

Trends in Probation Legislation 2019-2022

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EVERY YEAR, MILLIONS of people and their communities are affected by state probation policies and related reforms. Although the U.S. probation population reached a 21st-century low in 2021, more than 2.9 million people remained under state supervision, placing tremendous strain on state agencies responsible for upholding community safety, supporting rehabilitation during probation, assuring equity and fairness in the administration of probation, and optimizing taxpayer dollars. There has been wide variation in the scope, character, and objectives of probation reform across the nation, with scant record of which policies are typical or even common. Understanding where and how probation has been reformed provides insight into the extent and nature of current reform activities, setting the groundwork for future assessment efforts and continued enhancement of policy and practice.

Probation has been praised for its adoption of evidence-based practices, such as the use of risk and needs assessments to inform supervision levels, case management plans, and

referrals to community-based programs and services. Probation has also been critiqued as a form of “net-widening,” in which people with low-level convictions are pulled deeper into the criminal legal system through excessive surveillance and onerous supervision conditions (Phelps, 2013). In 2022, admissions to prison because of a violation of conditions of supervision (discretionary parole, mandatory parole, or post-custody probation) made up almost 24 percent of prison admission (Carson & Kluckow, 2023b). Further, policies that contribute to incarceration—such as revocation occurring because of missing an arbitrary number of officer contacts—allow the state to exert control over non-criminal behavior (Doherty, 2015). The compounding toll of multiple conditions can inhibit or even prevent success (Phelps, 2013; Klingele, 2013; Petersilia, 2003) when, for example, maintaining employment as a supervision condition conflicts with mandatory check-ins, treatment classes, and community service (Doherty, 2015). Racial disparities are also prevalent in probation: Black individuals are 2.6 times more likely to be on probation than White individuals (Bradner et al., 2020), and in a multi-site study Black individuals experienced probation revocations at a statistically significant higher rate than White or Hispanic individuals (Jannetta et al., 2014). Thus, community supervision, though regarded as a less punitive, more cost effective, and a purportedly rehabilitative alternative to incarceration, has instead in the recent decade fallen under scrutiny for its net-widening capability.

Laws governing probation can impact successful completion of supervision. Laws prohibiting or limiting revocations based solely on technical violations or noncompliant behavior allow supervision officers to respond to violations with graduated sanctions tailored to the severity and frequency of the event, leading to greater procedural legitimacy (Klingele, 2013). Other laws may encourage positive behavior by providing pathways to early discharge in response to compliance and refraining from criminal behavior. For example, in 2021, when Senate Bill 105 (SB 105) became law in Georgia, the state provided pathways to early discharge of probation conditioned on compliance with conditions and law-abiding behavior. These and other efforts at probation reform have been promoted by advocates, policymakers, and practitioners. Herein, the results of a recent 50-state legislative scan and analyses that identified and categorized key characteristics of legislation focused on adult probation reform are described.

Objective

A LexisNexis scan was conducted to identify and capture legislative activity in all 50 states between 2019 and 2022 that was focused on adult probation reforms. All enacted legislation was then coded for its relevance to four key elements of supervision: sentence limits, conditions, fees and restitution, and termination or early discharge. Further, the scope of the legislation was classified into two categories—whether the legislation was

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structured to decrease or increase the probation apparatus and whether the legislation made substantive changes to probation above administrative adjustments.

The purpose of this legislative scan is to provide an overview that characterizes recent changes to probation on a national scale. This 50-state scan details whether trends in probation reform are altering the scope and reach of probation in terms of sentence limits, conditions, fees and restitution, and termination. Our research asks:

1. How have sentence limits been represented in the legislation? Are sentence lengths increasing or decreasing?
2. How have conditions been represented in the legislation? Are conditions becoming more or less restrictive?
3. How are fees and restitution represented in the legislation? Are compliance and success dependent on an ability to pay?
4. How is termination represented in the legislation? Are there more or fewer barriers to successful termination?

In addition to the characterization of these key elements and their potential impact, we also inquire into the directional reach of the legislation. Specifically, we examine whether in terms of length, intensity, cost, or early termination the proposed legislation will likely increase, decrease, or have an unknown or neutral effect on the size of the probation population. Similarly, we analyze the substantive nature of the legislation and whether it could affect the scope or reach of probation, as opposed to a fiscal, administrative, or conforming change to the statute.

1. Does the legislation likely affect the reach of probation?
2. Does the legislation have the ability to create substantive change?

Finally, due to the time frame assessed, the scan also offers a snapshot of how probation reforms shifted from the year immediately preceding the COVID-19 pandemic through its peak and aftermath.

Literature Review

The community supervision population reached its peak in 2007, when nearly 4.3 million individuals were on probation and 826,097 were on parole (Carson & Kluckow, 2023a; Glaze & Bonczar, 2009). Since then, the probation population has declined, although it remains considerable in size. The rate of individuals on probation or parole reached a 21-year low in 2021 at 1,440 per 100,000 adults (Carson & Kluckow, 2023a). At the year end of

2021, there were an estimated 2,963,000 individuals on probation, with 3,745,000 under some type of community supervision (Kaeble, 2023). In 2020 and 2021, about 71 percent of all individuals released from prison had a condition of community supervision. With more than half a million individuals released from prisons in 2021, over 350,000 individuals were placed on supervision (Carson, 2022). The prison population grew in 2022 for the first time in 25 years (Carson & Kluckow, 2023b). And while 2022 national data on probation populations are not yet released, trends in community supervision populations typically mirror the prison population.

Over the last half century, in concert with mass incarceration, the approach to community supervision shifted from a rehabilitative strategy to a driver of incarceration by supervising low-level offenders, providing inadequate substance-use or mental health treatment, and imposing excessive rules and appointments (The Pew Charitable Trusts, 2020). As noted by Taxman and colleagues (2021), the human/social services origins of probation shifted in the late 1970s to a tough-on-crime approach such that “probation became a vehicle for imposing community-based supervision nested squarely within the rhetoric around sanctions and punishment.”

How strictly individuals are monitored, how many conditions they are required to meet, and the governing philosophy of supervising agencies (e.g., along a continuum of surveillance- to treatment-orientated) have not been conclusively demonstrated to positively impact the legal system outcomes of those on probation. An interesting finding from an evaluation of the Honest Opportunity Probation with Enforcement Demonstration Field Experiment was that despite variation in probation experience among the more than 1,500 probationers in four HOPE groups and four probation-as-usual groups (e.g., substantial differences in drug treatment, drug testing, violations, jail time, and treatment time), recidivism outcomes were similar, with roughly half of all groups experiencing revocation or new arrest during follow-up (Lattimore & DeMichele, 2019). These findings suggest that probation, in its various forms, struggles to set people up for success.

Growth in Probation

Tough on crime approaches, which dictated more and longer periods of incarceration through mandatory minimum sentences, three-strike laws, and truth in sentencing,

resulted in severe impacts on the correctional population that did not always match crime trends. In fact, from 1980-1994, the probation population increased 166 percent, parole increased 213 percent, and jail populations increased 164 percent (Lattimore, 2022). From 2001 to 2010, laws shifted to reduce mass incarceration through reclassifying crimes, reducing offense severity and sentence length, while strengthening community supervision (Austin, 2010). Continuing into the 21st century, incarcerated and supervised populations peaked in 2009, and since then, there have been around a 1 percent decrease in year-over-year trends (Lattimore, 2022).

More recently, the COVID-19 pandemic led to steeper decreases in both carceral and community populations, with 2021 marking a 25-year low of sentences to prison (Carson & Kluckow, 2023b). Although COVID-19 led to a 40 percent decline in state and federal prison admissions from 2019 to 2020, admissions quickly reverted, each following year marked by an increase (22 percent from 2020 to 2021, 11 percent from 2021 to 2022; Carson, 2022; Carson & Kluckow, 2023b). The most recent data on the total prison population reverses an almost decade-long downward trend, with 2022 marking an increase of 2 percent (Carson & Kluckow, 2023b).

The growth in probation was often intentional, aimed at alleviating some of the substantial harm caused by mass incarceration and tough on crime policies, notable at both the personal and budgetary level. Probation provides a more cost-effective method to rehabilitate or supervise individuals with lower-level offenses (Phelps, 2013), as one study of 33 states found that the cost of incarcerating an individual in prison was as much as 22 times that of community supervision (Pew Center on the States, 2009). Probation also holds the possibility of rehabilitative reintegration, with aims of buffering economic and social supports (Harding et al., 2022). However, with the imposition of controls on probationers to ensure public safety and reduce new crimes, the expansions of conditions led to an increase in violations, and thus an increase in incarceration for individuals on probation for condition violations (Cromwell et al., 2005). The Council of State Governments Justice Center estimates that the cost of imprisonment due to a supervision violation is \$9.3 billion annually; with \$2.8 billion due to technical violations and \$6.5 billion as a result of new offenses while on supervision (Council of State Governments,

2019). Further, these costs do not include local jail costs of either short-term stays in response to violations or longer stays pending imprisonment.

Concerns with Probation

Critiques of probation contend that the increase in surveillance leads to punishment of noncriminal violations, that it is ineffective at addressing needs, and that it decreases a person's quality of life through superfluous conditions and time-wasting obeisance. Further, probation can act as a net-widener, as non-criminal violations of supervision, such as missing an appointment with a probation officer, can lead to incarceration. Elaborating further, Harding and colleagues (2022) note that community supervision does not reduce crime, traps people in system involvement, is extreme and punitive, and creates real harm. They argue, instead, that social and economic integration at reentry benefits the community and improves public safety.

Other scholars argue that probation is a punitive intervention, depriving probationers of autonomy, a family life, and time (Doherty, 2015). Probation can negatively impact employment through prioritizing compliance over work (Phelps & Ruhland, 2022) and it can result in someone earning lower wages (Harding et al., 2017). Recidivism as a measure depends on the behavior of both individuals and probation officers, where officers influence recidivism through incarceration for technical violations (Harding, 2022). Probation is also onerous: In one state, probationers were found to have between 7 and 24 conditions (Corbett Jr., 2014). Probation is a "net-widener," where intensive supervision has been shown to increase technical violations and incarceration, as compared to regular supervision (Harding, 2022). Although probation is purportedly rehabilitative, probationers receive scant resources and support to address substance abuse, trauma, homelessness, and employment (Taxman, 2012; Petersilia, 2003). Results of a survey by Taxman and colleagues (2007) found that less than a quarter of community corrections agencies offered support for transitional housing (24 percent) or vocational training (23 percent).

Research on Reforms

Individuals are most at risk of recidivism during their first year of supervision, after which the benefits of supervision diminish (Andrews & Bonta, 2010). Accordingly, a common reform to probation is the introduction of

earned time or early discharge credits. These credits occur for compliance or good standing, often related to education or employment. Evaluations of such reforms have occurred in Missouri, Oregon (Olsen et al., 2022), and Arizona (Griffin et al., 2013), with promising results.

The Urban Institute evaluated earned discharge legislation in Missouri and Oregon. Individuals who received an earned discharge served less time than people who received other successful completions. Taken as a whole, the decrease amounted to 61,000 months saved in Oregon (2013-2019) and 1,255,000 months of supervision time in Missouri (2012-2019). At the individual level, this is an average of 13 months less time supervised in Oregon, and around two years less time supervised in Missouri. In terms of recidivism, those who received early discharges had recidivism rates similar to people who had other types of successful supervision completion. In Oregon, however, those with earned discharge had a slightly higher rate of felony reconviction; overall, however, they had a lower rate of reconviction. In Missouri, they had similar rates of felony reincarceration (Olsen et al., 2022).

Arizona began to offer earned time credits in 2009, where probationers could earn 20 days for every 30 days of compliance with their conditions. In an evaluation of this in Maricopa County, half of all eligible probationers were able to attain earned time credits, but few were able to obtain a substantial amount of credits—less than 8 percent received an early time credit release. Notably, most of the people on probation were unable to earn credits largely due to failing to meet financial requirements, including the mandatory probation supervision fee, court-ordered fees, victim restitution, fines, and surcharges (Griffin et al., 2013).

Other reforms have revised how technical violations are treated. In 2010, South Carolina legislation (SB1154) included the prioritization of administrative sanctions instead of incarceration for technical violations. After controlling for case and person characteristics, those who began supervision after the legislation was implemented were 33 percent less likely to be incarcerated after one year. Further, there was a 46 percent decline in the number of revocations (Pelletier et al., 2017). Philadelphia has reformed probation through sentencing policies implemented by District Attorney Krasner. In doing so, median community supervision lengths decreased by 25

percent, with an average supervision sentence length being 10 months shorter through negotiated pleas, all without a measurable change in recidivism (DAO report, 2021). As many of these reforms are nascent or their implementation a lengthy process, the long-term effects on recidivism rates, supervision terms, caseloads, costs, and equity are not yet known. Understanding if sustained change has been achieved through probation reform is important to the field and a prime area for future research.

Data and Methods

The authors reviewed 406 enacted bills that made changes to state probation legislation between January 1, 2019, and September 30, 2022. The initial set of bills was identified using a custom search string on LexisNexis, a website that aggregates statutes, legislation, and other legal information from all 50 states. The authors used a LexisNexis bulk export tool to archive each bill separately (.docx and .pdf format), then created a workbook indexing only those legislative changes passed into law, which appear in LexisNexis as underlined text for additions to existing statute and strike-through text for deletions to existing statute. The workbook containing the combined index of enacted changes served as the dataset for a 50-state scan of probation-focused legislation passed across the United States, 2019-2022.

The 50-state legislative scan used the LexisNexis database to generate an initial list of recently enacted legislation to modify state probation. The scan was designed to flag any enacted legislation that touched on the following four elements of probation reform (hereafter referred to as "key elements"): sentence limits, supervision conditions (excluding fees and restitution), fees and restitution, and termination or early discharge. To generate the initial list of relevant bills, the authors ran the following custom search string in LexisNexis:

text("probation" or "community supervision" /20 condition or fine or fee or (probation /6 sentenc!) or "technical violation" or (early /5 terminat! or discharge))

The authors then filtered the content further to include only "Statutes and Legislation" under the subordinate category "Public Law/ALS" and limited the date range to the 2019-2022 time frame. This LexisNexis query was performed in two phases, first for January 1,

2019, through October 31, 2021, and then a follow-up query for October 31, 2021, through September 30, 2022. For expediency, the cutoff date between the two phases of data collection (October 31, 2021) was set to the latest projected adjournment date for states with special sessions involving probation-focused legislation in 2021. The one-year follow-up analysis was then set to end on the last projected adjournment date for special sessions involving probation-focused legislation in 2022, approximately one year after the first cutoff date, resulting in asymmetrical sampling time frames. Later, we confirmed that no probation-focused legislation was passed via special sessions extending beyond the final cutoff date (September 30, 2022, through December 31, 2022). The present analysis combines the nearly four-year period, 2019-2022.

The initial search query and filtering identified 406 bills as potentially relevant to the analysis, corresponding to all 50 states, although these results were not all pertinent to community supervision probation. For example, some bills discussed licensing regulations or probationary terms for occupations (such as for dentists, veterinarians, nurses, etc.). These bills were excluded from further analysis. We also excluded results corresponding to parole and those related to juvenile probation, as our focus was exclusive to adult probation. Further, if the focus of the bill was not on probation but on another aspect of the criminal legal system and simply made mention of probation tangentially, we documented it but did not include it as probation legislation related to the key elements.

Results

The 406 enacted bills identified in the LexisNexis search were assessed to identify those that contained one or more of the four key elements—sentence length, conditions, fees and restitution, and termination or early discharge. Of the 406 bills, 152 addressed one or more key elements. The distributions across the key elements of these bills and unique states during the 2019-2022 period are shown in Table 1. A unique bill could address more than one key element, and a state could have enacted more than one bill during the period. There were 35 bills that addressed sentence limits, 89 that addressed conditions, 33 that addressed fees and restitution, and 23 that address termination or early discharge. Among the 43 states that passed at least one bill, 22 states passed legislation related to

sentence limits, 37 states passed legislation related to conditions, 23 states passed legislation related to fees and restitution, and 20 states passed legislation related to termination or early discharge.

The four key elements in enacted bills were then assessed with respect to scope and direction. Scope was assessed with respect to whether the reform was *substantive*, in other words whether the change could affect the reach of probation as opposed to serving an administrative, fiscal, or conforming change to statute. *Substantive* was coded as either *yes*, *no*, *neutral*, or *unknown*. For example, 2019 AK. HB 49 eliminated credit towards imprisonment sentence for time served for technical violations of probation; this change was categorized as substantive (or “Yes”) in scope. In comparison, 2021 AR HB 1114, which authorized the Board of Corrections to increase or decrease monthly supervision fees within specified guidelines and with notification of those on supervision, was categorized as not substantive. This change was considered administrative or fiscal and did not alter the reach of probation. Direction was assessed with respect to whether the reach of probation in terms of length of supervision, intensity of supervision, or size of the probation population would change as a result of the legislative reform. Direction was coded as *increase*, *decrease*, *neutral*, or *unknown*. For example, 2022 Colo. SB 49 was considered neutral, as it related to victim notification of potential early termination of probation; 2022 Ind. HEA 1004 was considered an increase, as it made probation mandatory (where previously discretionary) following completion of a community correction program. 2019 Colo. HB 1263 Section 4 amended current law to authorize the court to suspend a minimum of 48 hours of public service for drug offenders if it interferes with necessary treatment or other court-ordered conditions—this was considered a directional *decrease*, and 2019 Wy. SF 38 was classified as *unknown* in direction, as it provided judicial discretion to impose a term of probation equal to or less than the maximum term of imprisonment authorized for the offense based on good cause shown on the record, public safety, rehabilitation, deterrence, and other sentencing goals.

When bills made changes to multiple key elements, each element was categorized and analyzed separately; elements could be discordant in direction or substance. For example, 2019 Mi. S.B. 1050 contained a subsection that reduced the presumptive probation period

(a decrease in the directional reach of probation), as well as a separate section that expanded the group of offenses ineligible for reduced probation (an increase in the reach of probation). Table 2 summarizes findings with respect to the four key elements, identifying the number of elements with respect to *Direction* and *Substantive* scope.

For each key element, the reach of probation was decreased more often than increased or was likely to have a neutral/unknown effect. Similarly, the legislative element was classified more often as having a substantive effect rather than not; these substantive changes were most often in legislation related to conditions.

Table 3 enumerates how many distinct states passed adult probation legislation—related to a key element, direction, and substantive scope. Specific impacts with respect to each key element are described in more detail in the remainder of this section within this framework.

Sentence Limits

Legislation regarding probation sentence limits varied widely in direction and scope. Thirteen states passed legislation that increased the reach of probation through sentence limits, and fourteen states passed legislation that decreased the reach. For example, Alaska passed 2019 HB 49, to increase the presumptive limit of probation sentences for felony sex offenses from 15 to 25 years, including any extension. The same bill eliminated credit toward imprisonment sentence for any time served for a technical violation, and probation officers were granted discretion to recommend termination of probation after 2 years for class A/B felonies or after 18 months for other offenses—previously a mandatory recommendation. Last, the presumptive range of probation for Class C felonies was increased from 1-4 years to 2-4 years for second-felony convictions and from 2-5 years to 3-5 years for third-felony convictions. On their own and cumulatively, each of these components increased the directional reach and substantive scope of probation in Alaska by prolonging system involvement.

In contrast, other states decreased the reach of probation through legislation. For example, in California, 2020 Cal AB 1950 reduced the probation period for misdemeanors to 1 year (previously 3 years), except for offenses with specific probation periods specified in statute. It also amended presumptive limits: probation orders/suspended sentences were

reduced from the maximum sentence term to two years, excluding certain felonies (e.g., murder, manslaughter, certain felony offenses resulting in property loss exceeding \$25,000) and offenses with probation lengths specified in statute. It also established new presumptive limits for probation/suspended sentences for certain felony offenses (e.g., theft, embezzlement, extortion) resulting in property loss exceeding \$25,000). Each of these components of the amended penal code established a directional decrease in the reach of probation, limiting the amount of time individuals convicted of certain offenses would remain monitored—they were also considered as substantive in scope. Similarly, in 2019, Michigan enacted S.B. 1050, reducing the presumptive probation period from five years to three years, although it may be extended up to two times for no more than one additional year per extension if the court finds that a specific rehabilitation goal has not been achieved or a specific, articulable, and ongoing risk of harm to a victim can be mitigated only with continued probation supervision.

A substantive change was identified in 2019 Nev. SB 236, which reduced the presumptive limit for probation and suspension of sentence from 3-5 years to 1-3 years depending on offense severity. We considered this a directional decrease and a substantive change: substantive in that it had the potential to have considerable reach and impact. A non-substantive change was identified in Utah's 2022 SB 167, which requires the Sentencing Commission to study and update sentencing and release guidelines concerning the offense of sexual exploitation of a minor. We determined that this change was not substantive in nature and neutral in terms of direction.

Conditions

Between 2019 and 2022, 23 states enacted legislation related to supervision conditions, with a net-widening, directional increase. For example, Illinois enacted SB 626 in 2021 to authorize a sanction of 18 days in county jail “for violation of any of the conditions of release or assignment.” Michigan enacted 2021 S.B. 1050, establishing standard conditions for probation, one of which requires the court to order most probationers not to reside, work, or loiter within a student safety zone. Tennessee's 2021 SB 2632 authorizes the trial judge to issue a warrant of arrest or a criminal summons for a technical violation of probation (at the judge's discretion) if individuals on probation are convicted for a new offense

TABLE 1.
Distribution across Four Key Elements Related to Adult Probation of Enacted Legislative Bills and the States that enacted them, 2019-2022

	Key Elements			
	Sentence Limits	Conditions	Fees & Restitution	Termination or Early Discharge
Unique Bills				
152	35	89	33	23
Unique States				
43	22	37	23	20

TABLE 2.
Count of Elements of Adult Probation Bills Addressing the Direction and Substantive Scope, 2019-2022

	Key Elements			
	Sentence Limits	Conditions	Fees & Restitution	Termination or Early Discharge
Direction				
Increase Reach of Probation	20	50	13	2
Decrease Reach of Probation	24	52	20	17
Neutral	15	36	8	6
Unknown	1	17	5	7
Substantive				
Yes	43	107	21	14
No	11	31	19	13
Neutral	6	7	6	3
Unknown	0	10	0	2
Count of Bill Elements	60	155	46	32

TABLE 3.
Count of States with Adult Probation Bills Addressing Direction and Substantive Scope of Adult, 2019-2022

	Key Elements			
	Sentence Limits	Conditions	Fees & Restitution	Termination or Early Discharge
Direction	Unique States per Classification of Key Element*			
Increase Reach of Probation	13	23	10	2
Decrease Reach of Probation	14	24	12	13
Neutral	8	17	5	6
Unknown	1	8	5	5
Substantive				
Yes	20	36	14	12
No	6	16	12	12
Neutral	4	5	5	3
Unknown	0	8	1	2
Unique States	22	37	23	20

*This table counts each unique state to a specific classification (i.e., count of unique states with an increase in Sentence Limits).

or violate supervision terms. Each of these directional increases was considered substantive in scope. Similarly, Wyoming's 2019 HB 143 amended state law to give court discretion to place a person charged with a felony on probation without a presentence report. It added a provision giving court authority to dispense with a presentence report or limit its scope to circumstances and conditions it deems relevant to determining sentencing. Also in 2019, Pennsylvania's SB 501 revised state law to give the court authority to increase the conditions under which probation has been imposed upon a finding that the person "presents an identifiable risk to public safety." Legislation that increased the reach of probation relative to supervision conditions often increased the discretion of system actors, while prohibiting probationer activity.

Of the nine states that passed legislation with a directional reach that was neutral or unknown, several of these changes were related to creating new systems and responses: 2021 Ut. HB 290 tasked the state's Sentencing Commission with establishing evidence-based responses to probation violations. 2022 Colo. HB 1257 requires the state court administrator to develop a system of structured and individualized behavioral responses to guide probation officers. 2022 Va. HB 1318 requires the Virginia Criminal Sentencing Commission to develop, maintain, and modify sentencing guidelines for probation violation hearings for felony convictions. Each of these represents an administrative change, creating tasks for state bodies.

Twenty-four states passed legislation related to supervision conditions that directionally decreased the probation net, all of which were considered substantive in scope. In 2021, Arizona HB 2130 narrowed eligibility for intensive supervision to individuals with "high risk and high need." California added to the penal code (2021 Cal AB 1228) to include a presumptive release to own recognizance pending a revocation hearing, unless the court determined the individual poses a danger to the public or is at risk for failure to appear (FTA). It further added that bail shall not be imposed unless for public safety or FTA risk. Louisiana decreased the monthly fee for individuals on unsupervised probation to not more than \$1 with 2021 La. HB 248. Maine excluded drug use or excessive use of alcohol as violations subject to an issue of an arrest warrant by the probation officer or as reason for the court to revoke probation (2021 Me. HP 626). Michigan established a schedule of graduated

sanctions (2019 Mi. S.B. 1050) for repeat technical violations, such that the temporary sentence to incarceration increases with each subsequent violation. For an individual on felony probation, a jail stay of not more than 15 days can be imposed for the first technical violation, not more than 30 days for a second technical violation, and not more than 45 days for a third technical violation. Nebraska eliminated the placement of individuals with felony offenses into incarceration work camps as a condition of intensive supervision (2019 Neb. LB 340). With 2020 N.J. A.N. 1897, New Jersey restricted the court from setting conditions of probation, including the prohibition of manufacturing, distributing, dispensing, or possessing marijuana or hashish (or intent to do so). Nevada (2019 Nev. SB 236) reduced the penalty for failed drug tests during probation from "grounds for revocation of probation" to a "violation." And Colorado (2022 Colo. HB 1257) removed probation officers' authority to arrest or impose sanctions for positive drug tests (e.g., warrantless arrests, immediate sanctions). Efforts to decrease the reach of probation conditions focused on responses to technical violations, loosening restrictions or punishments related to drugs and drug tests, and focusing conditions on higher risk individuals.

Fees and Restitution

Ten states passed legislation that included the key element of fees and restitution and increased the reach of probation. Georgia (2021 Ga. HB 777) added a one-time \$25 court fee for violations "to defray the costs of operating the state court," a \$50 fee for FTA, and a one-time \$10 fee for individuals requesting and granted "extended time in lieu of probation" and "for administrative and technology costs." Idaho (2020 Ida. HB 463) included a probation supervision fee payment distribution law to clarify that misdemeanor probation fees include court-ordered costs and fees. Kansas (2019 Kan. HB 2034) made restitution due immediately as a condition of probation, unless the court orders payment in installments or finds compelling reasons why restitution would be unserviceable. The bill eliminates the requirement that the court state reasons for the restitution not being feasible on the record. North Dakota (2019 N.D. HB 1252) revised provisions regarding restitution to eliminate requirements that the court consider the defendant's ability to pay or whether the restitution will serve a rehabilitative purpose. New Jersey authorized

the court to place limits on defendants' ability to drive (e.g., suspend license, prohibit from obtaining license) upon finding they have defaulted in the payment of court-ordered assessments without good cause (2018 N.J. S.N. 1080). Wyoming (2020 Wy. HB 193) increased the court automation fee from \$25 to \$40 for criminal cases when the individual is found guilty or pleads guilty or no contest and is placed on probation for a felony offense. These bills increase the cost of probation to the individual and the punitiveness of not being able to pay and heighten the imposition itself, increasing the directional reach of probation to become more financially punitive. Research by Ruhland and colleagues (2020) using Texas administrative data showed that a 1 percent increase in the amount of fees a person was delinquent in paying was associated with a 13 percent increase in the odds of a probation revocation based on a technical violation. For every standard deviation increase in total amount of fees assessed, the odds of a revocation as a result of a technical violation increased by a factor of 3.94.

In contrast, twelve states enacted legislation regarding fees and restitution that decrease the reach of probation. Indiana (2019 Ind. HEA 1087) authorized the court to subtract from costs any "credits" for (1) allowable community service or (2) uncompensated volunteer work approved by the court for individuals not found to be indigent. Louisiana created guidelines for determining substantial financial hardship to the individual prior to ordering financial obligations as part of a criminal sentence or incarceration or as a condition of the defendant's release on probation or parole (2021 La. HB 288). Michigan enacted 2019 Mi. S.B. 1050, prohibiting excluding probationers from early discharge from probation based on inability to pay for conditions of probation, outstanding court-ordered fines, fees, or costs so long as the individual has made good-faith efforts to make payments. Missouri (2019 Mo. HB 192) prohibited including recovering city or county costs for detention or imprisonment as a condition of probation, further stipulating that failure to pay such costs cannot be the sole basis for issuance of a warrant. New York added a prohibition against reincarceration for certain technical violations, including a failure to pay (2021 N.Y. SB 1144). Oregon (2021 Ore. HB 2172) added that a "demonstrated commitment" to pay restitution "to the extent the person is able to pay" as evidence of compliance with terms of probation for purposes of determining eligibility for a reduction

of the probation period (where, previously, paying restitution was required). Additionally, Oregon (2021 Ore. SB 620) eliminated a provision of state law that allowed the court to order payment of supervision fees as a condition of probation.

Texas (2021 Tex. HB 385) passed measures that require the court to take into consideration the individual's ability to pay (1) before or immediately after placing the individual on probation; and (2) before or immediately after the court requires the defendant to pay court-ordered fines, fees, or costs while the individual is on probation. In addition, this legislation stipulated that at any time during probation (but generally no more than once in any six-month period), the individual can request in writing that the court reconsider the ability to pay "any fine, fee, program cost, or other payment ordered by the court, other than restitution." If the court finds the individual does not have sufficient resources or income to make a payment, the court must consider whether the individual can pay later, have the payment partially or completely waived, satisfy payment through community service, and/or engage in a combination of these three options. In Washington, upon an individual's petition that payment of fines or any unpaid portion thereof will impose manifest hardship on the individual or the individual's immediate family, legislation authorizes the court to remit all or part of the amount due in fines, modify the method of payment, or convert the unpaid amounts to community restitution hours (2021 Wa. HB 1412). As financial obligations burden those of lower socioeconomic groups, these bills have the possibility of making probation more equitable by alleviating some financial stipulations.

Of the bills considered not to be substantive in scope, most were also neutral or unknown in reach. For example, 2021 La. HB 288 set an effective date for new guidelines in determining financial hardship. 2020 Ky. HB 361 clarified that the Department of Corrections shall pay for the incarceration of felony offenders or Alford plea defendants at any jail, not just county jail. These pieces of legislation did not alter the scope or reach of probation and were administrative in nature.

Termination and Early Discharge

Legislation related to termination and early discharge focused on decreasing the reach of probation. Only two states included legislation that increased the reach of probation, while thirteen offered remediation. In 2019,

North Dakota passed HB 1051, which prohibited violent offenders from becoming eligible for release from confinement for sentences imposed upon revocation of probation. And Oregon (2021 Ore. HB 2172) added categories of offenses and sentences ineligible for reduction in the term of supervision (e.g., sex offenses, determinate sentences for certain felonies).

Thirteen states passed legislation that decreases the scope of probation as related to termination and early discharge. In 2021, Georgia passed SB 105, which revised the eligibility criteria for early termination of probation for first-time felony probationers sentenced to not more than 12 months imprisonment, followed by a period of probation. To be eligible, an individual must pay all restitution owed, must not have a revocation within 24 months, and must not have new criminal arrests other than "nonserious traffic offenses." Additionally, the bill requires the Georgia Department of Community Supervision to provide the court with an order for early termination for individuals meeting qualifications (e.g., all restitution paid, no revocation within the preceding 24 months, no new arrests) after serving three years on probation, which the court must execute unless the court or prosecuting attorney, within 30 days of receipt of the order, requests a hearing on the matter (which the court shall set no later than 90 days after receiving the order).

Michigan (2019 Mi. S.B. 1050) created a process whereby eligible individuals may petition the sentencing court for early discharge from probation (previously, only the department of correction or probation department had discretion to notify the sentencing court of a probationer's eligibility for early discharge), allowing the sentencing court to make early discharge determinations based on judicial review. Further, it requires the court to conduct a hearing when it denies early discharge based on judicial review. This process allows the individual to present the case for early discharge and requires a finding on the record of "any specific rehabilitation goal that has not yet been achieved, or a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision."

Texas offers 30-day time credit for successful completion of "any other faith-based, volunteer, or community-based program ordered or approved by the court" (2021 Tex. HB 385). In addition, a mechanism was added to trigger judicial review for probation

reduction or early termination. State law requires judges to review a probationer's record and consider early discharge or termination of probation upon the individual's completion of one-half of the original probation period or two years of probation, whichever is more, unless the individual is delinquent in paying restitution and has the ability to pay. The amendment adds text requiring probation officers to notify the judge when individuals are "delinquent in paying restitution" but otherwise compliant with conditions of probation at the time of the statutorily mandated judicial review. Upon receipt of such notice, the judge shall review the probationer's record and may authorize or deny early discharge or termination. If the judge does not terminate the probation period, the judge must promptly advise the individual's probation officer of the reasons, and the probation officer must advise the individual of those reasons in writing.

Vermont (2021 Vt. S 183) also amended legislation related to early discharge at the midpoint of a probation sentence. The amendment specifies that in the month preceding the midpoint of a probation sentence, if the individual meets criteria (e.g., no violations within 6 months), the Commissioner may file a motion requesting the sentencing court to dismiss the individual from probation. The motion must identify any pending criminal charge or probation violations. After pending criminal charges and probation violations are resolved, and if the individual still meets the criteria, the Commissioner shall file the motion requesting the sentencing court to dismiss the individual from probation. This amendment applies retroactively. These legislative acts related to early discharge or termination focused on incentivizing good behavior by offering earned time credits or early discharge for compliance with probation and completion of programming.

Bills that were not considered substantive in scope were primarily administrative in nature. For instance, 2021 Kan. HB 2077 mandates the Kansas Criminal Justice Reform Commission to make legislative recommendations related to processes and standards for diversion programs. 2019 Fla. SB 7066 adds a requirement that the Department of Corrections notify the probationer in writing of all outstanding terms of the sentence upon termination of the probation term. And 2022 Colo. 49 requires the Community Corrections Program agent to notify victims of any request for early termination of probation, unless they have opted out of notifications.

Discussion

The analyses identify two recent trends in probation reforms across the United States, 2019–2022. First, there has been considerable legislative activity related to probation. Within the four-year period, 43 out of 50 states enacted changes to state probation that addressed at least one of the four elements considered—sentence limits, conditions, fees and restitution, and termination/early discharge. Among the four key elements assessed, changes to conditions of supervision were most common (37 out of 43 states), and changes to early termination policies were least common (20 out of 43 states). Twenty-three (out of 43) states enacted legislation related to fees and restitution, and 22 passed bills related to sentence limits. Although considerable legislation was passed, the directional reach is almost evenly split in decreasing or increasing the reach of probation; only termination/early discharge was more often a decrease. For 2019–2022, probation reform across the country shows a conflicting mien: one in which probation is meant to become less onerous and one in which it becomes more punitive.

Although rarest across the four elements, legislation related to early termination was determined to decrease the reach of probation most often by making early termination or early discharge more accessible (13 of 20 states; 17 of 32 bills). Legislation addressing changes to conditions of supervision was most common, and the reforms were nearly evenly split between legislation that increased (23 each out of 37 states) versus decreased (24 each out of 37 states) the reach of probation by making conditions more or less restrictive or punitive. Sentence limits were similarly evenly divided, where 13 of 22 states (and 20 of 60 elements) increased the reach of probation, while 14 of 22 states (and 24 of 60 elements) decreased the reach of probation. Related to fees and restitution, legislation tended toward decreasing (12 of 23 states, 20 of 46 elements) as opposed to increasing (10 of 23 states, 13 of 46 elements).

Second, there has been wide variation in the scope, character, and objectives of probation reform in recent years. Overall, there does not appear to be a national tide of change flowing in one direction, such as toward increasing or decreasing the probation apparatus. Rather, the status of probation reform is mixed: states have passed legislation that increases the reach of probation and states have passed legislation that decreases the reach of probation (in addition to passing neutral laws). Legislative reform in many cases reduced the

reach of probation by offering earned time credits, decreasing the presumptive sentence limit, removing punishments and conditions related to marijuana, increasing the threshold for revocable violations, requiring the court to consider ability to pay, removing fees as a condition of probation, and mandating review for early termination. Other legislation increased the scope of probation by expanding the groups of offenses ineligible for early discharge, increasing probation sentence lengths, adding court-ordered treatment and prohibitions around where people on probation can live, increasing court fees, and allowing for suspension of driver's licenses if a person on probation defaults on payments.

Conclusion

Probation is a less costly alternative to imprisonment, with increased liberty and opportunity for rehabilitation. However, recent research suggests that probation also increases surveillance and the likelihood of incarceration for noncriminal activities, and that it does little to offer rehabilitation. State probation reforms have in many cases attempted to curtail the reach of probation, whether through early terminations or limiting excessive conditions. In this article we have presented findings from an analysis of state probation legislation between 2019 and 2022 that identified legislation related to adult probation that addressed the key elements of sentence limits, conditions, fees and restitution, and termination and early discharge.

In addition to the characterization of these key elements and their potential impact, we also inquire into the directional reach of the legislation: specifically, whether in terms of length, intensity, cost, or early termination, the proposed legislation will likely increase, decrease, or have an unknown or neutral effect on the size of the probation population. Similarly, we analyze the substantive nature of the legislation and whether it could affect the scope or reach of probation, as opposed to a fiscal, administrative, or conforming change to the statute.

Over four years (2019–2022), 43 states have passed probation policies into law and 152 unique bills have been enacted focusing on sentence limits, conditions, fees and restitution, and termination or early discharge. The effects of these reform efforts are largely unknown, as there have been few evaluations to address their impact. Given the 15-year trend of a steadily decreasing probation population, and a decrease of nearly 1 million adults on

community supervision between year-end 2012 through 2022 (Kaeble, 2024), it is important to understand if statutory probation policies are related to this decrease or if there are other factors contributing, and to identify what is needed for downward trajectory to continue.

To close, this paper lays out an agenda for future research. Six fundamental questions need to be answered:

1. What are the changes in supervision population size, caseload size, supervision length, discharge status, recidivism, incarceration, costs, and equity in states that have decreased, increased, or have not enacted new probation policies?
2. For states where policies have increased or decreased the reach of probation, are there changes in sentencing and use of incarceration for similarly situated individuals?
3. Have prison populations increased, decreased, or stayed the same after these policies have been implemented?
4. Are there changes in crime rates and crime types for states that have passed probation policies, and are there significant differences when comparing states that have increased or decreased the reach of probation?
5. How has the probation field responded to and been impacted by these policies?
6. What measures of success (e.g., employment, financial and residential stability, well-being, equity) are observed in states that have passed probation policies? Is there variation in these metrics for states that have increased or decreased the reach of probation?

While data availability and quality are frequent challenges to rigorous research being conducted and having confidence in the results, the widespread passage of these policies with minimal data and understanding of their potential effect is concerning. Research is urgently needed to inform probation policies—and to highlight what is and is not working with probation reforms. Further, those impacted by these policies (probation officers, individuals with lived experience) must have a seat at the table to speak to the research, findings, and policy implications. Probation and research partnerships serve as a viable and mutually beneficial opportunity to address this burgeoning gap in the knowledge base and to shift how reforms are introduced and implemented from arbitrary approaches to processes that are firmly grounded in evidence.

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