



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HOUSE DEMOCRATIC POLICY COMMITTEE HEARING

Topic: Probation Reform

Philadelphia City Hall – Philadelphia, PA

August 8, 2018

AGENDA

- 2:00 p.m. Welcome and Opening Remarks
- 2:10 p.m. Panel One:
- Christian Stephens,
Deputy Secretary for Field Services, Pennsylvania Department of Corrections
 - Helene Placey
Executive Director, County Chief Adult Probation & Parole Officers Association
 - Holly Harris
Executive Director, Justice Action Network
- 2:50 p.m. Panel Two:
- Mike Lee
Assistant District Attorney and Director of Legislation and Government Affairs,
Office of the Philadelphia District Attorney
 - Mark Houldin
Policy Director, Defender Association of Philadelphia
 - Leslie Jones
Policy and Advocacy Director, Montgomery County Public Defender Office
Member, Pennsylvania Association of Criminal Defense Lawyers
- 3:30 p.m. Panel of Parolees:
- John Thompson
 - Crystal Walker
- 3:50 p.m. Public Comments
- 4:10 p.m. Closing Remarks

Testimony of Christian Stephens – Deputy Secretary, Field Services
August 8, 2018

Chairman Sturla and members of the committee, I would like to thank you for providing me with the opportunity to appear before this committee today and speak on behalf of the Pennsylvania Board of Probation and Parole (PBPP) and the Department of Corrections (DOC).

I would like to first praise the excellent work that is done every day by our parole agents, supervisors, and all of our staff. They dedicate their lives to keeping Pennsylvanians safe, and the work that they do is vital to our commonwealth.

In response to the questions that were posed to us in advance of this hearing, we have consulted with our departments, and have the following responses for the committee:

1. How many people are on parole in Pennsylvania? As June 30, 2018 there are 41,777 re-entrants on parole in Pennsylvania. Of these, 31,226 are under active supervision.

2. How many people are on probation in Pennsylvania? While the probation number is more difficult for us to determine since we do not supervise people on probation, and instead they are supervised at the individual county level. As of December 31, 2017 there are approximately 250,329 persons on county probation, and 6,384 on “special probation.” State parole agents are responsible for supervising persons who are on “Special Probation.” “Special Probation” is a period of supervision under a sentencing court’s authority that extends beyond a re-entrant’s parole supervision, which is supervised by a parole agent. Counties often request that the state handle this type of supervision for re-entrants who will transition from one type of supervision to the other.

3. How many people are currently incarcerated for a parole violation? As of June 30, 2018, there were 3,603 re-entrants who are incarcerated for a parole violation. 1,175 of these inmates are technical parole violators, and the remaining 2,428 inmates are convicted parole violators.

4. What is the number of persons on parole from Philadelphia and the surrounding counties, and what is the number of inmates in a state correctional institution from Philadelphia and the surrounding counties? There are 1,325 inmates in DOC who were committed to an SCI by Bucks County, 1,061 by Chester County, 2,035 by Delaware County, 1,665 by Montgomery County, and 12,767 by Philadelphia County. In addition, there are 417 re-entrants on parole residing in Bucks County, 466 in Chester County, 1,374 in Delaware County, 637 in Montgomery County, and 8,861 in Philadelphia County.

5. How many people are incarcerated for parole violations without seeing a judge? Judges do not see inmates or re-entrants who are accused of parole violations. Inmates who are denied parole will receive a board action that lists the reasons for the denial as well as the date that they will next be interviewed for parole. Re-entrants who violate their parole are seen by a hearing examiners and Board members to determine whether or not they should be recommitted. If a re-entrant is recommitted they will receive a new Board Action that will list the date of their eligibility for re-parole or the date of their automatic re-parole. Re-entrants on “special probation” who are accused of violations will go before a judge, however, for a determination as to what next steps should be taken. Currently there are 336 re-entrants who are in parole violator centers.

6. What is the authority of a parole agent as it pertains to resentencing? Parole agents have the authority to arrest re-entrants for violations of parole, and to make recommendations to the board as to whether or not a re-entrant should be recommitted to a state correctional institution. If a re-entrant is recommended to be recommitted, an agent may testify before a hearing examiner and board member who will make that determination.

7. What is the current budget of your agency, and how many agents are currently engaged in supervision? The 2018-19 budget allocated \$135,742,000 for the Department of Criminal Justice to use for field supervision, and \$12,325,000 for the Board of Probation and Parole's general operations. These numbers will allow As of July 1, there are approximately 586 parole agents in the field. Additionally, we currently have 47 prospective parole agents in the training academy. At this time, we do not yet know when we will conduct future training academy agent classes. Our agent complement numbers are currently at their capacity, and our approximate caseload ratio is 55 to 1.

Chairman Sturla and members of the committee, I would like to again thank you for your time today, and for the opportunity to speak before you today. I am available to answer any questions you may have.



Testimony

House Democratic Policy Committee

Public Hearing on Probation Reform

August 8, 2018

Philadelphia City Hall

Presented by:

Helene Placey, Executive Director

County Chief Adult Probation and Parole Officers Association of Pennsylvania

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Good afternoon Representative Sturla and members of the House Democratic Policy Committee.

I am Helene Placey, Executive Director of the County Chief Adult Probation and Parole Officer Association of Pennsylvania. Thank you for providing this opportunity to testify before this committee on the subject of probation reform.

Due to the short notice of this hearing, our members did not have an opportunity to meet and discuss specific recommendations related to probation reform in Pennsylvania. I will provide some brief comments regarding the current state of affairs of county adult probation in Pennsylvania.

My remarks will address three areas:

- 1) Background of county probation and parole;
- 2) Major challenges in county probation; and
- 3) Strategic plan and implementation of evidence-based practices.

Background: County adult probation and parole departments

County adult probation and parole departments are under the jurisdiction of the President Judge in each county. Sixty-five of the 67 counties in Pennsylvania operate county adult probation and parole departments. The PA Board of Probation and Parole (PBPP) provides all adult probation and parole services in Mercer and Venango Counties.

County adult probation and parole departments supervise individuals who receive a confinement sentence with a maximum term of less than two years. In those cases, paroling authority is vested with the county sentencing judge. County probation also supervises any individual who is sentenced to an unlimited term of county intermediate punishment or an unlimited term of probation.

County adult probation department supervise 86% of offenders in the community on probation or parole (over 258,000 individuals). The PBPP supervises 14% of offenders in the community (approximately 41,946 individuals).

Major Challenges

There are numerous challenges that county probation departments face around the state but I will limit my comments to just a few.

First, the structure of county adult departments is decentralized. There are 65 different adult probation departments under the direction of 60 president judges. The probation departments have different levels of resources and stakeholder support. There is no oversight agency or advisory commission in the adult probation system providing standards and consistency throughout the 65 county adult probation departments. This stand in contrast to the juvenile probation system, where the Juvenile Court Judges Commission (JCJC) provides an oversight role by establishing standards in juvenile courts; establishes personnel practices and employment standards used in probation offices; collects, compiles and publishes juvenile court statistics; and administers a grant-in-aid program to improve county juvenile probation. Such a body for adult probation and parole would be a valuable tool for improving and strengthening county adult probation and parole system.

A second challenge is caseloads are high and continue to grow (see attachment). Based on the PBPP's 2016 County Adult Probation and Parole Report, county adult probation average active caseloads range from a high of 250 offenders to a low of 23 offenders with the statewide average of 105 offenders per officer. This is double the recommendation of the American Probation and Parole Association (APPA) suggesting caseloads of 50 offenders to one officer for moderate to high risk population. The PBPP average caseload for agents is around 66. Studies show that reduced caseloads, in combination with evidence-based practices, can lead to improved recidivism outcomes.

A third challenge is a lack of funding. County adult probation funds comes primarily from the county and raising revenue is limited. The county adult probation departments carry the largest share of the Commonwealth's correctional workload, but the state provide only a fraction of the funding – an amount that is not adequate to support the provision of effective probation and parole services. The Grant-in-aid program, established in the Improvement of Probation Services Act of 1965, was amended in 1986 to include the goal of covering 80% of

eligible county salary costs (see 61 Pa.C.S.A §6133) . GIA funding came close to meeting the 80% goal in the late 1980s (78% of eligible costs in FY 1988-89). Since then, GIA as a percentage of eligible salaries had declined steadily. Based on a 2015 Legislative Budget and Finance Committee Report on “*Funding of County Adult Probation Services*”, GIA in recent years has been lower than 18% of eligible county salary costs.

Related to funds used to support county probation services, the Crime Victims Act requires that adult offenders under the supervision of a county probation department pay a monthly fee (a/k/a supervision fee). The county is to retain 50% of the fee it collects and remit the remaining 50% to the Commonwealth’s State Offender Supervision Fund. To encourage counties to collect these fees, the PBPP established a policy of returning the fees to the county on a dollar-for-dollar basis. During the time the fees are with the Commonwealth, any interest earned is retained in the state General Fund. This transfer by the counties of half of the supervision fees to the state and their subsequent return to the counties creates additional administrative burdens. This practice is wasteful in time and administrative effort. It should be noted that the counties earn no interest on this money, while the state does.

Additionally, the manner in which supervision funds and GIA are reported in certain public documents is confusing and potentially misleading. For example, the PBPP takes supervision funds that are remitted to the Commonwealth and combines with the state GIA funds when calculating the state contribution to county probation departments. This results in a much higher level of state funding than if the supervision fees, which are assessed and collected at the county level, were considered as county funds. In 2016 counties collected over \$30 million in supervision fees.

There are many more challenges that face county probation departments but in the interest of time, I will limit my remarks to these three.

Strategic Plan and Implementation of Evidence-Based Practices

In 2016, the County Chiefs Adult Probation and Parole Officers Association released its strategic plan for advancing adult probation and parole within the Commonwealth. The goal of the strategic plan is to enhance public safety, reduce recidivism, and provide for a more effective

use of public funds through the implementation of evidence-based practices (EBPs) in the adult county probation system.

Evidence-based practices are the application of science into operational practice for services and programs for offenders. The goal is to use practices that have been empirically tested and have been shown to reduce recidivism among offenders. Our juvenile probation system has already undergone statewide implementation of EBP under the direction and leadership of JCJC.

The Chief's Association strategic plan is the beginning of a multi-year effort to achieve better outcomes in community-based offender recidivism rates. We believe the strength of our strategic plan lies in the support and collaboration of county adult probation and parole partners and key state stakeholders. The Chief Adult Probation and Parole Officers Association of Pennsylvania has collaborated with several state agencies and created a Statewide EBP leadership team comprised of the following: the Pennsylvania Commission on Crime and Delinquency, County Commissioners Association of Pennsylvania, Administrative Office of Pennsylvania Courts, Pennsylvania Department of Corrections, Pennsylvania Board of Probation and Parole, Office of the Victim Advocate, and the Pennsylvania Commission on Sentencing. Their goal is to partner together to develop a multi-phased action plan through which county adult probation and parole departments can acquire the necessary knowledge, tools, guidance, and support to effectively implement EBPs and programs throughout the Commonwealth.

Implementation of EBP in all counties adult probation departments will be a daunting challenge. But once implemented, county criminal justice systems should see results including:

- Improved supervision outcomes;
- Reduce offender risk;
- Reduced recidivism;
- Reduced use of county jail and state prison for probation and parole violators; and
- Better utilization of public resources.

Adult county probation departments are at various stages of implementation of EBP. There are some county departments who have partial implementation; some county departments have not yet begun.

In order to successfully implement EBPs, one of our tasks is to first reduce caseload size. How do we accomplish this? Hiring more county probation officers is not realistic. There simply are not enough funds. Therefore, we need to focus on reducing the number of people under probation supervision. This can be accomplished in several ways.

First, we need to stop using probation as a collection agency. For low level, low risk offenders, we need to utilize sentencing options of Guilt Without Further Penalty, Fines, and Restitution as a stand-alone sentence on a more regular basis.

Second, we need to reduce the length of probation terms. Lengthy probation terms of three, five, seven years do not punish the offender. These lengthy probation terms punish the probation department. Most research shows that if an offender is going to recidivate, they will most like reoffend within the first 18 months of their supervision. But if an individual does receive a sentence term of several years on probation, we need to do a better job of rewarding good behavior. We need to encourage courts to implement policies when an offender successfully complies with their conditions of supervision (e.g. maintains employment, pays off fines and restitution in full, etc.) their probation term would be terminated early.

In recent months, our association has conducted presentations for the judiciary and prosecutors around the state. Our goal is to inform them about our strategic plan and our efforts to implement EBPs. We need their support and we need to begin discussions in order to make these changes.

There are many ways to improve the way probation is used in Pennsylvania but much of the efforts will have to be at the county level with county stakeholders, particularly the judiciary and prosecutors. Our Association has faith in our courts and allowing judicial discretion at time of sentencing as well as any potential probation revocation hearing. We are not in a position to support or oppose any possible legislation on limiting probation terms for technical probation violators.

As part of the Justice Reinvestment 2 package, we are in support of SB 1070 which would create the County Adult Probation and Parole Advisory Committee within the Pennsylvania Commission on Crime and Delinquency. We believe our efforts would be supported through the enactment of this legislation.

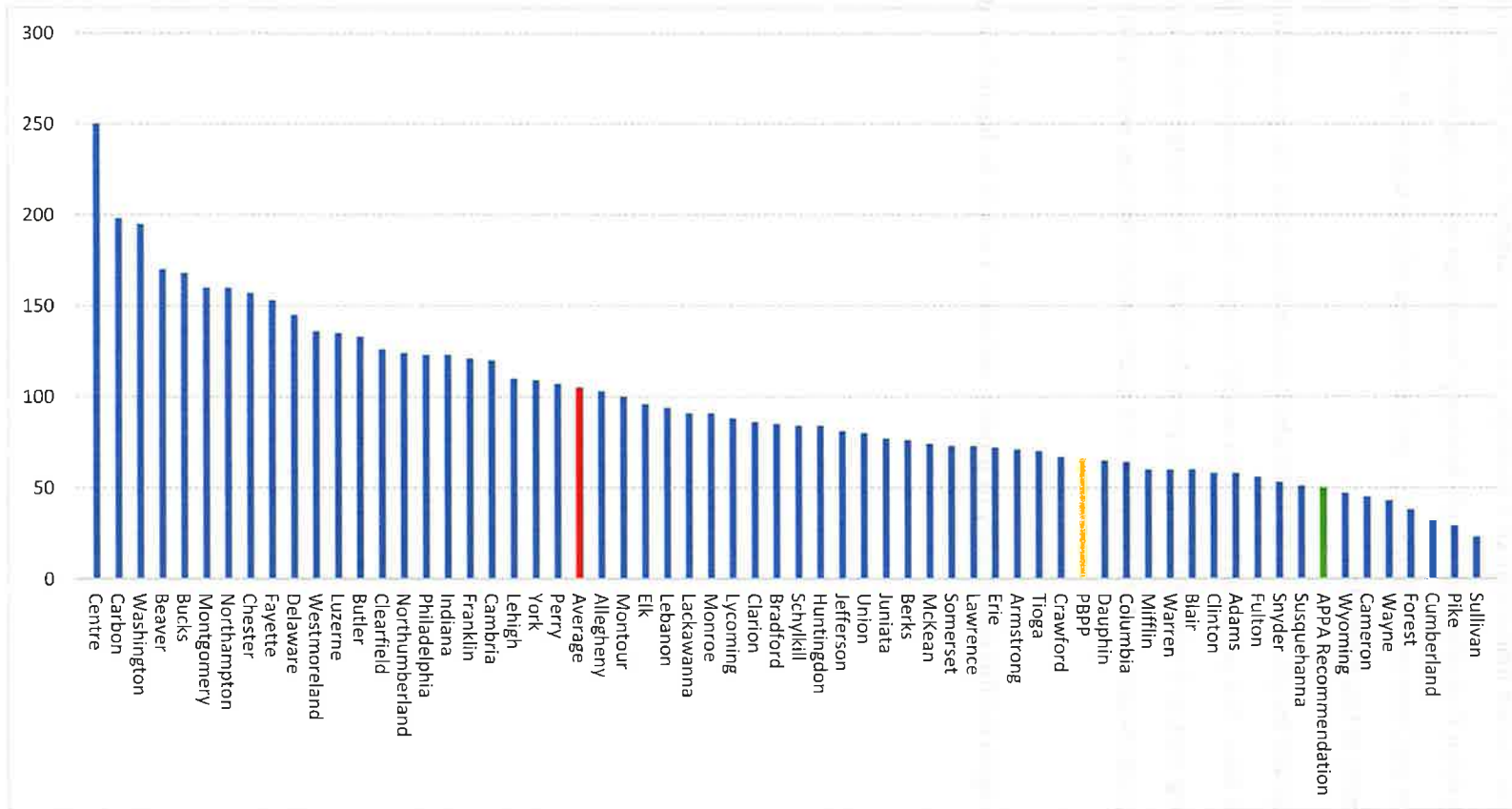
We also support the provision in SB 1072 which would streamline the process of county supervision fees. The proposed legislation would remove the requirement that 50% of the money being sent to the State Offender Supervision Fund. This change would allow 100% of the county supervision funds to remain at the county where the fees were collected.

Thank you again for this opportunity to provide remarks. I would be happy to answer any questions.



County Adult Probation and Parole Caseload Averages in PA

- 105 = Average Caseload for County Adult Probation/Parole Departments *
- 66 = Average Caseload for PBPP agents **
- 50 = Recommended caseload per American Probation and Parole Association (APPA) **



* PBPP 2016 County Adult Probation and Parole Report (data not available: Bedford, Greene, Lancaster, Potter, Venango Counties)

** Legislative Budget and Finance Committee Report "Funding of County Adult Probation Services" February 2015

**Testimony on behalf of the Montgomery County Office of the Public Defender and the
Pennsylvania Association of Criminal Defense Lawyers
Before the House Democratic Policy Committee
August 8, 2018, Philadelphia
A Statewide Problem**

In recent months, Philadelphia has attracted national attention for its community supervision practices. High profile cases, such as that of Meek Mill, have captivated the interest of community leaders and members,¹ and have led to the publication of compelling research evaluations from academic institutions.²

However, unjust and harmful probation practices are not only a Philadelphia problem, but a large scale, systemic problem across all of our Pennsylvania communities, including Montgomery County. This is why the Montgomery County Office of the Public Defender and the Pennsylvania Association of Criminal Defense Lawyers feel compelled to testify before the House Democratic Policy Committee today.

Probation concerns, especially involving technical violations and cap limits, are a statewide problem that can be approached through the application of common sense principles, supported by data and fiscal responsibility. Recent events have started this needed conversation, and we hope to be a part of continuing it.

Destabilizing Communities

In Pennsylvania, technical violations of probation and parole can result in **automatic, immediate detainment in a jail** by law.³ This incarceration can last anywhere from several days to many months, which is unfortunately the general course of action. These violations can include anything from non-reporting and address changes to traveling beyond adjacent counties without the permission of a probation officer. Not only does an automatic jail sentence for last minute, within-state travel not make common sense, but it also harms our communities.

Presumably, the major driver of probation rules is community safety. However, many probationers are being supervised for non-violent, relatively low-level offenses. What happens

¹ Executive Session on Community Corrections, *Toward an Approach to Community Corrections for the 21st Century: Consensus Document of the Executive Session on Community Corrections*. Program in Criminal Justice Policy and Management, Harvard Kennedy School, 2017.

² <http://justicelab.iserp.columbia.edu/img/PACCommunityCorrections4.19.18finalv3.pdf>.

³ Pennsylvania General Assembly, Title 61 § 6138(c).

to a low-level offender when subjected to incarceration alongside those that are truly dangerous? Research suggests that **incarceration of individuals can shape beliefs in favor of crime and violence, ultimately resulting in repeated offending** for some.⁴

This cycle can not only set an individual on the wrong path, but also has enormous ripple effects. For many indigent clients, even one day in jail can mean a **missed shift at an unstable job, which may result in unemployment**. Lack of employment **increases chances of reoffending**.⁵ Even when a probationer has a secure job, it leaves families to scramble for childcare and eldercare, and to make up for lost income to meet other basic needs – a problem in which 65% of families with an incarcerated parent cannot adequately cope.⁶ These families, in turn, must either flounder or turn to state and federal social service programs to stay afloat at the expense of the community.

A Costly Solution

Every day, Montgomery County spends **more than \$39,131.16 on detaining probation and parole violators**.⁷ That does not include costs for transporting individuals to court appearances, paying for attorneys and probation officers, and any necessary medical care.

To put that into perspective, **our county could pay for a four-year Penn State degree for a child every other day** with that amount of money.⁸ Every eight days, the county could afford to purchase a new home in the county at market price,⁹ and could purchase houses for all current homeless residents of our county within seven years.¹⁰

While this is certainly an oversimplification, the message is clear: substantial amounts of money are being poured into a practice that harms individuals, families, and our county. This practice diverts limited resources from other issues. Why are we incarcerating individuals for changing their address or other minor missteps instead of eliminating homelessness in under a decade or having the additional personnel and means to contribute to fight the opioid crisis?

⁴ Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3_suppl), 48S-65S.

⁵ Bak, T. (2002). Pretrial release behavior of defendants whom the US Attorney wished to detain. *Am. J. Crim. L.*, 30, 45.

⁶ deVuono-powell, S., Schweidler, C., Walters, A., & Zohrabi, A. (2015). Who pays? The true cost of incarceration on families. *Oakland, CA: Ella Baker Center*.

⁷ Based on a Montgomery County Correctional Facility (MCCF) annual budget document, and a MCCF report detailing the number of probationers currently detained.

⁸ https://www.collegedata.com/es/data/college/college_pg03_tmpl.jhtml?schoolId=59.

⁹ <https://www.zillow.com/montgomery-county-pa/home-values/>.

¹⁰ <https://www.montcopa.org/DocumentCenter/View/18117/PR-Your-Way-Home-Impact-Report-2017?bidId=>.

Help v. Handcuffs

Nationally, criminal justice experts, including prosecutors, parole officers and reform advocates, have all reached an important consensus: “America’s community corrections systems must reflect and embody the normative values of the wider democracy in which they reside.”¹¹ These core values require **“promoting the well-being and safety of communities; using the capacity to arrest, discipline, and incarcerate parsimoniously; recognizing the worth of justice-involved individuals; promoting the rule of law, respecting human dignity of people under supervision and treating them as citizens in a democratic society; and, infusing justice and fairness into the system.”**¹² The end game cannot focus merely on “completion” or “compliance,” but on improving outcomes in access to education, employment, healthcare, and housing for individuals and their families. According to the Harvard Kennedy School’s Executive Session on Community Corrections, the “[r]esearch clearly establishes that people convicted of crimes are often themselves victims, but current practices ignore this important overlap. Thus, community corrections agencies should do more to recognize that many of those under supervision have themselves been victims of crime, often violent crime, and may need victim services and supports.”¹³

Furthermore, the growing body of scientific research on cognitive impairment as a result of Adverse Childhood Experiences (ACEs) explains a kind of “tunnel vision” or “limited bandwidth” which compromises a trauma-impacted person’s ability to maintain organizational skills, attention, and focus in combination with a regimented schedule with zero tolerance consequences.¹⁴ Such conditions should be interpreted as a “prescription for failure,” instead of a demonstration in defiance.¹⁵ Reform increases justice for all and enhances community safety when we support people under community supervision as community assets with the potential to succeed.

A Timely Opportunity

Pennsylvania lawmakers have granted the Pennsylvania Board of Probation and Parole many powers, most importantly of which is the power and obligation “[t]o coordinate the reentry

¹¹ Executive Session on Community Corrections. *Toward an Approach to Community Corrections for the 21st Century: Consensus Document of the Executive Session on Community Corrections*. Program in Criminal Justice Policy and Management, Harvard Kennedy School, 2017, 1.

¹² *Id.*, 2.

¹³ *Id.*, 6.

¹⁴ Ronald P. Corbett, Jr. The Nexus Between Neuroscience and Probation. Robina Institute of Criminal Law and Criminal Justice Blog, posted August 29, 2017. Available: <https://robinainstitute.umn.edu/news-views/nexus-between-neuroscience-and-probation>.

¹⁵ *Id.*

of offenders into the community **using evidence-based practices that are effective in reducing recidivism.**¹⁶ While the Board has not issued a Research Bulletin since 2016,¹⁷ other evidence abounds that calls for a reconsideration of current practice. It is time to rethink and reshape the way these matters are handled.

Long probation sentences, which Pennsylvania is gaining notoriety for, do little to keep the community safe. In fact, most re-offenses will occur within one or two years,¹⁸ making longer sentences unnecessary, ineffective, costly, and technical violations traps.

Additionally, common sense and research show us that humans do not respond to exceptionally long or indeterminate sentences.¹⁹ Many of us might wait for a table at our favorite restaurant when the host tells us the wait is 30 minutes. What about when we are told that it will be *at least* 30 minutes, but maybe up to two hours? What if that two-hour wait might reset whenever you leave the building or visit a drinking fountain? A definite time frame encourages engagement, motivation and compliance, while unclear and unreasonable guidelines lead to frustration, anger, and eventually to giving up.

The evidence suggests that detention for technical violations is harmful, and that long, consecutive sentences are ineffective. It is time to implement these practices to effectively reduce recidivism and in doing so increase the satisfaction of the courts' lawful orders.

Continue the Conversation

Many of these ideas may be counterintuitive and might feel incompatible with a sense of justice and community safety. Fortunately, however, we need not rely on intuition and gut-feelings to drive criminal justice policy. Our current practices are unequivocally the product of well-intentioned decision makers, but even those decision makers recognized the need for continual re-evaluation and the ability of our state to learn from its mistakes. This system, as it stands, has become a mistake that strips individuals, families, and communities of loved ones, limited resources, and a chance to contribute, succeed and break the cycle. Now is the time to re-evaluate, reassess and move forward.

¹⁶ Pennsylvania General Assembly, Title 61 § 6131(a)(14).

¹⁷ https://www.pbpp.pa.gov/research_statistics/bulletins/Pages/default.aspx.

¹⁸ <http://justicelab.iserp.columbia.edu/img/PACommunityCorrections4.19.18finalv3.pdf>.

¹⁹ Solomon, Amy L., *et al.* 2008. Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry. Washington, DC: The Pew Charitable Trusts. Available: www.pewtrusts.org/-/media/assets/2008/12/13strategies.pdf.

The Montgomery County Office of the Public Defender²⁰ and the Pennsylvania Association of Criminal Defense Lawyers thank the House Democratic Policy Committee for this opportunity, as well as Representative Joanna McClinton for her interest in these crucial issues. We welcome questions or comments and look forward to additional hearings and meaningful change in the near future.

²⁰ These comments were prepared with the support of Daniel Flack, M.A., who is a JD/Ph.D student at Drexel University.