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# Probation and Felony Offenders

Joan Petersilia

## The rise in felony probation

Over the last two decades, several trends have converged to change the Nation's probation population. Rising crime rates have led to public demand that criminals get harsher treatment; "just deserts" and incapacitation have

displaced rehabilitation as the primary aim of corrections. Consequently, more felons are being imprisoned than ever before in our history. But at the same time, budget limitations have made it impossible for prison construction to keep pace with felony convictions. Prison crowding has be-

come so critical that the courts have increasingly used probation to catch the overflow.

As Figure 1 shows, between 1974 and 1983 the prison population increased by 48 percent, but the probation population increased by 63 percent.

### From the Director

A dramatic change in the use of probation has increased the risk to the public, according to recent research outlined in this Brief. Currently, one-third of our country's adult probation population is made up of convicted felons—not misdemeanants as commonly assumed. The fact is that "felony probation" is evolving as the sentence of choice for large numbers of convicted felons.

This research identifies and documents the extent to which public safety may be compromised as a result of a criminal justice policy shortfall. The study tracked more than 1,600 California convicted felons who received probation in lieu of a prison sentence.

The results provide hard evidence of what actually happens when serious felons are released into the community. Two-thirds of those studied were rearrested, 51 percent were convicted of a new crime, and 34 percent were given a jail or prison sentence.

The seriousness of the new crimes was also enlightening. Repeaters tended to commit the crimes the public fears most, including burglary, theft, and robbery.

The judicial policy of granting probation to felons seems to have evolved in

response to an unbalanced equation of too many serious crimes and not enough space to house convicted felons. In an effort to deal with one crisis—prison crowding—we appear to be creating another crisis.

This crisis has shifted to the streets of our cities, where felons who under previous sentencing policy would have been incarcerated are now released into communities on probation.

Because of the volume of crime and limited court calendars, only the most serious cases usually find their way into the courts today. No longer is a prison sentence based on the conviction of a single, serious crime; now it depends on conviction for a string of serious and violent crimes.

Our prisons and jails have become increasingly crowded with career criminals. Surveys of prison inmates by the Bureau of Justice Statistics found that almost 84 percent of people entering State prisons during 1979 were repeat offenders.

Alternatives to prison may appear less costly, from some points of view. But options such as probation must be cautiously used. Apparent cost savings can be outweighed by the future crimes against individual citizens placed in jeopardy by releasing felons without sufficient safeguards.

What remains to be seen is whether any form of nonincarceration can protect the public and provide a discernible criminal penalty. Can intensive supervision of convicted felons provide stringent work requirements and restitution for victims, and lower the cost of security to the taxpayer? The key to any program policy must be its effectiveness in protecting the public.

The National Institute is evaluating two experimental programs to see if intensive probation holds promise. In addition, research now in progress is following up on the study summarized in this Brief, comparing rearrest rates of probationers in this sample with those of felons of similar criminal backgrounds who were imprisoned.

Criminal justice research has shed important light on the use of probation as a policy in sentencing convicted felons. It has articulated the risk to the public safety and provided insight into the unintended consequence of a policy which appeared attractive from some perspectives. The documentation reveals the shortsightedness of that policy, but points the way toward future research and policy direction on sentencing and release policies.

James K. Stewart  
Director  
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Probation sentences for adult felons have become so common that a new term has emerged in criminal justice circles: felony probation. Today, over one-third of the Nation's adult probation population consists of persons convicted in superior courts of felonies (as opposed to misdemeanors).

This phenomenon raises some serious questions. Probation was originally intended for offenders who posed little threat to society and who were believed to be capable of rehabilitation through a productive, supervised life in the community. Given its intent and structure, can probation accommodate more serious offenders, supervise them properly, and keep them from committing more crimes? Understanding how well probation works for felons is a compelling public safety issue.

### The research context

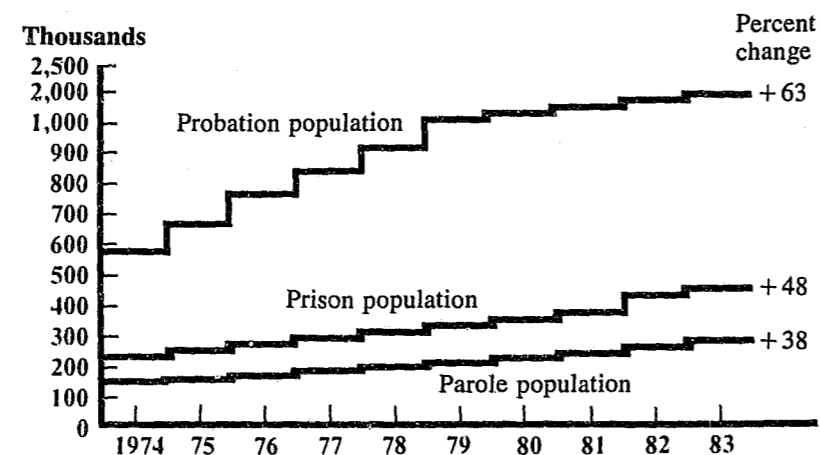
Unfortunately, there has been little research on probation itself, and virtually none on felony probation. A recent Rand Corporation study, funded by the National Institute of Justice, used data from California to look at basic assumptions about probation and its mission, to examine the public risks of putting felons on probation, and to consider alternative means of punishing them. This *Research in Brief* summarizes the study findings.<sup>1</sup>

California's probation system is one of the largest in the Nation and was once regarded as the most innovative. Most probation systems across the country have experienced budget cuts because of fiscal limitations and the shift from rehabilitation to punishment.

With Proposition 13 and other fiscal constraints, California's probation agencies may have suffered the most severe cuts of all. Since 1975, the state's probation population has risen 15 percent, while the number of probation officers has fallen by 20 percent. In the same time period, the state has spent 30 percent more on criminal justice in general, but 10 per-

1. Complete results are contained in *Granting Felons Probation: Public Risks and Alternatives* by Joan Petersilia, Susan Turner, James Kahan, and Joyce Peterson, R-3186-NIJ, The Rand Corporation, January 1985. The report can be obtained by writing Rand, 1700 Main Street, Santa Monica, CA 90406.

Figure 1. Change in U.S. parole, probation, and prison populations, 1974-1983



cent less on probation. As a result, probation staffs have had to take on greater caseloads, often at the cost of supervising probationers less carefully. Its experiences should be instructive for other States.

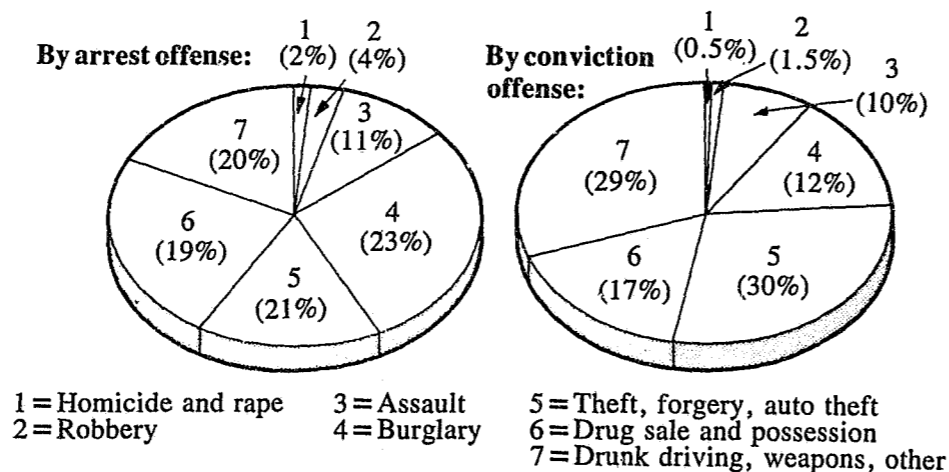
In California, 70 percent of all convicted offenders are granted probation. By 1984, about one percent of the State's total population was on probation. The group's size alone places a tremendous burden on probation agencies, and that burden is made heavier by the increasing number of serious offenders it includes.

As Figure 2 shows, a significant proportion of all persons granted probation in 1983 had been arrested and convicted of serious crimes.

This situation requires that policymakers look closely at probation, at the public risks of probation for convicted felons, and at possible alternative sanctions. In anticipation of the problems and questions a policy debate may raise, Rand's study was designed to answer some basic questions about probation:

- How well do felons fare on probation, measured in terms of rearrests, reconvictions, and incarcerations?
- What criteria do the courts use to decide whether convicted felons go to prison or get probation?
- How accurately can statistical models predict which felons will recidivate and which will not?
- If the answers to these questions indicate that probation is not appropriate

Figure 2. Adults placed on probation in California, 1983



Source: California Bureau of Criminal Statistics data, 1984

appropriate for most felons, can the criminal justice system devise workable alternatives?

The Rand study performed several types of statistical analyses of data for over 16,000 felons convicted in California's superior court during 1980, and recidivism data on a subsample of 1,672 who received probation in Los Angeles and Alameda Counties.

Because these two counties have experienced severe budget cuts and growing caseloads, their recidivism rates may differ from those in counties that have more adequate budgets. Nevertheless, Los Angeles and Alameda supervise 43 percent of the California probation population, and their data provide a good base for examining the issues surrounding probation as a sentencing alternative for adult felons.

### Public risks of felony probation

Felony probation does present a serious threat to public safety. Figure 3 suggests just how serious. Only 35 percent of the probationers managed to "stay clean," as far as official records indicate. During the 40-month period following their probationary sentence, 65 percent of the total sample were rearrested and 53 percent had official charges filed against them. Of these charges, 75 percent involved burglary/theft, robbery, or other violent crimes—the crimes most threatening to public safety.

Figure 3. Felony probationer recidivism rates (40-month followup)

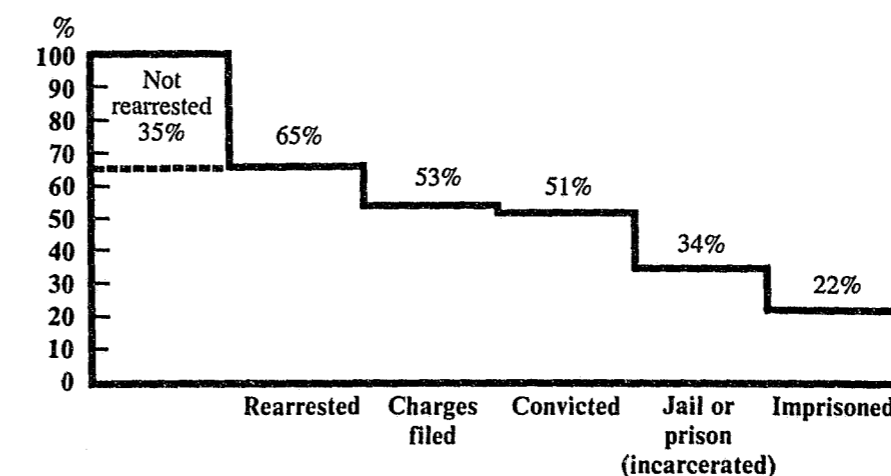
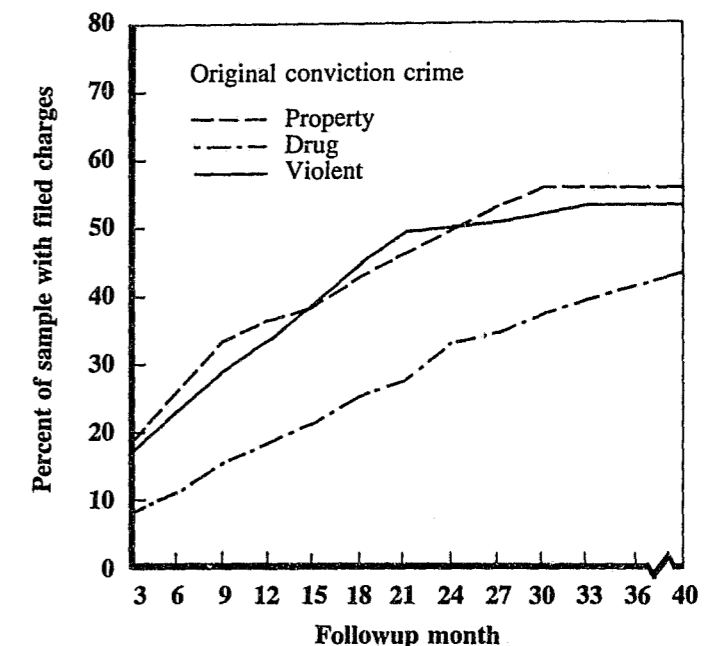


Figure 4. Cumulative percent of probationers with filed charges during followup months, by original conviction crime



Fifty-one percent of the total sample were reconvicted. Eighteen percent were convicted of homicide, rape, weapons offenses, assault, or robbery; and 34 percent eventually ended up in jail or prison.

The data also showed that offenders originally convicted of property crimes (burglary, theft, forgery) were the most likely to recidivate, followed (at some distance) by those who were convicted of violent and drug offenses. Only 33 percent of the prop-

erty offenders had no subsequent arrests, while about 40 percent of the drug and violent offenders managed to stay clean.

The study found two other important facts about the probationers. First, with the exception of drug offenders, probationers were most often rearrested and convicted of the same crimes they had originally been convicted of. Second, property offenders tended to be rearrested more quickly than those originally convicted for violent crimes or drug offenses.

The median time to first filed charge (not necessarily the first arrest) was 5 months for property offenders, 8 months for violent offenders, and 15 months for drug offenders.

However, as Figure 4 shows, both property and violent offenders either committed new crimes or "retired" within 2 years, while drug offenders continued to recidivate at a linear rate—that is, a roughly equal number returned to crime each month. Consequently, we do not know what the rate of recidivism for drug offenders would be beyond 40 months, nor can we be sure that the recidivism rate for drug offenders would, in the long

term, remain lower than the rates for property and violent offenders.

### Making the prison/probation decision

These high recidivism rates naturally raise questions about what criteria the courts use to decide whether a convicted felon receives a prison or probation sentence. Statistical analyses indicate a high correlation between prison sentences and certain basic factors of the case:<sup>2</sup>

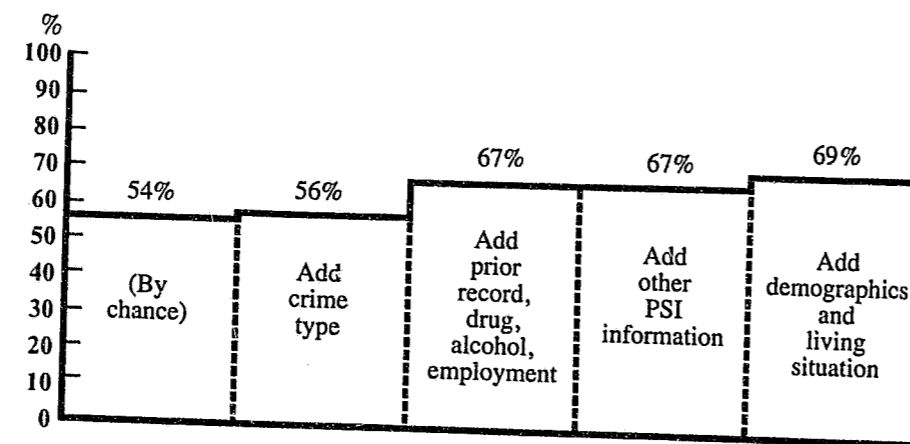
- having two or more current conviction counts
- having two or more adult prior convictions
- being on parole or probation when arrested
- being a drug addict
- being armed
- using a weapon
- seriously injuring the victim.

The California Penal Code (Section 1202d) states that such factors should be weighed before an offender is granted probation, and the courts do appear to consider them. For all offenses except assault, offenders who had three or more of these characteristics had an 80 percent probability of going to prison, regardless of the type of crime for which they were currently convicted. Because correctional facilities are strained to capacity, prisons appear to be increasingly reserved for "career criminals."

However, when the study attempted to "predict" which sentence specific offenders would receive, 20 to 25 per-

2. After controlling for the basic factors of each case, researchers also performed analyses to determine whether the manner in which the case was officially processed by the courts made a difference in the prison/probation decision. The analyses revealed that having a private attorney and obtaining pretrial release could reduce a defendant's chances of imprisonment, whereas going to trial (as opposed to plea-bargaining) generally increased that probability. These "process" variables significantly affected the prison/probation decision even after all the basic factors had been statistically controlled—that is, when all the offenders are statistically "interchangeable" except for their court handling.

Figure 5. Statistical ability to correctly predict rearrests



cent of the sample received sentences at odds with their "statistically-predicted" sentence. These findings suggest that—in terms of their crimes or criminal records—many of the felony probationers cannot be distinguished from their counterparts who went to prison.

### Predicting recidivism

To determine what factors were associated with rearrest, reconviction, and conviction for violent crime, the study used a hierarchy of information levels similar to that used by the court in the prison/probation decision.<sup>3</sup> The factors included (1) type of conviction crime, (2) prior record, drug and alcohol abuse, income, (3) sentence recommendation and special circumstances from the presentence investigation (PSI), and (4) demographics (age, race, education) and living situation.

Regression analyses identified the following factors as most significantly related to recidivism:

- **Type of conviction crime.** Property offenders had the highest rates of recidivism.

3. The Rand data contained information on over 235 factors, including extensive information about the offenders' criminal, personal, and socioeconomic characteristics.

- **Number of prior juvenile and adult convictions.** The greater the number, the higher the probability of recidivism.

- **Income at arrest.** Regardless of source or amount, the presence of income was associated with lower recidivism.

- **Household composition.** If the offender was living with spouse and/or children, recidivism was lower.

These factors were equally strong predictors of rearrest, reconviction, and conviction for violent crime. Nevertheless, as Figure 5 shows, knowing these factors still did not make the statistical prediction of rearrest a great deal better than chance.

For the total probation sample, knowing the type of conviction crime improved over chance by only 2 percent. Considering information on prior criminal record, drug and alcohol use, and employment made the prediction 11 percent more accurate than chance. However, adding demographics increased accuracy only 2 percent more—for a total of 69 percent in predicting rearrests. The study's predictions for reconvictions were only 64 percent accurate, while those for violent crime reconvictions were 71 percent accurate. Thus, using the best statistical models and a wealth of information on offenders, we could not predict recidivism with more than 71 percent accuracy.

It is interesting to compare the factors that predict the prison/probation decision with those the study used to predict recidivism. There was not as much correspondence as one might expect. The only factor used that strongly predicted both the decision to imprison and recidivism was prior adult criminal convictions. Prior juvenile convictions, while a very strong predictor of recidivism, were not particularly influential in the sentencing decision.

Most of the other factors important to the imprisonment decision, such as weapon use and victim injury, failed to significantly predict recidivism. Likewise, factors that did predict recidivism, such as living situation and monthly income, failed to influence the imprisonment decision. These differences undoubtedly reflect the trend in the California sentencing system toward a "just deserts" model, where sentencing is based primarily on the crime and prior criminal record, and not on factors necessarily associated with recidivism.

The study also discovered some important facts about presentence investigations (PSI's), reflected in Figure 5. Like many of their counterparts across the Nation, probation agencies in Los Angeles and Alameda Counties spend almost half their time and resources preparing PSI's.

In California, PSI's routinely include very detailed offender and offense information, plus judgments made by the probation officer concerning special aggravating or mitigating factors (e.g., offender is remorseful, has health problems, testified against accomplices). The study found that this additional information did not improve the recidivism prediction, once the analysis controlled for the offender's background and criminal history (which did come from the PSI).

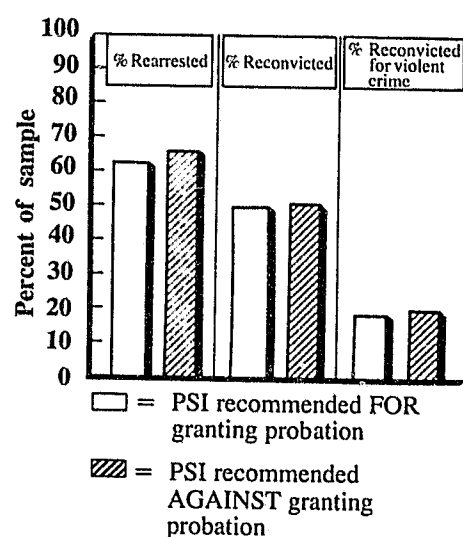
Moreover, the study found that, contrary to common belief, the courts do not necessarily follow the PSI's sentence recommendation. In the two counties, the PSI had recommended prison for 31 percent of the offenders who got probation.

Although this tendency to override the PSI recommendation merits more

study, it may reflect the courts' awareness that PSI's aren't necessarily accurate in predicting recidivism.

In the probationer sample, 63 percent of the people recommended for probation were rearrested, compared with 67 percent of those recommended for prison (see Figure 6).<sup>4</sup> Similar results were obtained for reconvictions and reconversions for violent crimes.

**Figure 6. Relationship between PSI sentence recommendation and recidivism (all offenders combined)**



In general, there were no statistical differences in the recidivism rates of those persons probation agencies recommended for probation and those they recommended for prison.

The problems with predicting recidivism prompted the study to approach the prison/probation decision from the opposite direction: to try to identify convicted felons who have a relatively high chance of succeeding on probation, and to determine if there are enough of them to significantly

4. These findings on PSI's should be interpreted cautiously. The PSI's examined were prepared in counties where officials admit to having less than adequate time to prepare proper reports. Under these conditions, it is not surprising that the PSI information does not adequately distinguish recidivists. In less burdened counties, the "predictive" quality of the PSI might be higher.

reduce the prison population without jeopardizing public safety.

The study created a statistical model, based on regression analyses, of "good prospects" for probation. This model used known factors common to probationers who had no new convictions to predict how many prisoners would have had a 75 percent chance of successful probation. Unfortunately, only about 3 percent of California's 1980 "incoming" prisoner population qualified. This result reinforces the study's general finding that very few adults convicted of felonies in Los Angeles and Alameda Counties are good candidates for probation, as it is now administered.

This conclusion is not intended as an indictment of the probation departments. With their reduced budgets and mountainous caseloads, they cannot supervise probationers much more closely. However, even if they could, routine probation was not conceived or structured to handle serious offenders. And, what is worse, these offenders seem to have crowded out the traditional probationer population—first offenders, petty thieves, drug offenders, and disrupters—many of whom evidently see the system's "indifference" as encouragement to commit more serious crimes.

Prior Rand research has shown that believing they can "get away with it" is characteristic of career criminals (Petersilia, 1977).

### Finding alternatives

The criminal justice system is facing a severe dilemma. Probation caseloads are increasing at the same time that budgets are shrinking. Nevertheless, probation will probably be used for still more convicted felons because of prison crowding and the lack of funds to build more prisons. Most of the felony probationers in the Rand study failed on probation, and it seems unlikely that the courts can improve their ability to predict recidivism, given current information and methods. Further, very few offenders now entering prison are good prospects for traditional probation.

The situation demands that the criminal justice system rethink its response to felony probationers. Without alternative sanctions for serious offenders, prison populations will continue to grow and the courts will be forced to consider probation for more and more serious offenders. Probation caseloads will increase, petty offenders will be increasingly "ignored" by the system (possibly encouraging recidivism), and recidivism rates will rise.

The criminal justice system has never developed a spectrum of sanctions to match the spectrum of criminals. Some believe that the system overutilizes imprisonment because it is virtually the only severe punishment available. There is a critical need to establish a greater array of sentencing options. However, the new options must be restrictive enough to ensure public safety.

One promising approach, being tried in Georgia and New Jersey, is intensive surveillance programs. The New Jersey program keeps offenders under strict curfew, requiring them to be in their homes from 10 p.m. to 6 a.m. Participants must also maintain employment, receive counseling, provide community service, submit to random urine testing for drugs, and make restitution to their victims.

The National Institute of Justice is sponsoring an evaluation of the New Jersey program, and preliminary results are encouraging. Of the 226 persons who have participated in the program during the past 14 months, 29 (13 percent) have been returned to prison—only one for an indictable offense. Most of the violations were curfew and drug related (Pearson, 1985).

Intensive surveillance programs cost \$3,000 to \$5,000 per offender per year, as compared to about \$1,600 for each person on probation and \$14,000 for each offender in prison. To help pay for these programs, some States have begun to collect probation supervision fees from the felons themselves. Georgia's program is basically self-supporting, and during its first year of operation it collected about \$650,000 in probation supervision fees (Erwin, 1983). Other States are attempting to develop risk-prediction models that identify "low-risk" probationers needing minimal supervision, thus allowing more resources to be applied to high-risk individuals.

Given the existing problems of prison crowding and the risks of felony probation, intensive surveillance may well be one of the most significant criminal justice experiments in the

next decade. If such programs prove successful, they will restore probation's credibility and reduce imprisonment rates, without significantly increasing crime. Most important, since such programs require that the offenders be gainfully employed and functioning members of a community, the programs offer the prospect of rehabilitating some of the offenders who participate.

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Joan Petersilia, a criminologist with the Rand Corporation, is directing a National Institute of Justice research project on probation.

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