

Probation and Parole in the United States

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Probation is intended to be a more lenient and socially beneficial means of rectifying criminal behavior. Probation was historically established to rehabilitate and reintegrate the offender back into mainstream society. Today, the probation system has grown bloated and counterproductive through mismanagement and overuse. More than a quarter of all prisoners nationwide are incarcerated for probation or parole violations, and not due to any criminal infraction. In order to ameliorate the economic and social strain caused by mass incarceration, our national probationary paradigm should be reevaluated and reconstructed to more closely resemble the original orientation of reeducating and edifying the offender in order to benefit the growth of both the individual and society as a whole.

History

Honorable Judge John Augustus is generally recognized as the “Father of Probation.” Augustus was born in Woburn, Massachusetts in 1785, and was elected as a judge in Boston in 1829. He was a member of the Washington Total Abstinence Society, an organization that professed abstinence from alcohol and other vices, while maintaining the conviction that others could be rehabilitated from their moral turpitude through understanding, kindness, and sustained moral persuasion.

In 1841, Augustus bailed out a “common drunkard” to become the first American probationer. The offender was ordered to appear before the court again in three weeks’ time for sentencing. The defendant returned to court sober and accompanied by Augustus. The presiding court was moved by the defendant’s abrupt change in appearance and demeanor and subsequently dismissed the charges.

Augustus thereafter began an eighteen-year career supervising the probation of 1,946 men and women. Augustus supervised probation for a variety of offenders, but always carefully evaluated whether the probationer was likely to successfully complete the probationary terms. Augustus took extensive notes on his probationers and often considered character, age, and associations as factors apt to influence the probationer's chances for success. Augustus's methods proved to be overwhelmingly successful—with only ten people over the course of Augustus's career failing to abide by the terms of their probation and subsequently forfeiting their bail. Augustus did not go unnoticed, and his efforts earned him repute among his political opponents and Bostonian philanthropists alike. Augustus was largely credited for influencing and ultimately realizing the enactment of, the Massachusetts probation statute (the first of its kind in the United States).

Following Massachusetts, the probationary system proliferated throughout the United States. The developing probationary system typically required the convicted to pay a fee as collateral for good behavior. Using this procedure, convictions were held in abeyance until the term of probation was served, and then the charge was later dismissed.

Suspended sentencing was disfavored by federal courts that generally maintained that the contemporary probation practices were too lenient, and also unconstitutionally infringed upon the executive pardoning power. ***That issue came before the Supreme Court in 1916 in what came to be known as the Killits decision.*** The Court held that federal courts did not have the power to suspend sentencing indefinitely, and subsequently recommended that probation legislation would be the proper mechanism for instituting probationary procedures and practices.

It was not until the Probation Act of 1925 that federal courts were granted the power to suspend the imposition of a sentence and to place defendants on terms of probation. The Act also authorized one or more persons to serve as probation officers, and the first salaried federal probation officer was appointed in 1927 in the District of Massachusetts.

Mass State Supervision

Probation is the most commonplace penal sentence in America. Nowadays, there is nearly seven million adult offenders under some form of correctional supervision in the United States—with more than 4.7 million of the offenders being supervised in the community by salaried probation officers.

Probation is when a court mandates an order placing a criminal offender under the supervision and care of a probation officer in lieu of incarceration. Provided that the probationer maintains the terms of their probation, they will not be required to serve a term of imprisonment. In order for probation to be granted, offenders must consent to the conditions of supervision imposed by the court. General conditions of probation are placed upon all probationers writ large, and some offenses require special conditions of probation. General conditions of probation include obedience to all statutes and laws,

consent to search the probationer's person and premises, report to the supervising probation officer as directed, notify supervising officer of any changes in employment or home address, not possess dangerous weapons or firearms, and request leave from the officer and/or court prior to traveling outside the probationary jurisdiction. Special conditions may include but are not limited to, stipulations such as house arrest, electronic monitoring, curfew, restitution, drug rehabilitation, and/or mental health/behavior counseling.

At all times, the sentencing court retains the authority to supervise the offender, modify the conditions of supervision, and revoke the probationary status of the offender (either partially or in full) due to an infraction of probation. Probationers are presumably motivated to comply with the terms of probation due to the ever-looming Damoclean blade of imprisonment.

The Nation on Probation

Currently, more than one in fifty-five Americans are under probation or parole supervision at any given time. The probation and parole systems have grown too large and unwieldy due to the sheer magnitude of the probationary population and the judicial trend toward increasingly lengthy probationary terms. Far from facilitating the reintegration of offenders with the community as originally intended, community supervision often serves as a tripwire for incarceration. Often, probation creates a vicious cycle wherein the probationer faces imprisonment or reincarceration for administrative violations that would not have otherwise resulted in prison time.

Probation is intended to be a more hopeful and less punitive means of correction. However, funding has not been commensurately allocated as more people have been placed onto state and federal supervision for longer periods of time. Although twice as many people are under supervision than are in prison or jail, only one in ten correctional dollars is actually allocated to probation and parole programs. This leaves probationers with few resources, and overworked probation officers that are incentivized to revoke probationary terms in order to alleviate their workload.

The result?

More than one in four people entering the prison system nationwide are imprisoned for an administrative probation or parole violation, and not due to some new criminal infraction. Revoked probationers cost American taxpayers just over \$2.8 billion—money that probably could and should be spent on the front end to rehabilitate the probationer rather than simply incarcerating them for administrative infractions.

At [Wasatch Defense Lawyers](#), we believe that there are better alternatives than prison, and even probation should be avoided whenever possible. At [Wasatch Defense Lawyers](#) we are fighting to reduce the number of people under supervision or incarcerated for low-level misbehavior!

Call today if you or a loved one is facing criminal charges or a probation infraction.
