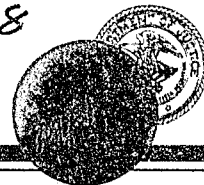


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CRIME FILE
Study Guide

James K. Stewart, Director

Probation

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ACQUISITIONS

In 1985, 1.65 percent of male residents in the United States aged 18 and over were under some form of correctional supervision. Between 1983 and the end of 1985, the overall correctional population increased by nearly 600,000 offenders. Although prison crowding draws both national attention and increased resources, "probation crowding" poses a more immediate threat to the criminal justice process and to community protection.

Probation is the most commonly used sanction in the United States. Nearly three times as many convicted offenders are placed on probation each year as are sentenced to prison and jail combined. In 1985, 64.4 percent of the 2,904,979 adult offenders under correctional supervision were on probation. Both the probation and prison populations have been rising—10.7 and 6 percent, respectively, in 1983 and 7.4 and 8.4 percent, respectively, between 1984 and 1985.

Despite the "get tough" image of recent legislative initiatives, the United States relies primarily on a community-based system of sentencing. The Commissioner of Probation in Massachusetts, Donald Cochran, notes, "It is misleading and perhaps a disservice to talk about probation

as an alternative to prison; in fact, our prison system currently functions as a last gasp alternative to the court's primary sanction—probation."

What Is Probation?

"Probation" is generally defined as a sentence served while under supervision in the community. It may include a prison or jail term which has been suspended, although there has been much recent discussion of the merits of defining probation as a sentence in its own right. One recent trend is for judges to use probation as a supplement to a period of incarceration. Combinations of prison and probation usually take one of four forms:

- **Split sentence.** The court specifies a period of incarceration to be followed by a period of probation.
- **Modification of sentence.** The original sentencing court may reconsider an offender's prison sentence within a limited time and modify it to probation.
- **Shock probation.** An offender sentenced to incarceration is released after a period of time in confinement (the shock) and resented to probation.
- **Intermittent incarceration.** An offender on probation may spend weekends or nights in a local jail.

The trend toward increased use of "mixed" sentences indicates a shift in both the perception and the purpose of probation. Punishment and community protection now take precedence over rehabilitation as a purpose of sentencing. Concerns of judges and other policymakers for community protection have resulted in dramatic changes in the supervision styles and strategies of probation officers. Many jurisdictions have developed specialized programs for "high risk" offenders, including house arrest, electronic monitoring, and other forms of intensive supervision. Probation officers are now directed to be less concerned with the provision of services for offenders (e.g., counseling, employment assistance) and more concerned with drug testing, curfew violations, employment verifications, arrest checks, surveillance, and revocation procedures. Probation is slowly and necessarily changing.

Moderator: James Q. Wilson, Collins Professor of Management,
University of California at Los Angeles

Guests: Reuben Greenberg, Charleston Police Department
Malcolm MacDonald, American Probation and Parole Association
Joan Petersilia, The Rand Corporation

Probation is the most frequently imposed criminal punishment in the United States. Although probation was long perceived as primarily rehabilitative in purpose, some programs now being established are avowedly punitive.

The Problem of Recidivism

A critical issue concerning probation policy is the extent to which probation can "control" offenders in the community. If probation officers cannot control the illegal behavior of probationers, then increased use of probation to reduce prison crowding seems ill-advised. To address the control issue, a number of related questions must be considered:

- *What level of recidivism is acceptable—20 percent, 30 percent, 50 percent?*
- *Who should be placed on probation—felons (violent, property), misdemeanants, drunk drivers, delinquents?*
- *How long should the probation department supervise offenders—6 months, 1 year, 5 years?*
- *How much time, energy, and money should be spent on probation services to achieve an "acceptable" level of control?*

Nationwide, roughly equal numbers of felony and misdemeanor probationers are supervised each year in the community, although the mix of offenders on probation varies from State to State. Thus, any comparison of overall failure (or recidivism) rates between States is difficult and often misleading.

Most offenders who are placed on probation succeed in the sense that they complete their probation without incarceration or revocation. Data for 1983 from 20 States reveal that the percentage of adult probationers who successfully completed their terms ranged from 66 percent in Mississippi to 95 percent in Vermont. The percentage of probationers incarcerated for a new offense (or, following revocation, for the original offense) varied from 5 percent in Vermont to 23 percent in Mississippi.

If "success" for probation is gauged by the percentage of probationers who are rearrested or rearraigned—rather than the much smaller percentage who are incarcerated—success rates are more modest. In addition, if administrative cases (such as drunk driving) are deleted from the analysis, even higher failure rates would be identified.

States that use a case classification system usually identify success and failure rates for offenders receiving minimum, moderate, and maximum (and in a number of States, intensive) supervision. In these States, failure rates (e.g., rearrest within 1 year) often are as low as 10 to 15 percent for "minimum" supervision cases and as high as 50 to 60 percent (or more) for maximum or intensive supervision cases.

Recent research reveals that felony probationers often pose significantly higher risks to the community than misdemeanor probationers. A recently completed evaluation of felony probation in California offers a graphic portrait of a probation system without adequate control over certain offenders. The researchers' conclusions deserve careful consideration:

This program brought to you by the National Institute of Justice, James K. Stewart, Director. The series produced through a grant to the Police Foundation.

In our opinion, felons granted probation present a serious threat to public safety. During the 40-month follow-up period of our study, 65 percent of the probationers in our subsample were rearrested, 51 percent reconvicted, 18 percent were reconvicted of serious violent crimes (homicide, rape, weapons offenses, assault, and robbery), and 34 percent were reincarcerated. Moreover, 75 percent of the official charges filed against our subsample involved burglary/theft, robbery, and other violent crimes—the crimes most threatening to public safety. (Joan Petersilia et al. 1984, vii)

If the figures cited above are similar for other States, it is easy to wonder why we continue to put felons on probation.

According to Petersilia, the answer is an amalgam of history, expediency, and sentencing philosophy. First, historically, our prisons have been used for repeat offenders; probation has been the usual sanction for first-time felons.

Second, in many States placing more felons in prison rather than on probation is not a viable alternative. A majority of States are under Federal court order to build new prisons or to limit prison populations.

Third, many judges do not like to impose a prison sentence early in an offender's criminal career. Partly this is because of continued belief in rehabilitation. And partly it is because of the pessimistic view that no matter how great a threat to the community offenders may present at the time of sentencing to probation, the threat will be greater upon their release from prison.

Do prisons make offenders worse? In California, a recent study which examined the comparative failure rates of matched groups of convicted felons in prison and felons on probation supported the notion that imprisonment may increase the likelihood of future offending. Petersilia and Turner (1986) reported that prisoners had a significantly higher recidivism rate (72 percent) than a similar group of felons (including assaulters, robbers, burglars, drug offenders, and individuals convicted of theft) on probation (63 percent). They found no significant differences between groups in the seriousness of crimes committed or in the time before failure (6 months for both).

Restructuring Probation as an Intermediate Sanction

Limited prison and jail resources make it impossible to incarcerate all convicted offenders. One solution is to restructure probation to include a range of increasingly incapacitating community-based "control" programs for offenders who pose a significant threat to public safety.

A wide range of "intensive" community-based sentencing alternatives has been developed by legislators, judges, and correctional administrators. The main impetus has been prison crowding. In many States, probation departments have designed and implemented community-based programs for offenders who would otherwise be sentenced to prison or jail. Almost every State has developed one or more programs with names such as intensive probation supervision, house arrest, day reporting centers, and electronic monitoring. Federal probation agencies have embraced intensive supervision for specific categories of offenders (such as drug and white collar offenders).

Intensive probation supervision programs. Intensive supervision programs are being considered or are in place in almost every State. The best known program is in Georgia. The attraction of the Georgia program is that it seems to accomplish two goals that are often viewed as antithetical:

(1) restraining the growth of prison populations and associated costs by controlling selected offenders in the community, and (2) at the same time, satisfying to some extent the demand that criminals be punished for their crimes. The pivotal question is whether or not prison-bound offenders can be shifted into Intensive Probation Supervision without threatening the public safety. (Erwin and Bennett 1987, p. 1)

Judges in Georgia sentence an offender directly to intensive supervision. Key features of the Georgia program include a team approach to case management that has separate roles for probation officers and surveillance officers; small caseloads (25 per two-person team in most areas); mandatory curfews, employment, and community service; drug and alcohol monitoring on a regular basis; and five face-to-face contacts per week.

Does the Georgia program successfully control offenders in the community? Erwin and Bennett found that "of the 2,322 people in the program between 1982 and 1985, 370 (or 16 percent) absconded or had their probation revoked" (1987, p. 2). Very few of the "failures" were arrested for committing serious felonies.

Does the Georgia IPS program divert offenders from prison? The Georgia study indicates that there was a 10-percent decrease in the percentage of felons sentenced to incarceration during the study period, along with a corresponding 10-percent increase in probation caseloads statewide (not all the additional probation sentences called for intensive supervision). While these findings are impressive, the target population for the Georgia program was "prison-bound" nonviolent offenders, of whom 43 percent had committed property offenses, 41 percent drug or alcohol offenses, and 9 percent violent crimes. Other States that use IPS for offenders convicted of more violent crimes may not achieve similar results.

Preliminary figures suggest that Georgia's program has been cost effective. The average annual cost of incarcerating an offender in Georgia is \$7,760, compared with an annual IPS cost of \$985 per offender. Georgia requires probationers to pay probation fees (ranging from \$10 to \$50 per month), and these fees have been used to pay for the Georgia program.

Other IPS program models have been developed. In New Jersey's program, the offender is sentenced, incarcerated, and then allowed to "apply" to a resentencing panel for placement into the IPS program. The rationale is that a reduction of prison or jail populations can be assured if offenders are taken directly out of prison. Otherwise judges may sentence offenders to intensive supervision who would not have been incarcerated, thereby frustrating the goal of reducing prison crowding by diverting prison-bound offenders to IPS.

According to a preliminary evaluation of New Jersey's program by Pearson (1987), there are 31 contacts per month between probation officers and probationers (including 12 face-to-face, 7 curfew, and 4 urinalysis checks). Other features of this model include:

- Development of plans for life in the community (work, study, community services, etc.).
- A requirement of full-time employment or vocational training and community service.
- The use of a community sponsor and other support persons who will provide extensive assistance and direction to each participant.

Preliminary findings were revealing. Approximately 600 offenders have entered the program since it began. About one-third were returned to prison for technical violations before they completed their 18 months in the program. Overall, about 1 in 10 offenders committed a new crime, and 1 in 20 committed a new felony while under intensive supervision. The cost estimates for the New Jersey program are much higher than the cost associated with Georgia's program—\$13,693 per year for an intensive supervision case, compared with \$19,958 to \$20,851 for an incarcerated offender (Pearson 1987, table 1).

Massachusetts offers a third approach to intensive supervision. The key features are that assignment to IPS occurs *after* the offender is placed on probation. The target population includes property offenders, drug offenders, and violent offenders (35 percent). Contact levels include four, face-to-face and six collateral contacts per month.

Electronic monitoring and house arrest programs. Electronic monitoring and house arrest programs exist in many States as separate programs, distinct from intensive probation supervision. These programs are more a demonstration of the fragmented nature of program development in the courts and corrections than a comprehensive effort to develop a range of new intermediate sanctions. A recent nationwide review of intensive probation supervision programs revealed a continuing trend by program developers to add both of these features to existing IPS programs.

Nationwide, only a small percentage of the probation population is being monitored, either by a person or by an electronic device. However, it is possible to envision both kinds of programs, along with intensive supervision, as successive steps in an increasingly intrusive community control program. In such a system, offenders' initial placement in a particular level of institutional or community control might be determined by a judge, with subsequent movement from the community to prison or from the prison back to the community determined by the offender's behavior. This procedure would continue the attempt to balance offender risk with appropriate punishment.

Taken together, the foregoing programs provide an intermediate set of punishments that offer the monitoring and incapacitation features of prison and the offender rehabilitation prospects of probation.

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Discussion Questions

1. By subjecting offenders to intrusive conditions—unannounced drug testing, frequent contacts with probation officers, curfews—some intensive probation supervision programs are designed to be intermediate punishments that can be imposed instead of prison sentences. Can intrusive conditions like these make a probation sentence equivalent to a prison sentence?
2. What kinds of offenders should be sentenced to IPS and other intermediate punishments?
3. Because of the need to address prison crowding, some IPS programs are designed for offenders who would otherwise be sent to prison. Critics of such programs argue that they are often used instead for offenders who would otherwise receive *less* punitive sentences. This practice is sometimes said to "widen the net of social control." Is net widening necessarily bad?
4. Would you want your State to establish an IPS program?
5. What, in your view, should the purpose of probation be?

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