

Probation

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Probation literally means testing of behaviour or abilities. In a legal sense, an offender on probation is ordered to follow certain conditions set forth by the court, often under the supervision of a probation officer. Offenders are ordinarily required to refrain from subsequent possession of firearms, and may be ordered to remain employed, abide to a curfew, live at a directed place, obey the orders of the probation officer, or not leave the jurisdiction. The probationer may be ordered as well to refrain from contact with the victims (such as a former partner in a domestic violence case), with potential victims of similar crimes (such as minors, if the instant offense involves child sexual abuse), or with known criminals, particularly co-defendants. Additional restrictions can include: a ban on possession or use of alcoholic beverages, even if alcohol was not involved in the original criminal charges. Offenders on probation might be fitted with an electronic tag (or monitor), which signals their whereabouts to officials. Also, offenders have been ordered to submit to repeated alcohol/drug testing or to participate in alcohol/drug or psychological treatment, or to perform community service work.

Arming and increased authority

In the United States, most probation agencies have armed officers. In 39 states, territories and federal probation, such arming is either mandated or optional. Arming is allowed in an increasing number of jurisdictions.

Probation officers are peace officers who possess limited police powers. In Nevada, Oklahoma, and South Carolina, probation agencies also employ full-time police officers, who are authorized to arrest throughout the state, have access to tactical special operations units, and are deployed to sites of emergencies and disasters. Nevada Probation and Parole, a division of the Nevada Highway Patrol department of public safety, responded to the Hurricane Katrina disaster.

Types of supervision

Intensive probation, home detention, GPS monitoring These are highly intrusive forms of probation in which the offender is very closely monitored, and it is common for violent criminals, higher-ranking gang members, habitual offenders, and sex offenders to be supervised at this level. Some jurisdictions require offenders under such supervision to waive their constitutional rights under the Fourth Amendment regarding search and seizure, and such probationers may be subject to unannounced home or workplace visits, surveillance, and the use of electronic monitoring or satellite tracking. GPS monitoring and home detention are common in juvenile cases, even if the underlying delinquency is minor.

Standard supervision Offenders under standard supervision are generally required to report to an officer, most commonly between biweekly and quarterly, and are subject to any other conditions as may have been ordered (as described above: treatment, community service, and so on).

Unsupervised probation does not involve direct supervision by an officer. The probationer is expected to complete any conditions of the order without the involvement of an officer, perhaps within a shorter period. For example, given one year of unsupervised probation, a probationer might be required to have completed community service, paid court costs or fines, etc., within the first six months. For the remaining six months, he or she may merely be required to refrain from unlawful behavior. Probationers are allowed to go to their workplace, educational institution, or place of holy worship. Such probationers may be asked to meet with an officer at the onset or near the end of the probationary period, or not at all. If terms are not completed, an officer may file a petition to revoke probation.

Informal supervision is supervised or unsupervised probation without having been found guilty of a crime. Probation terms such as search clauses or drug testing may be included. At the end of the informal supervision period, the case is dismissed. This is usually offered as part of a plea bargain or pre-trial diversion, and typically requires the accused to sign a form to waive some Constitutional rights, such as protection from unreasonable search and seizure while on probation. Informal probation can also require the accused to enter a plea of "Guilty", pending the completion of the terms set forth in the agreement, at which time the charge is typically dismissed.

History

The concept of probation, from the Latin, *probatio*, "testing," has historical roots in the practice of judicial reprieve. In English common law, prior to the advent of democratic rule, the courts could temporarily suspend the execution of a sentence to allow a criminal defendant to appeal to the monarch for a pardon. Probation first developed in the United States when John Augustus, a Boston cobbler, persuaded a judge in the Boston police court in 1841 to give him custody of a convicted offender, a "drunkard," for a brief period and then helped the man to appear rehabilitated by the time of sentencing. Even earlier, the practice of suspending a sentence was used as early as 1830 in Boston, Massachusetts, and became widespread in U.S. courts, although there was no statutory provision for such a practice. At first, judges, most notably Peter Oxenbridge Thatcher of Boston, used "release on recognizance" or bail and simply refrained from taking any further action. In 1878 the mayor of Boston hired a former police officer, the ironically named Captain Savage," to become what many recognize as the first official probation officer. By the mid-19th century, however, many Federal Courts were using a judicial reprieve to suspend sentence, and this posed a legal question. In 1916, the United States Supreme Court, in the *Killets Decision*, held that a Federal Judge (Killets) was without power to suspend a sentence indefinitely. This decision led to the passing of the National Probation Act of 1925, thereby, allowing courts to suspend the imposition of incarceration and place an offender on probation.

Massachusetts developed the first state-wide probation system in 1880, and by 1920, 21 other states had followed suit. With the passage of the National Probation Act on March 5, 1925, signed

by President Calvin Coolidge, the U.S. Federal Probation Service was established. On the state level, pursuant to the Crime Control and Consent Act of 1936, a group of states entered into an agreement wherein they would supervise probationers and parolees who reside in each other's jurisdictions on each other's behalf. Known as the Interstate Compact For the Supervision of Parolees and Probationers, this agreement was originally signed by 25 states in 1937. By 1951, all the states in the United States of America had a working probation system and ratified the Interstate Compact Agreement. In 1959, the new states of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the territories of the Virgin Islands, Guam, and American Samoa ratified the act as well.

Theory

Probation began as a humanitarian effort to allow first-time and minor offenders a second chance. Early probationers were expected not only to obey the law but also to behave in a morally acceptable fashion. Officers sought to provide moral leadership to help shape probationers' attitudes and behavior with respect to family, religion, employment, and free time. They aimed to ensure that this was enforced as well, and early probationers were given the opportunity to prove themselves and possibly even reduce their sentence.

From the 1920s through the 1950s, the major developments in the field of psychology led probation officers to shift their emphasis from moral leadership to therapeutic counseling. This shift brought three important changes. First, the officer no longer primarily acted as a community supervisor charged with enforcing a particular morality. Second, the officer became more of a social worker whose goal was to help the offender solve psychological and social problems. Third, the offender was expected to become actively involved in the treatment. The pursuit of rehabilitation as the primary goal of probation gave the officer extensive discretion in defining and treating the offender's problems. Officers used their judgment to evaluate each offender and develop a treatment approach to the personal problems that presumably had led to crime. Many states offered to dismiss or expunge the conviction if the probationer fulfilled the terms of the probation.

During the 1960s, major social changes swept across the United States. These changes also affected the field of community corrections. Rather than counseling offenders, probation officers provided them with concrete social services such as assistance with employment, housing, finances, and education. This emphasis on reintegrating offenders and remedying the social problems they faced was consistent with federal efforts to wage a War on Poverty." A probation officer became less of a counselor or therapist, and more of an advocate, dealing with private and public institutions on the offender's behalf.

In the late 1970s the orientation of probation changed again as the goals of rehabilitation and

reintegration gave way to "risk management." This approach, still dominant today, seeks to reduce the likelihood that an offender will commit a new offense. Risk management reflects two basic goals. First, in accord with the deserved-punishment ideal, the punishment should fit the offense, and correctional intervention should neither increase nor diminish the severity of punishment. Second, according to the community protection criterion, the amount and type of supervision are determined according to the risk that the probationer will return to lawbreaking.

Probation violations

A probation officer may imprison a probationer and petition the court for a violation of probation. The court will request that the defendant prove their innocence at an order to show cause hearing. If the defendant is unable to challenge the presumption of guilt at the hearing, the officer or prosecutor may request that additional conditions of probation be imposed, that the duration be extended, or that a period of incarceration be ordered, followed by a return to probation. There is no invariant rule as to what circumstances warrant a violation hearing, although conviction of a subsequent offense, or failure to report (to the officer) are nearly universal.

If a violation is found, the severity of the penalties may depend upon the facts of the original offense, the facts of the violation, and the probationer's criminal history. For example, if an offender is on probation for a gang-related offense, subsequent "association with known criminals" may be viewed as a more serious violation than if the person were on probation for driving a car with a suspended license; the reverse may be true if the initial offense were for driving under the influence. Similarly, penalties for violation may be greater if a subsequent offense is of greater severity (such as a felony, following a misdemeanor), or if the original offense and subsequent offense are of the same type (such as a battery following an assault, or retail theft following retail theft).

Probation revocation

When a probation violation is extremely severe, or after multiple lesser violations, a probation revocation hearing could be scheduled. A judge at the hearing will consider reports from the probation officer, and if probation is revoked, the probationer will often be incarcerated in jail or prison. However, the term of incarceration might be reduced from the original potential sentence for the alleged crime(s). In cases where a defendant opted to accept probation rather than incur the time or risk of going to trial, a probation revocation can result in conviction of the original criminal charges. Thus, an innocent defendant could agree to probation but later be judged in severe probation violation, causing revocation, a jail term, and a permanent record of conviction.

Glossary of terms

Probation officer - a peace officer assigned to monitor a person on probation.

Probation violation - an action which violates the terms of probation.

Probation revocation - the termination of probation, typically due to excessive violations. It is very common for probation to be revoked, and the person be sent to jail or Prison.

Probation period - the duration of time for each individual's probation.

felony - (high crime) a major offense typically incurring punishment of one year or longer in prison.

misdemeanor - a minor offense with typical punishment of less than one year or fines.

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