

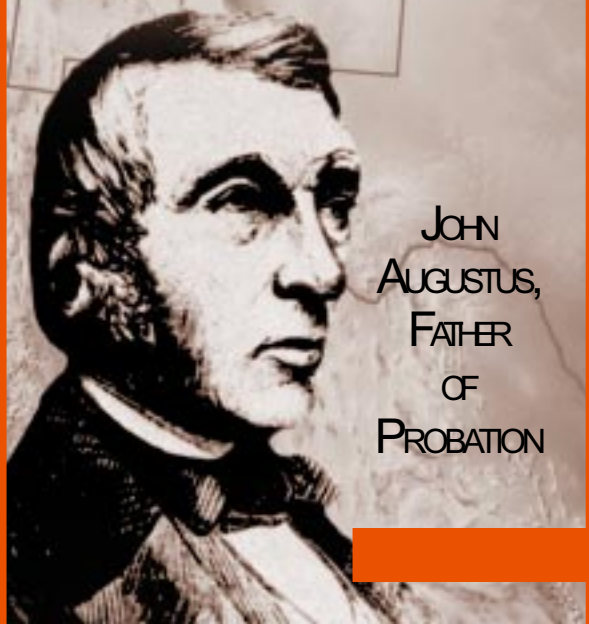
P robation

in

the

United

States



JOHN
AUGUSTUS,
FATHER
OF
PROBATION

Part I

Editor's note: This is the first part of a two part article. Part two of this article will appear in the Perspectives Summer 1998 issue.

Probation is the most common form of criminal sentencing in the United States. It is commonly defined as: A court-ordered disposition alternative through which an adjudicated offender is placed under the control, supervision and care of a probation staff member in lieu of imprisonment, so long as the probationer meets certain standards of contact (American Correctional Association 1995).

The Bureau of Justice Statistics reports that just over 3 million adults were under state or federal probation at year-end 1995, and that probationers make up 58 percent of all adults under correctional supervision (BJS 1996). In fact, the number of persons on probation is so large that the U.S. Department of Justice estimates that, on any one day, nearly 2 percent of all U.S. adult citizens are under probation supervision. And the population continues to rise—increasing 4 percent in 1994, and almost 300 percent over the past ten years (BJS 1996).

Despite its wide usage, probation is often the subject of intense criticism. It suffers from a “soft on crime” image, and as a result, maintains little public support. Probation is often depicted as permissive, uncaring about crime victims, and blindly advocating a rehabilitative ideal while ignoring the reality of violent, predatory criminals.

Their poor (and some believe, misunderstood) public image leaves them unable to compete effectively for scarce public funds. Nationally, community corrections receives less than 10 percent of state and local government expenditures for corrections, even though they supervise two out of three correctional clients (Petersilia 1995b).

As a result of inadequate funding, probation often means freedom from supervision. Offenders in large urban areas are often assigned to a probation officer's hundred-plus caseload, where meetings occur at most once a month, and there is little monitoring of employment or treatment progress. As long as no re-arrest occurs, offenders can successfully complete probation whether or not conditions have been fully met or court fees paid (Langan 1994). Such “supervision” not only makes a mockery of the justice system, but leaves many serious offenders unsupervised.

But while current programs are often seen as inadequate, the *concept* of probation has a great deal of appeal. As Judge Burton Roberts, Administrative Judge of the Bronx Supreme and Criminal Courts explained: “Nothing is wrong with probation. It is the *execution* of probation that is wrong” (cited in Klein 1997:72).

Scholars and citizens agree that probation has many advantages over imprisonment, including lower cost, increased opportunities for rehabilitation, and reduced risk of criminal socialization. And with prison crowding a nationwide problem, the need for inexpensive and flexible community punishment options has never been greater. Probation leaders (Corbett 1996; Nidorf 1996), policymakers (Bell and Bennett 1996), and scholars (Clear and Braga 1995; Tonry and Lynch 1996) are now calling for “reforming,” “reinvesting,” and “restructuring” probation.

But exactly *how* would one go about reforming probation? Some are beginning to offer suggestions. There is a general trend toward greater judicial involvement in monitoring probation conditions. In many jurisdictions, judges have established special drug courts. Here, judges identify first-time drug offenders, sentence them to participate in drug testing and rehabilitation programs, and then the judge personally monitors their progress. If the offender successfully completes the program, he or she is not incarcerated and in some jurisdictions (e.g., Denver, Colorado), the conviction is expunged from the official record. Research on drug courts has been limited, but some studies have shown reductions in recidivism (Goldkamp 1994) and increased offender

participation in treatment (Deschenes, Turner, and Greenwood 1995).

Other judges have decided on an individual basis to impose probation sentences that are more punitive and meaningful. A judge in Houston, Texas, as part of his sentencing for molesting two students, a 66 year old music instructor was forced to give up his \$12,000 piano and post a sign on his front door warning children to stay away. State District Judge Ted Poe also barred the teacher from buying another piano, and even from playing one until the end of his 20-year probation (Mulholland 1994).

But meting out individualized sentences, and personally monitoring offenders takes time, and judges' court calendars are crowded. James Q. Wilson of UCLA has suggested enlisting the police to help probation officers monitor offenders, particularly for the presence of weapons (Wilson 1995). He recommends giving each police patrol officer a list of people on probation or parole who live on that officer's beat and then rewarding the police for making frequent stops to insure that the offenders are not carrying guns or violating other statutes. Police in Redmond, Washington have been involved in such an experiment since 1992, and while the program has not been formally evaluated, the police believe it has resulted in reduced crime (Morgan and Marris 1994).

But closer monitoring of probationers is only half the problem. The more difficult problem is finding jail and prison capacity to punish violators once they are discovered. Closely monitoring drug testing, for example, leads to many positive drug tests (Petersilia and Turner 1993). Most local jails don't have sufficient space to incarcerate all drug users, wanting to prioritize space for violent offenders. The result is that probationers quickly learn that testing dirty for drugs, or violating other court-ordered conditions, has little consequence.

Oregon is trying to rectify this problem by imposing a swift and certain, but short (two to three days) jail sentence on *every* probationer who tests positive for drugs (Parent et al. 1994). The notion is that the offender will find the term disruptive to his normal life and be deterred from further drug use. Sanctions are gradually increased upon each subsequent failed drug test according to written department policy, and after three failed tests, the probationer is sent to prison. An evaluation of the program by the National Council on Crime and Delinquency (Baird, Wagner, and DeComo 1995) show encouraging results in terms of increasing offender participation in treatment and lowering recidivism while under supervision.

Unfortunately, debating the merits of these or other strategies is severely limited because we know so little about current probation practice. Assembling what is known about U.S. probation practices, so that public policy can be better informed, is the main purpose of this article.

Together, the data in this article show that probation is seriously underfunded relative to prisons—a policy that is not only short-sighted but dangerous. Probationers in urban areas often receive little or no supervision, and the resulting recidivism rates are high for felons. But prison crowding has renewed interest in community-based sanctions, and recent evaluative evidence suggests that probation programs—properly designed and implemented—can be effective on a number of dimensions, including reducing recidivism.

There are several steps to achieving greater crime control over probationers. First, we must provide adequate financial resources to deliver programs that have been shown to work. Successful probation programs combine *both* treatment and surveillance, and are targeted toward appropriate offender subgroups. Current evidence suggests low-level drug offenders are prime candidates for enhanced probation programs. We must then work to garner more public support by convincing citizens that probation sanctions are punitive, and convincing the judiciary that offenders will be held accountable for their behavior. Over time, probation will demonstrate its effectiveness, both in terms of reducing the human toll that imprisonment exacts on those incarcerated, and reserving scarce resources to ensure that truly violent offenders remain in prison.

Section I begins by describing U.S. juvenile and adult probation data sources, explaining briefly why the topic has received relatively little attention.

Section II presents a brief history of probation in the U.S., highlighting important milestones.

Section III summarizes probation in modern sentencing practice, discussing how the probation decision is made, the preparation of the presentence investigation, and the setting and enforcement of probation conditions. This section also describes the organi-

“Moved by the plight of those in the jails and prisons of his day, a humble Boston bootmaker began a great movement in the reformation of offenders when, in 1841, he took from the court for a period of probation one who under his care and with his friendship became a man again.”

From the memorial plaque displayed in Boston in recognition of John Augustus, the Father of Probation

zation and funding of U.S. probation departments.

Section IV describes current probation population characteristics. It reviews the growth in probation populations, and what is known about offenders' crimes, court-ordered conditions, and supervision requirements. It also presents data detailing how the granting of probation varies across jurisdictions.

Section V is devoted to assessing probation outcomes, reviewing recidivism and alternative outcomes measures. Section VI outlines several steps to reviving probation and achieving greater crime control over probationers.

I. Sources of Probation Information

Probation receives little public scrutiny, not by intent but because the probation system is so complex and the data is scattered among hundreds of loosely connected agencies, each operating with a wide variety of rules and structures. Whereas one agency may be required to serve juvenile, misdemeanor, and felony offenders, another agency may handle only one type of offender. In some locations, probation officers run detention facilities and day-reporting centers, and in still others, they supervise pretrial offenders or even parolees, and run school-based prevention programs. The term "probation" has various meanings within multiple areas of corrections, and the volume and type of offenders on probation are quite large and varied.

Virtually all probation information is national in scope and collected by agencies within the Office of Justice Programs, U.S. Department of Justice. There are only a few states (e.g., Minnesota, Vermont, North Carolina) that collect more detailed data on probationers, and very few probation agencies maintain their own research units. As a result, most states can not describe the demographic or crime characteristics of probationers under their supervision. For example, California—which supervises nearly 300,000 adult probationers—is unable to provide the gender, age, or crime convictions of its probationers on the annual survey administered by the Bureau of Justice Statistics (Maquire and Pastore 1995).

A. Juvenile Probationers

Information on the number of youth placed on probation comes from the *Juvenile Court Statistics* series. This annual series collects information from all U.S. courts with juvenile jurisdiction. Sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and analyzed by the National Center for Juvenile Justice (NCJJ), it describes the numbers of youth granted probation, as well as their underlying crime and demographic characteristics (see Butts, et al. 1995).

In 1992, the OJJDP sponsored a nationwide survey of juvenile probation departments, collecting information on departments' size, organization, and caseload size. Results of this survey are contained in Hurst and Torbet (1993).

B. Adult Probationers

Nearly all existing national data describing adult probationers comes from two statistical series sponsored by the Bureau of Justice Statistics (BJS), the statistical arm of the U.S. Department of Justice (DOJ). The first series, *Correctional Populations in the United States* (BJS 1995) collects annual counts and movements from all Federal, State, and local adult probation agencies in the United States. Probationer information includes race, sex, and ethnicity, and the numbers on probation for felonies, misdemeanors, and driving while intoxicated. Data on the type of discharge is also obtained (i.e., successful completion, incarcerated). This information has been collected by the DOJ since the mid-1970s.

The second series is the *National Judicial Reporting Program* (NJRP) a biennial sample survey, which compiles information on the sentences

that felons receive in State courts nationwide and on the characteristics of the felons. The latest information is reported in *State Court Sentencing of Convicted Felons, 1992* (Langan and Cohen 1996) and is based on a sample of 300 nationally representative counties. The information collected on convicted felons includes their age, race, gender, prior criminal record, length of sentence, and conviction offense.¹

Data on the organization of adult probation departments has been sporadically collected over the years by the National Institute of Justice (Comptroller General 1976; Allen, Carlson, Parks 1979; Nelson, Ohmart, Harlow 1978); National Association of Criminal Justice Planners (Cunniff and Bergsmann 1990; Cunniff and Shilton 1991), the National Institute of Corrections (NIC 1993), and the Criminal Justice Institute (Camp and Camp 1995). The Criminal Justice Institute is a private, non-profit organization that has been publishing, since 1990, selected probation data in *The Corrections Yearbook: Probation and Parole*.

The National Institute of Justice (NIJ), the research arm of the U.S. Department of Justice, has sponsored nearly all of the basic and evaluation research conducted to date on adult probation. In recent years, these efforts have focused primarily on evaluating the effects of intermediate sanctions, programs that are more severe than routine probation but do not involve incarceration (for a review, see Tonry and Lynch 1996).

Beyond these minimal data, there is little systematic information on probation. We know almost nothing, for example, about the over one million adults misdemeanants who are placed on probation—what were their crimes, what services did probation provide, and how many are re-arrested? And except for the studies mentioned above, we don't have that type of information for adult felons or juveniles either. There are serious gaps in our knowledge, and what does exist is not easily accessible or summarized.

II. The Origins and Evolution of Probation

To understand current probation practice, you must appreciate its historical roots. Probation in the U.S. began in 1841 with the innovative work of John Augustus, a Boston bootmaker who was the first to post bail for a man charged with being a common drunk under the authority of the Boston Police Court. Mr. Augustus was a religious man of financial means, and had some experience working with alcoholics. When the man appeared before the judge for sentencing, Mr. Augustus asked the judge to defer sentencing for three weeks and release the man into Augustus' custody. At the end of this brief probationary period, the offender convinced the judge of his reform and therefore received a nominal fine. The concept of probation had been born (Dressler 1962).

From the beginning, the "helping" role of Augustus met with the scorn of law enforcement officials who wanted the offenders punished not helped. But Augustus persisted, and the court gradually accepted the notion that not all offenders needed to be incarcerated. During the next fifteen years (from 1841 until his death in 1859), Augustus bailed out over 1,800 persons in the Boston courts, making himself liable to the extent of \$243,234 and preventing these individuals from being held in jail to await trial. Augustus is reported to have selected his candidates carefully, offering assistance "mainly to those who were indicted for their first offense, and whose hearts were not wholly depraved, but gave promise of better things" (Augustus 1939). He provided his charges with aid in obtaining employment, an education, or a place to live, and also made an impartial report to the court.

Augustus reported great success with his charges, nearly all of whom were accused or convicted of violating Boston's vice or temperance laws.

Of the first 1,100 offenders he discussed in his autobiography, he claimed only one had forfeited bond, and asserted that, with help, most of them eventually led upright lives (Augustus 1939).

Buoyed by Augustus's example, Massachusetts quickly moved into the forefront of probation development. An experiment in providing services for children (resembling probation) was inaugurated in 1869. In 1878, Massachusetts was the first state to formally adopt a probation law for juveniles. Interestingly, it was also the concern for mitigating the harshness of penalties for children that led to the international development of probation (Hamaï et al. 1995).

Public support for adult probation was much more difficult to come by. It was not until 1901 that New York passed the first statute authorizing probation for adult offenders; over 20 years after Massachusetts passed its law for juvenile probationers (Latessa and Allen 1997). By 1956, all states had adopted adult and juvenile probation laws.

John Augustus' early work provided the model for probation as we know it today. Virtually every basic practice of probation was originally conceived by him. He was the first person to use the term probation—which derives from the Latin term *probatio*, meaning a “period of proving or trial.” He developed the ideas of the presentence investigation, supervision conditions, social casework, reports to the court, and revocation of probation. Unfortunately, for such a visionary, it is unfortunate that Augustus died destitute (Dressler 1962).

Initially, probation officers were volunteers who according to Augustus, just needed to have a good heart. Early probation volunteer officers were often drawn from Catholic, Protestant, and Jewish church groups. In addition, police were reassigned to function as probation officers while continuing to draw their pay as municipal employees. But as the concept spread and the number of persons arrested increased, the need for presentence investigations and other court investigations increased, and the volunteer probation officer was converted into a paid position (Dressler 1962). The new officers hired were drawn largely from the law enforcement community—retired sheriffs and policemen—and worked directly for the judge.

Gradually the role of court support and probation officer became synonymous, and probation officers became “the eyes and ears of the local court.” As Rothman observed some years later, probation developed in the U.S. very haphazardly, and with no real thought (Rothman 1980:244). Missions were unclear and often contradictory, and from the start there was tension between the law enforcement and rehabilitation purposes of probation (McAnany, Thomson and Fogel 1984). But most importantly, tasks were continually added to probation's responsibilities, while funding remained constant or declined. A 1979 survey (Fitzharris 1979) found that probation departments were responsible for more than 50 different activities, including court-related civil functions (for example, step-parent adoption investigations, minority age marriage investigations).

Between the 1950s and 1970s, U.S. probation evolved in relative obscurity. But a number of reports issued in the 1970s brought national attention to the inadequacy of probation services and their organization. The National Advisory Commission on Criminal Justice Standards and Goals (1973:112) stated that probation was the “brightest hope for corrections,” but was “failing to provide services and supervision.” In 1974, a widely publicized review of rehabilitation programs purportedly showed probation's ineffectiveness (Martinson 1974), and two years later the U.S. Comptroller General's Office released a report concluding that probation as currently practiced was a failure, and that the U.S. probation systems were “in crisis” (1976:3). They urged that “Since most offenders are sentenced to probation, probation systems must receive adequate resources. But something more fundamental is needed. The priority given to probation in the criminal justice system

must be reevaluated.” (Comptroller General 1976:74).

In recent years, probation agencies have struggled—with continued meager resources—to upgrade services and supervision. Important developments have included the widespread adoption of case classification systems and various types of intermediate sanctions (e.g., electronic monitoring, intensive supervision). These programs have had varied success in reducing recidivism, but the evaluations have been instructive in terms of future program design.

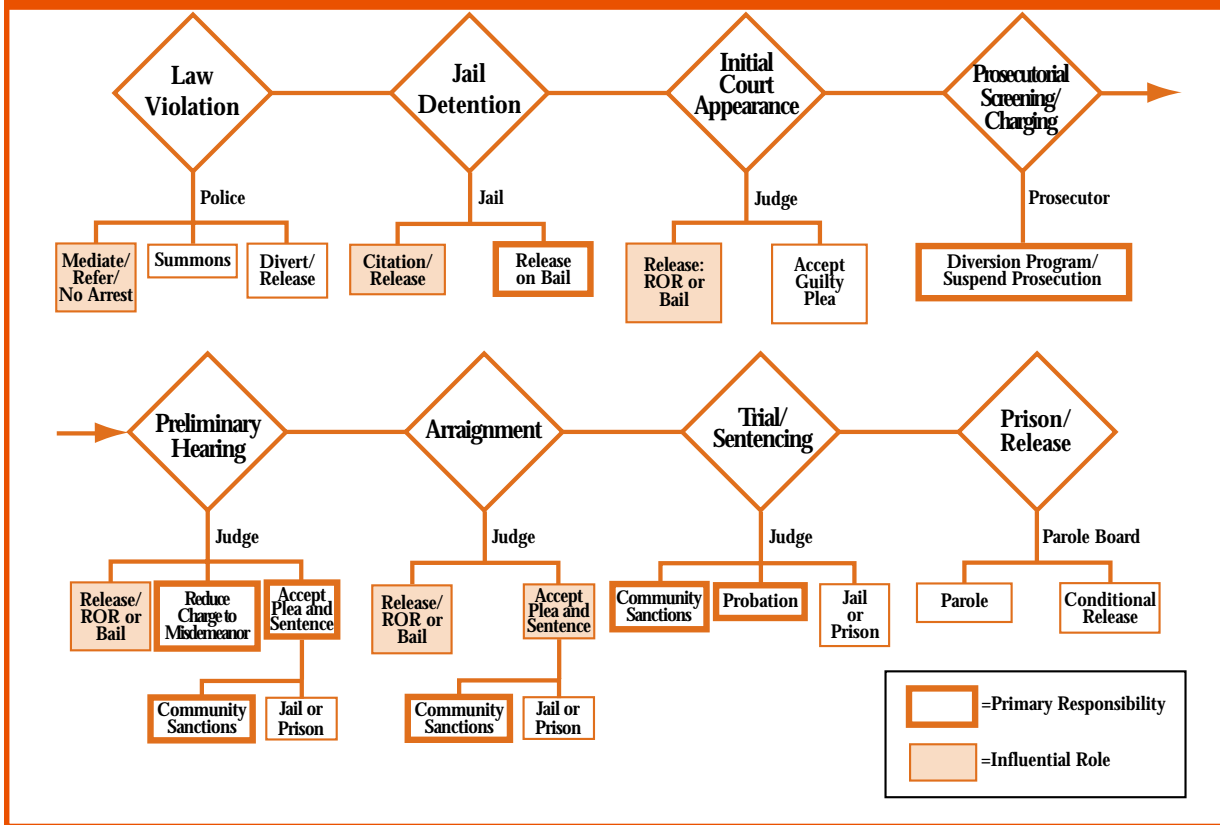
Significant events in the development of U.S. probation are contained in Table 1.

Table 1	
Significant Events in the Development of US Probation	
Year	Event
1841	John Augustus introduces probation in the US in Boston
1878	Massachusetts is first state to formally adopt probation for juveniles
1878-1938	37 states, the District of Columbia, and the federal government passed juvenile and adult probation laws
1927	All states but Wyoming have juvenile probation laws
1954	All states have juvenile probation laws
1956	All states have adult probation laws (Mississippi becomes the last state to pass authorizing legislation)
1973	National Advisory Commission on Criminal Justice Standards and Goals endorses more extensive use of probation.
1973	Minnesota first state to adopt Community Corrections Act, 18 states follow by 1995
1974	Martinson's widely publicized research purportedly proving that probation does not work
1975	US Department of Justice conducts the first census of US probationers
1975	Wisconsin implements first probation case classification system. American Probation and Parole founded.
1976	U.S. Comptroller General's study of US probation concludes it is a “system in crisis” due to inadequate funding
1982	Georgia's Intensive Supervision Probation (ISP) Program claims to reduce recidivism and costs.
1983	Electronic monitoring of offenders begins in New Mexico, followed by larger experiment in Florida
1985	RAND releases study of felony probationers, showing high failure rates. Replications follow, showing probation services and effectiveness vary widely across nation.
1989	Government Accounting Office survey shows all 50 States have adopted intensive probation and other intermediate sanction programs
1991	U.S. Department of Justice funds nationwide intensive supervision demonstration and evaluation.
1993	Program evaluations show probation without adequate surveillance and treatment is ineffective, but appropriate programs reduce recidivism.

Source: Compiled by the author.

Figure 1

Probation's Involvement in the Criminal Justice System



In fact, it is safe to say that no other justice agency is involved with the offender and his case as comprehensively as the probation department. Every other agency completes their work, and hands the case over to the next decision maker. For example, the police arrest offenders, hand them over to the prosecutor who files charges, who hands them to the judge who sentences, and finally to the warden who confines—but the probation department interacts with all of these agencies, provides the data that influences each of their processing decisions, and takes charge of the offender's supervision at any point

III. Probation and Modern Sentencing Practice

Anyone who is convicted, and many of those arrested, come into contact with the probation department and probation officials who operate with a great deal of discretionary authority and dramatically affect most subsequent justice processing decisions. Their input affects not only the subsequent liberties offenders will enjoy, but their decisions influence public safety, since they recommend (within certain legal restraints) which offenders will be released back to their communities, and judges usually accept their sentence recommendations.

A. Probation's Influence Throughout the Justice System

As shown in Figure 1, probation officials are involved in decision-making long before sentencing, often beginning from the point of a crime being noted by the police. They usually perform the personal investigation to determine whether or not a defendant will be released on his own recognizance or bail. Probation reports are the primary source of information the court uses determine which cases will be deferred from formal prosecution. If deferred, probation officers will also supervise the diverted offender and their recommendation will be primary in whether or not the offender has successfully complied with the diversionary sentence, and hence no formal prosecution will occur.

For persons who violate court-ordered conditions, probation officers are responsible for deciding which violations will be brought back to the courts attention, and what subsequent sanctions to recommend. When the court grants probation, probation staff have great discretionary about which court-ordered conditions to enforce and monitor. And even when an offender goes to prison, the offender's initial security classification (and eligibility for parole) will be based on information contained in the presentence investigation. Finally, when the offender is released from jail or prison, probation staff often provide his or her community supervision.

when the system decides to return the offender to the community (of course, for parolees, parole officers usually assume this function). Figure 1 highlights the involvement of probation agencies throughout the justice system, showing its integral role to custody and supervision.

B. The Presentence Investigation Report

When most think of probation, they think of its *supervision* function. But providing law enforcement agencies and the courts with the necessary information to make key processing decisions is the other major function of probation, commonly referred to as probation's *investigation* function.

From the point of arrest, information about the offenders' crime and criminal background is accumulated and eventually presented to the court if the case proceeds through prosecution and sentencing. This formal document is known as the presentence investigation (PSI) or presentence report (PSR).

The PSI is a critically important document, since over 90 percent of all felony cases in the U.S. are eventually resolved through a negotiated plea (BJS 1995), and the major decision of the court is whether imprisonment will be imposed. A survey by the National Institute of Corrections found that half of all states require a PSI in all felony cases; the PSI is discretionary for felonies in another sixteen states. Only two states require a PSI prior to disposition in misdemeanor cases (NIC 1993). Where PSIs are discretionary, the option of requesting them usually rests with the courts.

Research has repeatedly shown that judge's knowledge of the defendant is usually limited to the information contained in the PSI, and as a result, there is a high correlation between the recommendation of the PO and the judge's sentence. Research by the American Justice Institute (1981), for example, using samples from representative probation departments throughout the United States, found that recommendations

for probation were adopted by the sentencing judge between 66 and 95 percent of the time.

The probation department's PSI typically includes information on the seriousness of the crime, the defendant's risk, the defendant's circumstance, a summary of the legally permissible sentencing options, and a recommendation for or against prison. If recommending prison, the PSI recommends sentence length; and if recommending probation, the PSI recommends sentence length and the conditions to be imposed.

Some have noted that the introduction of sentencing guidelines—which require calculations based on details of the crime and prior criminal record—have increased the importance of the PSI and the role and responsibility of the probation officer, particularly at the federal level (McDonald and Carlson 1993).

While the PSI is initially prepared to aid the sentencing judge, once prepared it becomes a critically important document to justice officials throughout the system, as well as the basis of most criminological research studies. As Abadinsky (1997:105) noted, its most common uses are:

- serving as the basis for the initial risk/needs classification probation officers use to assign an offender to a supervision caseload and treatment plan;
- assisting jail and prison personnel in their classification and treatment programs;
- furnishing parole authorities with information pertinent to consideration for parole and release planning; and
- providing a source of information for research studies.

C. Factors Influencing Who Gets Probation Versus Prison

The most important purpose of the PSI is to assist in making the prison/probation decision. Generally speaking, the more serious the offender, the greater likelihood of a prison term. But exactly what crime and/or offender characteristics are used by the court to assess "seriousness?"

Petersilia and Turner (1986) analyzed the criminal records and case files of approximately 16,500 males, each of whom had been convicted of selected felony crimes in one of 17 California counties in 1980. The researchers coded detailed information about the offender's crimes, criminal backgrounds, and how their case was processed (e.g., private or public attorney). The purpose was to identify the specific factors that distinguished who was granted probation (with or without a jail term) and who was sentenced to prison, when both persons have been convicted of the same penal code, in the same county, and in the same year. They found that a person was more likely to receive a prison sentence if he:

- had two or more conviction counts (i.e., convicted of multiple charges)
- had two or more prior criminal convictions
- was on probation or parole at the time of the arrest
- was a drug addict
- used a weapon during the commission of the offense or seriously injured the victims.

For all offenses except assault, offenders having three or more of these characteristics had an 80 percent or greater probability of going to prison in California, regardless of the type of crime of which they were currently convicted (Petersilia and Turner 1986).

After controlling for these "basic factors," the researchers also found that having a private (versus public) attorney could reduce a defendant's chances of imprisonment (this was true except for drug cases, where attorney type made no difference). Obtaining pretrial release also lessened the probability of going to prison, whereas going to trial increased

that probability (Petersilia and Turner 1986: xi).

But while such factors predicted about 75 percent of the sentencing decisions in the study, they did not explain the remainder. Thus, Petersilia and Turner (1986) concluded that in about 25 percent of the cases studied, those persons sent to prison could not be effectively distinguished in terms of their crimes or criminal backgrounds from those receiving probation. These data suggest that many offenders who are granted felony probation are indistinguishable in terms of their crimes or criminal record from those who are imprisoned (or vice versa).

D. Setting and Enforcing the Conditions of Probation

For those offenders granted probation, the court decides which specific conditions will be included in the probation contract between the offender and the court. In actual practice, when a judge sentences an offender to probation, he/she often combines the probation term with a suspended sentence, whereby the judge sentences a defendant to prison or jail and then suspends the sentence in favor of probation. In this way, the jail or prison term has been legally imposed, but simply held in abeyance to be reinstated if the offender fails to abide by the probation conditions (Latessa and Allen 1997). Offenders are presumed to be more motivated to comply with the conditions of probation by knowing what awaits should they fail to do so.

In addition to deciding whether to impose a sentence of incarceration and then "suspend" it in favor of probation (or sentence to probation directly), the judge makes a number of other highly important, but discretionary decisions. He/she must decide whether to impose a jail term along with probation. This is commonly referred to as "split sentencing," and nationally, probation is combined with a jail term in 26 percent of felony cases (Langan and Cohen 1996). Some states use split sentencing more frequently. For example, 60 percent of persons sentenced to probation in Minnesota are required to serve some jail time (Minnesota Guidelines Commission 1996), as are nearly 80 percent of felons in California (California Department of Justice 1995). The average jail sentence for felony probationers is 7 months, while the average length of felony probation is 47 months (BJS 1995).

It is the judge's responsibility to enumerate the conditions the probationer must abide by in order to remain in the community. The particular conditions of an offender's probation contract are usually recommended by probation officers and contained in the PSI. But they may also be designed by the judge, and judges are generally free to construct any terms of probation they deem necessary. Judges also often authorize the setting of "such other conditions as the probation officer may deem proper to impose" or may leave the mode of implementation a condition (such as method of treatment) to the discretion of the probation officer.

The judge's (and probation officer's) required conditions usually fall into one of three realms:

- standard *conditions* imposed on all probationers, include such requirements as reporting to the probation office, notifying the agency of any change of address, remaining gainfully employed and not leaving the jurisdiction without permission.
- punitive *conditions* are usually established to reflect the seriousness of the offense, and increase the painfulness of probation. Examples are fines, community service, victim restitution, house arrest, and drug testing.
- treatment *conditions* are imposed to force probationers to deal with a significant problems or need, such as substance abuse, family counseling, or vocational training.

The Supreme Court has held that probation should not be considered a form of "prison without walls," but rather, a period of conditional

liberty that is protected by due process (McShane and Krause 1993:93). In that vein, the courts have ruled that each probation condition must not infringe on the basic rights of the person being supervised. Case law has established that there are four general elements in establishing the legal validity of a probation condition. Each imposed probation condition:

- must serve a *legitimate purpose*—must either protect society or lead to the rehabilitation of the offender;
- must be *clear*—with language that is explicit, outlining specifically what can or cannot be done so that the average person can know exactly what is expected;
- must be *reasonable*—not excessive in its expectations, and
- must be *constitutional*—while probationers do have a diminished expectation of certain privileges, they retain basic human freedoms such as religion, speech, and marriage.

In legal terms, the probation conditions form a contract between the offender and the court². The contract states the conditions, at least theoretically, the offender must abide by to remain in the community. The court requires that the probation officer provide the defendant with a written statement setting forth all the conditions to which the sentence is subject. The offender signs the contract, and the probation officer is the “enforcer” of the contract, responsible for notifying the court when the contract is not being fulfilled.

Should a defendant violate a probation condition at any time prior to the expiration of the term of probation, the court may, after a hearing pursuant to certain rules (which include written notification of charges):

- continue him or her on probation, with or without extending the term or modifying or enlarging the conditions; or
- revoke the sentence of probation and impose any other sentence that was available at the time of initial sentencing (e.g., prison or jail).

As mentioned previously, a suspended sentence is often issued along with probation, and upon revocation, judges may order the original sentence to be carried out. When a suspended sentence is reinstated, the judge may decide to give credit for probation time already served, or he/she may require the complete original incarceration term to be served.

Over the years, the number of offenders who have special conditions

attached to probation has increased (Clear 1994). The public’s more punitive mood, combined with inexpensive drug testing and a higher number of probationers having substance abuse problems, undoubtedly contributes to the increase in the number of conditions imposed on probationers. More stringent conditions increase the chances of failure (Petersilia and Turner 1993). According to BJS, a lower percentage of offenders are successfully completing their probation terms. In 1986, 74 percent of those who exited probation successfully completed their terms; in 1992, the figure was 67 percent, and by 1994, that figure had dropped to 60 percent (Langan 1996).

Langan and Cunniff’s (1992) study of felons on probation showed that 55 percent of the offenders had some special condition (beyond the standard conditions) added to their probation terms (shown in Figure 2), the most common being drug testing.

Further analysis by Langan (1994) showed that many probationers failed to satisfy their probation-ordered conditions. He found that half of all probationers simply did not comply with the court-ordered terms of their probation, and only a fifty percent of the known violators ever went to jail or prison for their noncompliance. Langan concluded (1994:791) “...sanctions are not vigorously enforced.”

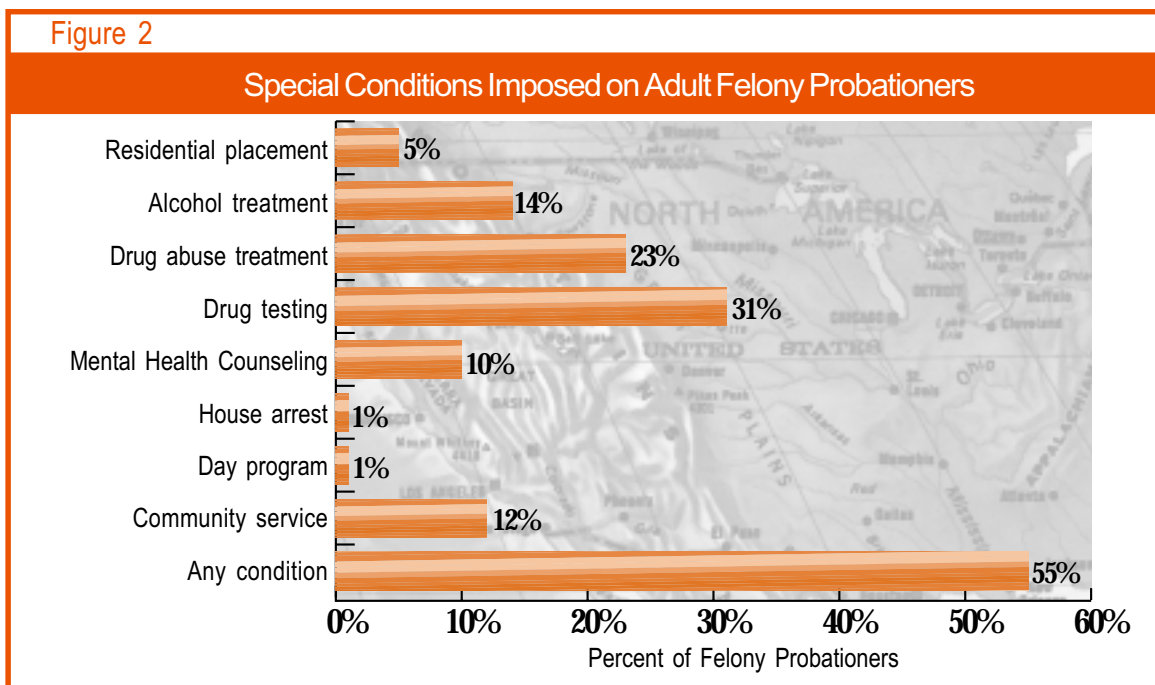
Taxman and Byrne (1994) reanalyzing a national sample of felons placed on probation and tracked by BJS for 2 years (Dawson 1990), and discovered that even probation absconders (i.e., those who fail to report) are not often punished. They found that, on any one day, about 10 to 20 percent of adult felony probationers were on abscond status, their whereabouts unknown. While warrants were usually issued for their arrest, no agency actively invests time finding the offenders and serving the warrants. They concluded that, practically speaking, as long as offenders are not rearrested, they are not violated.

Even though many court-ordered conditions are not actively enforced, the probation population is so large, that even revoking a few percent of them or revoking all those who are rearrested, can have a dramatic impact on prison admissions. In fact, current estimates show that between 30 and 50 percent of all new prison admissions are probation and parole failures (Parent et al., 1994). Texas, for example, reported that in 1993, approximately two thirds of all prison admissions were either probation

or parole violators. In Oregon, the figure was over 80 percent, and in California, over 60 percent (Parent et al. 1994)³.

Due to the scarcity of prison beds, policymakers have begun to wonder whether revoking probationers and parolees for technical violations (i.e., infractions of the conditions of supervision, rather than for a new crime) makes sense. While it is important to take some action when probation violations are discovered, it is not obvious that prison is the best response.

Several states, trying to reserve prison beds for



violent offenders, are now structuring the courts response to technical violations. Missouri has opened up the Kansas City Recycling Center, a forty-one bed facility operated by a private contractor to deal exclusively with technical violators who have been recommended for revocation (Herman 1993). Mississippi and Georgia use ninety-day boot camp programs, housed in separate wings of the State prison, for probation violators (Grubbs 1993; Prevost, Rhine, and Jackson 1993). While empirical evidence is scant as to the effects of these programs, system officials believe that the programs serve to increase the certainty of punishment, while reserving scarce prison space for the truly violent (Rhine 1993).

E. Probation Caseloads and Contact Levels

The most common measure of probation's workload is caseload size, or the number of offenders assigned to each probation officer. Published reports normally divide the number of probation department employees or line officers, with the number of adult probationers under supervision to indicate average caseload size. Over the years, probation caseloads have grown from what was thought to be an ideal size of 30:1 in the mid-1970s (President's Commission on Law Enforcement 1967) to today, where the average adult regular supervision caseload is reported to be 117:1 (Camp and Camp 1995).

The adult figure is misleading and vastly overstates the number of officers available for offender supervision. First, as Cunniff and Bergsmann's study (1990) showed, not all probation employees or even line officers are assigned to offender supervision. On average, Cunniff and Bergsmann (1990) found that in a typical U.S. probation department:

- only 52 percent of a typical probation department's staff are line officers, 48 percent are clerical, support staff, and management. Such high clerical staffing (23 percent) is required because a third to a half of all clerical personnel type PSIs for the court.

- Of line probation officers, *only about 17 percent of them supervise adult felons*. The remaining officers supervise juveniles (half of all U.S. adult probation departments also have responsibility for supervising juveniles), and 11 percent prepare PSIs.

These figures were nearly identical to those found in the NIC national survey of probation departments (NIC 1993).

There were an estimated 50,000 probation employees in 1994 (Camp and Camp 1995). If 23 percent of them (or 11,500 officers) were supervising 2,962,166 adult probationers, then the average U.S. adult probation caseload in 1994 would equal 258 offenders for each line officer.

A recent survey (Thomas 1993) of juvenile probation officers responsible for supervision showed that U.S. juvenile caseloads range between 2 and 200 cases, with a typical (median) active caseload of 41. The optimal caseload suggested by juvenile probation officers was 30 cases.

Of course, offenders are not supervised on "average" caseloads. Rather, probation staff utilize a variety of risk and needs classification instruments to identify those offenders needing more intensive supervision and/or services. Developing these "risk/need" classification devices occupied probation personnel throughout the 1970s, and their use is now routine throughout the U.S. (for a review, see Clear 1988). Unfortunately, while risk assessments are better able to identify offenders more likely to reoffend, funds are usually insufficient to implement the level of supervision predicted by the classification instrument (Jones 1996).

Recent BJS data show 95 percent of *all* us adult probationers are supervised on regular caseloads, whereas about 4 percent are on intensive supervision and about 1 percent are on specialized caseloads, such as electronic monitoring or boot camps (Brown et al. 1996). Again, however, these numbers don't tell U.S. much about the actual contact

Table 2

Felony Probationers' Initial Supervision Levels

Supervision Level	Prescribed # of Contacts	% of Caseload
Intensive	9 per month	10%
Maximum	3 per month	32%
Medium	1 per month	37%
Minimum	1 per 3 months	12%
Administrative	none required	9%

Source: Langan and Cunniff, 1994.

levels received by felons. The best data on this subject comes from the Langan and Cunniff (1992) study tracking felony probationers. They report that about 10 percent of *felony* probationers are placed on intensive caseloads, where administrative guidelines suggest probation officers should have contact with probationers 9 times per month (Table 2). The authors note that this initial classification level doesn't necessarily mean that they got that level of service, but rather they were assigned to a caseload having that administrative standard.

The Langan and Cunniff (1992) study also provides information about supervision level, relative to conviction crime and county of conviction. They report that, across all the sites and felony crimes studied, about 20 percent of adult felony probationers are assigned to caseloads requiring *no* personal contact.

In large urban counties, the situation is particularly acute, and the average caseload size noted above still does not convey the seriousness of the situation. Take, for example, the Los Angeles County Probation Department, the largest probation department in the world. In 1995, its 900 line officers were responsible for supervising 88,000 adult and juvenile offenders. Since the mid-1970s, county officials have continually cut their budgets, while the number of persons granted probation and the number of required presentence investigations has grown (Nidorf 1996).

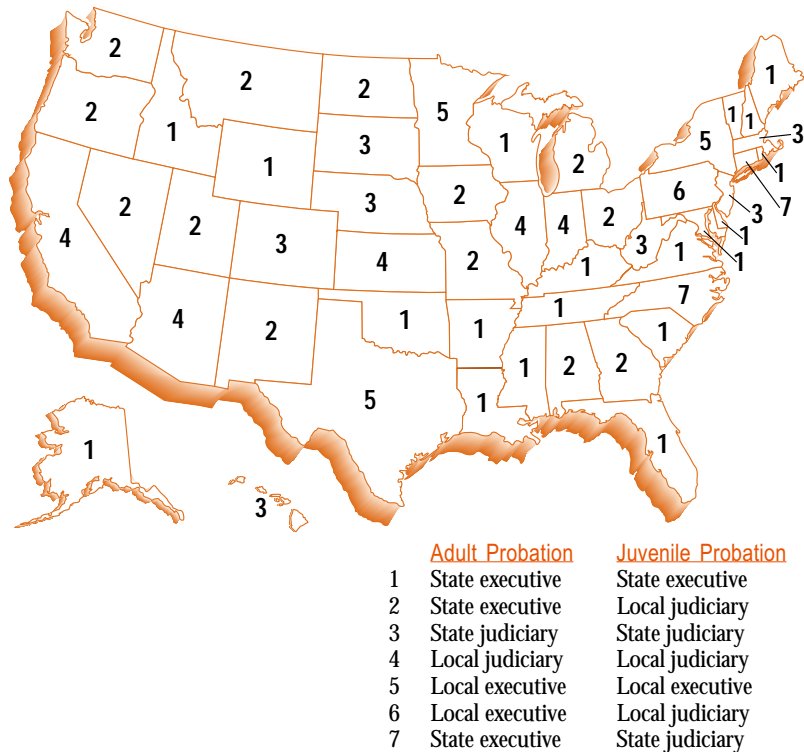
The result is that in 1995, 66 percent of *all* probationers in LA were supervised on "automated" or banked caseloads (Petersilia 1995b). In these caseloads, no services, supervision, or personal contact is provided. Rather, these persons are simply required to send in a pre-addressed postcard once or twice a month reporting on their activities. A more detailed study found that on any given day, there are nearly 10,000 violent offenders (convicted of murder, rape, assault, kidnapping and robbery) being supervised by probation officers in LA, and about half of them are on "automated minimum" caseloads with no reporting requirements (Los Angeles County Planning Committee 1996).

F. The Organization of Probation

Probation is basically a State and local activity, with the Federal Government providing technical support, data gathering, and funding for innovative programs and their evaluation. Probation is administered by more than 2,000 separate agencies, and there is no uniform structure (Abadinsky 1997). As the National Institute of Corrections (NIC) recently observed, "Probation was established in nearly as many patterns as there are states, and they have since been modified by forces unique to each state and each locality." (1993:v). The result is that probation services in the U.S. differ in terms of whether they are delivered by the executive or the judicial branch of government, how services are funded, and whether probation services are primarily a state or a local function. While a detailed discussion of these issues is beyond the scope of this essay, interested readers are referred to the NIC's (1993) report *State and*

Figure 3

Jurisdictional Arrangements for Probation, by State



Local Probation Systems in the United States: A Survey of Current Practice.

1. Centralized or Decentralized Probation?

The centralization issue concerns the location of authority to administer probation services. Proponents of probation argue that judicially administered probation (usually on a county level) promotes diversity. Nelson, Ohmart, and Harlow (1978) suggest that an agency administered by a city or county instead of a state is smaller, more flexible and better able to respond to the unique problems of the community. And because decentralized probation draws its support from its community and local government, it can offer more appropriate supervision for its clients and make better use of existing resources. It is also predicted that if the State took over probation, it might be assigned a lower level of priority than it would be if it remained a local, judicially controlled service.

Over time, adult probation services moved from the judicial to the executive branch, and is now located in the judicial branch in only one-quarter of the states (see Figure 3). However, more than half of the agencies providing juvenile probation services, are administered on the local level. [Fortunately, the administration of parole is much less complex: one agency per state and always in the executive branch].

The trend in adult probation is towards centralization, where authority for a state's probation activities are placed in a single statewide administrative body (NIC 1993). In 1996, three quarters of all states located adult probation in the executive branch, where services and funding were centralized. Proponents of this approach assert that all other human services and correctional subsystems are located within the executive branch; program budgeting can be better coordinated; and judges, trained in law, not administration, are not well equipped to administer probation services (Abadinsky 1997:35). Even in those county-based probation systems, states have usually created an oversight agency for better coordination and uniformity of probation services—California is

currently the only State operating probation locally without a state oversight agency (Parent et al. 1994).

As Clear and Cole (1997) point out, there is no optimal probation organization. In jurisdictions with a tradition of strong and effective local probation programming, decentralized services make sense. In states that typically have provided services through centralized, large scale bureaucracies, perhaps probation should be part of such services. One thing is for sure, as probation receives greater attention—and its services and supervision are more closely scrutinized—the issue of who oversees probation, and who is responsible for standards, training, and revocation policy, will become central in the years ahead.

2. Probation Funding

a. State versus County Funding

Probation funding has always been recognized as woefully inadequate, given its prominence in modern U.S. sentencing practices. While states have become more willing to fund probation, counties still provide primary funding for probation in twelve states, although some of these agencies receive significant state support. In NIC's 1993 survey, California counties received the least amount of state assistance, ranging from a low of 9 percent in Los Angeles and San Diego to a high of 14 percent in San Francisco. Counties in Texas, on the other hand, received some of the largest shares of state assistance (Dallas received 50 percent of its operating budget from the State) (NIC 1993).

Some states have used other means to upgrade the quality of probation services and funding. Community Corrections Acts (CCAs) are mechanisms by which state funds are granted to local governments to foster local sanctions to be used in lieu of state prison. By 1995, 18 states had enacted CCAs and the evidence suggests that CCAs have encouraged some good local probation programs, but have been less successful at reducing commitments to state prison or improving coordination of state and local programs (Shilton 1995; Parent 1995). Still, interest in the CCA concept—and other state "subsidies" to upgrade probation—is growing across the U.S.

Arizona probation probably has the most ideal system. In 1987, the State Legislature wrote into statute that felony probation caseloads could not exceed 60 offenders to one probation officer. And, they allocated state funding to maintain that level of service. As a result, probation departments in Arizona are nationally recognized to be among the best, providing their offenders with both strict surveillance and needed treatment services.

b. Annual Costs Per Probationer

The *Corrections Yearbook* reports that the annual costs spent for probationers on supervision in the U.S. ranged from \$156 in Connecticut to \$1,500 in the federal system. The average of the 44 reporting states was \$584 spent per probationer, per year (Camp and Camp 1995). But such numbers are rather meaningless, since we don't know what factors were considered in reaching that cost estimate. One system may actually compute the average cost per offender, per day on the basis of services rendered and officers salaries, whereas other jurisdictions may simply divide the total operating budget by the number of clients served. Still others may figure into the equation the costs of various, private contracts for treatment and drug testing. In short, there is no standard

formula for computing probationer costs, but funds are known to be inadequate.

Since its beginnings, probation has continually been asked to take on greater numbers of probationers and conduct a greater number of presentence investigations, all while experiencing stable or declining funding. As Clear and Braga recently wrote: “Apparently, community supervision has been seen as a kind of elastic resource that could handle whatever numbers of offenders the system required it to.” (Clear and Braga 1995:423).

From 1977 to 1990 prison, jail, parole, and probation populations all about tripled in size. Yet only spending for prisons and jails had increased expenditures. In 1990, prison and jail spending accounted for two cents of every state and local dollar spent — twice the amount spent in 1977. Spending for probation and parole accounted for two-tenths of one cent of every dollar spent in 1990—unchanged from what it was in 1977 (Langan 1994). Today, although two-thirds of all persons convicted are in the community, only about one tenth of the correctional budget goes to supervise them.

c. Fines and Fees

As part of the conditions of probation, many jurisdictions are including various offender-imposed fees, which when collected, are used to support the probation department. These fees are levied for a variety of services including the preparation of presentence reports, electronic monitoring, work release programs, drug counseling, and regular probation supervision. By 1992, more than half of the states allowed probation departments to charge fees to probationers, ranging anywhere from \$10 to \$40 per month, usually with a sliding scale for those unable to pay (Finn and Parent 1992).

Finn and Parent (1992), in an NIJ study of fines, found that despite a common perception of the criminal as penniless and unemployable, most offenders on probation who have committed misdemeanors—and even many who have committed felonies—can afford reasonably monthly supervision fees. Texas, for example, has been highly successful in generating probation fees. Probationers there are required to pay a standard monthly fee of \$10 plus \$5 for the victims fund. In 1990, they spent about \$106 million to supervise probationers, but collected more than \$57 million in fees—about one half the cost of basic probation supervision (Finn and Parent 1992:12).

Taxpayers applaud such efforts and they may also teach offenders personal responsibility, but the practice causes dilemmas concerning whether to revoke probation for nonpayment. The courts have ruled that probation cannot be revoked when an indigent offender has not paid his fees or restitution (*Bearden v. Georgia* 1983).

IV. Who Is On Probation? Characteristics and Risks of Current Probation Population

Probation was never intended to serve as a major criminal sanction. It was designed for first time offenders who were not too deeply involved in crime, and for whom individualized treatment and casework could make a difference. But, as shown below, things have

changed considerably.

A. Profile of Persons Placed on Probation

1. Size of the Probation Population

BJS recently reported that U.S. judges sentence to probation or probation with jail, 80 percent of all adults convicted of misdemeanors (crimes normally punishable by less than a year incarceration), and about 60 percent of all adults convicted of felonies (crimes punishable by more than 1 year in prison)—or fully two-thirds of all persons convicted of a crime (BJS 1996). As a result, BJS estimated that there were a record number of 2,962,166 adults on probation at yearend 1994, an increase of 4 percent over the previous year (see Figure 4).

Figure 4 also shows a consistent 3:1 ratio between probationers and prisoners over the past decade. An interesting recent analysis by Zvejkic (1996) shows that the U.S. and other Western European countries preference for probation versus prison sentencing is not shared within some other countries, most notably Japan, Israel, and Scotland. For example, the ratio of imprisonment to probation in Japan is 4:1.

BJS also reports that the southern U.S. states generally have the highest per capita ratio of probationers—reporting 1,846 probationers per 100,000 adults at yearend 1995 (BJS 1996). In terms of sheer numbers of probationers, Texas has the largest adult probation population (about 396,000), followed by California (about 277,000). In Texas, 3.1 percent of all adults were on probation at yearend 1995 (BJS 1996).

If probation were being used primarily as an alternative to incarceration, one might expect to find that the states that imposed more probationary sentences would have lower than average incarceration rates and vice versa. This is not the case. Generally, states with a relatively high per capita imprisonment rate also have a relatively high per capita use of probation. Texas, for example, has one of the highest state imprisonment rates in the nation (sixth highest) and the highest rate of probation impositions. Similarly, Southern states generally place persons on probation at a high rate, and they also generally incarcerate more than the rest of the nation (Klein 1997).

2. Demographic Characteristics and Conviction Crimes

Half of all offenders on probation in 1995 had been convicted of a felony, and a quarter were on probation for a misdemeanor. One in every six probationers had been convicted of driving while intoxicated—which could be either a felony or misdemeanor (BJS 1996).

Figure 4

Adults in Prison, Jail, Probation and Parole, 1980-1994

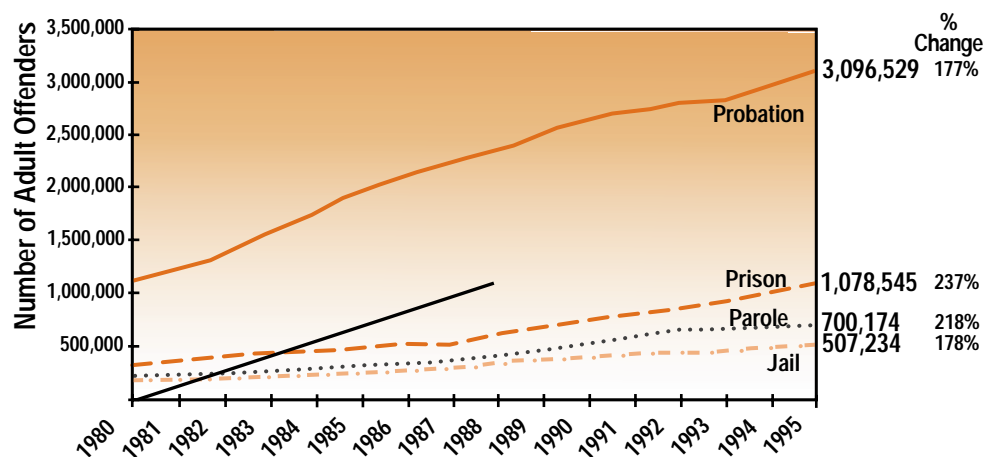
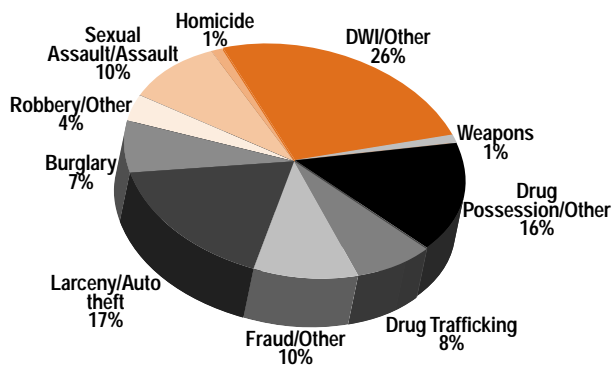


Figure 5

Adults on Probation by Conviction Type



The average age of all (state) adult probationers nationwide is 29 years; women made up 21 percent of the nation's probationers. Approximately 64 percent of adults on probation were white, and 34 percent were black. Hispanics, who may be of any race, represented 14 percent of probationers (BJS, 1996). These percentages have remained relatively constant since BJS began collecting the data in 1978 (Langan 1996).

While BJS does not routinely collect the conviction crimes of probationers, they undertook a special *Census of Probation and Parole in 1991* (BJS 1992) where such information was obtained for a nationally representative sample of adult probationers (felons and misdemeanors combined). The conviction crimes of adult probationers are contained in Figure 5.

While we know less about the characteristics of juvenile probationers, Butts et al. (1995) reports that in 1993, 35 percent (520,600) of all formally and informally handled delinquency cases disposed by juvenile courts resulted in probation. Probation was the most severe disposition in over half (56 percent) of adjudicated delinquency cases, with annual proportions remaining constant for the 5-year period 1989-1993.

Figure 6 shows the growth in juvenile probation populations, as well as their underlying offense. It is important to remember that this growth in juvenile probation populations has occurred even though a greater number of serious juvenile offenders are being waived to adult court for prosecution and sentencing (Butts et al. 1994). Judicial waivers increased 68 percent between 1988 and 1992, although waivers to adult court are still estimated to be less than 2 percent of all cases filed in juvenile court (Howell, Krisberg, Jones 1993).

B. The Variability and Prevalence of Probation Sentencing

As noted earlier, the decision to grant probation is highly discretionary within certain legal boundaries and practices vary considerably within and among states. Cuniff and Shelton (1991), in a study of over 12,000 cases sentenced to probation in 1986 in 32 large jurisdictions, found that among the participating jurisdictions, the percent of all sentences involving probation ranged from a low of 30 percent in New York County (Manhattan) to a high of 75 percent in Hennepin County (Minneapolis).

Cuniff and Shelton (1991) suggest some of the variation is due to sentencing laws under which these jurisdictions function and their justice environment. They report that courts in determinate sentencing states (with no parole board) tend to use probation more frequently than courts in indeterminate sentencing states (with parole boards). Presumably, in indeterminate states, parole boards will release early the less serious and less dangerous offenders—thus, reducing length of prison time served for less serious offenders. But in determinate sentencing states, prison terms are fixed and parole boards have little ability to reduce the length of stay courts impose. Apparently, judges are less willing to sentence to prison when length of term is fixed.

Studies have also shown that judges are more willing to place felons on probation when they perceive that the probation department can monitor the offender closely and that community resources are sufficient to address some of the offender's underlying problems (Frank, Cullen, and Cullen, 1987). Minnesota, Washington, and Arizona—the three states identified by Cuniff and Shelton (1992) as utilizing probation most frequently—are well known for delivering good probation supervision and having adequate resources to provide treatment and services.

Some of the variability in granting probation, however, must also be due to the underlying distribution of offense categories within these jurisdictions. For example, it may be that the robberies committed in one location are much less serious than those committed in another. However, reanalysis of a data set collected by RAND researchers, where offense seriousness was statistically controlled, still revealed a wide disparity among jurisdictions in their use of straight probation (i.e., without a jail term). Klein and his colleagues examined adjudication outcomes of defendants from 14 large urban jurisdictions across the country in 1986, where all of the defendants were charged with stranger-to-stranger armed robberies and residential burglaries (Klein et al. 1991). They found that the granting of straight probation, even for felons convicted of similar crimes, varies substantially across the nation, particularly for burglary (see Figure 7). The figures for the California counties are particularly low because California commonly uses split sentences (probation plus jail) for felony crimes.

This demonstrated variability in the granting of probation is important, as it suggests that the underlying probation population and the services they need and supervision risks they pose is vastly different,

Figure 6

Number of Juveniles in U.S. on Probation, by Year and Crime

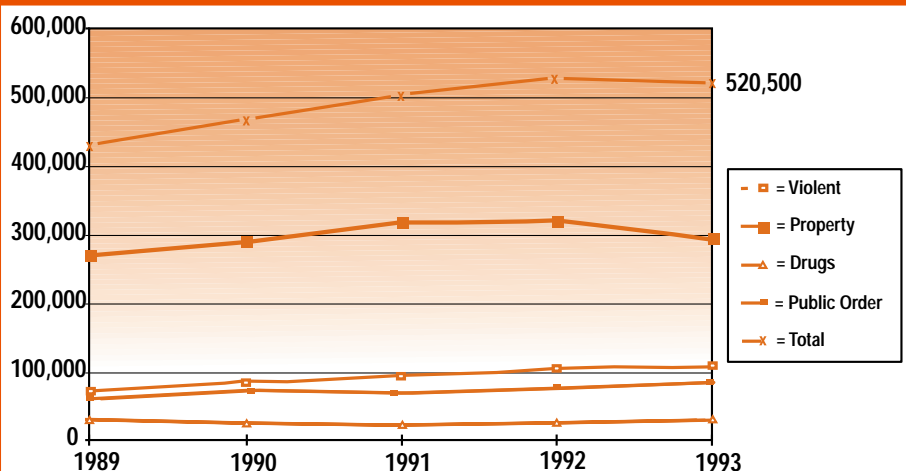
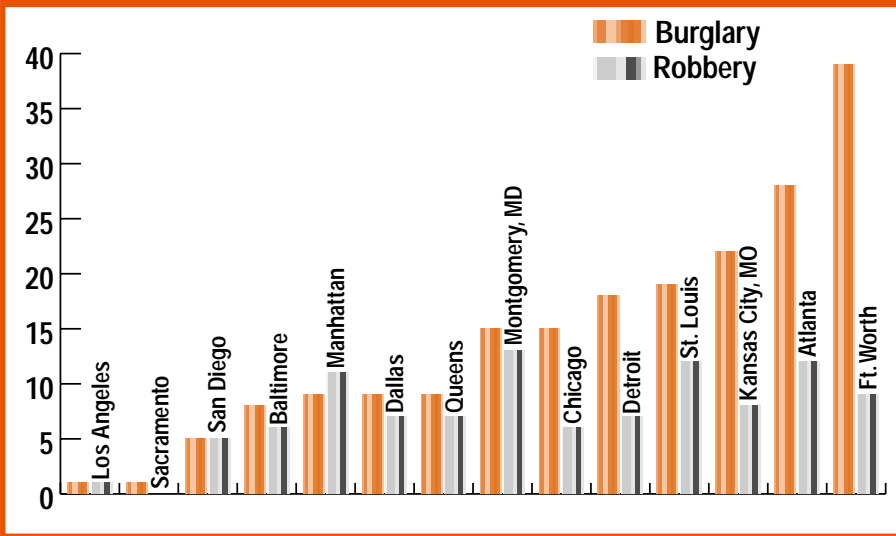


Figure 7

Percent of Convicted Residential Burglars and Armed Robbers Granted Straight Probation



depending on the jurisdiction studied.

As noted above, states vary considerably in their usage of probation. The main reason is that there are no national guidelines for granting probation, or limiting its use. Rather, generally speaking, the court is supposed to grant probation when the defendant does not pose a risk to society or need correctional supervision, and if the granting of probation would not underrate the seriousness of the crime (American Bar Association 1970). Until recently those broad guidelines were interpreted with great discretion.

During recent years, however, states have been redefining categories of offense that render an offender ineligible for probation—or alternatively, identifying offenders who are low risk and *should* be sentenced to probation. In fact, recent mandatory sentencing laws, such as the popular “three strikes and you’re out” have been motivated, in large part, by a desire to limit judicial discretion and the court’s ability to grant probation to repeat offenders (Greenwood et al. 1994).

The public perceives that the justice system is too lenient, and when certain statistics are publicized, it appears that way. But, as is other matters involving justice data, the truth is more complicated and it all depends on which populations are included in the summary statistics.

As noted previously in this essay, roughly two thirds of all adult convicted felons are granted probation. Hence, the commonly stated fact that: “probation is our nation’s most common sentence.” Many use this data to characterize U.S. sentencing practices as lenient (Bell and Bennett 1996). But felony probation terms typically include jail, particularly for person offenses. BJS recently reported that overall, 74 percent of convicted felons were sentenced to incarceration in a State prison or local jail,

and just 25 percent of were sentenced to straight probation (see Table 3).

Endnotes

In 1992, BJS conducted the *National Survey of Adults on Probation*, the first-ever survey which will obtain detailed information on the backgrounds and characteristics of a national sample of probationers. The results will be available in Spring, 1997.

²An excellent discussion of the legal basis for probation and enforcing probation conditions can be found in Klein 1997.

³California reports that more than 60% of its prison admissions each year are probation and parole violators, but a recent analysis by Petersilia (1995a) found that “true” technical violators (those returned for rule infractions rather than a new crimes) made up only 4 percent of the total prison admissions in 1991.

This article is reprinted with permission for the University of Chicago Press. The article originally appeared in Crime and Justice, vol. 22, . Tonig (ed.).

Joan Petersilia, Ph.D. is a professor in the Department of Criminology, Law and Society at the School of Social Ecology at the University of California, Irvine, CA.

Table 3

Felony Sentences Imposed by State and Federal Courts, By Offense, United States, 1990

Most serious conviction offense	Percent of felons sentenced to:				
	Total	Incarceration			Straight Probation
		Total	Prison	Jail	
Violent Offenses					
Murder/manslaughter	100%	95%	91%	4%	5%
Rape	100	86	67	19	14
Robbery	100	90	74	16	10
Aggravated assault	100	72	45	27	26
Other violent	100	67	42	25	33
Property Offenses					
Burglary	100	75	54	21	25
Larceny	100	64	39	25	36
Motor vehicle theft	100	75	46	29	25
Other theft	100	62	38	24	38
Fraud/forgery	100	52	32	20	48
Fraud	100	46	25	21	54
Forgery	100	59	40	19	41
Drug Offenses					
Possession	100	64	35	29	36
Trafficking	100	77	51	26	23

Note: For persons receiving a combination of sentences, the sentence designation came from the most severe penalty imposed — prison being the most severe, followed by jail, then probation.

Source: U.S. Department of Justice, Bureau of Justice Statistics, Felony Sentences in the United States, 1990, Washington DC: U.S. Department of Justice, 1994, p. 5.