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Probation in the United States: A Historical and Modern Perspective

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Author Biographical Information

Dr. Ryan M. Labrecque is an Assistant Professor in the Criminology and Criminal Justice Department at Portland State University. Dr. Labrecque's research interests focus on the evaluation of correctional interventions, the effects of prison life, the development of risk and needs assessments for community and institutional corrections settings, offender rehabilitation, and the transfer of knowledge to practitioners and policy makers. He has a number of published articles, book chapters, and conference presentations on these topics. Dr. Labrecque has also worked on several federal and state funded research projects in these areas and he is a former probation and parole officer.

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Abstract

Probation is a court order through which a criminal defendant is placed under the control, supervision, and care of a probation officer in lieu of imprisonment; so long as the probationer maintains certain standards of conduct. This chapter reviews the historical development of probation in the United States, and highlights how the practice is used in the 21st century. Probation has many advantages over imprisonment, including lower operational costs, increased opportunities for rehabilitation, and reduced risk of criminal socialization. However, there is increasing evidence to suggest probation strategies that focus on compliance monitoring and other law enforcement aspects of supervision are not effective in reducing recidivism, and under some circumstances may even increase it. Finally, this chapter concludes with a review of the status of the emerging efforts to redefine the function of probation in the modern era.

Keywords: Probation, Community Corrections, Correctional Supervision

71 **Probation in the United States: A Historical and Modern Perspective**

72 On any given day, there are approximately 6.9 million adult offenders under some form
73 of correctional supervision in the United States, with more than 4.7 million who are supervised
74 in the community (Kaeble, Glaze, Tsoutis, and Minton 2016). Probation is the most commonly
75 used criminal sentence, with probationers comprising 56 percent of the total correctional
76 population and 82 percent of the total community supervision population (Kaeble, Maruschak,
77 and Bonczar 2015). The total correctional population has steadily been declining for seven
78 continuous years at a rate of approximately 1 percent per year. However, this decrease has
79 largely been driven by the reduction in the use of probation, where in 2007 there were 4.3
80 million offenders on probation and in 2014 there were 3.9 million (Kaeble et al. 2016).

81 A similar trend exists in the juvenile justice system, where approximately 64 percent of
82 all adjudicated delinquent cases and 56 percent of all adjudicated status offenses result in the
83 disposition of probation as the most severe sanction ordered by the court (Hockenberry and
84 Puzzanchera 2014). There are presently more than 500,000 juveniles on probation in the United
85 States, which represents a nearly 30 percent reduction in the use of the practice since the late
86 1990s (Livsey 2012). Despite this widespread use of both adult and juvenile probation, however,
87 there is little evidence that this practice is effective in reducing recidivism (Bonta, Rugge, Scott,
88 Bourgon, and Yessine 2008).

89 This chapter reviews the historical development of probation in the United States, and
90 highlights how the practice is used in the 21st century. This chapter also describes the process by
91 which offenders are sentenced to probation, the types of offenders and offenses that lead to
92 probation, the conditions of probation that are often imposed by the sentencing court, the process
93 for dealing with technical violations of probation, and the effectiveness of probation in reducing

94 crime. Finally, this chapter concludes by examining the status of emerging evidence-based
95 attempts at redefining the function of probation in the modern era.

96 **Probation**

97 Probation is a court order through which a criminal defendant is placed under the control,
98 supervision, and care of a probation officer in lieu of imprisonment; so long as the probationer
99 maintains certain standards of conduct (American Probation and Parole Association 2013). In
100 order for probation to be granted, the offender must agree to comply with the conditions of
101 supervision imposed upon him or her by the sentencing court. General conditions of probation
102 are placed upon all probationers regardless of individual circumstances. These mandatory
103 conditions typically include that the probationer must obey all laws, submit to searches as
104 ordered, report to the supervising probation officer as directed, notify supervising officer of any
105 change in address or employment, not possess a firearm, associate with other known criminals,
106 or leave the jurisdiction of the court without prior approval (Abadinsky 2014).

107 The sentencing court may also impose additional conditions of probation that are tailored
108 in response to the offender's risk to the community and his or her individual rehabilitative needs.
109 These specific conditions can include stipulations such as the probationer must remain confined
110 to his or her house, submit to electronic monitoring, abide by a specific curfew, pay restitution or
111 probation supervision fees, and participate in substance abuse, mental health, educational,
112 vocational, or other treatment programs (Abadinsky 2014). The sentencing court retains the
113 authority to supervise the offender in the community, modify the conditions of supervision, and
114 revoke the probationary status of the offender (either in part or in full) based on his or her
115 behavior while on probation (Allen, Latessa, and Ponder 2015). Probationers are presumed to be

116 motivated to comply with the courts' wishes because if one does not, he or she may face the
117 possibility of being incarcerated (Latessa and Smith 2015).

118 It is the probation officer's responsibility to ensure that the conditions imposed by the
119 court are met and, if necessary, to call the violation(s) to the attention of the court (Morgan
120 2016). As such, the probation officers' role is to serve as both a helper and a rule enforcer
121 (Skeem and Manchak 2008). Assuming the probationer meets all of the court-imposed
122 conditions, the term of probation will complete at the expiration of the sentence. Probation
123 officers can also file a motion with the court to end a period of probation early if the offender has
124 successfully satisfied all of the courts requirements (e.g., successfully completed a treatment
125 program, paid off restitution) and it is believed that he or she has received the maximum benefit
126 of supervision (Latessa and Smith 2015). In the United States, probationers spend an average of
127 22 months on probation (Kaeble et al. 2015), and the majority (68 percent) successfully
128 completes his or her probation sentence (see Maruschak and Bonczar 2013).

129 If a probationer violates his or her conditions of probation (i.e., a technical violation), the
130 probation officer must address the misbehavior with the offender. The court gives probation
131 officers a great deal of discretionary power in responding to these situations. Officers are often
132 free to choose in which instances a probationer should receive a stern warning and those which
133 warrant an officer to bring the probationer back before the court for a formalized hearing
134 (Abadinsky 2014). Ideally, the judge, probation officer, prosecutor, probationer and his or her
135 defense counsel will collaborate during the revocation process to determine what course of
136 action should be taken (Latessa and Smith 2015). Offenders may serve a portion of his or her
137 initial underlying sentence in jail or prison, have additional conditions of supervision imposed
138 upon him or her, or have his or her probationary term extended. In some cases the term of

139 probation is unsatisfactorily terminated and the probationer may serve out the remainder of his or
140 her sentence in custody (Maruschak and Bonczar 2013). Offenders incarcerated due to such
141 revocations make up nearly half of all new intakes to state prisons in any given year (Taxman
142 2012), which has also contributed to the increase in the United States' inmate population (Austin
143 and Irwin 2012).

144 **Historical Development of Probation**

145 The use of probation in the United States has a long history. John Augustus, a Boston
146 shoemaker, is often credited with being the “father of probation” (Dressler 1970). Between 1841
147 and 1858, Augustus posted bail for nearly 2,000 men, women, and children—mostly minor
148 offenders and alcoholics—who otherwise had no way of paying their fines (Taxman 2012).
149 Augustus then aided these offenders in gaining employment and reported on their progress
150 toward reformation when he or she was later brought before the court for sentencing (Allen et al.
151 2015). It is no surprise that Augustus's home state of Massachusetts was the first to pass a
152 probation statute in 1878; and by 1956, all 50 states and the federal government had adopted
153 juvenile and adult probation laws (Petersilia 1997).

154 From its inception, probation emerged as a way to help offenders, which was largely
155 supported by the correctional philosophy of rehabilitation (Rothman 1980). The use of probation
156 was seen as an opportunity to divert the offender from imprisonment and give him or her another
157 chance (Latessa and Smith 2015). By remaining in the community, the offender would be better
158 able to support dependents, make restitution, retain employment, and participate in treatment
159 programs (Morgan 2016). Public support for the practice remained relatively unchallenged until
160 the early 1970s, when offender rehabilitation more generally came under attack (for more
161 information see Cullen and Gilbert 1982). Robert Martinson's (1974, p. 25) review of the

162 correctional treatment literature proclaimed “with few and isolated exceptions, the rehabilitative
163 efforts that have been reported so far have had no appreciable effect on recidivism.” The
164 conclusion that “nothing works” dealt a devastating blow to the rehabilitative ideal (Allen 1981).

165 During this “get tough” era, it became increasingly more difficult for correctional
166 administrators and policy-makers to support rehabilitative strategies while the philosophy was
167 being discredited (Cullen and Gendreau 2000). Throughout much of the 1980s and 1990s, a
168 series of punitive sentencing policies were adopted in many federal, state, and local jurisdictions
169 (e.g., mandatory minimum sentencing laws, three-strikes laws, truth-in-sentencing laws). Not
170 surprisingly, these policy changes led to a drastic increase in the number of offenders in prison
171 (Currie 1998). However, these policy changes also led to an increase in the number of offenders
172 who were placed on probation (Austin and Irwin 2012). To illustrate, in 1980 there were slightly
173 more than 1 million adult probationers in the United States; however, by the early 2000s, this
174 number grew to 4 million (Maruschak and Parks, 2012). This represents a 400 percent increase
175 in the use of probation in two decades.

176 During this time, there was also a fundamental shift in the function of probation (see
177 Taxman 2002). Probation departments began downplaying its officers’ roles as social workers
178 and who aided in connecting probationers to resources and services in the community, and
179 intensifying the use of controls over offenders (Taxman 2008). Whereas the first 150 years of
180 probation were focused on rehabilitating and assisting offenders stabilize their lives, these
181 changes led to probation officers emphasizing the law enforcement aspects of their job, with a
182 particular emphasis on strictly enforcing the conditions of probation (e.g., reporting, drug testing,
183 working, paying restitution, informing the officer of their whereabouts; Taxman 2012). This
184 strategy was based on the assumption that technical violations of these conditions serve as a

185 precursor to criminal behavior (see Campbell 2014). It was therefore reasoned that this strict
186 enforcement strategy would deter offenders from engaging in such undesirable behavior (see
187 e.g., Center for Civic Innovation 1999; Farabee 2005; and Hawken and Kleiman 2009).

188 **Reaffirming Rehabilitation**

189 In response to the growing movement of increasingly severe punishments (Clear 1994),
190 there was a countermovement to “reaffirm rehabilitation” as the overarching goal of corrections
191 (see Cullen and Gilbert 1982). Most notably, the Canadian school of rehabilitation led this effort
192 to develop a viable theory of effective offender treatment (Cullen and Jonson 2011). The
193 approach taken by this group of scholars was to search for the convergent validity across diverse
194 empirical and theoretical literatures to demonstrate that certain types of treatment programs and
195 strategies would benefit offenders and protect the public. As part of this process, the primary
196 method used to summarize findings was to quantitatively synthesize the results (i.e., meta-
197 analysis). Currently, there are more than 100 meta-analyses that have been conducted of the
198 correctional treatment literature, which have been replicated with remarkable consistency (see
199 McGuire 2013). Collectively, these findings are referred to as the *principles of effective*
200 *intervention* (see Andrews and Bonta 2010 for a detailed review).

201 The three most important principles identified by Andrews and Bonta (2010) are those of
202 risk, need, and responsivity (RNR). The *risk principle* asserts criminal behavior is predictable
203 when valid risk assessment tools are used and treatment intensity is matched to level of risk,
204 where higher risk offenders receive more services than lower risk offenders. The *need principle*
205 suggests that in order to reduce recidivism, the dynamic (i.e., changeable) crime-producing risk
206 factors—or criminogenic needs—should be the target of intervention (e.g., antisocial personality,
207 antisocial cognition, antisocial associates). The *responsivity principle* describes how to best

208 target criminogenic needs—with cognitive-behavioral interventions—and stresses the
209 importance of matching offenders and treatment strategies in a manner that is most conducive to
210 his or her learning style, motivation, abilities, and strengths (Andrews & Dowden, 2006).

211 A growing body of research finds that stronger adherence to the principles of RNR is
212 associated with more dramatic reductions in recidivism (increase of 2 percent recidivism with no
213 adherence to the principles and decrease of 26 percent for adherence to all three principles;
214 Andrews and Bonta 2010, p. 74). Further, research shows stronger treatment effects occur when
215 interventions are applied in the community as opposed to the institutional setting (reductions of
216 40% compared to 30%; McGuire 2002). Regrettably, however, these principles have not yet been
217 widely applied in probation settings (Bonta et al. 2011). Rather, the primary focus of probation
218 officers remains on compliance monitoring and other law enforcement aspects of supervision
219 (Bonta et al. 2008). This is rather unfortunate, given that it has been well documented that
220 punitive-based supervision strategies (e.g., intensive supervision, electronic monitoring, house
221 arrest) have no appreciable effects on recidivism, and under some circumstances may actually
222 increase it (MacKenzie 2006; Petersilia and Turner 1993; Sherman et al. 1997).

223 In 2008, Bonta and his colleagues conducted a meta-analysis that has cast some doubt on
224 the ability of the general practice of probation to effectively reduce recidivism. More
225 specifically, Bonta et al. (2008) found that community supervision was associated with a 2
226 percent reduction in general recidivism and had no impact on violent recidivism. These weak
227 findings seriously question the rationale of maintaining the current probation practices, when
228 there are other potentially more viable options available that may be able to achieve better
229 outcomes (Burrell 2012). In response, there has been a growing effort to nudge probation out of
230 its focus on compliance monitoring and to better incorporate the use of evidence-based

231 rehabilitation services in an effort to achieve better outcomes (see Bourgon, Gutierrez, and Aston
232 2012).

233 **New Approaches to Supervision**

234 During the last decade, several formalized attempts have been made to improve the
235 effectiveness of probation by incorporating the principles of effective intervention into practice
236 (for a review see Trotter 2013; and Viglione and Taxman 2015). These new supervision
237 strategies include the Proactive Community Supervision (PCS) model (Taxman 2008), the
238 Strategic Training Initiative in Community Supervision (STICS) model (Bonta et al. 2011), the
239 Effective Practices in Community Supervision (EPICS) model (Smith, Schweitzer, Labrecque,
240 and Latessa 2012), and the Strategies Aimed at Reducing Re-Arrest (STARR) model (Robinson
241 et al. 2012). Each of these models seeks to teach probation officers how to more effectively apply
242 the RNR principles within the context of the individual case management meetings with the
243 offenders they supervise. More specifically, these initiatives seek to aid officers in targeting the
244 criminogenic needs (*need principle*) of higher risk offenders (*risk principle*) with cognitive-
245 behavioral based interventions, in a manner that is conducive to his or her learning style,
246 motivation, abilities, and strengths (*responsivity principle*).

247 These new models of intervention further work to try and improve the nature of the
248 relationship between the probation officer and the probationer. Inherent in these strategies is the
249 notion that officers should develop quality relationships with the offenders they supervise, while
250 balancing the goals of care (i.e., rehabilitating the offender) and control (i.e., protecting the
251 community; Skeem and Manchak 2008). These models also attempt to increase the officer use of
252 core correctional practices (CCPs), which are the core skills that have been shown to increase the

253 therapeutic potential of correctional interventions (Dowden and Andrews 2004). There are eight
254 CCPs identified by Gendreau, Andrews, and Thériault (2010):

255 *Anticriminal modeling* – officer models prosocial behavior and reinforces the offender
256 when he or she does the same.

257
258 *Effective reinforcement* – officer reinforces a desirable behavior of the offender and
259 discusses the short- and long-term benefits of its continued use with him or her.

260
261 *Effective disapproval* – officer disapproves of an undesirable behavior of the offender,
262 discusses the short- and long-term costs of its continued use with him or her, and
263 demonstrates an alternative, prosocial behavior.

264
265 *Effective use of authority* – officer guides offender toward compliance by focusing his or
266 her message on the behavior exhibited, being direct and specific concerning his or her
267 demands and specifying the offender’s choices and attendant consequences.

268
269 *Structured learning* – officer uses behavioral strategies to assist offender in developing
270 prosocial skills to avoid or manage high-risk situations. Officer teaches skills in a
271 structured manner by defining, modeling, and rehearsing the skill followed by providing
272 constructive feedback. Officer encourages offender to practice the skill in increasingly
273 difficult situations.

274
275 *Problem solving* – officer teaches offender to address high-risk situations by exercising
276 the steps of effective problem solving: identifying the problem, clarifying the goals,
277 generating a list of alternative solutions, reviewing options, implementing the plan, and
278 evaluating the outcome.

279
280 *Cognitive restructuring* – officer helps offender generate descriptions of problematic
281 situations and identify his or her related thoughts and feelings. Officer then helps
282 offender to recognize risky thinking and practice prosocial alternatives.

283
284 *Relationship skills* – effective officers possess several critical relationship skills including
285 being warm, open, nonjudgmental, empathetic, flexible, engaging, solution-focused, and
286 directive.

287
288 Support for these new models of supervision has begun to accumulate (see e.g., the
289 reviews by Chadwick, Dewolf, and Serin 2015; Drake 2013; and Trotter 2013). Collectively,
290 these new models have been found to enhance officer use of the CCPs (Bourgon, Bonta, Rugge,
291 Scott, and Yessine 2010; Smith et al. 2012); improve the quality of the offender-officer
292 relationship (Labrecque, Schweitzer, and Smith 2014), decrease offender antisocial attitudes

293 (Labrecque, Smith, Schweitzer, and Thompson 2013); and reduce recidivism (Bonta et al. 2011;
294 Latessa, Smith, Schweitzer, and Labrecque 2012; Labrecque, Smith, and Luther 2015;
295 Lowenkamp, Holsinger, Robinson, and Alexander 2014). A recent meta-analysis conducted by
296 Chadwick et al. (2015) reported that offenders supervised by officers trained in these new
297 models were 1.5 times less likely to recidivate compared to the offenders supervised by officers
298 not trained in these models.

299 **Probation in the Twenty-First Century**

300 Presently, there are more than 2,000 independent probation agencies in the United States
301 that all operate under different state and federal laws (Abadinsky 2014). Under the umbrella of
302 probation, there are six separate systems: juvenile probation, municipal probation, county
303 probation, state probation, state combined probation and parole, and federal probation
304 (Abadinsky 2014). Each state has more than one of these systems in operation simultaneously,
305 which is administered either by a single, central agency; a variety of local agencies; or a
306 combination of the two (Hanser 2014). Further, probation can be delivered through either the
307 executive or judiciary branch of government. Probation agencies administered through the
308 executive branch may exist as part of the larger state correctional system or may exist as its own
309 separate system. Probation agencies administered through the judicial branch work for the court
310 system itself. In both cases, the probation agency still oversees the compliance with the
311 conditions of supervision (Hanser 2014).

312 In addition to its supervisory role, probation agencies also serve an investigatory function
313 for the courts (Petersilia 1997). Under the direction of the criminal court, probation officers
314 complete presentence investigation (PSI) reports in order to provide the sentencing court with
315 information about the offender and the facts surround his or her case (Latessa and Smith 2015).

316 A PSI typically includes information on the offender's background, past criminal behavior,
317 offense situations, personal and family circumstances, personality, need, risk level, a summary of
318 permissible sentencing options, and a recommendation for disposition (Allen et al. 2015). If
319 incarceration is recommended, the probation officer recommends a sentence length; and if
320 recommending probation, the officer recommends sentence length and the conditions to be
321 imposed (Petersilia 1997). In general, judges have a wide range of options in the disposition of a
322 criminal case including suspending a sentence, imposing a fine, requiring restitution, imposing
323 community supervision, and incarcerating an offender. The PSI is thus designed to help the judge
324 make a more informed decision by taking into account the needs of the offender, as well as the
325 safety of the community (Latessa and Smith 2015).

326 The use of probation supervision is no longer reserved for first-time and less serious
327 offenders, as it was during the Augustus era (Taxman 2012). A Bureau of Justice Statistics report
328 found that nearly half of all sentenced probationers had a prior criminal conviction (Mumola and
329 Bonczar 1998). In 2014, 56 percent of adult offenders were on probation for a felony offense
330 (Kaeble et al. 2015). Although the majority of probationers are sentenced for non-violent
331 offenses, 19 percent of adults (Kaeble et al. 2015) and 26 percent of juveniles are sentenced to
332 probation for violent (i.e., personal) offenses (Hockenberry and Puzzanchera 2014).
333 Approximately, three-fourths of all juvenile and adult probationers are males who are also
334 represented by a disproportionately higher rate of ethnic/minority offenders. Further, more than
335 one-third of juvenile probationers are also under the age of 16 (Hockenberry and Puzzanchera
336 2014). These changes in the probationer characteristics have made this population more difficult
337 to manage, especially when coupled with shrinking departmental budgets and increasing officer
338 to offender ratios (see DeMichele 2007; and Petersilia 1997).

339 **Conclusion**

340 Probation has many advantages over imprisonment, including lower operational costs,
341 increased opportunities for rehabilitation, and reduced risk of criminal socialization (Latessa and
342 Smith 2015). However, there is increasing evidence to suggest that probation strategies that
343 focus on compliance monitoring and other law enforcement aspects of supervision are not
344 effective in reducing recidivism, and may even increase it (Bonta et al. 2008; MacKenzie 2006;
345 Petersilia and Turner 1993; Sherman et al. 1997). There is also a growing body of literature that
346 indicates the effectiveness of probation is contingent upon the extent to which the principles of
347 effective intervention are adhered (Andrews and Bonta 2010). As Judge Burton Roberts—the
348 Administrative Judge of the Bronx Supreme and Criminal Courts—explains: “Nothing is wrong
349 with probation. It is the *execution* of probation that is wrong” (as cited in Klein 1997, p. 72).

350 It has been well documented that the effectiveness of any correctional intervention is
351 greatly diminished if careful attention is not paid to how the program is implemented in practice
352 (Gendreau, Goggin, and Smith 1999). Prior research has demonstrated that incompetent use of
353 treatment strategies can have the unintended consequence of increasing, rather than decreasing,
354 recidivism (see e.g. Lowenkamp, Latessa, and Smith 2006). Despite the efforts of the new
355 supervision models to increase the officer adherence to the RNR principles and use of CCPs,
356 there is evidence that even trained officers do not consistently apply these skills in their
357 interactions with offenders during follow-up evaluations (Robinson et al., 2012).

358 This is unfortunate because research suggests there is a relationship between adherence to
359 the model and offender outcomes. For example, Smith and Labrecque (2016) found that
360 offenders supervised by EPICS trained officers who used the models’ skills with high fidelity
361 had lower recidivism rates than those supervised by officers who used the skills with less

362 fidelity. This result stresses the importance of ensuring that probation officers adhere to the
363 models skills with fidelity. One strategy for improving the use of these skills is to monitor officer
364 performance (e.g., audio-record officer-offender interactions) and provide officers with coaching
365 opportunities and booster training sessions. Labrecque and Smith (2015) found that coaching
366 officers over a period of 18 months led to increased use of CCPs throughout the duration. It is
367 therefore critical that probation agencies not only adopt such models of supervision and train its
368 officers in these curricula, but these organizations must also ensure these skills are being used in
369 practice with fidelity (e.g., monitor officer performance, provide coaching and booster sessions).

370 Probation agencies have a responsibility to protect the community. Although many intra-
371 agency commonalities exist, the administration of probation is not uniform across the United
372 States; rather it varies widely from jurisdiction to jurisdiction (Taxman 2012). Likewise, these
373 correctional agencies are free to enforce different strategies of supervision. It is no longer
374 adequate for organizations and officers to focus exclusively on controlling and punishing
375 probationers. The incorporation of the principles of effective intervention into probation settings
376 is therefore crucial to better serve the millions of probationers in the United States and to achieve
377 better societal outcomes (i.e., lower recidivism rates; Viglione and Taxman 2015). Fortunately,
378 there are several new models of supervision available that seek to increase the use of these
379 principles in probation settings (e.g., PCS, STICS, EPICS, STARR), which have shown very
380 promising results. The attempts undertaken thus far are a great first step in generating
381 meaningful changes in probation organizations, but there is still much work to be done in this
382 area.

383

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