

The Perils of Probation: How Supervision Contributes to Jail Populations

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Introduction

Probation—a court-ordered period of supervision in the community for people convicted of criminal charges—has traditionally been viewed as an alternative to incarceration, and sentencing more people to probation rather than prison was long proposed as a solution to the problem of mass incarceration. (See “A brief history of probation” on page 2.) However, as the number of people on probation in the United States has grown massively and probation supervision has become more punitive over the past few decades, more recent reports have focused on how probation is actually contributing to mass incarceration.¹ These reports explain how increasingly large numbers of people are having their probation supervision revoked and are then being sentenced to incarceration, often for noncompliance with conditions of supervision rather than new criminal charges.² Although most of these reports mention both prisons and jails when discussing how probation violations have contributed to mass incarceration, they provide almost no specific information about how such violations affect jail populations. The information about probation’s impact on jails included in some of these reports is often extremely old and sometimes incorrect, propagated from reports that cite previous reports in a sort of game of statistical “telephone.”³ Meanwhile, other reports simply acknowledge the reality that there is no good national data on how probation contributes to incarceration in local jails.⁴ The lack of information about probation’s impact on jail populations is problematic because far more people are admitted to jails than prisons every year and jails are a driving force in mass incarceration generally, and jail populations are also marked by significant racial disparities.⁵

This brief will summarize what we do know about probation and how it can contribute to jail populations. It will also present analysis of data from nine cities and counties participating in the John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge (SJC), a national initiative that seeks to address over-incarceration by changing the way the

United States thinks about and uses jails. The Vera Institute of Justice (Vera) was able to obtain more detailed jail data from these sites than is available at the national level. This analysis offers examples of how probation affects jail incarceration and the kind of data and analysis that is needed at the national level. Finally, this brief will highlight work being done in two SJC sites—St. Louis County, Missouri, and Allegheny County, Pennsylvania—to reduce the number of people on probation in their jails. This brief is intended both to spur greater consideration of the problem of probation's contribution to jail populations and to suggest ways to address it.

A brief history of probation*

The beginning of probation in the United States is usually credited to the work of John Augustus, a Boston bootmaker and temperance advocate.^a In 1841, Augustus posted bail for a man who would ordinarily have been sentenced to incarceration and convinced the judge to defer sentencing for several weeks while the man remained under Augustus's supervision.^b At the end of this period, Augustus was able to demonstrate the man's "rehabilitation," and the judge sentenced him only to a nominal fine.^c Over the next decade and a half, Augustus went on to bail out over 1,800 people and assist them in obtaining work or housing, saving many from being sentenced to incarceration.^d

Massachusetts passed the first law authorizing professional, state-employed probation officers for adults in 1891.^e By 1910, over two-thirds of states had enacted adult probation laws.^f All 50 states and the federal government had passed laws providing for adult probation by 1956.^g By the 1950s and 1960s, probation had become an extremely popular sentence, with 40 to 50 percent of people convicted of crimes receiving probation.^h

For much of its history, the focus of probation was on "rehabilitation," and the role of probation officers was often compared to that of social workers.ⁱ This began to change in the late 1970s and 1980s, as a generally more

punitive shift in society and the beginning of the "tough on crime" era led probation officers to emphasize the law enforcement aspects of their jobs, especially the strict enforcement of conditions of supervision.^j States also adopted "intensive supervision" programs that imposed even more restrictive conditions on people being supervised.^k

This shift in focus to surveillance and enforcement led to greater numbers of people on probation being sentenced to incarceration for violations.^l Recently, as states have begun to try to reduce the number of people incarcerated for probation violations, there is evidence that some probation officers are shifting to a hybrid approach to supervision that incorporates both law enforcement and social work aspects.^m

*box notes at end of report

What We Know About Probation

The scope of probation in the United States

Probation is the most common criminal sentence in the United States.⁶ (See “A probation primer: Terms and definitions” on page 4.) Although the problem of mass incarceration has received much greater attention, the scope of probation in the United States exceeds even that of incarceration. Probation has grown tremendously over the past four decades, in parallel with increased incarceration. From 1977 to its highest point in 2007, the number of people on probation grew from 816,525 to 4,293,000, a 426 percent increase, before decreasing 18.6 percent to 3,492,900 by 2019.⁷ Despite this more recent decline, probation in the United States still has a vast reach—although the total number of people on probation has decreased, the rate of people on probation per arrest nationally was actually 12.6 percent higher in 2018 than in 2008.⁸ In 2019, one in 73 adults in the United States was on probation, representing more than 55 percent of people under any form of correctional control, and there were almost 1.5 million more people on probation than in jails and prisons combined.⁹

As with incarceration, the United States is exceptional in its use of probation. Over the past decade, the rate of people on probation in the United States has ranged from five to 10 times higher than the average rate for European countries.¹⁰ In 2018, no U.S. state had a probation rate even close to the European average, and all but three had rates higher than every European country.¹¹ Probation in the United States is also uniquely punitive compared to Europe, with longer terms, a much higher average number of conditions, a greater emphasis on enforcement and control, less supportive assistance, higher revocation rates, and a greater reliance on incarceration to punish noncompliance.¹²

A probation primer: Terms and definitions*

Probation

Probation is a court-imposed sanction through which people convicted of misdemeanors or felonies are ordered to be supervised in the community.^a Probation involves a term of supervision subject to compliance with specified conditions and may be imposed as part of a suspended sentence to incarceration or as a free-standing sentence.^b Probation has become the default non-incarceration sentence in the United States, with approximately two-thirds of convicted people being put on probation.^c

Probation violation

Noncompliance with any of the conditions of supervision constitutes a probation violation, which can lead to sanctions or revocation. (See definitions of “sanctions” and “revocation.”) Violations are commonly divided into two categories—“technical” violations and “new offense” violations. Technical violations involve noncompliance with probation conditions that are not in themselves illegal (for example, failing to report to a probation officer, failing to pay fees, drinking alcohol, etc.), while “new offense” violations involve conduct that constitutes a crime.^d For the purposes of this report, probation violations not associated with new criminal charges are considered technical.^e

Detainer or hold

Detainers, in some places referred to as holds, are orders requiring that people charged with violating probation be held in jail.^f When a detainer is lodged, there is no possibility of release unless it is lifted, either by the judge presiding over the probation violation, or, in some places, by the probation officer.^g Even if someone was charged with both a probation violation and a new offense, and a different judge ordered their release in the new case, they would remain in jail while the detainer was in place.^h

Violation hearings

Proceedings on probation violations are initiated by a probation officer filing a notice of violation or motion to revoke probation. The U.S. Supreme Court has held that two hearings are necessary for probation violations—a preliminary hearing to determine if there is probable cause that a violation occurred and a final hearing to decide whether the person violated probation and what should happen.ⁱ Due process is extremely limited at these hearings. People have a right to notice of the alleged violations and the government’s evidence, to present

witnesses and evidence, and to testify, but there is no presumption of innocence, no right to a jury or even to have the case heard by a judicial officer, no automatic right to appointed counsel or to cross-examine witnesses, and hearsay and illegally obtained evidence are admissible.^j More importantly, the burden of proof at the final hearing in almost all jurisdictions is only a “preponderance of the evidence,” which essentially means “more likely than not.”^k This means that people can be found in violation of probation for committing new offenses even if they have been acquitted of the charges or have had them dismissed in a separate criminal process.^l People who are found to have violated probation face revocation or other sanctions.

Sanctions

If a person is found to have violated probation, one potential result is the imposition of sanctions. Sanctions could include modifying probation conditions, extending the probation term, or a period of incarceration, usually in jail, with supervision continuing afterward.^m In many jurisdictions, probation officers are given the authority to impose “administrative” sanctions (i.e., sanctions that do not require approval by a judge), including “short” jail sentences, without instituting formal violation proceedings in court.ⁿ

Revocation

Another possibility following a finding that a person has violated probation is probation revocation. Revocation is the most severe penalty for a violation, involving the termination of the sentence to probation supervision and the imposition of a new, or previously suspended, sentence.^o Revocation almost always results in a carceral sentence, often to prison for people on probation for felonies, and usually more severe than the sentence that someone not on probation would have received.^p In some jurisdictions where the judge previously suspended a specific sentence, only that sentence can be imposed on revocation, while in others, the sentence on revocation can be anything up to the maximum for the original offense.

*box notes at end of report

Probation length

The period of time for which a person is sentenced to supervision is usually referred to as the probation term, and for misdemeanors it may be longer than the maximum period of incarceration authorized for the same offense.¹³ The most common maximum probation term for a felony is five years, and the most common maximum probation term for a misdemeanor is between two and five years.¹⁴ Many states allow longer probation terms—sometimes up to the maximum sentence of incarceration allowed for the offense for felonies—or provide for extended supervision terms for specific offenses—sometimes up to life.¹⁵ Research has shown that the highest risk of rearrest or serious noncompliance is in the first year or two of supervision, often within the first few months, suggesting these maximum terms are unnecessarily long.¹⁶ Longer terms of probation can actually be counterproductive, as they are more likely to expose people to revocation for technical violations.¹⁷ Studies have also shown that people granted early discharge from probation had similar or lower rates of rearrest than people who served their full terms.¹⁸

The probation term to which people are sentenced is not necessarily the same as the amount of time they will actually spend on probation, as they may be granted early termination or may have their probation revoked for violations. In 2018, the national average length of time spent on probation was just under two years, though there was significant variation in probation length across states.¹⁹ This average is probably not an accurate account of the length of probation sentences, however, because more than a third of people do not complete their probation terms, and revocations after short periods of supervision can skew the average.²⁰

Probation conditions

It is estimated that people on probation regularly have to comply with an average of 10 to 20 or more conditions.²¹ Standard conditions typically include reporting regularly to probation officers and being truthful with them; not violating any laws; notifying probation officers of any address changes; finding or maintaining employment; not using drugs and/or alcohol; not possessing weapons; allowing unannounced visits and warrantless searches by probation officers; avoiding people with criminal records; not leaving the state without permission; and paying supervision fees and other financial sanctions.²² Special conditions often include curfews, mandated treatment or programs, and staying away from specific people or places, but could involve almost anything a judge decides to require.²³ Often, conditions are imposed without much evidence that they even have the intended effects.²⁴

A large number of stringent conditions makes it more likely that people will not be able to comply, especially when those conditions conflict with each other—for example, requiring people to remain employed while simultaneously requiring them to report to probation officers or attend treatment and other programs during business hours.²⁵ Intensive supervision of people for compliance with all of these conditions tends to increase rather than decrease violations and revocations.²⁶ Probation conditions can also be extremely vague; for example, requiring people to “be good,” “avoid injurious habits,” or only associate with “good” people, which can make it very hard for people to comply but very easy for probation officers to find violations.²⁷ The difficulty of complying with so many often vague conditions for long periods of time has even led some judges and probation officials to express doubts about whether they themselves would be successful on probation.²⁸

Probation outcomes

In 2018, more than 1.8 million people exited probation nationwide. Of those, 58 percent successfully completed probation, 16 percent were revoked to incarceration, and 26 percent exited for other or unknown reasons.²⁹ Of people revoked to incarceration, it appears that approximately 24 percent were revoked for new offense violations, 46 percent for technical violations, and 29 percent were revoked for unknown reasons.³⁰ Successful completion rates in the mid-1980s were around 80 percent but then dropped rapidly and have remained steady at about 60 percent for the past several decades.³¹ Successful completion of probation, however, does not mean no violations. In fact, many people who end up successfully completing probation have technical violations or even new arrests while under supervision.³²

Violations are fairly common for people on probation, with studies showing anywhere from around one-fifth to two-thirds of people in different jurisdictions with violations.³³ Technical violations are far more common than new offense violations, and many new offense violations are for minor crimes.³⁴ Studies have found that one of the most common violations across jurisdictions is the failure to report to a probation officer.³⁵ Failure to report, however, is often an indication of other, usually minor, noncompliance, as people who have fallen behind on paying fees or missed required program sessions may stop reporting to their probation officers because they are afraid of being incarcerated for those other issues.³⁶ The frequency of technical violations is not surprising considering the difficulty of complying with the numerous, vague, and often conflicting conditions imposed on people under probation supervision.

Probation and racial injustice

Probation in the United States is also marked by significant racial disparities. Black people are disproportionately under probation supervision.³⁷ In 2018, Black people were over 2.6 times more likely than white people to be on probation, representing 30 percent of those on probation, compared to roughly 13 percent of the national population.³⁸ While this disparity is actually smaller than disparities at other points in the criminal legal system, that is largely because Black people—particularly Black men—are less likely to be sentenced to probation and more likely to be sentenced to jail or prison instead.³⁹ When they are sentenced to probation, Black people tend to be given a higher number of conditions and to be on probation for longer terms than similarly situated white people.⁴⁰

There are also significant racial disparities in probation outcomes. Black people are more likely to have technical violations and, due to heavier policing of Black neighborhoods, are more likely to be rearrested while on probation.⁴¹ They are also more likely than white people to be sanctioned with incarceration and to be revoked for violations.⁴² Studies from different jurisdictions have shown that Black people are anywhere from 18 to 66 percent more likely than white people to have their probation revoked and 4.3 times more likely to be admitted to prison for a probation revocation.⁴³ Longer probation terms and more extensive—and often more punitive—conditions likely play a role in the greater number of violations and revocations for Black people.⁴⁴ Historic and structural racism, often manifesting as concentrated disadvantage, can further hamper Black people's capacity to complete probation: they may lack resources needed for successful compliance with supervision, and white probation officers from significantly different backgrounds may not adequately understand or empathize with the challenges Black people under their supervision face.⁴⁵

Probation, substance use, and mental health

People on probation experience substance use disorders at estimated rates ranging from two to nine times higher than the general public.⁴⁶ Almost half of people report being under the influence of alcohol or drugs at the time of the offense for which they were put on probation, and drug and alcohol use has been shown to be a significant factor in revocations.⁴⁷ But fewer than half of people on probation who need treatment actually get it.⁴⁸

Similarly, people on probation have an estimated two to four times higher rate of mental illness than the general population.⁴⁹ People who are on probation and who also struggle with mental illness are more likely to be unemployed and receive government benefits, and they are likely to have a harder time complying with probation supervision as their lives can be more unstable.⁵⁰ As with people with substance use disorders, however, only around half of people on probation who have mental health disorders actually receive treatment.⁵¹



Probation and Jail Populations

There are many ways that probation can affect jail populations. It is possible that probation might initially play a role in reducing jail populations, as people detained pretrial might accept a plea bargain for release on probation.⁵² However, as probation has become increasingly punitive, there is evidence that a growing number of people may be choosing to serve jail time to avoid probation. Studies offering people hypothetical choices of different sentences have shown that Black people, in particular, are more likely to opt for incarceration over probation. When offered a choice between lengthy amounts of time on probation or shorter amounts of time in jail or prison, these studies found that the point at which Black people choose incarceration over probation comes significantly sooner than it does for white people—that is, white people will choose significantly longer probation sentences if they can avoid incarceration, whereas Black people offered a term of probation even twice as long as that of incarceration will simply choose incarceration, citing what they believe to be harsher treatment by probation officers and greater difficulty meeting the requirements of supervision.⁵³ Additionally, as defense attorneys increasingly see high probation failure rates and come to view probation as merely delaying incarceration rather than preventing it, they may be more likely to recommend that clients serve a short jail sentence in order to avoid probation.⁵⁴ And people who accept a sentence to probation still may not get out of jail immediately if they receive “split” sentences, which require them to serve a period of incarceration before being released to probation supervision.⁵⁵

Perhaps the biggest way that probation contributes to increased jail populations is through the detention of people awaiting violation hearings.⁵⁶ In many jurisdictions, there is a strong presumption—or even a requirement—that people be detained pending probation violations, and once a detainer is filed, there are usually very few chances for a person to be released.⁵⁷ People can be detained in jail for weeks or months waiting

for a final violation hearing, even for minor technical violations.⁵⁸ Often, the only alternative to waiting for a hearing is to accept a plea deal and be sentenced to the time they have already served in jail. This means even people who are innocent or have good defenses to violations end up pleading guilty to avoid spending more time in jail.⁵⁹

People who are found to have violated probation are also frequently sanctioned with jail time, either administratively (i.e., sanctions imposed by probation officers that don't require a judge's approval) or after a hearing, and attempts in many states to reduce revocations to prison for technical violations may lead to increased jail populations through heavier reliance on jail sanctions and jail sentences after revocation for these violations.⁶⁰ Although jail sanctions for violations are common, there is very little evidence that they are effective at reducing violations or new offenses while people are on probation. Studies have found that jail sanctions either result in higher recidivism rates or are no more effective than community-based sanctions, such as community service or mandated treatment, suggesting that less expensive and disruptive non-jail sanctions should generally be used instead.⁶¹

Probation can also contribute to increased jail populations through sentences after revocation. Far more attention has been paid to revocations to prison, but people may instead be sentenced to jail after their probation is revoked.⁶² While people revoked from felony probation can be sentenced to either jail or prison, in most states people revoked from misdemeanor probation can *only* be sentenced to jail.⁶³ This is potentially a significant contributor to jail populations because as many as 80 percent of people convicted of misdemeanors have been reported to be sentenced to probation.⁶⁴ However, the true extent of misdemeanor probation is difficult to gauge, as research suggests some states systematically underreport—or exclude from their reports to the Bureau of Justice Statistics—misdemeanor probation populations that are supervised locally or by private companies.⁶⁵

Although we know a lot about the ways in which probation may affect jail populations, there is far less information about how probation actually does affect jail populations, either nationally or in specific jurisdictions. The national data on probation and jails generally lacks sufficient detail, and some of the only detailed information available is decades old. (See “The limits of national data on probation” on page 12.) Beyond this sparse national data, some sense of the impact of probation on jails can be gleaned from studies of specific jurisdictions, although these also frequently lack sufficient detail to provide a full picture.⁶⁶

The limits of national data on probation

The primary source for national data on probation is the Bureau of Justice Statistics' Annual Probation Survey, which provides the data for the *Probation and Parole in the United States* series.^a Although this survey provides the most detailed information about people on probation nationally, it includes very little information about probation's impact on jails. It does include a variable for people on probation held in local jails, but fewer than half of jurisdictions report that variable. For jurisdictions that do report this variable, the numbers provided do not distinguish between people being held pending violations and those serving sentences on violations, or between people in jail for technical versus new offense violations. Other data about incarceration from this survey—for example, split sentences, entries to probation with incarceration, and exits from probation to incarceration—simply does not distinguish between jail and prison incarceration at all.

The Bureau of Justice Statistics' Survey of Adults on Probation was conducted only once, in 1995.^b Although this survey provided considerable detail about people on probation, their conditions of supervision, and their outcomes, the only specific information included on people on probation in jails was on split sentences, with 31 percent

of people on probation having received split sentences of jail and probation and an average jail sentence of three months.^c The survey also included detailed information about how many people on probation had violations filed against them, the types of violations, and what the results of the violation proceedings were. However, it only reported the number of people whose violation proceedings resulted in incarceration, without distinguishing between jail and prison incarceration. It did not provide any information about whether people were held pending hearings.^d

The Bureau of Justice Statistics' Survey of Inmates in Local Jails was last conducted in 2002.^e The 2002 survey reported that 34 percent of people in jail were on probation at the time of admission. It included information on whether their probation had been revoked and some amount of detail on the type of violation that led to revocation.^f However, it did not provide details on whether people whose probation had not been revoked were being held pending violation hearings or for other reasons, or whether people whose probation had been revoked were serving sentences in jail or waiting to be transferred to serve prison sentences.

*box notes at end of report

To truly understand the impact that probation has on jail populations, we need to know not only how many people on probation are in jail, but also why and for how long they are there. It is important to know, for example, whether people are in jail for technical violations or new offense violations, and whether they are being detained pending violation hearings, serving sanctions for violations, or serving sentences after revocation. This level of detail is necessary to fully understand both the ways in which probation contributes to jail populations and what can be done to disrupt the cycle between probation and jails.

An Analysis of Probation and Jail Populations in Select Local Jurisdictions

Data regarding the role of probation as a driver of jail populations is inconsistently reported and largely unavailable nationally. Thus, this brief explores the impact of probation on jail populations at a local level, analyzing data from nine jurisdictions participating in the Safety and Justice Challenge (SJC).⁶⁷ Although this selection is not representative of all local jail systems across the country, it provides novel insight into the varied role that probation plays in local criminal legal systems and highlights the large impact probation can have on jail populations in many jurisdictions.

Methodology

Vera analyzed booking-level jail administrative data provided by nine jurisdictions over a one-year period (May 1, 2018 through April 30, 2019) and identified people who were on probation at the time they were booked into jail and were held in jail due, in part or in full, to a probation violation.⁶⁸ People held in jail due in part to a probation violation are those who have a probation violation along with a new criminal charge on their jail booking. People held in jail due fully to a probation violation are those for whom all charges on their booking are probation violations (in other words, technical probation violations only). Together, these two groups represent everyone held in jail because of a probation violation. In seven of the nine jurisdictions, Vera was able to analyze these two groups separately using available data.

There are three common metrics used to describe jail populations: admissions, length of stay, and average daily population. Admissions (number of bookings made into jail) and length of stay (how long people are held in jail) combine to form the average daily population (the average number of

people in jail per day). In this section, we report these three metrics over the one-year period, presenting the number of new admissions for people held in jail due to a probation violation as a percentage of total annual admissions, the median length of stay for those held due to a probation violation compared to the median length of stay for those held for reasons other than a probation violation, and the average number of people held daily due to a probation violation as a percentage of the total average daily population.⁶⁹ Together, these three metrics offer insight into the role probation plays in driving the jail population in these nine jurisdictions. Vera also used data disaggregated by race to analyze racial disparities in the total average daily jail population and average daily populations of people held in jail due to a probation violation in each site. For one jurisdiction—Philadelphia, Pennsylvania—Vera was able to produce estimates only for overall average daily population and not for admissions or length of stay.⁷⁰

Admissions

People held in jail for probation violations made up a large share of total annual admissions in multiple jurisdictions: in three sites, more than 15 percent of jail admissions involved a probation violation. In other jurisdictions, probation violations appear to be a more minor driver of jail admissions: in four sites, less than 6 percent of admissions involved a probation violation. On average, 11 percent of annual jail admissions involved a probation violation across the eight jurisdictions with available admissions data. Table 1 displays the number and percentage of annual jail admissions that were due (in part or in full) to a probation violation in each jurisdiction.

Table 1

Total annual jail admissions and annual admissions with a probation violation by jurisdiction, May 1, 2018–April 30, 2019

Jurisdiction	Total annual admissions	Admissions with a probation violation	
		Count	Percentage
Allegheny County, PA	13,459	3,200	23.8%
Charleston County, SC*	13,401	523	3.9%
Harris County, TX	95,272	5,249	5.5%
Mecklenburg County, NC	18,143	1,057	5.8%
New Orleans, LA	16,781	929	5.5%
Pennington County, SD	10,829	2,089	19.3%
Pima County, AZ	28,135	2,399	8.5%
St. Louis County, MO*	21,390	3,267	15.3%
			Average: 11.0%

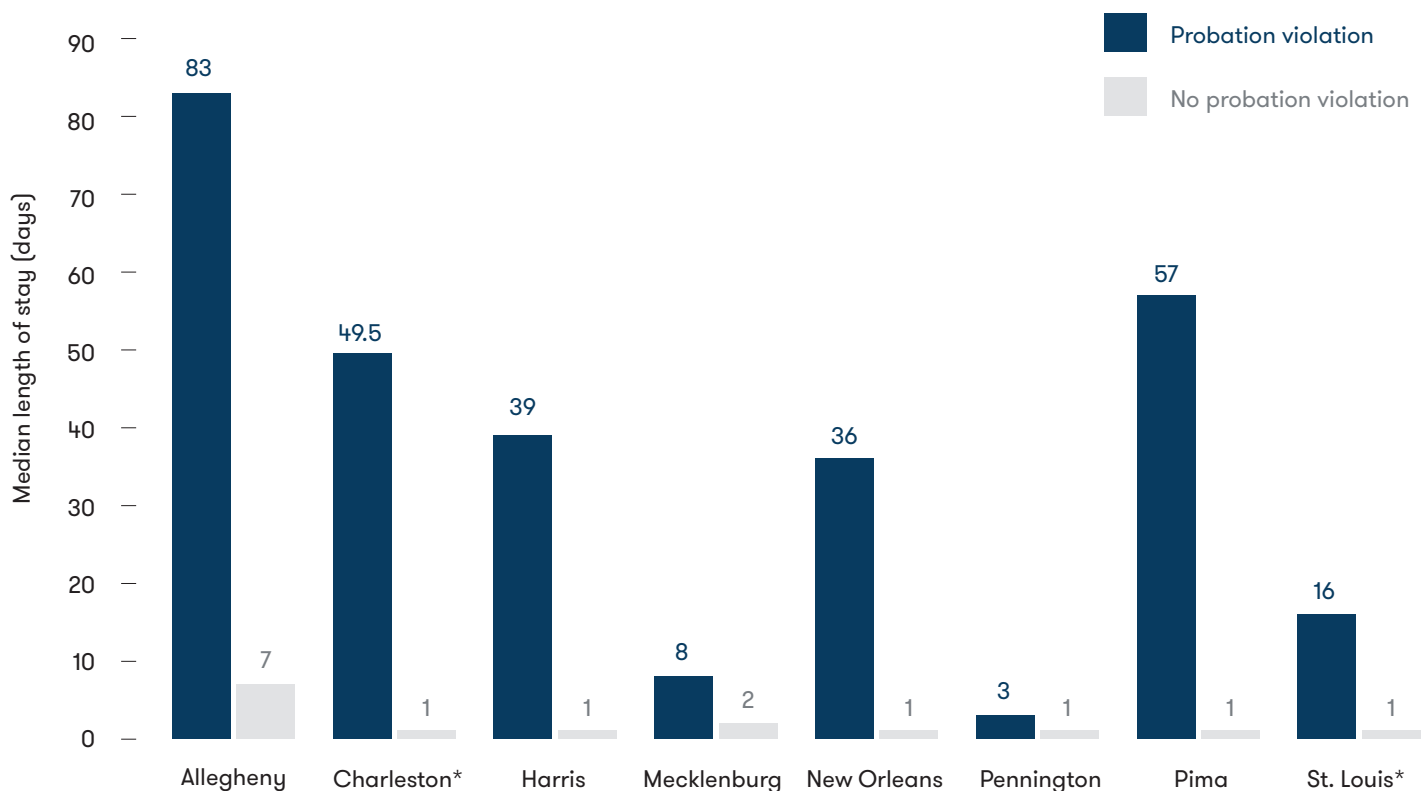
* Because of the way probation and parole violations were grouped together in jail administrative data from Charleston County, South Carolina, and St. Louis County, Missouri, some bookings with parole violations and not probation violations may be included in analyses for these two jurisdictions.

Length of stay

Across the eight sites with length of stay (LOS) data, the median LOS for people held in jail due to a probation violation was higher than the median LOS for people with no probation violation. At a minimum, the median LOS was three times longer for people held for a probation violation compared to people with no probation violation in one jurisdiction. In some jurisdictions, the difference was nearly 50 to 60 times higher. This demonstrates that probation is a driver of longer lengths of jail incarceration. Figure 1 displays the median LOS in each site for people held with a probation violation and people held with no probation violation.

Figure 1

Median length of stay in jail by probation violation status and jurisdiction, May 1, 2018–April 30, 2019



* Because of the way probation and parole violations were grouped together in jail administrative data from Charleston County, South Carolina, and St. Louis County, Missouri, some bookings with parole violations and not probation violations may be included in analyses for these two jurisdictions.

Average daily population

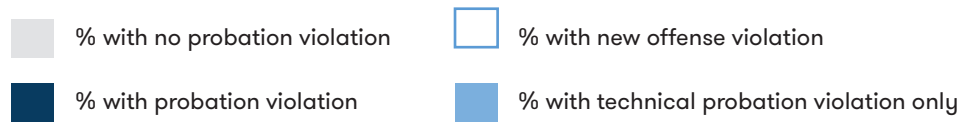
Given that people held in jail due to a probation violation made up a large percentage of annual jail admissions in some jurisdictions and experienced disproportionately long LOS, they represented a sizeable share of the average daily jail population in many of the jurisdictions analyzed. Figure 2 displays the breakdown of the average daily population in each jurisdiction by probation violation status. In five of the nine jurisdictions, 30 percent or more of the average daily population was made up of people held in jail with probation violations. Even in the two jurisdictions with the lowest proportion of probation violations, people held with probation violations made up more than 9 percent of the average daily population. In the two jurisdictions in Pennsylvania—Allegheny County and Philadelphia—people held with probation violations made up about half of the people held in jail, which suggests that state-level policies play a significant role in the degree to which probation drives local jail populations.⁷¹

This data also makes clear how longer lengths of stay contribute to the percentage of people held in jail on a given day with probation violations. For example, in Charleston, just 4 percent of jail admissions involved a probation violation, but due to the large disparity in LOS by probation violation status, nearly 17 percent of the average daily population was composed of people held because of probation violations.

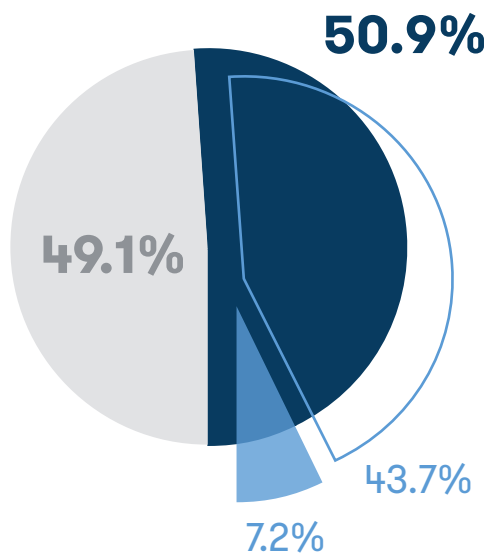
For the seven jurisdictions with sufficient data to differentiate between people held because of a technical probation violation and people held because of a new offense violation, people held for a technical probation violation alone represented an average of 6 percent of the average daily jail population. That is, if not for the technical probation violation, they would not be held in jail.

Figure 2

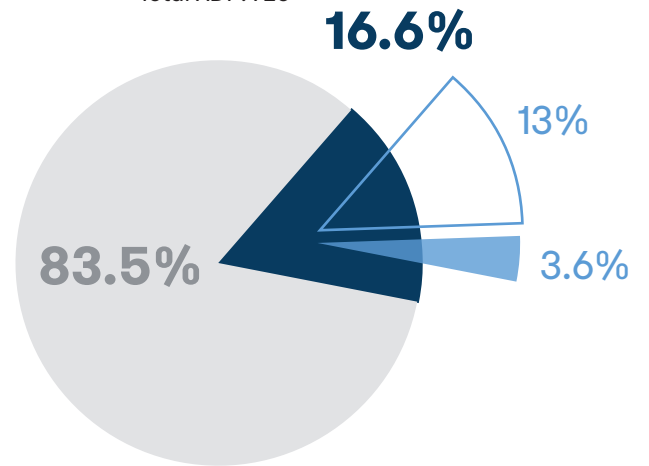
Average daily population breakdown by probation violation status and jurisdiction, May 1, 2018–April 30, 2019



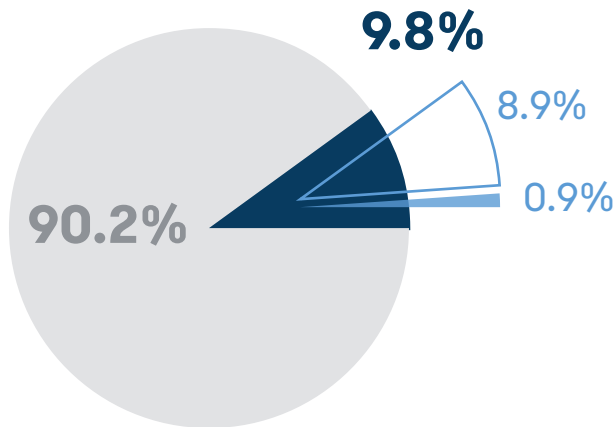
Allegheny County, PA
Total ADP: 2,537



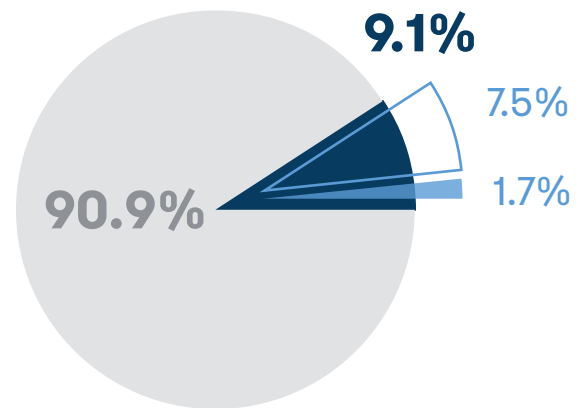
Charleston County, SC*
Total ADP: 725



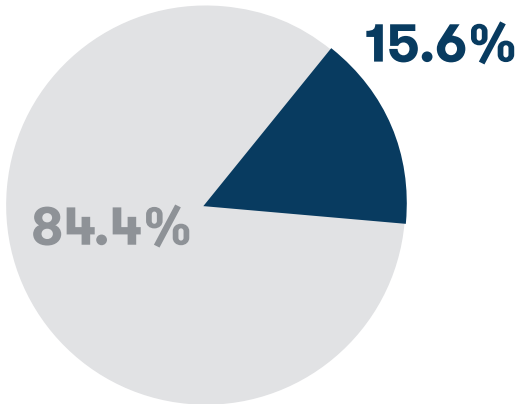
Harris County, TX
Total ADP: 9,152



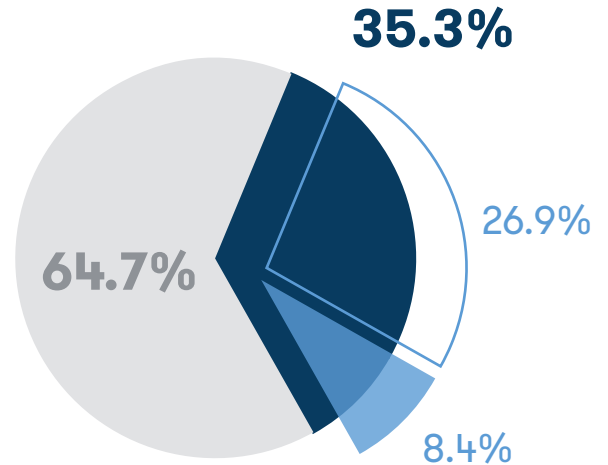
Mecklenburg County, NC
Total ADP: 980



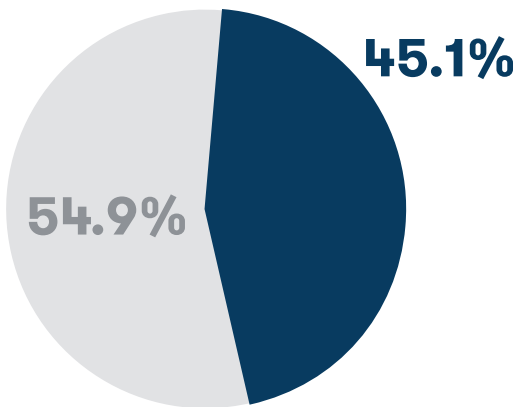
New Orleans, LA
Total ADP: 1,210



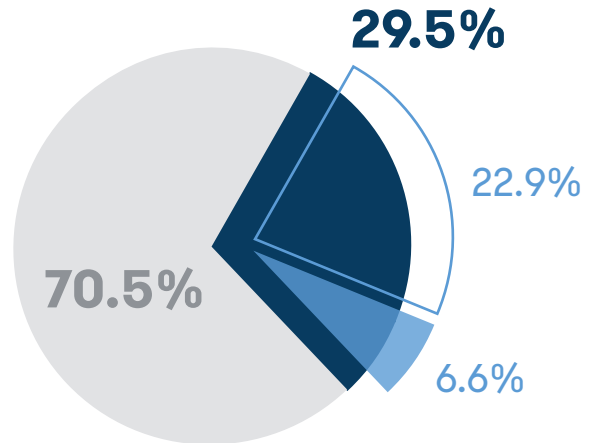
Pennington County, SD
Total ADP: 436



Philadelphia, PA*
Total ADP: 4,800

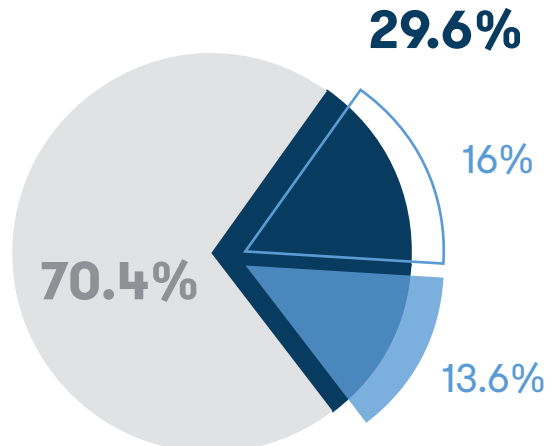


Pima County, AZ
Total ADP: 1,729



- % with no probation violation
- % with probation violation
- % with new offense violation
- % with technical probation violation only

St. Louis County, MO*
Total ADP: 1,352



* Because of the way probation and parole violations were grouped together in jail administrative data from Charleston County, South Carolina, and St. Louis, Missouri, some bookings with parole violations and not probation violations may be included in analyses for these two jurisdictions. For Philadelphia, Pennsylvania, estimates include those held in jail for probation and parole violations because one agency supervises both types of cases and, given the overlap and complexity of many of the sentences, does not distinguish between these types of cases.

Note: Due to rounding, estimates may not total 100 percent.

Racial disparities

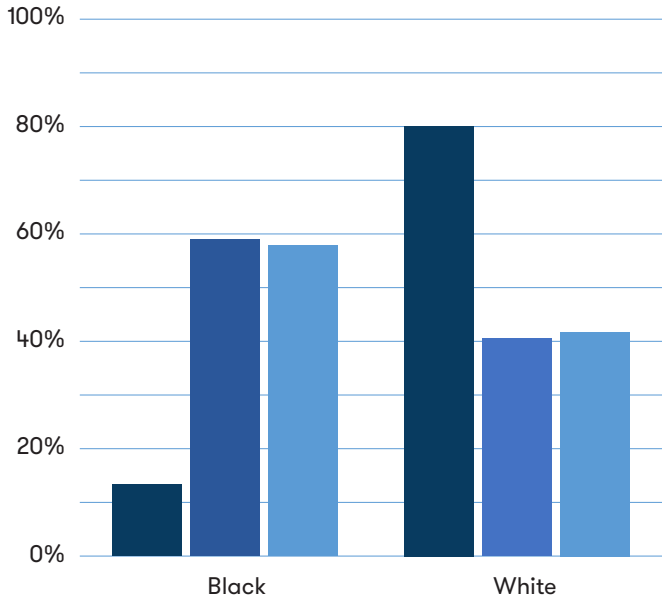
As with jail populations generally, there were pronounced racial disparities among people held in jail due to probation violations. (See Figure 3.) Across all eight jurisdictions for which race and/or ethnicity data was available, people of color—particularly Black and Native American people—were overrepresented in the overall jail population. These pronounced racial disparities persist with respect to people held in jail because of a probation violation. For example, in Allegheny County, Black people represented just 13 percent of the total county population, but they represented 59 percent of the jail population and 58 percent of the population held in jail due to a probation violation.⁷² In Pennington County, Native American people represented just 10 percent of the county population, but they represented 62 percent of the jail population and 61 percent of the population held in jail due to a probation violation.

Figure 3

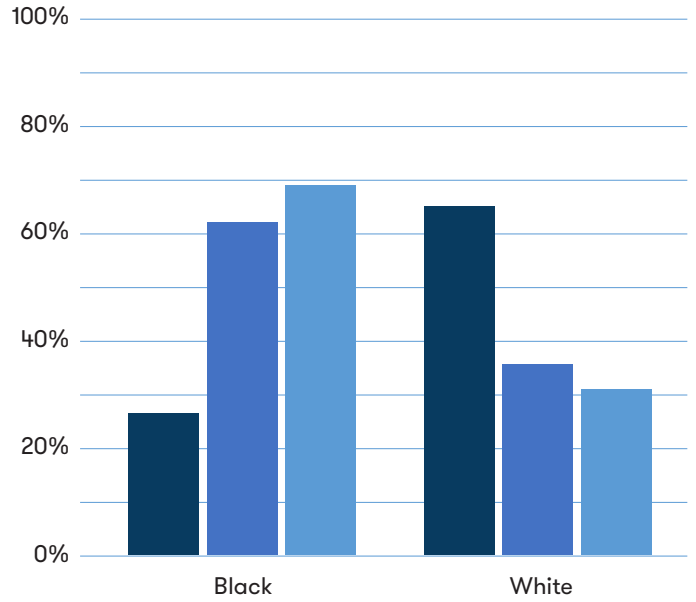
Racial distribution across jurisdiction population, total jail population, and probation violation jail population, May 1, 2018–April 30, 2019

County or city population
 Total jail population
 People held in jail due to probation

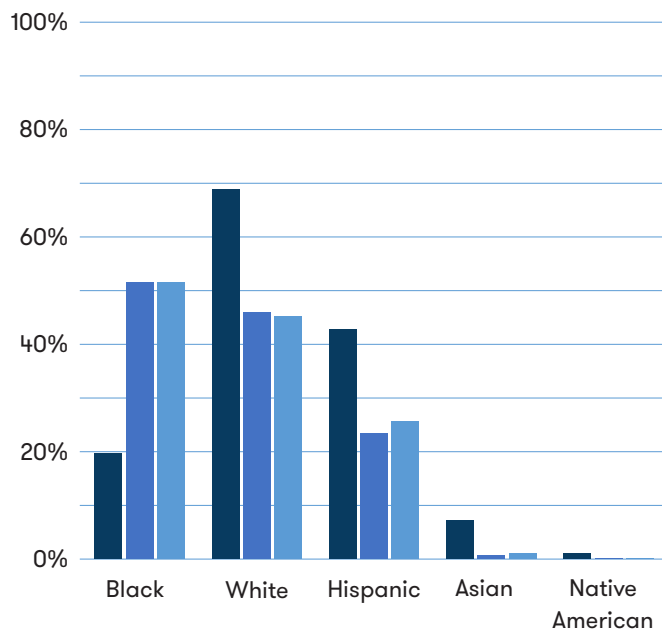
Allegheny County, PA



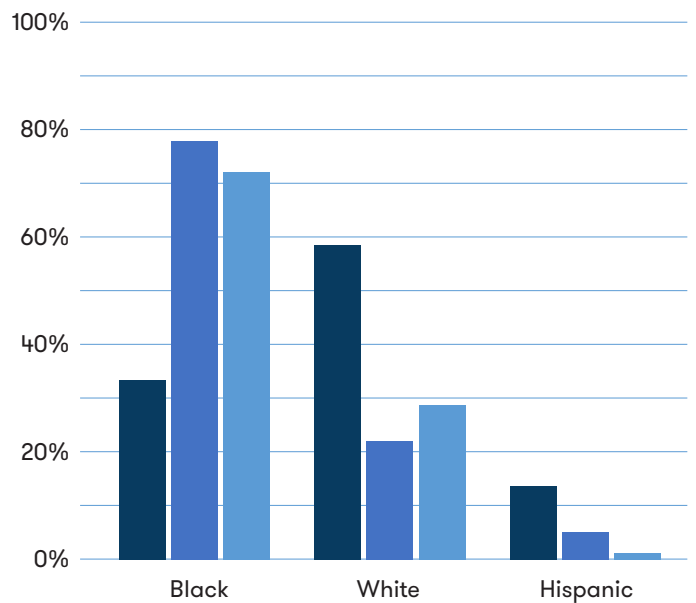
Charleston County, SC*



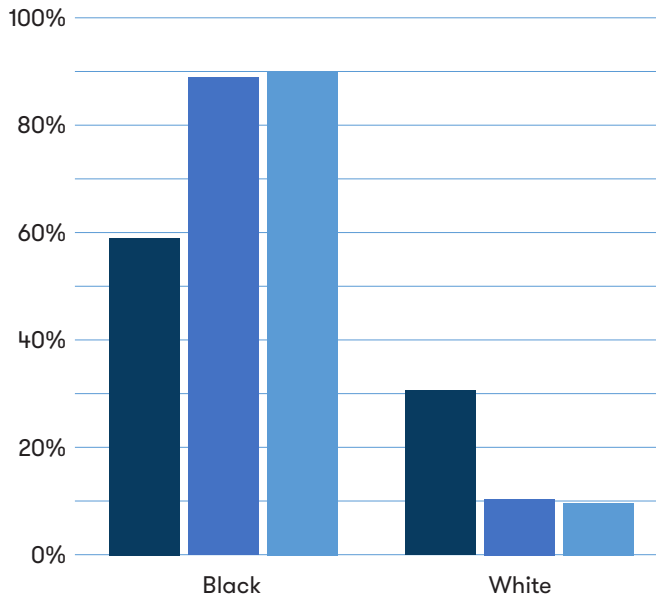
Harris County, TX



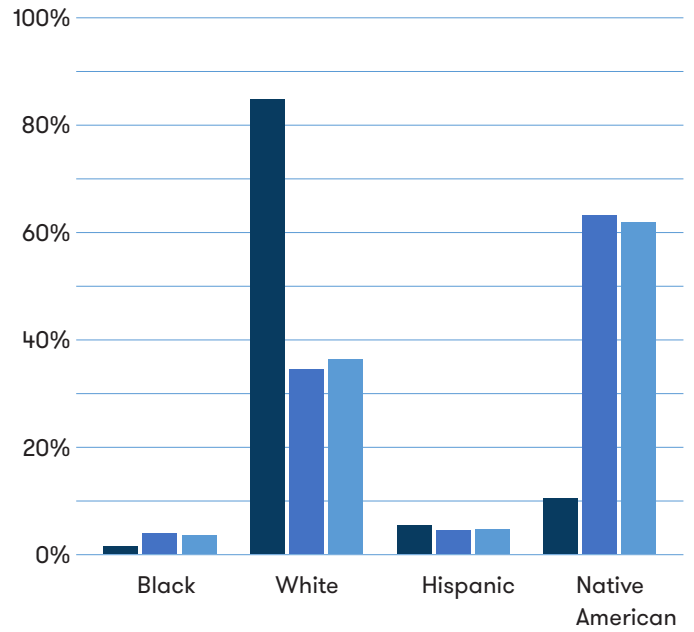
Mecklenburg County, NC



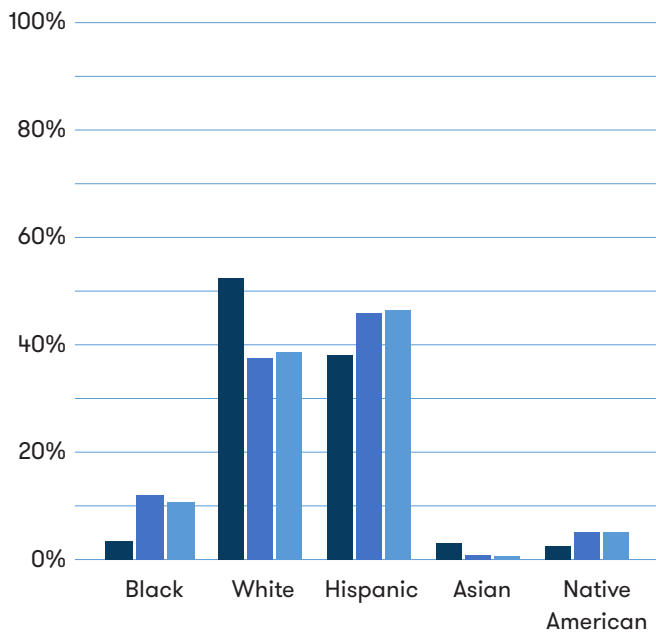
New Orleans, LA



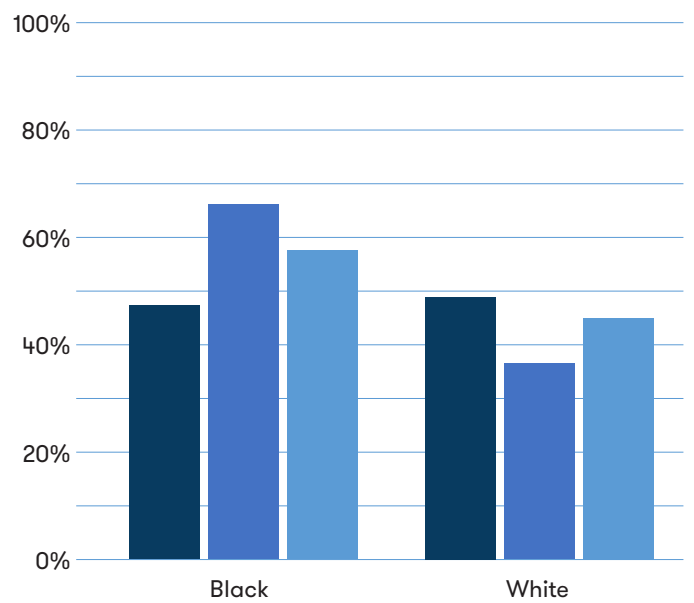
Pennington County, SD



Pima County, AZ



St. Louis County, MO*



County or city population
 Total jail population
 People held in jail due to probation

Source for county population demographic data: U.S. Census Bureau (2019).

*Because of the way probation and parole violations were grouped together in jail administrative data from Charleston County, South Carolina, and St. Louis County, Missouri, some bookings with parole violations and not probation violations may be included in analyses for these two jurisdictions.

Note: Only those racial groups with sufficient data quality (as reported by the site) and more than 10 people held in jail due to a probation violation in a given jurisdiction are included. For Pima County, the data was structured such that "Hispanic" was a unique racial category with no overlap with other racial categories. For all other jurisdictions with a "Hispanic" category reflected in the figure, people identified as having Hispanic ethnicity were included in both the Hispanic category and in a racial category. For example, in Harris County, Black Hispanic people were included in both the Black category and the Hispanic category.

Data limitations and conclusions

This analysis illuminated important limitations in criminal legal administrative data. This presents opportunities for improved data collection and integration to deepen our understanding of probation's role in driving jail populations.

First, jurisdictions should aim to integrate data from jails and probation departments. Without easy linkage between jail and probation data systems, it is likely that many jail systems cannot accurately and efficiently determine the number of people held due to probation violations. Additionally, charge designations and reasons for confinement in jail data are often incomplete or imprecise (for example, probation and parole violations may be grouped together), making the ability to link jail and probation data together even more critical. For the present analysis, the grouping of probation and parole violations in some sites and not others limited the ability to make direct comparisons between sites.

Second, in some jurisdictions, it was not possible to differentiate between people held in jail with a technical probation violation only and people held in jail with a technical probation violation and a new offense. This information is needed to identify people who would not be held in jail if not for a probation violation.

Finally, Vera was unable to accurately assess the legal status (pending violation hearing versus sentenced) for people held in jail due to a probation violation in all but one jurisdiction. This is an important area for future investigation.

As Vera's analysis of data from the nine SJC sites demonstrates, there can be great variation in how much probation contributes to jail populations. Some sites have relatively few people admitted to jail for probation violations while, in others, people with probation violations make up around 15 to 25 percent of admissions. One area of uniformity across sites was length of stay. In every site, people in jail with probation violations spent considerably more time incarcerated than people without probation violations, ranging from a minimum of three times as long to as high as 50 to 60 times longer. This extended LOS appears to be a major driver of the proportion of the average daily jail population made up of people with probation violations. Even in the sites with the lowest estimates, people held on probation violations represented around 10 to 15 percent of the average daily jail population, while the other sites ranged from around one-third to one-half. There are also marked racial disparities in who is in jail for probation violations, with Black and Native American people incarcerated in numbers far beyond their representation in the local population.

Strategies for Reducing Jail Populations for Probation Violations

As part of their efforts to reduce the number of people in their jails overall, Safety and Justice Challenge sites whose average daily jail population includes a large proportion of people being held for probation violations have adopted strategies to focus on and reduce this population. As examples of different approaches that jurisdictions could take to reduce the impact of probation violations on their jail populations, this brief highlights two sites—St. Louis County, Missouri, and Allegheny County, Pennsylvania—and outlines additional strategies jurisdictions could employ.

St. Louis County, Missouri

When St. Louis County, Missouri, first became part of the SJC in 2015, 29 percent of people in its jail were there on probation violations, with an average LOS of 99 days and a median of 39 days.⁷³ In an attempt to reduce this population, stakeholders initially adopted strategies such as using funds to provide better access to housing and services for people in jail on probation violations in order to release more people with needed supports. Although this approach produced some success, it didn't have the desired impact on the jail population as it still took too long to get people out of jail and into those services.⁷⁴

In mid-2018, stakeholders decided to shift to strategies designed to release people on probation from jail more quickly by focusing on how to speed up the various steps in the violations process: getting probation officers the information they need to make release recommendations, getting those recommendations to the court, and getting judges to act on the recommendations. A key factor in this process was the opportunity for Missouri Probation and Parole (Probation) to locate three full-time staff members in the jail, where they have dedicated workstations with access to Probation's data system. This proximity allows these officers to interview people as soon as they come into the jail on violations; hear their versions of what happened; get updated information about their current living situations, challenges, and needs; and explain the process to them. These officers can then facilitate communication between clients and their supervising officers and get recommendations for release. Because the jail is right next to the courthouse, release recommendations can be walked right over for judges' sign-off. Better communication between Probation and the court, as well as more detailed release recommendations, have also led to more judges being willing to order release based on a probation officer's written recommendations rather than waiting to hold a preliminary hearing.

This process has required a great deal of coordination among Probation, the court, the jail, and other county agencies and officials. Improved communication and collaboration has been essential. High-level stakeholders from all agencies have come together to consider new approaches and find solutions. Other SJC strategies, like St. Louis County's Jail Population Review Team—a group of stakeholders that meets regularly to review cases of people held in jail—have also contributed to better system-wide communication and have helped those involved come up with new ideas for how to release people in jail on probation violations more quickly.

As a result of these efforts, by the fall of 2020, St. Louis County was able to reduce the number of people in jail for probation violations to 13 percent, with the average LOS reduced to 28 days and the median to eight.⁷⁵ Probation is now looking to focus on the front end of the criminal legal system to reduce the number of people detained in the first place. Probation leadership has started exploring the reasons why people stop reporting to their probation officers to find ways to prevent violations before they happen, treating warrants for violations as a last resort, and having officers consider all factors and options before requesting them.

Allegheny County, Pennsylvania

For a number of years, people held on detainers for probation violations had made up more than 40 percent of the population of the Allegheny County Jail. In 2015, Allegheny County Adult Probation (Probation) worked with the court to review this population and reduce it from around 1,300 people to around 900 people.⁷⁶ However, in the absence of sustained efforts, the detainer population of the jail grew again. When Allegheny County joined the SJC in October 2018, there were 1,060 people in jail for probation violations. Stakeholders decided to adopt multiple strategies to try to prevent people from going to jail on probation detainers and to get those who do go to jail out more quickly.⁷⁷

To prevent people from ending up in jail on technical violations after they had spent significant periods of time complying with probation supervision, Probation, the Allegheny County Office of the Public Defender (OPD), and the Allegheny County District Attorney's (DA's) Office worked out criteria for an early termination of probation strategy. While Probation had always had an internal policy that officers could submit requests for early termination of probation for people who were doing particularly well under supervision, this strategy aimed to systematize early terminations and do them in bulk. To be eligible, people need to have completed half of their term of supervision, have met all conditions, and have no new convictions or outstanding warrants.⁷⁸ Originally, only people being supervised for misdemeanors who were deemed low risk were eligible. However, in the fall of 2019, the DA's Office agreed to expand the criteria to include some felonies and simple assaults and people assessed at all supervision risk levels. For people meeting the criteria, OPD or the DA's Office file specific types of motions for early termination. Because judges know that these early termination motions are filed only when people have met the criteria agreed on by all parties, they are more likely to grant them. As of December 2019, judges had approved 73 percent of early termination motions.⁷⁹

To further reduce the number of people sent to jail for probation violations, a workgroup made up of probation management and supervisory teams met through the spring and summer of 2019 to develop a new policy on detainers. This policy, approved in November 2019, is

intended to make detainers an option of last resort in most cases. Unless people have mandatory detention court conditions or are charged with new offenses that represent a serious threat to public safety, the policy requires probation officers to exhaust all other options for keeping people in the community before issuing detainers. For people who still do get detained, the new policy also establishes criteria to encourage probation officers to get those detainers lifted more quickly. This is done by requiring probation officers to begin release planning as soon as people are detained and to follow up regularly to review the status of detained clients so that the officers can have the detainers lifted as soon as circumstances allow—for example, if someone is accepted into a treatment program.

While it has been difficult to separate the effects of the new detainer policy from Allegheny County's broader efforts to reduce its jail population in response to the COVID-19 pandemic—which began only a few months after the new policy took effect—Probation issued far fewer detainers each month in 2020. As of the end of September 2020, 370 more detainers had been lifted than issued.⁸⁰ Within the first year of the pandemic, 459 detainers were lifted, which was an increase from 170 lifted the previous year.⁸¹

The county established a detainer review workgroup to monitor how the new detainer policy is being implemented. The workgroup also reviews individual cases to identify ways to facilitate expedited release. In addition to representatives from Probation management, this workgroup includes representatives from Probation's Court Liaison Unit, the Allegheny County Jail, OPD, Pretrial Services, the Department of Human Services, and agencies providing services to justice-involved people.⁸² Using a specially developed dashboard that includes detailed information about people detained on probation violations, the workgroup is able to look at challenging cases to determine what is keeping people in jail and set up needed services or take other steps to get them released. Having multiagency representation on the workgroup has also allowed stakeholders to develop better relationships and practices to expedite the release of people held on detainers beyond the specific cases discussed in workgroup meetings.⁸³

Because people who had probation violations as well as new charges were detained for an average of more than two months between the resolution of the new charges and the resolution of the probation violations, stakeholders developed procedures to ensure that courts can resolve both cases in a single hearing as often as possible. This has presented logistical and staffing challenges and has so far been limited to cases in which people had the same judge for both the new charges and probation violations. Courts have resolved approximately half of eligible cases in a single hearing, resulting in significant reductions in the amount of time many people spend in jail.⁸⁴

Although many of these strategies have been adopted relatively recently, Allegheny County has seen some encouraging results already, with the number of people in jail on detainers dropping to 941 by mid-March 2020 and to 620 by the end of April 2021.⁸⁵ Beyond these specific strategies, however, Allegheny County Adult Probation is also trying to shift its internal culture and how its officers approach their work. Director Frank Scherer says that he wants his department to change from what had become a mindset of looking to catch people doing something wrong to encouraging clients' success. He and Implementation Manager Ashlee Lynn want to give judges a fuller picture of the people who are on probation. For example, they would like to send judges reports on everyone who successfully completes probation, so they're not only seeing violations and revocations, and are encouraging probation officers to also include positive things people have done under supervision in violation reports. By shifting the culture, Scherer and Lynn hope that a person on probation ending up in jail will be seen not as an individual failure but as a failure of the system.

Other recommended strategies

As more attention has been given to probation's effects on mass incarceration, experts and national organizations have recommended a number of ways to improve the success of people on probation and limit the use of incarceration for violations. Perhaps the most basic of these is to limit the use of probation in the first place. Rather than relying on probation as the default non-incarceration sentence, courts should instead use alternatives like pre-conviction diversion, unconditional discharge (essentially a conviction with no sentence imposed), conditional discharge (a sentence of release with conditions, such as remaining arrest-free or getting treatment, but no supervision), or community service, particularly in low-level cases.⁸⁶ For people who are sentenced to probation, limiting probation terms—ideally to no more than two years—and allowing early termination, similar to Allegheny County's strategy, can help reduce the chances of technical violations.⁸⁷ Reducing the number of probation conditions by setting them individually for each person and including only conditions related to rehabilitation or public safety can further reduce the potential for technical violations.⁸⁸ Reducing the frequency of reporting, allowing people to report by phone or by using remote kiosks rather than in person, and assigning caseloads geographically and/or locating probation offices in the neighborhoods where most people being supervised live are also ways to promote success under supervision.⁸⁹ Recommendations specific to reducing the use of incarceration for probation violations include using summonses (orders to appear in court not requiring arrest) instead of warrants for violations; eliminating detainers or, like in Allegheny County, using them only as a last resort; requiring judicial review before someone is incarcerated for a violation; eliminating incarceration for technical violations and using only non-carceral sanctions; and eliminating split sentences.⁹⁰

Conclusion

Together, the frequency with which people are sentenced to probation, overly long probation terms, and numerous restrictive conditions for people under supervision frequently lead to probation violations and incarceration. Vera's analysis of SJC-site data shows that probation violations are a source of racial disparities in jails and can significantly contribute to jail populations, primarily through the longer LOS associated with incarceration for violations. Because of this extended LOS, people held for probation violations can make up a fairly large proportion of the average daily jail population even in sites with relatively low jail admissions for violations, with ADP for probation violations ranging from around 10 to 50 percent across sites. Despite the variation, it is clear that the number of people in jails for probation violations is a problem that needs to be addressed.

Because LOS appears to be a major driver, strategies such as those used in St. Louis County and Allegheny County to expedite the release of people held on probation violations can be an important step in reducing this part of the jail population. Spending even a few days in jail, however, can lead to worse outcomes and an increased likelihood of rearrest, and can destabilize employment, family relationships, and housing.⁹¹ Thus, it is even more critical to find ways to prevent people from being sent to jail for probation violations in the first place—for example, by reducing the number of people who are sentenced to probation rather than less punitive options and by adopting a policy like Allegheny County's that limits the use of detainers.

In order for different jurisdictions to determine the best strategies to reduce the number of people in their jails for probation violations, however, it is first necessary for them to know more about who is in their jails for probation violations. As the analysis here shows, even sites that have jail data about probation violations are often missing essential information. Probation agencies often use their case management systems only for managing individual cases rather than for data tracking, which can add to the challenges of trying to match jail and probation data.

While this brief represents an initial step in looking at the problem of probation's impact on jail populations, additional study is sorely needed. Probation agencies and local jails should work together to combine data, disaggregated by race and ethnicity, to ensure that they are able to tell when people are in jail for probation violations; whether the violations are all technical or include new charges; whether people are being detained pending a violation hearing, serving a sentence as a sanction for a violation, or serving a jail sentence after revocation; and how long people are spending in jail pending hearings and/or after being sentenced for violations. While jurisdictions shouldn't wait until they have perfect data to address the problem, with detailed data to provide a full understanding of who is in jail for probation violations and why, they will be able to take even bolder and more targeted steps to reduce the use of jail for probation violations. Doing so is essential not only to reduce the number of people in jail, but also to reverse the trend of probation being used as an increasingly common and punitive auxiliary of mass incarceration. As this brief has clarified, there is an urgent need for greater attention to the perils of probation as a contributor to jail populations and for strategies to begin addressing it.

Acknowledgments

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Endnotes

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 - 30 Ibid. This assessment of the type of violation uses the Bureau of Justice Statistics' categories of incarceration "with new sentence" and "under current sentence" as proxies for new offense violations and technical violations, respectively. See also Bradner, Schiraldi, Mejia, and Lopoo, *More Work to Do*, 2020, 9.
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- 35 Bonczar, *Characteristics of Adults on Probation*, 1995, 1997, 10; Gray, Fields, and Maxwell, "Who, What, and When," 2001, 548-549; Rengifo and Scott-Hayward, *Intermediate Sanctions in Multnomah County*, 2008, 25; Pettus-Davis and Kennedy, *Going Back to Jail*, 2020, 16; and Tapia and Harris, "Race and Revocation," 2006, 1-25, 11-13.
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- 37 Frankel, *Revoked*, 2020, 38, 149; Christopher Hartney and Linh Vuong, *Created Equal: Racial and Ethnic Disparities in the US Criminal Justice System* (Oakland, CA: National Council on Crime and Delinquency, 2009), 22, <https://perma.cc/7BZM-QHFB>; Viet Nguyen, Ryken Grattet, and Mia Bird, *California Probation in the Era of Reform* (San Francisco: Public Policy Institute of California, 2017), 13, <https://perma.cc/5SBF-WK94>; Horowitz, Utada, and Fuhrmann, *High Stakes, Missed Opportunities*, 2018, 1, 7; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 56; and Rengifo and Scott-Hayward, *Intermediate Sanctions in Multnomah County*, 2008, 11.
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- people, they also do not seem to be given credit for factors that should be mitigating. For example, one study found that employed Black people are more than twice as likely as employed white people to be revoked and have almost the same odds of revocation as unemployed white people. Tapia and Harris, "Race and Revocation," 2006, 1-25, 16-18.
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- 59 Ewing, "Major Jail Time," 2017; Melamed, Purcell, and Williams, "Everyone is Detained," 2019; and Frankel, *Revoked*, 2020, 5, 109.
- 60 Frankel, *Revoked*, 2020, 65-69; E. K. Drake and S. Aos, *Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?* (Olympia, WA: Washington State Institute for Public Policy, 2012), 4, <https://perma.cc/TM6Z-24Y9>; Klingele, "Understanding Revocation," 2019, 5, 13-14; Klingele, "Rethinking Community Supervision," 2013, 1040; Doherty, "Obey All Laws and Be Good," 2016, 323-326; Wodahl, Ogle, and Heck, "Revocation Trends," 2011, 220-221; Michael Haugen, *Getting Technical: Preventing and Responding to Technical Supervision Violations and Misdemeanors* (Austin, TX: Texas Public Policy Foundation, 2019), <https://perma.cc/J76V-7QZC>; Klingele, "Rethinking Community Supervision," 2013, 1047-1049; and Pew Charitable Trusts, *States Rethink Responses*, 2019.
- 61 Ginger Martin, *The Effectiveness of Community-Based Sanctions in Reducing Recidivism* (Salem, OR: Oregon Department of Corrections, 2002), 4-9, 18-26; Rengifo and Scott-Hayward, *Intermediate Sanctions in Multnomah County*, 2008, 29-32, 35-40, 43-44; Drake and Aos, *Confinement for Technical Violations*, 2012, 5-6; John H. Boman IV, Thomas J. Mowen, Eric J. Wodahl et al., "Responding to Substance-Use-Related Probation and Parole Violations: Are Enhanced Treatment Sanctions Preferable to Jail Sanctions?" *Criminal Justice Studies* 32, no. 4 (2019), 356-370, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8133702/pdf/nihms-1069228.pdf>; Gendreau, Goggin, Cullen, and Andrews, "The Effects of Community Sanctions and Incarceration on Recidivism," 2000, 12-13; Pew Charitable Trusts, *States Rethink Responses*, 2019, 8; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 45; Phelps, "Ending Mass Probation," 2018, 135; Phelps and Curry, "Supervision in the Community," 2017, 17; Taxman, "Probation, Intermediate Sanctions, and Community-Based Corrections," 2012, 16; Patrice Villettaz, Martin Killias, and Isabel Zoder, "The Effects of Custodial vs. Non-Custodial Sentences on Re-Offending: A Systematic Review of the State of Knowledge," *Campbell Systematic Reviews* 2, no. 1 (2006), 1-69, <https://onlinelibrary.wiley.com/doi/pdf/10.4073/csr.2006.13>; Patrice Villettaz, Gwladys Gillieron, and Martin Killias, "The Effects on Re-Offending of Custodial vs. Non-custodial Sanctions: An Updated Systematic Review of the State of Knowledge," *Campbell Systematic Reviews* 11, no. 1 (2015), 1-92, <https://onlinelibrary.wiley.com/doi/pdf/10.4073/csr.2015.1>; Eric J. Wodahl, John H. Boman IV, and Brett E. Garland, "Responding to Probation and Parole Violations: Are Jail Sanctions More Effective than Community-Based Graduated Sanctions?" *Journal of Criminal Justice* 43, no. 3 (2015), 242-250. Although the "swift, certain, and fair" (SCF) approach to sanctions, modeled on Hawaii's HOPE Program, has been cited in favor of the use of quick jail sanctions, support for that approach is mixed at best. Evaluations of the HOPE Program showed some success with this approach, but evaluations of the SCF model in other jurisdictions found the use of jail sanctions either ineffective or in some cases harmful. See Boman, Mowen, Wodahl, et al., "Are Enhanced Treatment Sanctions Preferable to Jail Sanctions?" 2019, 359; and Reichert, *Drug Testing in Community Corrections*, 2020.
- 62 Phelps, "The Paradox of Probation," 2013, 61; Phelps, "Mass Probation: Toward a More Robust Theory," 2017, 56; Wodahl, Ogle, Heck, "Revocation Trends," 2011, 207-226, 213; and Eaglin and Solomon, *Reducing Racial and Ethnic Disparities in Jails*, 2015, 11-12. One study from Wisconsin found that 70 percent of probation revocations resulted in jail sentences. See Klingele, "Understanding Revocation," 2019, 6. Similarly, a study from Pennsylvania found that 56 percent of people resentenced after revocation received a county jail sentence. Galvin, Kleiman, and Davidson, *The Role of Substance Use in Probation Outcomes*, 2020, 38. Even people sentenced to prison on revocation may still contribute to jail populations for some time as they remain in jail awaiting transfer to prison facilities. See Burke, *Policy-Driven Responses to Probation and Parole Violations*, 1997, 1.

- 63 This is because the maximum sentence for misdemeanors in most states is a year or less, which would be served in jail instead of prison. In some states, where a misdemeanor sentence may be more than a year, that sentence is still served in jail. See National Conference of State Legislatures, “Misdemeanor Sentencing Trends,” updated January 29, 2019, <https://perma.cc/UA98-5EUS>.
- 64 Petersilia, “Probation in the U.S.,” 1997, 173, 178; and Doherty, “Obey All Laws and Be Good,” 2016, 340.
- 65 Phelps, “The Curious Disappearance of Research on Supervision,” 2015, 27; Phelps, “Mass Probation: Toward a More Robust Theory,” 2017, 53-73, 64-65; and Phelps, “Mass Probation from Micro to Macro,” 2020, 265.
- 66 Wodahl, Ogle, and Heck, “Revocation Trends,” 2011, 213-214. For example, a study of Multnomah County, Oregon, found that 92 percent of people receiving sanctions were given jail time, and they served an average of 64 days. See Rengifo and Scott-Hayward, *Intermediate Sanctions in Multnomah County*, 2008, 18-21, 43. A study from Macomb County, Michigan, found that 54 percent of technical violations resulted in jail incarceration, with an average sentence of 176 days. See Burke, *Policy-Driven Responses to Probation and Parole Violations*, 1997, 30-31. An analysis of data from 12 counties in California found that almost 47 percent of people on probation were booked into jail within one year and more than 20 percent were booked two or more times. See Nguyen, Grattet, and Bird, *California Probation*, 2017, 9-10. Reports from various counties in Pennsylvania showed that anywhere from 34 to 58 percent of people in local jails were detained on probation violations. See Frankel, *Revoked*, 2020, 141. And a 2017 survey of six of the 10 largest jurisdictions in the country (Philadelphia; Texas’s Bexar County, where San Antonio is located; New York City; San Diego; Texas’s Harris County, which includes Houston; and Los Angeles County) found probation detention rates in jails ranging from 4 to 50 percent. See Ewing, “Major Jail Time,” 2017.
- 67 Because of data use agreements between SJC sites and CUNY’s Institute for State and Local Governance (ISLG) and between Vera and ISLG, the authors were able to obtain detailed jail administrative data and, in some cases, probation data for these sites.
- 68 More recent data was unavailable for analysis due to the significant time required for data sharing. Although the authors also tried to use probation data whenever possible, it was only possible to link probation data with jail data for this analysis for Harris County, Texas. Bookings for parole violations were excluded wherever possible, but, because of the way probation and parole violations were grouped together in jail administrative data from Charleston County, South Carolina, and St. Louis, Missouri, some bookings with parole violations and not probation violations may be included in analyses for these two jurisdictions. For Philadelphia, Pennsylvania, estimates include people held in jail for both probation and parole violations because one agency supervises both types of cases and, given the overlap and complexity of many of the sentences, does not distinguish between these types of cases.
- 69 In this brief, Vera uses median rather than average length of stay because the average length of stay is often heavily skewed by a small number of outliers with very long lengths of stay.
- 70 The First Judicial District of Pennsylvania publishes an end-of-month daily snapshot describing the Philadelphia jail population on the last day of every month, categorized by reasons for confinement. Vera pooled the counts from these snapshots over the 12-month period of interest to approximate the percentage of people held in the jail because of a Philadelphia Adult Probation and Parole detainer over the year. A sentencing judge may request, while retaining their decision-making power, the Pennsylvania Parole Board to supervise certain people released from state custody, known as “special probation” cases. All Philadelphia detainer categories also include those issued on special probation cases at the request of Pennsylvania State Parole.
- 71 In Pennsylvania, for example, people are kept on probation for much longer periods than in most other states. State law sets probation terms equal to the statutory maximum sentence for the offense, so that people may receive sentences to probation of 10 or 20 years, and judges frequently sentence people to consecutive terms of probation, extending supervision even longer. See Vincent Schiraldi, *The Pennsylvania Community Corrections Story* (New York: Columbia Justice Lab, 2018), 3, <https://perma.cc/H445-SR83>. Because lengthy terms of probation can increase the chances of violations, this is a likely a major contributing factor to the high proportion of people held on probation violations in Allegheny County and Philadelphia.
- 72 County population demographic data (2019) obtained from U.S. Census Bureau. U.S. Census Bureau, “County Population by Characteristics: 2010-2019,” database (Washington, DC: U.S. Census Bureau), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-detail.html>.
- 73 Beth Huebner and Richard Powell, “Technical Violations of Probation: Moving Away from Incarceration and Toward a Tailored Response,” presentation at Safety and Justice Challenge Network Meeting, San Diego, CA, May 8, 2019; and email from Dr. Beth Huebner to Vera dated September 28, 2020.
- 74 Unless otherwise noted, information on St. Louis County’s work to reduce the probation violation population of its jail is from a March 9, 2020, Vera phone interview with Richard Powell, district administrator for Missouri Probation and Parole, and a March 10, 2020, Vera phone interview with Dr. Beth Huebner, SJC project director and professor of criminology and criminal justice at the University of Missouri St. Louis.
- 75 E-mail from Dr. Beth Huebner to Vera dated September 28, 2020.
- 76 Allegheny County Adult Probation Department, *Annual Report 2018* (Pittsburgh, PA: Allegheny County Adult Probation Department, 2019), 12, <https://perma.cc/N83A-6EYU>.
- 77 Unless otherwise noted, information on Allegheny County’s work to reduce the probation violation population of its jail is from a March 12, 2020, Vera interview with Frank Scherer, director of Allegheny

- County Adult Probation, and Ashlee Lynn, implementation manager at Allegheny County Adult Probation.
- 78 People being supervised for sex offenses, most violent offenses, firearms offenses, or who are also being supervised for another county are excluded from eligibility.
- 79 E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated July 6, 2020.
- 80 E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated October 27, 2020.
- 81 E-mail from Ashlee Lynn, Allegheny County Adult Probation implementation manager, to Vera, dated May 10, 2021.
- 82 E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated July 1, 2020.
- 83 For example, as a result of discussions during the detainer review workgroup meetings, Pretrial Services is now notified of the results of preliminary hearings in probation violations so that it can move to modify bonds for people whose detainees are lifted at those hearings. E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated July 1, 2020.
- 84 E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated July 6, 2020.
- 85 E-mail from Molly Morrill, Allegheny County SJC project director, to Vera, dated July 6, 2020; and e-mail from Ashlee Lynn, Allegheny County Adult Probation implementation manager, to Vera, dated May 10, 2021.
- 86 Klingele, “Rethinking Community Supervision,” 2013, 1055-1060; Horowitz, “The Costs of Abusing Probationary Sentences,” 2010, 774-779; Frankel, *Revoked*, 2020, 213; Executive Session on Community Corrections, *Community Corrections for the 21st Century*, 2017, 4; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 5, 9-16; Phelps, “Ending Mass Probation,” 2018, 136; and Jacobson, Schiraldi, Daly, and Hotez, *Less Is More*, 2017, 11.
- 87 For limits on probation terms, see Executive Session on Community Corrections, *Community Corrections for the 21st Century*, 2017, 4; Bradner, Schiraldi, Mejia, and Lopoo, *More Work to Do*, 2020, 13; Jacobson, Schiraldi, Daly, and Hotez, *Less Is More*, 2017, 11; Klingele, “Rethinking Community Supervision,” 2013, 1062-1063; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 24, 29; and Vera Institute, *The Potential of Community Corrections*, 2013, 27. Early termination in many jurisdictions is granted through the use of “earned compliance credits,” which reduce the term of supervision based on a person’s compliance with supervision, commonly taking 30 days off of the probation term for every 30 days of compliance. See Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 26-28; Bradner, Schiraldi, Mejia, and Lopoo, *More Work to Do*, 2020, 13-14; Frankel, *Revoked*, 2020, 218; Adam Gelb and Connie Utada, “For Better Results, Cut Correctional Populations,” Pew Charitable Trusts, August 25, 2017, <https://perma.cc/Y7A8-33B6>; Jacobson, Schiraldi, Daly, and Hotez, *Less Is More*, 2017, 11; Klingele, “Rethinking Community Supervision,” 2013, 1063-1064; Schiraldi, *Too Big to Succeed*, 2018, 7-8; and Vera Institute, *The Potential of Community Corrections*, 2013, 27. Whether through the use of earned compliance credits or some other criteria, ideally early termination should be either presumptive or automatic, reducing the need for court involvement in the process. See Klingele, “Rethinking Community Supervision,” 2013, 1064; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 29-30; and Vera Institute, *The Potential of Community Corrections*, 2013, 27. An alternative approach to early termination has been referred to as “dosage” or “goal-based” probation, in which probation terminates as soon as people meet the specific goals in their case management plans. See Madeline M. Carter and Richard J. Sankovitz, *Dosage Probation: Rethinking the Structure of Probation Sentences* (Silver Spring, MD: Center for Effective Public Policy, 2014), <https://perma.cc/PQ7C-RQD4>; Executive Session on Community Corrections, *Community Corrections for the 21st Century*, 2017, 4-5; Horowitz, Utada, and Fuhrmann, *High Stakes, Missed Opportunities*, 2018, 15; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 24-26; and Phelps, “Ending Mass Probation,” 2018, 133.
- 88 Corbett, “The Burdens of Leniency,” 2015, 1728-1729; Corbett, “The Ironies of Correctional Practice,” 2016, 280; Frankel, *Revoked*, 2020, 212-217; Klingele, “Rethinking Community Supervision,” 2013, 1060-1064; and Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 6, 32-33.
- 89 Frankel, *Revoked*, 2020, 213; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 32-35; Byrne, Gelb, and Horowitz, *Maximum Impact*, 2009, 4; and Executive Session on Community Corrections, *Community Corrections for the 21st Century*, 2017, 6-7.
- 90 Bradner, Schiraldi, Mejia, and Lopoo, *More Work to Do*, 2020, 14; Corbett, “The Burdens of Leniency,” 2015, 1729; Corbett, “The Ironies of Correctional Practice,” 2016, 280-281; Frankel, *Revoked*, 2020, 211-214; Dinsmore, Lassiter, Margulies, et al., *Policy Reforms Can Strengthen Community Supervision*, 2020, 45-48; Phelps and Curry, “Supervision in the Community,” 2017, 17; and Vera Institute, *The Potential of Community Corrections*, 2013, 18-19.
- 91 See Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, (New York: Vera Institute of Justice, 2019), 2-6, <https://perma.cc/T46P-NXFT>; Phelps, “Mass Probation from Micro to Macro,” 2020, 270; Frankel, *Revoked*, 2020, 103; Wodahl, Boman, and Garland, “Responding to Probation and Parole Violations,” 2015, 249; and Bradner, Schiraldi, Mejia, and Lopoo, *More Work to Do*, 2020, 14.

A brief history of probation, page 2

- 1 Joan Petersilia, "Probation in the United States," *Crime and Justice* 22 (1997), 149-200, 155; Cecelia Klingele, "Rethinking the Use of Community Supervision," *Journal of Criminal Law and Criminology* 103, no. 4 (2013), 1015-1070, 1022-1023, <https://perma.cc/FUS9-CLH8>; Ryan M. Labrecque, "Probation in the United States: A Historical and Modern Perspective," in *Routledge Handbook of Corrections in the United States*, edited by O. Hayden Griffin III and Vanessa H. Woodward (New York: Routledge, 2017), <https://perma.cc/RT8F-C2FV>; and Andrew Horwitz, "The Costs of Abusing Probationary Sentences: Overincarceration and the Erosion of Due Process," *Brooklyn Law Review* 75, no. 3 (2010), 753-790, 756, <https://perma.cc/V9PN-DVQH>.
- b Petersilia, "Probation in the United States," 1997, 155; and Klingele, "Rethinking the Use of Community Supervision," 2013, 1022-1023.
- c Petersilia, "Probation in the United States," 1997, 155; and Klingele, "Rethinking the Use of Community Supervision," 2013, 1022-1023.
- d Petersilia, "Probation in the United States," 1997, 155-156; and Labrecque, "Probation in the United States," 2017, 7.
- e Klingele, "Rethinking the Use of Community Supervision," 2013, 1023.
- f Ibid.
- g Petersilia, "Probation in the United States," 1997, 156-158; and Labrecque, "Probation in the United States," 2017, 7.
- h Klingele, "Rethinking the Use of Community Supervision," 2013, 1023.
- i Ronald P. Corbett Jr., "The Burdens of Leniency: The Changing Face of Probation," *Minnesota Law Review* 99 (2015), 1697-1705, 1707, <https://perma.cc/RU34-QWYN>; Executive Session on Community Corrections, *Toward an Approach to Community Corrections for the 21st Century: Consensus Document of the Executive Session on Community Corrections* (Cambridge, MA: Harvard Kennedy School, Program in Criminal Justice Policy and Management, 2017), 3, <https://perma.cc/K6PX-LXUA>; Allison Frankel, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* (New York: Human Rights Watch and American Civil Liberties Union, 2020), 28-32, <https://perma.cc/3E9H-6FFT>; Horwitz, "Abusing Probationary Sentences," 2010, 757-758; Klingele, "Rethinking the Use of Community Supervision," 2013, 1023-1024; and Labrecque, "Probation in the United States," 2017, 7-11.
- j Corbett, "The Burdens of Leniency," 2015, 1705-1710; Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," *Georgetown Law Journal* 104, no. 2 (2016), 291-354, 333, <https://perma.cc/HK77-9WX2>; Executive Session on Community Corrections, *Community Corrections for the 21st Century*, 2017, 3; Frankel, *Revoked*, 2020, 28-32; Horwitz, "Abusing Probationary Sentences," 2010, 758-763; Klingele, "Rethinking the Use of Community Supervision," 2013, 1023-1024; Labrecque, "Probation in the United States," 2017, 7-11; Michelle S. Phelps, "The Curious Disappearance of Sociological Research on Probation Supervision," *Criminal Justice and Law Enforcement Annual: Global Perspectives* 7 (2015), 1-30, 13; Edward E. Rhine and Faye S. Taxman, "American Exceptionalism in Community Supervision: A Comparative Analysis of Probation in the United States, Scotland, and Sweden," in *American Exceptionalism in Crime and Punishment*, edited by Kevin R. Reitz (New York: Oxford University Press, 2018), 8-9; and Faye S. Taxman, "Probation, Intermediate Sanctions, and Community-Based Corrections," in *The Oxford Handbook of Sentencing and Corrections*, edited by Joan Petersilia and Kevin R. Reitz (New York: Oxford University Press, 2012), 3.
- k Klingele, "Rethinking the Use of Community Supervision," 2013, 1023-1024; Phelps, "The Curious Disappearance," 2015, 13; and Taxman, "Probation, Intermediate Sanctions, and Community-Based Corrections," 2012, 3.
- l Corbett, "The Burdens of Leniency," 2015, 1705-1707; Petersilia, "Probation in the United States," 1997, 165; Michelle S. Phelps, "Ending Mass Probation: Sentencing, Supervision, and Revocation," *Future of Children* 28, no. 1 (2018), 125-146, 133, <https://perma.cc/ZYS4-NQ2X>; Rhine and Taxman, "American Exceptionalism in Community Supervision," 2018, 8-9; and Eric J. Wodahl, Robbin Ogle, and Cary Heck, "Revocation Trends: A Threat to the Legitimacy of Community-Based Corrections," *The Prison Journal* 91, no. 2 (2011), 207-226, 214.
- m Ryken Grattet, Viet Nguyen, Mia Bird, and Justin Gross, "Probation's Changing Role in California: Challenges and Opportunities for Hybrid Supervision," *Federal Probation* 82, no. 1 (2018), 20-25, <https://perma.cc/K75H-2S99>; and Phelps, "The Curious Disappearance," 2015, 1-30, 13.

A probation primer: Terms and definitions, page 4

- a Michelle S. Phelps and Caitlin Curry, "Supervision in the Community: Probation and Parole," in *Oxford Research Encyclopedia of Criminology and Criminal Justice*, edited by Henry Pontell (Oxford, UK: Oxford University Press, 2017), 2, <https://perma.cc/56EZ-JZZZ>; Cecelia Klingele, "Rethinking the Use of Community Supervision," *Journal of Criminal Law and Criminology* 103, no. 4 (2013), 1015-1070, 1022, <https://perma.cc/FUS9-CLH8>; and Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 7, <https://perma.cc/M2T3-TKUV>.
- b Kelly Lyn Mitchell, Kevin R. Reitz, Alexis Watts, and Catherine A. Ellis, *Profiles in Probation Revocation: Examining the Legal Framework in 21 States* (Minneapolis: Robina Institute of Criminal Law and Criminal Justice, 2014), 6, <https://perma.cc/Z4G7-GSNY>; Klingele, "Rethinking the Use of Community Supervision," 2013, 1022; and Vera Institute of Justice, *The Potential of Community Corrections*, 2013, 7.
- c Joan Petersilia, "Probation in the United States," *Crime and Justice* 22 (1997), 149-200, 173, 178; Andrew Horwitz, "The Costs of Abusing Probationary Sentences: Overincarceration and the Erosion of Due Process," *Brooklyn Law Review* 75, no. 3 (2010), 753-790, 758-772, <https://perma.cc/V9PN-DVQH>.
- d Pew Charitable Trusts, *Probation and Parole Systems Marked by High Stakes, Missed Opportunities* (Washington, DC: The Pew Charitable Trusts, 2018), 3, <https://perma.cc/Q7CA-P346>; Allison Frankel, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* (New York: Human Rights Watch and American Civil Liberties Union, 2020), 18, <https://perma.cc/3E9H-6FFT>. Washington is apparently unique among states in not allowing a condition of probation that requires obeying all criminal laws, so new offenses there cannot be prosecuted as probation violations. See Mitchell, Reitz, Watts, and Ellis, *Profiles in Probation Revocation*, 2014, 87. Distinguishing between these two types of violations is not always easy or uniform. For example, some jurisdictions will not consider violations technical if the conduct alleged could constitute a new criminal offense, even if no new charges are brought or no conviction is obtained, while others deem violations technical unless there is a new criminal conviction. See Frankel, *Revoked*, 2020, 18.
- e Defining technical violations in this way is necessary based on the data available, but it could potentially mischaracterize some violations. Research has shown that, in some cases, prosecutors may choose to pursue allegations of new criminal conduct through probation violation proceedings, where the burden of proof and evidentiary standards are lower but the potential sentence often the same, rather than filing new charges and going through the normal criminal process. See Sharon Brett, Neda Khoshkhou, and Mitali Nagrecha, *Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay* (Cambridge, MA: Harvard Law School, Criminal Justice Policy Program, 2020), 26, <https://perma.cc/7ZUN-HUL7>; Peggy Burke, Adam Gelb, and Jake Horowitz, *When Offenders Break the Rules: Smart Responses to Parole and Probation Violations* (Washington, DC: Pew Center on the States, 2007), 3, <https://perma.cc/7JD7-VYVB>; Frankel, *Revoked*, 2020, 84-85; Horwitz, "Abusing Probationary Sentences," 2010, 771, 782-783; Rodney F. Kingsnorth, Randall C. MacIntosh, and Sandra Sutherland, "Criminal Charge or Probation Violation? Prosecutorial Discretion and Implications for Research in Criminal Court Processing," *Criminology* 40, no. 3 (2002), 553-578; David E. Olson, "Probation Revocation," in *Oxford Research Encyclopedia of Criminology and Criminal Justice* (2019), 7; and Nancy Rodriguez and Vincent J. Webb, "Probation Violations, Revocations, and Imprisonment: The Decisions of Probation Officers, Prosecutors, and Judges Pre- and Post-Mandatory Drug Treatment," *Criminal Justice Policy Review* 18, no. 1 (2007), 3-30, 23.
- f Frankel, *Revoked*, 2020, 16.
- g Frankel, *Revoked*, 2020, 16, 90, 93; Wendy Sawyer, Alexi Jones, and Maddy Troilo, "Technical Violations, Immigration Detainers, and Other Bad Reasons to Keep People in Jail," Prison Policy Initiative, March 18, 2020, <https://perma.cc/2EUT-47QQ>; Kendra Bradner, Vincent Schiraldi, Natasha Mejia, and Evangeline Lopoo, *More Work to Do: Analysis of Probation and Parole in the United States, 2017-2018* (New York: Columbia University Justice Lab, 2020), 14, <https://perma.cc/SEY4-D68V>; Samantha Melamed, Dylan Purcell, and Chris A. Williams, "Everyone is Detained," *Philadelphia Inquirer*, December 27, 2019, <https://perma.cc/H9WP-J63Z>; Maura Ewing, "How Minor Probation Violations Can Lead to Major Jail Time," *Atlantic*, June 9, 2017, <https://perma.cc/JE3V-BWST>. In some places, a detainer filed by a probation agency can be lifted by the agency itself, but more often it requires a judge's order for release to lift a detainer.
- h Ewing, "Minor Probation Violations," 2017; Frankel, *Revoked*, 2020, 90-91.
- i *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972), <https://perma.cc/T5F3-LFWR>; and *Gagnon v. Scarpelli*, 411 U.S. 778, 781 (1973), <https://perma.cc/LBW3-KLUG>.
- j *Morrissey*, 408 U.S. at 487; *Gagnon*, 411 U.S. at 781; Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," *Georgetown Law Journal* 104, no. 2 (2016), 322-323, <https://perma.cc/HKY7-9WX2>; Frankel, *Revoked*, 2020, 83-89; Horwitz, "Abusing Probationary Sentences," 2010, 770; Klingele, "Rethinking the Use of Community Supervision," 2013, 1040-1041; and Olson, "Probation Revocation," 2019, 6.
- k Alabama uses a standard even lower than a preponderance; Minnesota, Nebraska, and West Virginia use a slightly higher standard (although still lower than beyond a reasonable doubt); and Colorado uses the preponderance standard for technical violations but requires proof beyond a reasonable doubt for new offense violations. All other states require only a preponderance of the evidence to prove probation violations. Daniel F. Piar, "A Uniform Code of Procedure for Revoking Probation," *American Journal of Criminal Law* 31, no. 1 (2003), 117-173, 127-128. See also Mitchell, Reitz, Watts, and Ellis, *Profiles in Probation Revocation*, 2014, 12; Klingele,

Alabama uses a standard even lower than a preponderance; Minnesota, Nebraska, and West Virginia use a slightly higher standard (although still lower than beyond a reasonable doubt); and Colorado uses the preponderance standard for technical violations but requires proof beyond a reasonable doubt for new offense violations. All other states require only a preponderance of the evidence to prove probation violations. Daniel F. Piar, "A Uniform Code of Procedure for Revoking Probation," *American Journal of Criminal Law* 31, no. 1 [2003], 117-173, 127-128. See also Mitchell, Reitz, Watts, and Ellis, *Profiles in Probation Revocation*, 2014, 12; Klingele, "Rethinking the Use of Community Supervision," 2013, 1041; and Doherty, "Obey All Laws and Be Good," 2016, 322-323.

- l Horwitz, "Abusing Probationary Sentences," 2010, 782-783; and Frankel, *Revoked*, 2020, 84. Perhaps unsurprisingly, the same situation doesn't apply in reverse. In most jurisdictions, when someone is found even by the lower standard in a violation hearing not to have committed a new offense, the government is not precluded from pursuing separate criminal charges based on the same allegations. See Horwitz, "Abusing Probationary Sentences," 2010, 783.
- m Mitchell, Reitz, Watts, and Ellis, *Profiles in Probation Revocation*, 2014; Michelle S. Phelps, "Mass Probation from Micro to Macro: Tracing the Expansion and Consequences of Community Supervision," *Annual Review of Criminology* 3 (2020), 261-279, 262; and Olson, "Probation Revocation," 2019, 6, 12.
- n "Short," of course, is a relative term, as these sanctions are limited to two or three days in some jurisdictions but may involve two to three months of incarceration in others. American Probation and Parole Association, *Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision* (Lombard, IL: American Probation and Parole Association, 2013), 12-15, <https://perma.cc/DBQ9-QNNG>; Brett Khoshkhoo, and Nagrecha, *Paying on Probation*, 2020, 21-22; Pew Charitable Trusts, *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations* (Washington, DC: Pew Charitable Trusts, 2019), 3, <https://perma.cc/2FYA-FSQH>; Klingele, "Rethinking the Use of Community Supervision," 2013, 1040, 1047; Doherty, "Obey All Laws and Be Good," 2016, 323-326; Andres F. Rengifo and Christine S. Scott-Hayward, *Assessing the Effectiveness of Intermediate Sanctions in Multnomah County, Oregon* (New York: Vera Institute of Justice, 2008), 20, <https://perma.cc/9AXX-TJPE>.
- o Frankel, *Revoked*, 2020, 15; Olson, "Probation Revocation," 2019, 1, 6; Cecelia Klingele, "Understanding Revocation from Community Supervision," in *Ex-offenders Under Watch* (Milwaukee, WI: Badger Institute, 2019), 4, <https://perma.cc/8BHT-7NN7>; and Council of State Governments Justice Center, *Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets* (New York: Council of State Governments Justice Center, 2019), <https://perma.cc/64E3-KVZX>.
- p Olson, "Probation Revocation," 2019, 1, 6-7; Frankel, *Revoked*, 2020, 115-116, 125. In some jurisdictions, however, courts can "revoke and reinstate," revoking the original probation sentence and replacing it

with a new sentence to probation with different conditions, a longer term, or reinstatement following a short period of incarceration. Although this might technically be viewed as a revocation in those jurisdictions, it is actually more similar to the non-revocation sanctions used in most jurisdictions. See Brett, Khoshkhoo, and Nagrecha, *Paying on Probation*, 2020, 81-82, n. 224.

- q Mitchell, Reitz, Watts, and Ellis, *Profiles in Probation Revocation*, 2014, 7; Klingele, "Rethinking the Use of Community Supervision," 2013, 1041; and Frankel, *Revoked*, 2020, 115-116. Additionally, while many states grant credit for time spent under supervision to people on parole, very few allow credit for time spent under probation supervision, so someone whose probation is revoked could face years in prison even after spending years complying with supervision. Frankel, *Revoked*, 2020, 117-118; and Brett, Khoshkhoo, and Nagrecha, *Paying on Probation*, 2020, 27-28. The lack of credit for time spent under supervision can put people on probation in a worse situation than people sentenced to prison at the outset. For example, a person sentenced to prison for five to 10 years who is paroled after five years, spends four years under parole supervision, and then violates, could only be returned to prison for one year. However, a person sentenced to five years of probation for the same offense who spends four years under supervision and then has probation revoked could be sentenced to serve the full five- to 10-year sentence in prison. Even if that person is paroled after five years and doesn't violate again, they will have spent the same amount of time incarcerated and almost twice as long under supervision.

The limits of national data on probation, page 12

- a The Annual Probation Survey, which collects data from probation agencies across the country, has been conducted annually since 1980, except for 1991. See U.S. Department of Justice, Bureau of Justice Statistics (BJS), “Data Collection: Annual Probation Survey and Annual Parole Survey,” <https://perma.cc/SW52-KNAH>.
- b Unlike the Annual Probation Survey, which is completed by probation agencies, the Survey of Adults on Probation was completed by people being supervised on probation. See BJS, “Data Collection: 1995 Survey Of Adults On Probation,” <https://perma.cc/8K8L-9GMX>.
- c Thomas P. Bonczar, *Characteristics of Adults on Probation*, 1995 (Washington, DC: BJS, 1997), 6, <https://perma.cc/9KTB-HJN6>.
- d *Ibid.*, 9-11.
- e See BJS, “Survey Of Inmates In Local Jails,” <https://perma.cc/P6KM-GNZ9>.
- f Doris J. James, *Profile of Jail Inmates*, 2002 (Washington, DC: BJS, 2004), 6, <https://perma.cc/N8X7-LH4B>.

Credits

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