Probation in the United States: A Historical and Modern Perspective

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

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

This chapter reviews the historical development of probation in the United States, and highlights how the practice is used in the 21st century. This chapter also describes the process by which offenders are sentenced to probation, the types of offenders and offenses that lead to probation, the conditions of probation that are often imposed by the sentencing court, the process for dealing with technical violations of probation, and the effectiveness of probation in reducing
crime. Finally, this chapter concludes by examining the status of emerging evidence-based attempts at redefining the function of probation in the modern era.

**Probation**

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 (American Probation and Parole Association 2013). In order for probation to be granted, the offender must agree to comply with the conditions of supervision imposed upon him or her by the sentencing court. General conditions of probation are placed upon all probationers regardless of individual circumstances. These mandatory conditions typically include that the probationer must obey all laws, submit to searches as ordered, report to the supervising probation officer as directed, notify supervising officer of any change in address or employment, not possess a firearm, associate with other known criminals, or leave the jurisdiction of the court without prior approval (Abadinsky 2014).

The sentencing court may also impose additional conditions of probation that are tailored in response to the offender’s risk to the community and his or her individual rehabilitative needs. These specific conditions can include stipulations such as the probationer must remain confined to his or her house, submit to electronic monitoring, abide by a specific curfew, pay restitution or probation supervision fees, and participate in substance abuse, mental health, educational, vocational, or other treatment programs (Abadinsky 2014). The sentencing court retains the authority to supervise the offender in the community, modify the conditions of supervision, and revoke the probationary status of the offender (either in part or in full) based on his or her behavior while on probation (Allen, Latessa, and Ponder 2015). Probationers are presumed to be
motivated to comply with the courts’ wishes because if one does not, he or she may face the possibility of being incarcerated (Latessa and Smith 2015).

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

If a probationer violates his or her conditions of probation (i.e., a technical violation), the probation officer must address the misbehavior with the offender. The court gives probation officers a great deal of discretionary power in responding to these situations. Officers are often free to choose in which instances a probationer should receive a stern warning and those which warrant an officer to bring the probationer back before the court for a formalized hearing (Abadinsky 2014). Ideally, the judge, probation officer, prosecutor, probationer and his or her defense counsel will collaborate during the revocation process to determine what course of action should be taken (Latessa and Smith 2015). Offenders may serve a portion of his or her initial underlying sentence in jail or prison, have additional conditions of supervision imposed upon him or her, or have his or her probationary term extended. In some cases the term of
probation is unsatisfactorily terminated and the probationer may serve out the remainder of his or
her sentence in custody (Maruschak and Bonczar 2013). Offenders incarcerated due to such
revocations make up nearly half of all new intakes to state prisons in any given year (Taxman
2012), which has also contributed to the increase in the United States’ inmate population (Austin
and Irwin 2012).

**Historical Development of Probation**

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

From its inception, probation emerged as a way to help offenders, which was largely
supported by the correctional philosophy of rehabilitation (Rothman 1980). The use of probation
was seen as an opportunity to divert the offender from imprisonment and give him or her another
chance (Latessa and Smith 2015). By remaining in the community, the offender would be better
able to support dependents, make restitution, retain employment, and participate in treatment
programs (Morgan 2016). Public support for the practice remained relatively unchallenged until
the early 1970s, when offender rehabilitation more generally came under attack (for more
information see Cullen and Gilbert 1982). Robert Martinson’s (1974, p. 25) review of the
correctional treatment literature proclaimed “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.” The conclusion that “nothing works” dealt a devastating blow to the rehabilitative ideal (Allen 1981).

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

During this time, there was also a fundamental shift in the function of probation (see Taxman 2002). Probation departments began downplaying its officers’ roles as social workers and who aided in connecting probationers to resources and services in the community, and intensifying the use of controls over offenders (Taxman 2008). Whereas the first 150 years of probation were focused on rehabilitating and assisting offenders stabilize their lives, these changes led to probation officers emphasizing the law enforcement aspects of their job, with a particular emphasis on strictly enforcing the conditions of probation (e.g., reporting, drug testing, working, paying restitution, informing the officer of their whereabouts; Taxman 2012). This strategy was based on the assumption that technical violations of these conditions serve as a
precursor to criminal behavior (see Campbell 2014). It was therefore reasoned that this strict enforcement strategy would deter offenders from engaging in such undesirable behavior (see e.g., Center for Civic Innovation 1999; Farabee 2005; and Hawken and Kleiman 2009).

**Reaffirming Rehabilitation**

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

The three most important principles identified by Andrews and Bonta (2010) are those of risk, need, and responsivity (RNR). The *risk principle* asserts criminal behavior is predictable when valid risk assessment tools are used and treatment intensity is matched to level of risk, where higher risk offenders receive more services than lower risk offenders. The *need principle* suggests that in order to reduce recidivism, the dynamic (i.e., changeable) crime-producing risk factors—or criminogenic needs—should be the target of intervention (e.g., antisocial personality, antisocial cognition, antisocial associates). The *responsivity principle* describes how to best
target criminogenic needs—with cognitive-behavioral interventions—and stresses the importance of matching offenders and treatment strategies in a manner that is most conducive to his or her learning style, motivation, abilities, and strengths (Andrews & Dowden, 2006).

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

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

New Approaches to Supervision

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

These new models of intervention further work to try and improve the nature of the relationship between the probation officer and the probationer. Inherent in these strategies is the notion that officers should develop quality relationships with the offenders they supervise, while balancing the goals of care (i.e., rehabilitating the offender) and control (i.e., protecting the community; Skeem and Manchak 2008). These models also attempt to increase the officer use of core correctional practices (CCPs), which are the core skills that have been shown to increase the
therapeutic potential of correctional interventions (Dowden and Andrews 2004). There are eight CCPs identified by Gendreau, Andrews, and Thériault (2010):

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

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

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

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

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

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

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

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

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

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

In addition to its supervisory role, probation agencies also serve an investigatory function for the courts (Petersilia 1997). Under the direction of the criminal court, probation officers complete presentence investigation (PSI) reports in order to provide the sentencing court with information about the offender and the facts surround his or her case (Latessa and Smith 2015).
A PSI typically includes information on the offender’s background, past criminal behavior, offense situations, personal and family circumstances, personality, need, risk level, a summary of permissible sentencing options, and a recommendation for disposition (Allen et al. 2015). If incarceration is recommended, the probation officer recommends a sentence length; and if recommending probation, the officer recommends sentence length and the conditions to be imposed (Petersilia 1997). In general, judges have a wide range of options in the disposition of a criminal case including suspending a sentence, imposing a fine, requiring restitution, imposing community supervision, and incarcerating an offender. The PSI is thus designed to help the judge make a more informed decision by taking into account the needs of the offender, as well as the safety of the community (Latessa and Smith 2015).

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

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

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

This is unfortunate because research suggests there is a relationship between adherence to the model and offender outcomes. For example, Smith and Labrecque (2016) found that offenders supervised by EPICS trained officers who used the models’ skills with high fidelity had lower recidivism rates than those supervised by officers who used the skills with less
fidelity. This result stresses the importance of ensuring that probation officers adhere to the models skills with fidelity. One strategy for improving the use of these skills is to monitor officer performance (e.g., audio-record officer-offender interactions) and provide officers with coaching opportunities and booster training sessions. Labrecque and Smith (2015) found that coaching officers over a period of 18 months led to increased use of CCPs throughout the duration. It is therefore critical that probation agencies not only adopt such models of supervision and train its officers in these curricula, but these organizations must also ensure these skills are being used in practice with fidelity (e.g., monitor officer performance, provide coaching and booster sessions).

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