

How Probation and Parole Drive Mass Incarceration

April 2023

When we think of prison, we often think of bars and walls: after all, nearly half of American families have had a loved one confined to a cell. But beyond the roughly 2 million people in American prisons and 9 million cycling annually through U.S. jails, 2.3 another 3.7 million people have their liberty restrained outside prison walls. Parole, probation, and other forms of conditional release are often presented as a more lenient alternative to incarceration, but the harsh reality is that these systems are actually substantial *drivers* of incarceration.

Nationwide, violations of probation or parole (VOPs) make up 42% of state prison admissions, and in 20 states, they make up over half of prison admissions. In addition to entangling people in the criminal legal system unnecessarily, being on community supervision damages social ties and creates and exacerbates poverty, housing insecurity, and poor health. Community supervision requirements set people up to fail, with overwhelming rules that are difficult to follow, long sentences, hyper-surveillance, and incredibly harsh penalties—often including incarceration—for breaking even minor rules.

As Americans grapple with the need to transform our approach to community harm, we must confront the fact that we cannot empty our prisons and jails without addressing the influx of people pushed through community supervision into incarceration.

¹ Every Second: The Impact of the Incarceration Crisis on America's families. (December 2018). Fwd. https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf.

² Sawyer, W. & Wagner, P. (March 14, 2023). *Mass Incarceration: The Whole Pie 2023*. Prison Policy Initiative. https://www.prisonpolicy.org/reports/pie2023.html.

³ Minton, T.D. & Zeng, Z. (December 2021). *Jail Inmates in 2020 - Statistical Tables*. Bureau of Justice Statistics. https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf.

⁴ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

⁵ National Report. (2020). The Council of State Governments. https://csgjusticecenter.org/publications/more-community-less-confinement/national-

 $report/\#: \sim : text = ln\%202020\%2C\%2042\%20 percent\%20 of \%20 prison\%20 admissions\%20 were\%20 for \%20 supervision\%20 violations \%20 concluding\%20 roughly\%2098\%2000\%20 people\%20 admitted\%20 to \%20 prison\%20 for \%20 technical\%20 violations.$

⁶ Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets. (June 2019). The Council of State Governments & Arnold Ventures. https://csgjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf.

Probation and parole set people up for failure.

- I. People on community supervision are under hyper-surveillance.
 - A. People on probation or parole get punished for behavior that isn't criminal and wouldn't be a problem for someone not on community supervision. These are known as technical violations.⁷
 - Technical violations include behaviors like missing a check-in with a supervisor, breaking curfew, moving residences without telling a supervisor, or not showing up for school or work.⁸
 - 2. For the general public, these are offenses that may not even come with a punishment, or might result in a fine or community service at most. But when a person on community supervision commits these offenses, they risk incarceration.⁹
 - B. When a person is on community supervision, they are also significantly more likely to get caught for low-level, nonviolent offenses that someone not on supervision might easily get away with, like drug use.¹⁰
- II. The rules associated with probation and parole are numerous, difficult to follow, and often totally unrelated to the original offense.¹¹
 - A. People on probation are expected to comply with up to 18-20 different requirements *per day.* 12
 - B. Rules can range from maintaining full-time employment (which is especially challenging for people with a criminal record), to regularly reporting to a probation officer, to not changing residence without permission, to being home by a certain hour, to submitting to (and often paying for) drug testing (even when their original offense was not related to drugs), to not associating with people with criminal records, even if those people are members of their own family.¹³

⁷ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

⁸ Wang, L (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

⁹ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

¹⁰ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

¹¹ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

¹² Corbett Jr., R.P. (2015). The Burdens of Leniency: The Changing Face of Probation. *Minnesota Law Review*. https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Corbett_4fmt_PDF.pdf#page=14.

¹³ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

- C. In some cases, rules can be as strange and invasive as forbidding people from sitting in the front seat of a car, forbidding people from getting pregnant, and forcing people to put a bumper sticker on their car announcing that they are a sex offender..¹⁴
- D. These rules would be hard for anyone to follow, but people on community supervision are more likely to be poor in the first place, ¹⁵ not to mention the ways that contact with the criminal legal system hinders economic security and housing stability. ¹⁶, ¹⁷
 - 1. 2 in 3 people on probation make less than \$20,000 per year, and nearly 40% of those people make less than \$10,000 annually.¹⁸
 - 2. One study on community supervision systems in Massachusetts found that people in the poorest parts of the state were on probation at nearly double the rate of people in the wealthiest parts.¹⁹
 - 3. Poverty limits access to reliable transportation to get to work or required supervision meetings, ²⁰ makes it harder to find childcare, ²¹ destabilizes housing, employment, and education, and puts immense strains on a person's emotional, mental, and physical health. ²² This instability and lack of resources makes following the rules of community supervision significantly more difficult. And breaking any of those rules can result in jail time. ²³

III. Being on community supervision drives economic instability.

A. In 47 states, people can be charged fees to pay for their own probation supervision.

37 states allow parole supervision fees.²⁴

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.

 $\label{local-probation_parole/#:~:text=The%20NSDUH%20data%20also%20indicate, having \% 20 among \% 20 the \% 20 lowest \% 20 incomes. \\$

https://www.partnersforjustice.org/evidence/impact-of-the-carceral-system-on-economic-stability-and-mobility.

¹⁴ Jacobson, M.P., Schiraldo, V., Daly, R., & Hotez, E. (August 2017). *Less Is More: How Reducing Probation Populations Can Improve Outcomes*. Harvard Kennedy School.

¹⁵ Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

¹⁶ Impact of the Carceral System on Economic Stability and Mobility. (May 2022). Partners for Justice.

¹⁷ The Criminal Legal System Drives Housing Loss. (March 2023). Partners for Justice. https://www.partnersforjustice.org/evidence/arrests-drive-homelessness.

¹⁸ Press Release: National Examination of Probation & Parole Fees Finds Widespread Imposition in Nearly All 50 States. (May 10, 2022). Fines and Fees Justice Center. https://finesandfeesjusticecenter.org/2022/05/10/press-release-national-examination-of-probation-parole-fees-finds-widespread-imposition-in-nearly-all-50-states/

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19 Sawyer, W. (December 8, 2016). *Punishing Poverty: The high cost of probation fees in Massachusetts*. Prison Policy Initiative. https://www.prisonpolicy.org/probation/ma_report.html.

²⁰ White, G.B. (May 16, 2015). *Stranded: How America's Failing Public Transportation Increases Inequality.* The Atlantic. https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/.

²¹ Koltai, J., Carson, J., Parker, T., & Glauber, R. (December 23, 2021). *Childcare Remains Out of Reach for Millions in 2021, Leading to Disproportionate Job Losses for Black, Hispanic, and Low-Income Families.* University of New Hampshire Carsey School of Public Policy. https://carsey.unh.edu/publication/childcare-remains-out-of-reach-for-millions-in-2021#:~:text=Both%20Black%20and%20low%2Dincome.needed%20to%20care%20for%20children.

²² Poverty. (n.d.) Healthy People 2030. https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/poverty.

²³ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

²⁴ Press Release: National Examination of Probation & Parole Fees Finds Widespread Imposition in Nearly All 50 States. (May 10, 2022). Fines and Fees Justice Center. https://finesandfeesjusticecenter.org/2022/05/10/press-release-national-examination-of-probation-parole-fees-finds-widespread-imposition-in-nearly-all-50-states/.

- 1. In 32 states, failure to pay supervision fees can result in probation revocation where the person is punished for breaking the rules of probation—or an extension of the probation sentence.25
- B. These fees can be expensive, ranging up to over \$200 per month in some states.²⁶
- C. In a meta-analysis of research on legal debt, supervision fees were the most common form of legal debt people owed..²⁷
- D. In addition to paying directly for probation or parole supervision, people also often pay fees for requirements like drug testing, counseling or mental health treatment, or electronic monitoring...28
 - Electronic monitoring alone can cost over \$5,000 per year.²⁹
- E. States collect significant revenue from these systems: Massachusetts collected \$20 million in probation fees alone in 2016..30
- Based on the fact that the criminal legal system disproportionately targets poor people, the IV. constant scrutiny imposed on people under community supervision, the many overwhelming rules, and the staggering costs of the associated fees, it is no surprise that only 60% of people successfully complete their probation sentence. 31 This means a massive number of people on probation or parole end up behind bars as a result of violating their supervision conditions.

The system of community supervision drives incarceration.

- I. Probation and parole rapidly churn people back into jail and prison, as violating the strict, unforgiving rules of supervision can result in incarceration.
- П. 210,912 people were shifted from community supervision to-or back to-prison or jail in 2020.32

and Re-entry: a Scoping Review. American Journal of Criminal Justice, 46(2): 250-278. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7417202/.

University Law School. https://issuu.com/gwlawpubs/docs/electronic-prisons-report?fr=sOGI5NDcxODg3. ³⁰ Report of the Trial Court Fines and Fees Working Group. (November 17, 2016). Massachusetts Trial Court Fines and Fees Working Group. https://static.prisonpolicy.org/scans/report-of-the-fines-and-fees-working-group.pdf.

²⁵ Press Release: National Examination of Probation & Parole Fees Finds Widespread Imposition in Nearly All 50 States. (May 10. 2022). Fines and Fees Justice Center. https://finesandfeesjusticecenter.org/2022/05/10/press-release-national-examination-of-

probation-parole-fees-finds-widespread-imposition-in-nearly-all-50-states/.

²⁶ 50 State Survey: Probation and Parole Fees. (May 2022). Fines and Fees Justice Center & Reform Alliance. https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf. ²⁷ Harper, A., Ginapp, C., Bardelli, T., Grimshaw, A., Justen, M., Mohamedali, A., Thomas, I., & Puglisi, L. (2021). Debt, Incarceration,

²⁸ 50 State Survey: Probation and Parole Fees. (May 2022). Fines and Fees Justice Center & Reform Alliance. https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf. ²⁹ Weisburd, K. (2021). Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System. *George Washington*

³¹ Jacobson, M.P., Schiraldo, V., Daly, R., & Hotez, E. (August 2017). Less Is More: How Reducing Probation Populations Can Improve Outcomes. Harvard Kennedy School.

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf. ³² Kaeble, D. (December 2021). *Probation and Parole in the United States, 2020.* Bureau of Justice Statistics. https://bjs.oip.gov/content/pub/pdf/ppus20.pdf.

- III. 42% of state prison admissions are the result of VOPs,³³ either for new criminal offenses or technical violations.
 - A. That means that nearly half of all of the people who go to prison are there because they broke the rules of their community supervision.
- IV. In 2017, technical violations—non-criminal offenses like missing a supervision appointment or breaking curfew—accounted for nearly 1/4 of all state prison admissions..34
- V. Incarcerating people for VOPs is expensive: in 2021 alone, 41 states collectively spent well over \$8 billion to incarcerate more than 193,000 people for supervision violations..³⁵
- VI. Community supervision, which is often seen as an alternative to incarceration, actually makes it *more* likely that a person will end up behind bars.

Our probation and parole systems have far-reaching non-legal consequences as well.

- Though the general public often assumes these forms of supervision help people reintegrate into society, the truth is that being under supervision makes it *less* likely people will earn a living and remain housed.
 - A. Probation and parole systems extract wealth, as people lose thousands of dollars paying fees and legal costs. 36,37
 - B. People spend hours upon hours attending court and supervision meetings, leading to loss of income or even being fired..³⁸
 - C. Sometimes, people on community supervision can have their driver's license suspended, which not only complicates transportation to jobs or school, but also makes it harder to attend court and supervision meetings.³⁹
 - D. People on community supervision are 3 times more likely to be unemployed than the general population.⁴⁰

³³ National Report. (2020). The Council of State Governments. https://csgjusticecenter.org/publications/more-community-less-confinement/national-

 $[\]label{local-constraints} report/\#:$\sim: text=In\%202020\%2C\%2042\%20 percent\%20 of\%20 prison\%20 admissions\%20 were\%20 for\%20 supervision\%20 violations \%20\%20 including\%20 roughly\%2098\%2000\%20 people\%20 admitted\%20 to\%20 prison\%20 for\%20 technical\%20 violations.$

³⁴ Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets. (June 2019). The Council of State Governments & Arnold Ventures. https://csgjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf.

³⁵ The Cost of Recidivism. (April 2023). The Council of State Governments. https://csgjusticecenter.org/publications/the-cost-of-recidivism/.

³⁶ Dewan, S. (August 2, 2015). *Probation May Sound Light, But Punishments Can Land Hard.* The New York Times. https://www.nytimes.com/2015/08/03/us/probation-sounding-light-can-land-hard.html.

³⁷ 50 State Survey: Probation and Parole Fees. (May 2022). Fines and Fees Justice Center & Reform Alliance. https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf.

³⁸ Dewan, S. (August 2, 2015). *Probation May Sound Light, But Punishments Can Land Hard.* The New York Times. https://www.nytimes.com/2015/08/03/us/probation-sounding-light-can-land-hard.html.

³⁹ Dewan, S. (August 2, 2015). *Probation May Sound Light, But Punishments Can Land Hard.* The New York Times. https://www.nytimes.com/2015/08/03/us/probation-sounding-light-can-land-hard.html.

⁴⁰ Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

- E. Our probation and parole systems drive housing loss.
 - 1. Public Housing Authorities across the country can evict tenants who violate the terms of their probation or parole.⁴¹
 - 2. Many of the rules associated with community supervision "effectively serve as a ban on stable housing". One formerly incarcerated man explains that the conditions of his parole have effectively made him homeless: in the name of "public safety", his parole officer denies his applications for any housing "near" places where children may congregate (daycares, public fountains, etc.)--even though the man's crime had nothing to do with children. This has left him destabilized, homeless, and without options—long after he finished serving his sentence. 42
- F. The rules of probation or parole generally prohibit any contact with people involved in the case, other people with a criminal legal record, anyone with a past felony conviction, or anyone suspected of gang affiliation. ⁴³ The stated purpose of these rules is to prevent VOPs and recidivism, ⁴⁴ but the reality is that they keep people from accessing social networks that could otherwise help them secure jobs or housing. ⁴⁵
- II. In addition to the material and economic impacts, being on community supervision can harm relationships and complicate social ties.
 - A. People on probation or parole usually cannot associate with anyone with a criminal record, anyone with a past felony conviction, or anyone suspected of gang affiliation.⁴⁶
 - 1. Because crime and high incarceration rates are concentrated in certain neighborhoods, ⁴⁷ it is very likely that these rules forbid contact with friends and family members.
 - B. <u>Social and community ties</u> are vital for people trying to disentangle themselves from the criminal legal system, and have been shown to reduce recidivism. Yet our community supervision systems function to sever these ties.

 $[\]label{lower_homograph} https://www.prisonpolicy.org/blog/2023/04/03/nsduh_probation_parole/\#:\sim:text=The\%20NSDUH\%20data\%20also\%20indicate, having\%20among\%20the\%20lowest\%20incomes.$

⁴¹ 42 USC 1437d. https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1437d&num=0&edition=prelim. ⁴² Vaughan, W. (May 9, 2023). *How Parole Conditions Trapped Me in Homelessness*. The Appeal. https://theappeal.org/parole-

post-prison-supervision-homelessness/.

43 Overview of Probation and Synantical Polace Conditions (Nevember 2016) Administrative Office of the United States Court

⁴³ Overview of Probation and Supervised Release Conditions. (November 2016). Administrative Office of the United States Courts Probation and Pretrial Services Office.

https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

⁴⁴ Overview of Probation and Supervised Release Conditions. (November 2016). Administrative Office of the United States Courts Probation and Pretrial Services Office.

 $[\]underline{https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.}$

⁴⁵ Augustine, D. & Kushel, M. (September 14, 2022). Community Supervision, Housing Insecurity, and Homelessness. *The American Academy of Political and Social Science, 701*(1). https://journals.sagepub.com/doi/full/10.1177/00027162221113983.

⁴⁶ Overview of Probation and Supervised Release Conditions. (November 2016). Administrative Office of the United States Courts Probation and Pretrial Services Office.

https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

⁴⁷ Clear, T.R. (2008). The Effects of High Imprisonment Rates on Communities. *Crime and Justice, 37*(1): 97-132. DOI: 10.1086/522360.

- III. Like the criminal legal system more broadly, 48 probation and parole systems harm health.
 - A. People on probation have mortality rates 2 times higher than the general population. 49
 - B. People on community supervision have higher rates of substance use and mental health issues, less access to healthcare, higher mortality, and higher rates of chronic health conditions and disability. ⁵⁰
 - 1. 3 in 10 people on community supervision have substance use disorders, 4 times the rate of substance use disorders in the general population. ⁵¹
 - 2. 1 in 5 people on community supervision has a mental health disorder, twice the rate of the general population. 52
 - C. Despite having more health-related needs, 25% of people on probation and 27% of people on parole don't have health insurance. ⁵³

Conclusion

"Navigating this system feels like a constant battle, folded into my daily waking life. There is a defined enemy, employed by the state, who has had almost unilateral authority over my existence since I left prison. My parole officer now controls my access to housing, employment, and my ability to be with loved ones." ⁵⁴

Though often seen as a lighter punishment than incarceration, being under the purview of the state through probation or parole can totally destabilize a person's life and force them to become entangled in the criminal legal system both unnecessarily and perpetually, at tremendous cost.

Supportive forms of transitional care have the potential to help people leave the criminal legal system and find stability—but extended state surveillance does not. To even begin approaching a goal of

⁴⁸ The Carceral System Makes Us Sicker, Not Safer. (February 2023). Partners for Justice. https://www.partnersforjustice.org/evidence/incarceration-destroys-health.

⁴⁹ Wildeman, C., Goldman, A.W., & Wang, E.A. (October 11, 2019). Age-Standardized Mortality of Persons on Probation, in Jail, or in State Prison and the General Population, 2001-2012. *Public Health Reports, 134*(6). https://journals.sagepub.com/doi/full/10.1177/0033354919879732.

⁵⁰ Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

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⁵¹ Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

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⁵² Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

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⁵³ Widra, E. & Jones, A. (April 3, 2023). *Mortality, health, and poverty: the unmet needs of people on probation and parole.* Prison Policy Initiative.

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⁵⁴ Vaughan, W. (May 9, 2023). *How Parole Conditions Trapped Me in Homelessness*. The Appeal. https://theappeal.org/parole-post-prison-supervision-homelessness/.

enhanced community safety, probation and parole systems must limit rules to minimize the potential for VOPs, reduce the length of supervision, waive supervision fees, and replace their culture of surveillance with connections to social services, jobs, education, housing, and other opportunities. 55

The use of probation should also be significantly decreased: New York City serves as a case study for the potential of reducing probation sentences to decarcerate without compromising public safety. ⁵⁶ Between 1996-2014, probation sentences for felony arrests declined by 60% in New York City. This did not lead to increased crime or increased jail or prison populations. In fact, in that time period, violent crime declined by 57% and New York's incarceration rate decreased by 55%. ⁵⁷ Instead of defaulting to probation as an alternative to incarceration, courts should use warnings, community service, and diversion to appropriate programming, such as treatment for substance use disorders or mental health services. ⁵⁸

As it stands, community supervision systems exacerbate poverty and instability while pushing people deeper and deeper into the criminal legal system. In order to minimize the harm caused by the system and improve public safety, probation and parole systems must be transformed and reduced.

⁵⁵ Wang, L (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

⁵⁶ Wang, L (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

⁵⁷ Jacobson, M.P., Schiraldo, V., Daly, R., & Hotez, E. (August 2017). *Less Is More: How Reducing Probation Populations Can Improve Outcomes.* Harvard Kennedy School.

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.

⁵⁸ Wang, L. (May 2023). *Punishment Beyond Prisons 2023: Incarceration and supervision by state.* Prison Policy Initiative. https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.