Introduction: The Origins of Probation

This chapter focuses on probation, which is a sentence imposed on convicted offenders that allows them to remain in the community under the supervision of a probation officer instead of being sent to prison. The term probation comes from the Latin term probare,
meaning “to prove.” Because probation is a conditional release into the community, the probation period is a time of testing a person’s character and his or her ability to meet certain requirements. That is, convicted persons must prove to the court that they are capable of remaining in the community and living up to its legal and moral standards. About 90% of all sentences handed down by the courts in the United States are probation orders (Kramer & Ulmer, 2009).

The practice of imprisoning convicted criminals is a relatively modern and expensive way of dealing with them. Up to two or three hundred years ago, they were dealt with by execution, corporal punishments such as disfigurement or branding, or humiliation in the stocks. All these punishments took place as community spectacles, and even with community participation in the case of individuals sentenced to time in the stocks. Assuming that a convicted person was not executed, he or she remained in the community enduring the shame of having offended it (think of Hester Prynne’s punishment in Nathaniel Hawthorne’s *The Scarlet Letter*). The only kind of offenders typically subjected to this kind of shaming today are sex offenders whose pictures are displayed on the Internet and who are frequently identified to their neighbors through community notification orders.

In this chapter, we discuss how probation has developed and flourished as a correctional sanction. The purpose probation serves as the most common correctional sentence and what that means for the community corrections officer charged with supervising huge caseloads are also explored. Techniques used by such officers to improve upon programming provided to probationers and to reduce their recidivism are reviewed.

**Modern Modes of Reprieve**

More enlightened eras saw punishments move away from barbaric cruelties and the emergence of the penitentiary where offenders could contemplate the errors of their ways and perhaps redeem themselves while residing there. But as we have seen, penitentiaries were not very nice places, and some kind souls in positions to do so sought ways to spare deserving or redeemable offenders from being consigned to them. This practice had its legal underpinnings in the concept of *judicial reprieve* sometimes practiced in English courts beginning in the 19th century. A *judicial reprieve* was a delay in sentencing following a conviction, a delay that most often would become permanent if the offender demonstrated good behavior. In those days, there were no probation officers charged with supervising reprieved individuals; the nosey and judgmental nature of the small communities typical of such times was more than adequate for that task.

Early American courts also used judicial reprieve whereby a judge would suspend the sentence and the defendant would be released on his or her own recognizance. Today, an “own recognizance” release is the release of an arrested person without payment of bail who promises to appear in court to answer criminal charges. In early America, it was granted to persons already convicted as a form of probation, although offenders received no formal supervision or assistance to help them to mend their ways. The first real probation system in which a reprieved person was supervised and helped was developed in the United States in the 1840s by a Boston cobbler named *John Augustus*. Augustus would appear in court and offer to take carefully selected offenders into his own home where he would do what he could to reform them as an alternative to imprisonment. Probation soon became his full-time vocation and he recruited other civic-minded volunteers to help him. By the time of his death in 1859, Augustus and his volunteers had saved more than 2,000 convicts from imprisonment (Schmalleger, 2001). It should be noted, however, that Augustus only worked
with first offenders and excluded the “wholly depraved” (Vanstone, 2004, p. 41), a luxury modern probation officers do not enjoy.

In 1878, the Massachusetts legislature authorized Boston to hire salaried probation officers to do the work of Augustus’s volunteers, and a number of states quickly followed suit. This legislation grew out of the need to enforce the conditions of a suspended sentence as well as the need to help offenders to change their lives (Vanstone, 2008). However, the probation idea almost died in 1916 when the United States Supreme Court ruled that judges may not indefinitely suspend a sentence (Ex parte United States [Killits], 1916). In this case, an embezzler was sentenced to 5 years imprisonment, which the judge (federal judge John Killits) suspended, contingent on the embezzler’s good behavior. What Killits had done was place an offender on probation without there having been such a system established by law. Probation was such a popular idea with legislators at this time, however, that this ruling led to the passage of the National Probation Act of 1925, allowing federal judges to suspend sentences and place convicted individuals on probation if they found that circumstances warranted it.

**Why Do We Need Community Corrections?**

Community corrections may be defined as any activity performed by agents of the government to assist offenders to establish or reestablish law-abiding roles in the community while at the same time monitoring their behavior for criminal activity. In theory, monitoring and assisting offenders while in the community protects society from criminal predation without taxpayers having to shoulder the financial cost of incarcerating all its offenders. Even if, as a society, we were willing and able to bear the monetary cost of imprisoning all offenders, incarceration imposes other costs on the community. These costs can and must be borne where seriously violent and chronic criminals are concerned, but to send every felony offender to prison would be counterproductive. Yet the general public is not well-disposed to the idea of probation because “[i]t suffers from a ‘soft on crime’ image” and is seen as “permissive, uncaring about crime victims, and blindly advocating a rehabilitative ideal while ignoring the reality of violent, predatory criminals” (Petersilia, 1998, p. 30). However, allowing relatively minor offenders to remain in the community under probation supervision to prove that they can live law-abiding lives offers many benefits to them, as well as to their community.

The general public’s notion that a probation sentence is “getting away with it” is a notion not shared by many offenders. The probationer receives a prison sentence upon conviction that is suspended during the period of proving that he or she is capable of living a law-abiding life. This sentence hangs over probationers’ heads like a guillotine ready to drop if they fail to provide that proof. It may be for this reason that a number of studies have found that “experienced” offenders who have done prison time, probation time, and parole time often prefer prison to the more demanding forms of probation such as day reporting and intensive supervision probation (Crouch, 1993; May, Wood, Mooney, & Minor, 2005). Probation requires offenders to work, submit to treatment schedules, and do lots of other orderly things that many hardened criminals simply do not have the inclination to do. Numerous interviews with active “street criminals” (e.g., burglars, robbers, carjackers) show that such things are treated with disdain (B. Jacobs & Wright, 1999; Mawby, 2001). Serving time in prison is less of a hassle for many of them, and many know they would end up there anyway because they would not live up to probation conditions (May et al., 2005).
Other less criminally involved offenders prefer a probation sentence so that they can retain their jobs and maintain connection to their families and communities. As we saw in Chapter 1, perceptions of the severity of a punishment, and thus its deterrent effect, are a function of the contrast between one’s everyday life and life under punishment conditions (the contrast effect). Of the more than 4 million Americans on probation in 2008, a total of 59% of them successfully completed their conditions of supervision and were released from probation (Glaze & Bonczar, 2009). In the event of a failure to live up to the conditions of probation, the prison sentence is then typically imposed. Thus, while many fail the probation period, the majority succeed, so surely providing nonviolent offenders the opportunity to try to redeem themselves while remaining in the community is sensible criminal justice policy. But what are the benefits for the community?

(1) Probation costs between $700 and $1,000 per year as opposed to $20,000 to $30,000 per year (more for women, juveniles, and the elderly) for imprisonment, saving the taxpayer at least $19,000 per year per non-incarcerated felon (Foster, 2006). Many jurisdictions require probationers to pay for their own supervision, which means that the taxpayer pays nothing. However, while economic considerations are vitally important to policy makers, they are not the primary concern of corrections; protecting the community is. Community-based corrections is the solution only for those offenders who do not pose a significant risk to public safety.

(2) Employed probationers stay in their communities and continue to pay taxes; offenders who were unemployed at the time of conviction may obtain training and help in finding a job. This adds further to the tax revenues of the community and, more importantly, allows offenders to keep or obtain the stake in conformity that employment offers. A job also allows them the wherewithal to pay fines and court costs, as well as restitution to victims.

(3) In the case of married offenders, community supervision maintains the integrity of the family, whereas incarceration could lead to its disruption and all the negative consequences such disruption entails.

(4) Probation prevents felons from becoming further embedded in a criminal lifestyle by being exposed to chronic offenders in prison. Almost all prisoners will leave the institution someday, and many will emerge harder, more criminally sophisticated, and more bitter than they were when they entered. Furthermore, they are now ex-cons, a label that is a heavy liability when attempting to reintegrate into free society.

(5) Many more offenders get into trouble because of deficiencies than because of pathologies. Deficits such as the lack of education, a substance abuse problem, faulty thinking patterns, and so forth can be assessed and addressed using the methods that will be discussed in Chapter 14 on treatment. If we can correct these deficits to some extent, then the community benefits, because it is a self-evident truth that whatever helps the offender, protects the community.

We do not wish to appear naïve about this; there are people who are unfit to remain in the community and could not lead a law-abiding life even if given everything they needed to start over. For instance, among criminals in the witness protection program, despite being given new identities, jobs, housing, and basically a new start in life, 21% are arrested under their new identities within 2 years of entry (Albanese & Pursley, 1993, p. 75). The type of criminals in the witness protection program are used to relatively high incomes made in a life filled with excitement and personal power and independence, and they often find it difficult to adjust to an ordinary job with minimal pay.
Although community corrections is sensible policy, and there are more people under such supervision than ever before, there has been a decline in its use from its heyday in the rehabilitation-oriented 1970s and 1980s relative to the use of incarceration. Figure 6.1 shows that the probation population has gone up from just over 1 million in 1980 to over 4 million in 2008, which amounts to about 1 for every 45 adults in the United States (Glaze & Bonczar, 2009). However, the ratio of probationers to prison inmates was 4.02:1 in 1980 and 2.96:1 in 2008. This is more the result of the increased reliance on incarceration than on decreased use of probation as “get tough” sentencing policies have been implemented. In 2008, a total of 76% of probationers were male. Figure 6.2 provides the racial/ethnic breakdown of 4,270,917 probationers in 2008.
Probation and parole officers (the roles are combined in some jurisdictions) have two common roles: to protect the community and to assist their probationers and parolees to become productive and law-abiding citizens. The dual roles mark them as law enforcement officers (their legally defined role in most states) and as social workers. The offenders they supervise may be on probation or parole depending on their legal status. Probation is a judicial function, meaning that the offenders are under the ultimate supervision of the court. Probationers may or may not have served jail time prior to community supervision by a probation officer. Offenders who have served time in prison are placed on parole upon release and are under the ultimate supervision of the executive branch of government, typically the state department of corrections.

Photo 6.1
A probation officer meets with a probationer.

Probation officers are officers of the courts, and in this capacity they are responsible for enforcing court orders, which may require them to monitor programs such as drug and alcohol treatment and develop plans to assist their probationers’ transition to a free society. They are also required to make arrests, to perform searches, and to seize evidence of wrongdoing. Officers may have to appear in court occasionally to present evidence of violation of probation orders and to justify their recommendations for either termination of probation and subsequent imprisonment or continued probation with additional conditions. This is part of the officers’ law enforcement role. Probation/parole officers work with criminal offenders who may be dangerous and often live in areas that may also be dangerous, which is why 35 states require their officers to carry a firearm (Holcomb, 2008). Nevertheless, it is
important that officers spend a lot of time in those communities to learn about their culture, customs, and values, and to learn what resources are available to assist with the rehabilitation of offenders.

As in any other occupation, the effectiveness of probation/parole officers' performance ranges from dismal to outstanding. One of the biggest problems in probation and parole work is gaining the trust of probationers and parolees and developing rapport with them. Most officers are white and middle class, whereas many of their “clients” are minorities, and whereas most probationers and parolees are male, about half of probation officers are female (Walsh & Stohr, 2010). It is very difficult for both officers and probationers to overcome the class, race, and gender divide and for each to understand and appreciate where the other is “coming from.” Nevertheless, the job must be done as effectively as possible.

The measures of correctional effectiveness are how well the community is protected from the offenders on an officer’s caseload (law enforcement role) and how well their offenders are able to resolve their criminogenic problems and become decent law-abiding citizens (social work role). There is often tension between these supposedly contradictory roles (Skeem & Manchack, 2008). Some officers take on the law enforcement role and embrace working values emphasizing strict compliance with probation conditions and holding offenders strictly accountable. Other officers take on the counselor role, providing offenders with whatever is available in the community to bring about behavior change. The extent to which officers follow these different models depends not only on the personalities and training of the individual officers, but also on the overall model dictated by their agency, which in turn is dictated by the ideology of politicians and whether their correctional philosophy is punitive or rehabilitative.

A third group of officers combine the two roles and follows a “hybrid” approach. Skeem and Manchak (2008) view the law enforcer as authoritarian and the counselor as permissive, but see the hybrid officer as authoritative, the kind of parenting style that psychologists tell us the most effective parents adopt (Grusec & Hastings, 2007). Authoritarian officers are inflexible disciplinarians who require unquestioning compliance with their demands. Such a style often leads to hostility and rebelliousness among those at whom it is directed. Permissive officers set few rules and are reluctant to enforce those that are set. This style often results in the perception of others that the officer is a “pushover,” and it practically invites noncompliance and lack of respect. Authoritative officers are hybrids who are firm enforcers but fair, knowing that boundaries must be set and consequences endured for venturing beyond them. They clearly describe those boundaries and the consequences for crossing them (the law enforcement role), but also offer guidance and support to probationers (the social work role) so that they may be better able to stay within those boundaries.

How well do these different styles do with respect to the dual roles of community protection and offender rehabilitation? One study found that in terms of technical violations such as failure to comply with some condition of probation, 43% of probationers supervised by a law enforcement–oriented officer, 5% of probationers supervised by a treatment-oriented officer, and 13% of those supervised by a “hybrid” officer received a technical violation (Paparozzi & Gendreau, 2005). These findings are as expected: Law enforcers do not tolerate any violations, counselors tolerate almost every violation, and hybrids tolerate selectively. New criminal convictions are a better measure of supervision effectiveness than technical violations, however, because while technical violations are largely in the hands of officers, new criminal convictions are out of their hands. Offenders with treatment-oriented officers were convicted of new crimes at twice the rate of those supervised by law-enforcement officers (32% vs 16%), while only 6% of offenders supervised by hybrid officers were convicted of a new crime.
Probation Officer Stress

Supervising criminal offenders is not the easiest or most lucrative job in the world. In common with police officers and correctional officers, probation and parole officers are dealing with difficult human beings on a daily basis, often without the tools and support needed to do the job. Doing a demanding and sometimes dangerous job under less than adequate conditions can, and does, lead to stress (Slate, Wells, & Wesley Johnson, 2003). For instance, one study of officers in four states found that 35% to 55% reported that they had been victims of threatened or actual violence (Finn & Kuck, 2005). Stress is a physical and emotional state of tension that occurs as the body reacts to environmental challenges (stressors). No one can be expected to do a very good job while experiencing stress.

The most important job stressors identified by the officers surveyed by Slate et al. (2003) were poor salaries, poor promotion opportunities, excessive paperwork, lack of resources from the community, large caseloads, and a general frustration with the inadequacies of the criminal justice system. These stressors eventually lead to psychological withdrawal from the job, which means that probationers, and thus the community, are getting shortchanged. High stress levels in the department also lead to frequent absenteeism and high rates of employee turnover. Thus, it is imperative that the issue of probation/parole officer stress be meaningfully addressed.

Slate et al. (2003) emphasize that attempts to address the problem of probation officer stress should not simply involve counseling officers on how to cope with stress, because the problem is organizational (inherent in the probation system), not personal. They suggest that participatory management strategies be instituted so that each person in the department participates in the decision-making process, and thus feels valued and empowered. The researchers found that personnel who did participate in decision making reported fewer stress symptoms and were happier on the job. Participatory management (workplace democracy) leads to a happier and more productive workforce, even if nothing else changes—"contented cows give better milk."

Community Corrections Assessment Tools

Officers have a variety of tools for helping them to do their jobs more efficiently. Among the various assessment instruments, the most widely used one at this time is the client management classification system (CMC). The CMC contains offender risk and needs scales that embody the principle of responsivity discussed in the chapter on offender treatment (Chapter 14), and is also used to determine the level of supervision that offenders receive. The average caseload of a probation officer is around 139 (Finn & Kuck, 2005), which means that there is precious little time to devote to each offender, especially given that there are other duties an officer must perform. This is why a method of organizing officers’ time is needed so that they do not find themselves floundering all over the place, and is a major reason why correctional agencies use instruments such as the CMC. Some offenders need more services and higher levels of monitoring than others, and to treat them all as equals in this regard would be both counterproductive and wasteful. The CMC places probationers into the four supervision-level categories, according to Walsh and Stohr (2010), which are outlined below.

Selective Intervention. These are low-risk and low-needs offenders; that is, they are minimally criminally involved and they have a stake in conformity. These folks require little of the officers’ time or resources, which means that there are more available for others that
need them. There is evidence that low-risk offenders actually become worse if they are over-supervised and subjected to treatment modalities that they do not need (Lowenkamp & Latessa, 2004). Placing such offenders in the same restrictive programs as high-risk offenders exposes them to bad influences and may disrupt the very factors (family, employment, pro-social activities and contacts) that made them low-risk in the first place. Officers are advised only to intervene in the lives of such people “selectively,” that is, only in very special circumstances such as a new arrest.

**Environmental Structure.** These offenders are on the low end of medium-risk and require regular supervision. Officers work with these individuals to channel them into a number of services such as educational, vocational, and substance abuse programs. These are not necessarily people deeply embedded in a criminal lifestyle but rather people with a number of social deficits that can be corrected. This type of offender probably constitutes the majority of probationers, and perhaps a few parolees.

**Casework/Control.** These offenders are at the high end of medium-risk or the low end of high-risk. They require intensive casework and their activities should be closely monitored. They require the same services as environmental structure probationers, but they are less likely to benefit from them. They tend to be more entrenched in the criminal lifestyle and more likely to have severe drug and/or alcohol problems.

**Limit-Setting.** Offenders in this category are firmly embedded in a criminogenic lifestyle and are thus at a high risk for probation failure. They are often supervised by officers with an intensive supervision caseload (see below) and require severe limits to be placed on their activities. Protection of the community through surveillance and strict controls is of primary concern with offenders of this type.
Engaging the Community to Prevent Recidivism

The Comparative Perspective box on community corrections emphasized how probation began as a voluntary community concept in the United States and Britain, and is a concept that still dominates the Japanese system. We in the United States probably cannot revive the old level of community involvement, and cultural differences preclude volunteerism at
anywhere near Japanese levels. For instance, to achieve the average 2.5 ratio of probationers to volunteer probation officers that they enjoy in Japan with our approximately 4 million probationers would require about 1.6 million volunteer officers. Nevertheless, we can engage our communities in the process of offender rehabilitation, realizing that whatever helps the offender helps the community.

The criminological literature provides abundant support for the notions that social bonds (Hirschi, 1969) and social capital (Sampson & Laub, 1999) are powerful barriers against criminal offending. Social bonds are connections (often emotional in nature) to others and to social institutions that promote prosocial behavior and discourage antisocial behavior. Social capital refers to a store of positive relationships in social networks upon which the individual can draw for support. It also means that a person with social capital has acquired an education and other solid credentials that enable him or her to lead a prosocial life. Those who have opened their social capital accounts early in life (bonding to parents, school, and other prosocial networks) may spend much of it freely during adolescence, but nevertheless manage to salvage a sufficiently tidy nest egg by the time they reach adulthood to keep them on the straight and narrow. The idea is that they are not likely to risk losing this nest egg by engaging in criminal activity. Most criminals, on the other hand, lack social bonds, and largely because of this, they lack the stake in conformity provided by a healthy stash of social capital.

If we consider the great majority of felons in terms of deficiency (good things that they lack) rather than in terms of personal pathology (bad things they are), we are talking about a deficiency in social capital. The community can be seen as a bank in which social capital is stored and from which offenders can apply for a loan. That is, the community is the repository of all of those things from which social capital is derived, such as education, employment, and networks of prosocial individuals in various organizations and clubs (e.g., Alcoholics Anonymous, churches, hobby/interest centers). Time spent in involvement in steady employment and with prosocial others engaged in prosocial activities is time unavailable to spend in idleness in the company of antisocial others planning antisocial activities. The old saying that “the devil finds work for idle hands” may be trite, but it is also very true.

Thus, good case management in community corrections requires community involvement. No community corrections agency is able to deliver the full range of offender needs (mental health, substance abuse, vocational training, welfare, etc.) by itself. Probation and parole officers must not only assess the needs of their charges, but must also be able to locate and network with the social service agencies that address those needs as their primary function. In fact, there are those who maintain that the probation/parole officer’s relationships with community service agencies are more important than their relationship with their probationers/parolees. Officers must be skilled at networking with the various agencies if they are to help provide offenders with the services they need. The community corrections worker is a broker who takes input about offenders from offenders themselves, police, courts, friends, neighbors, family, employees, and so on, and refers the problem out to the appropriate agency. This brokerage function can be best achieved with fewer offenders who are intensively supervised on an officer’s caseload than with many who are infrequently seen and haphazardly supervised.

Intermediate Sanctions

Intermediate sanctions refers to a number of innovative alternative sentences that may be imposed in place of the traditional prison/probation dichotomy. Such sanctions are
considered intermediate because they are seen as more punitive than straight probation but less punitive than prison. They are also a way of easing prison overcrowding and the financial cost of prison while providing the community with higher levels of security from victimization through higher levels of offender surveillance than is possible on regular probation. As we shall see, these supposed benefits are not always realized. We have already seen that many experienced offenders would choose prison over some of the stricter community-based alternatives. Furthermore, since offenders placed in them have recidivism rates not much different from offenders released from prison within the first and subsequent years, the costs of state incarceration are deferred rather than avoided (Marion, 2002). The first alternative we examine is intensive supervision probation.

### Intensive Supervision Probation

**Intensive supervision probation (ISP)** is typically limited to offenders who probably should not be in the community but have been allowed to remain, either in the belief that there is a fighting chance they may be rehabilitated or in an effort to save the costs of incarceration. ISP officers’ caseloads are drastically reduced (typically a caseload of 25) to allow officers to more closely supervise, often on a daily basis with frequent drug testing, using the surveillance model. Burrell (2006) describes ISP officers as “aggressive in their surveillance and punitive in their sanctions” (p. 4). Liberal critics of the tactics of ISP officers describe their model of supervision colorfully as one of “pee ‘em and see ‘em,” or “tail ‘em, nail ‘em, and jail ‘em” (Skeem & Manchack, 2008). However, this type of law enforcement surveillance happens to be the kind of supervision recommended for high-risk probationers by the client management classification system discussed earlier.

MacKenzie and Brame (2001) hypothesize in their study of ISP that such supervision coerces offenders into prosocial activities, which in turn leads to a lower probability of them reoffending. Intensive supervision means that probation officers maintain more frequent contact with probationers and intrude into their lives more than is the norm with other probationers. Intensive supervision offenders are supervised at that level because they have the greatest probability of reoffending (they are high-risk) and are the most deficient in social capital (they have high needs). Higher levels of supervision allow officers to coerce offenders into a wide variety of educational and treatment programs and other prosocial activities designed to provide offenders with social capital. MacKenzie and Brame found that ISP supervision did result in offenders being coerced into more prosocial activities and that there was a slight reduction in recidivism. The issue the study left unresolved is whether participating in prosocial activities enabled offenders to acquire skills that provided them with social capital they could put to good use, or if intensive supervision per se accounted for their findings.

The term *coercion* has negative connotations for the more libertarian types among us (“You can lead a horse to water . . .” and all that), but the great majority of people being treated for problems such as substance abuse have very large bootprints impressed on their backsides. Probationers and parolees, almost by definition, will not voluntarily place themselves in the kinds of programs and activities we would like them to be in—they are simply not motivated in that direction. The criminal justice system must provide that motivation via the judicious use of carrots and sticks. Reviews of the U.S. (Farabee, Pendergast, & Anglin, 1998) and UK (Barton, 1999) literature on coerced substance abuse treatment concluded that coerced treatment often has more positive outcomes than voluntary treatment, probably because of the threat of criminal justice sanctions.
Work Release

Work release programs are designed to control offenders in a secure environment while at the same time allowing them to maintain employment. Work release centers are usually situated in or adjacent to a county jail, but they can also be part of the state prison system. Residents of work release centers have typically been given a suspended sentence and placed on probation with a specified time to be served in work release. Work release residents may also be parolees under certain circumstances, such as when there is the need to closely supervise a new parolee, or when a parole violator is given another opportunity to remain in the community rather than being sent back to prison. Surveillance of work release residents is strict; they are allowed out only for the purpose of attending their employment, and are locked in the facility when not working. The advantage of such programs is that they allow offenders to maintain ties with their families and with employers. Such programs also save the taxpayer money because offenders pay the cost of their accommodation with their earnings.

Offenders on work release are generally the least likely of all community-based corrections offenders to be rearrested and imprisoned within 1 year and 5 years of successful completion. However, 64% of offenders successfully released and 71% of those unsuccessfully released had further arrests within 5 years (Marion, 2002). Offenders chosen for work release are typically selected because, although they have committed a crime deemed too serious for regular probation, they are usually employed, although unemployed probationers can be placed in work release contingent on their finding employment within a specified time (Abadinsky, 2009). Being employed is incompatible with a criminal lifestyle (although obviously from the above statistics, not completely), especially if the offender is a probationer rather than a parolee.

Shock Probation/Parole and Boot Camps

Shock probation (mentioned in Chapter 4) was initiated in Ohio in the 1970s and was designed to literally shock offenders into desisting from crime by briefly exposing them to the horrors of prison. It was limited to first offenders who had perhaps been unimpressed with the realities of prison life until given a taste. Under this program, offenders were sentenced to prison and released after (typically) 30 days and placed on probation. In some states, a person may receive shock parole, which typically means that he or she has remained in prison longer than the shock probationer and is released under the authority of the parole commission rather than the courts. Most of the research on this kind of treatment was conducted in the 1970s and 1980s and concluded that shock probationers/parolees had lower recidivism rates than incarcerated offenders not released under shock conditions (Vito, Allen, & Farmer, 1981). This should not be surprising, however, given the fact that those selected for shock probation/parole were either first offenders or repeaters who had not committed very serious crimes.

When we hear of shock incarceration today, it is typically incarceration in a so-called boot camp. Correctional boot camps are facilities modeled after military boot camps. Relatively young and nonviolent offenders are the most typical kinds of offenders sent to correctional boot camps for short periods (90–180 days) where they are subjected to military-style discipline and physical and educational programs. Boot camps are most unpopular with offenders. In May et al.’s (2005) analysis of “exchange rates” discussed earlier, offenders who had served time in prison would only be willing to spend an average of 4.65 months in boot camp to avoid 12 months in prison. Interestingly, judges and probation/parole officers also
agree that boot camp is more punitive than prison, indicating they were willing to serve only 6.19 and 6.05 months, respectively, to avoid 12 months in prison (Moore, May, & Wood, 2008).

The idea of boot camps for young adult offenders was once a popular idea among the general public, as well as among a considerable number of correctional personnel and criminal justice academics. Boot camps conjured up the movie image of a surly, slouching, and scruffy youth forced into the army who 2 years later proudly marched back into the old neighborhood, crew-cut, sparklingly clean, and properly motivated and disciplined. Yes, the drill sergeant with righteous fire and brimstone would do what the family and social work-tainted juvenile probation officers could never do.

Such magical transformations rarely happen in real life. The army merely provides many such youths with new opportunities to offend, and they spend much of their time either avoiding the MPs or lodged in the brig while awaiting their dishonorable discharges. Botcher and Ezell's (2005) evaluation of offenders sent to correctional boot camp in California revealed the same sorry outcome. Specifically, they found no significant differences between their experimental group (boot campers) and a control group of similar offenders not sent to boot camp in terms of either property or violent crime reoffending. In other words, boot camps have joined the woeful list of correctional programs that appear ineffective.

Victim–Offender Reconciliation Programs (VORPs)

**VORPs** are programs designed to bring offenders and their victims together in an attempt to reconcile (“make right”) the wrongs offenders have caused and are an integral component of the **restorative justice** philosophy. This philosophy differs from models (such as retributive, rehabilitative, etc.) that are offender driven (What do we do with the offender?) in that it considers the offender, the victim, and the community as partners in restoring the situation to its pre-victimization status. Restorative justice has been defined as “every action that is primarily oriented toward justice by repairing the harm that has been caused by the crime,” and it “usually means a face-to-face confrontation between victim and perpetrator, where a mutually agreeable restorative solution is proposed and agreed upon” (Champion, 2005, p. 154). Restorative justice is often referred to as a **balanced approach** in that it gives approximately equal weight to community protection, offender accountability, and offender competency.

Many crime victims are seeking fairness, justice, and restitution *as defined by them*, as opposed to revenge and punishment. Central to the VORP process is the bringing together of victim and offender in face-to-face meetings mediated by a person trained in mediation theory and practice. Meetings are voluntary for both offender and victim and are designed to iron out ways in which the offender can make amends for the hurt and damage caused to the victim.

Victims participating in VORPs gain the opportunity to make offenders aware of their feelings of personal violation and loss and to lay out their proposals for how offenders can restore the situation. Offenders are afforded the opportunity to see firsthand the pain they have caused their victims, and perhaps even to express remorse. The mediator assists the parties in developing a contract agreeable to both. The mediator monitors the terms of the contract and may schedule further face-to-face meetings.

VORPs are used most often in the juvenile system but are rarely used for personal violent crimes in either juvenile or adult systems. Where they are used, about 60% of victims invited to participate actually become involved, and a high percentage (mid- to high 90s) results in signed contracts (Coates, 1990). Mark Umbreit (1994) sums up the various satisfactions reported by victims who participated in VORPs:
1. Meeting offenders helped reduce their fear of being revictimized.
2. They appreciated the opportunity to tell offenders how they felt.
3. Being personally involved in the justice process was satisfying to them.
4. They gained insight into the crime and into the offender’s situation.
5. They received restitution.

VORPs do not suit all victims, especially those who feel that the wrong done to them cannot so easily be “put right,” and who want the offender punished (Olson & Dzur, 2004). In addition, the value of VORPS for the prevention of further offending has yet to be properly assessed.

Legal Issues in Probation and Parole

Both probation and parole are statutory privileges granted by the state in lieu of imprisonment (in the first case) or further imprisonment (in the second case). Because of their conditional privilege status, it was long thought that the state did not have to provide probationers and parolees any procedural due process rights in the granting or revoking of either status. Today, probationers and parolees are granted some due process rights, although like inmates there are restrictions on them that are not applicable to citizens not under correctional supervision.

The first important case in this area was *Mempa v. Rhay* (1967). Mempa was a probationer who committed a burglary, which he admitted, 4 months after he was placed on probation. His probation was revoked without a proper hearing and without the assistance of legal counsel, and he was sent to prison. The issue before the Supreme Court was whether probationers have a right to counsel at a deferred sentencing (probation revocation) hearing. The Court ruled that under the Sixth and Fourteenth Amendments, probationers do have that right because Mempa was being sentenced, and the fact that sentencing took place subsequent to a probation placement does not alter the fact that sentencing is a “critical stage” in a criminal case. The Court further stated that probationers facing revocation should have the opportunity to challenge evidence by cross-examining state witnesses (typically only the probation officer), to present exculpatory witnesses, and to testify him- or herself.

A further advance in granting due process rights to offenders on conditional liberty status came in *Morrissey v. Brewer* (1972). Morrissey was a parolee who was arrested by his parole officer for a number of technical violations and returned to prison without a hearing. Morrissey’s petition to the Supreme Court claimed that because he received no hearing prior to revocation, he was denied his rights under the due process clause of the Fourteenth Amendment. The Court agreed that when a liberty interest is involved, certain processes are necessary (A liberty interest refers to government-imposed changes in someone’s legal status that interferes with his or her constitutionally guaranteed rights to be free of such interference.). The ruling by the Court in *Morrissey* noted that parole revocation does not call for all the rights due an unconvicted defendant, but that there were certain protections under the Fourteenth Amendment to which the person is entitled. These rights were laid out by the Court as follows:

(a) Written notice of the claimed violations of parole.
(b) Disclosure to the parolee of evidence against him.
Opportunity to be heard in person and to present witnesses and documentary evidence.

(d) The right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).

(e) A “neutral and detached” hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers.

(f) A written statement by the fact finders as to the evidence relied on and reasons for revoking parole.

While individuals are on probation or parole, they have limited constitutional rights, and their probation/parole officers have broader powers to intrude into their lives than police officers. Because probationers and parolees waive their Fourth Amendment search and seizure rights, probation/parole officers may conduct searches at any time without a warrant and without the probable cause needed by police officers. Evidence seized by probation/parole officers without a warrant can be used in probation or parole revocation hearings, but not as trial evidence in a new case (Pennsylvania Board of Probation and Parole v. Scott, 1998). The Court ruled that to exclude evidence from a parole hearing would hamper the State’s ability to ensure the parolee’s compliance with conditions of release and would yield the parolee free of consequences for noncompliance. This “special needs” (of law enforcement) exception to the Fourth Amendment has been extended to the police under certain circumstances. The Supreme Court has held that if a probation order is written in such a way that provides for submission to a search “by a probation officer or any other law enforcement officer,” then the police gain the same rights to conduct searches based on less than probable cause as probation and parole officers (United States v. Knights, 2001).

Summary

- Community-based corrections are used to control the behavior of criminal offenders while keeping them in the community. Conditional release (judicial reprieve) was practiced in ancient times in common law, but probation was not really established until the 20th century. Although often considered too lenient, community corrections benefit the public in many ways. Probation helps offenders by giving them a second chance to demonstrate that they can be law abiding in the community, and what helps offenders automatically helps the communities they live in.

- Because of many “get tough” policies, and although there are more Americans than ever under community supervision, the use of community corrections is declining relative to the use of incarceration.

- The client management classification system (CMC) is a tool designed to guide supervision and treatment strategies for offenders placed on probation. As with any tool, however, the CMC is only as good as the skill and conscientiousness with which it is used. The level of stress of the probation officers’ job leads many of them to burn out and to put less than adequate care and effort into attending to the many and varied tasks they need to carry out.

- Intermediate sanctions are considered to be more punitive than regular probation but less punitive than prison, although experienced criminals do not necessarily share that view. Some of these programs, particularly work release, show positive results, although this may be more a function of the kinds of offenders placed in them rather than the programs themselves. Most participants in these programs, however, tend to recidivate at rates not significantly different from parolees.

- Victim–offender reconciliation programs (VORPs) are a fairly recent addition to community corrections. They consider the victim, the offender, and the community as equal partners in returning the situation to its pre-victimization status. This idea of restorative justice is mostly used with juvenile offenders and minor adult offenders.
# Key Terms

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# Discussion Questions

1. Looking at all the pros and cons of community-based corrections, do you think probation is too lenient for felony offenders? If so, what do we do with them?

2. In your opinion, what is the single biggest benefit of probation for the community and its single greatest cost?

3. Studies show that about 95% of probation officers’ sentencing recommendations to the courts are followed. Why do you think this is so, and is it a good or bad thing that probation officers control the flow of information to judges?

4. What is the advantage of tools such as CMC over “good old-fashioned” experience to determine how a probationer should be supervised?

5. Boot camps have full and total control of offenders for up to 6 months, so why do you think they are unable to change offenders’ attitudes and behaviors?

6. Do you think police officers should be given the same powers of search and seizure as probation and parole officers for the purposes of controlling the activities of probationers and parolees? Why or why not?

# Useful Internet Sites

- American Probation and Parole Association: [www.appa-net.org](http://www.appa-net.org)
- Probation and Pretrial Service, United States Courts: [www.uscourts.gov](http://www.uscourts.gov)