Probation Systems - Origins and Evolution, Policy and Practice

For the Youth Justice Workgroup

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Objectives

► Create shared understanding among all stakeholders about the history and evolution of probation

► Engage stakeholders in reflecting on and reimagining probation work
Agenda

1. Origins and Evolution in Probation Law and Policy, Current Thinking and Practice
   ► Patricia Soung, Children’s Defense Fund-CA

2. System and Labor Perspectives
   ► Eduardo Mundo, Retired LA County Probation Officer
   ► Stephen Walker, CA Correctional Peace Officers Association
   ► Felicia Cotton, LA County Probation Department

3. Comments and Moderated Discussion
   ► Saul Sarobia, Probation Reform and Implementation Team consultant
Takeaways

- History can teach us important lessons on what should be transformed and replaced.

- Questions about probation systems’ role and orientation are not new.
  - There has always been tension, given their many functions. There has always been a debate about whether to expand or focus those functions.

- Probation officers have typically leaned towards law enforcement functions - in the system’s early existence, and more recently even when laws and policies began to reemphasize rehabilitation.
Probation Size and Reach

► The modern probation system is expansive
► In juvenile court, probation is the most common disposition
► Across the country in 2017, approximately 80% of 4,650,900 adults and 60% of 974,900 youth processed through court systems were placed on probation

(National Juvenile Defender Center, “Promoting Positive Youth Development: The Critical Need to Reform Youth Probation Orders” (2016); Kaeble & Bonczar (2017); Hockenberry & Puzzanchera (2017))
In California in 2018 alone:

► 65,020 youth were referred to county probation departments

► 60,308 pre-adjudication detention decisions were reported
  ▶ 69.4% or 41,841 juveniles were not detained
  ▶ Of the juveniles who were detained, 93.8% were held in a secure facility

► For over half (55%, or 35,760) of the referrals to the county probation departments, a petition was filed in juvenile court
  ▶ 53.3% (19,077) filed were new petitions
  ▶ 46.7% (16,683) filed were subsequent petitions
  ▶ 60.8% (21,758) resulted in wardship probation
Probation services across California are heavily weighted toward juvenile probation, and juvenile custody in particular:

► Across all counties, an average of 77% of probation officer time is allocated to juvenile services

► The 15 largest counties reported that approximately:
  ► ½ of all probation officer time was spent on juvenile custody services
  ► ¼ on juvenile non-custody services
  ► ¼ on adult services

(According to a 2006 California Probation Services Survey by the Judicial Council of California, Administrative Office of the Courts)
Origins and Purpose

- Community Supervision and Deferred Judgement
- Juvenile Court
- Systems Evolving Together:
  Juvenile Court and Probation
Community Supervision and Deferred Judgement

► In the US, the origination of probation is typically attributed to a bootmaker named John Augustus - who in 1841, convinced a Boston court to release and defer the sentencing of a “common drunkard” into his custody, and promised the man’s appearance at his next hearing.

► Augustus successfully advocated for some 1400 people to be released.

► The work inspired the development and spread of probation’s function to assist and rehabilitate individuals in the community.³
► California enacted its first “Probation Law” in 1872, as other states codified probation as a practice and agent of the criminal justice system.

► Another state statute was passed in 1883 to further allow police and the courts to put youth under supervised probation.

► Amendments in 1905 more fully developed the county probation systems and created salaried positions in some counties.

Community Supervision and Deferred Judgement
Juvenile Court

- A second turn-of-the-century movement focused on rehabilitation to create a separate children’s court system also spread across the nation.
- In 1903, California became the seventh state to create a juvenile court by passing laws that also governed probation.
- Juvenile courts were conceived as an alternative to criminal prosecution, and an effort to separate youth from adults in the criminal justice system.
Both sought to further rehabilitation and evolved concurrently as additional laws in 1909 expanded the juvenile court’s jurisdictional bases and increased salaried probation positions.

Juvenile probation officers thus have a particularly complex set of responsibilities, as they aim to:

- prevent youth from further immersion into the system
- increase youths’ chances of exiting and avoiding future involvement
- protect the privacy of youth
- while maintaining public safety\(^5\)
Legal and Policy Evolution

Timeline
- 1915
- Between 1915 and 1960
- 1957-1960: Special Commission on Juvenile Justice
- After 1961
- More recent statutory changes
About a decade into their existence, juvenile court laws in California were overhauled

- Prescribed greater responsibilities to probation officers and probation committees in counties

- On one hand, the changes were called an innovation and on the other, they “left many areas ‘open for differences of interpretation and the growth of divergent practices’, which may explain why opposition was limited.”
Between 1915-1960

Piecemeal fixes to the juvenile law resulted in “an unwieldy checkerboard of inconsistencies, duplications, and archaic practices unresponsive to the needs of a more modern, more populated California.”

► In 1932, Los Angeles County opened the first juvenile camp to confine youth
► In 1945, state subsidies were created for counties to establish and operate juvenile homes, ranches, or camps
► Challenges and critiques of juvenile court system mounted – code had not been revised in 40 years
► Increasing administrative experience and advances in behavioral and social sciences contributed to greater knowledge and rethinking in the field
1957-1960: Special Study Commission on Juvenile Justice

Findings

► The rehabilitative promise of the juvenile court system was unfulfilled - due to overloading, “lack of definitions, contradictions and ambiguities in California’s Juvenile Court law,” lack of protection of basic legal rights, lack of well-defined, data driven standards and norms, and inconsistencies across the juvenile justice agencies.

► California had gained notoriety and criticism by national probation and child welfare organizations for excessive juvenile detention practice.

► In 1958, over 113,000 cases were referred to probation in CA (43 percent for traffic offenses, 40 percent for delinquency, 12 percent for dependency and 5 percent for other reasons)

► More than 3/4 of the 68,000 youth referred for delinquency were detained - so more than 50,000 youth were detained in juvenile halls and several thousand more were held in local police jails and other lock-ups.
1957-1960: Special Study
Commission on Juvenile Justice

Findings and Recommendations on Probation

- Problems included: variability across counties; supervision that provided “very little supervision and even less treatment” so that “only an insignificant proportion of probation cases receive intensive rehabilitative services”; excessive caseloads; and use of informal supervision

  - The United States Children’s Bureau opposed informal probation as too readily subject to abuse and overuse, and recommended that youth who do require court supervision be referred to appropriate social service agencies instead.

- The recommendations included developing more comprehensive practice standards on intake, detention and wardship decisions; tasking probation solely with screening of court referrals and diagnoses; limiting supervision to 6 months
After 1961

- The statutory revisions grew probation agencies’ status and workload

- The revisions failed to resolve probation’s proper role in adjudicatory hearings
  - Worry about whether a PO was to “remain neutral or take the position of an advocate” and about the real “temptation for the probation officer to assume a more prosecutorial function in support of his social study.”

- Attempts were made to professionalize and standardize juvenile probation practices (example: *Desktop Guide to Good Juvenile Probation Practice*)
More recent statutory changes

- **Mid-2000s** - Most of the state detention facilities under the California Youth Authority were closed and the basis of state detention was limited (this shifted supervision of most youth to county probation departments)

- **2010** - State put probation agencies in charge of supervising all young people released from state detention

- **2015** - A statutory analysis of probation tasks showed an overall increase in more rehabilitation and case-manager orientated tasks towards a more balanced approach as compared to 2002

- **2020-2021** - DJJ closure
  - What does this mean for probation?
On the Ground — Probation Attitudes and Practices

- Orientation in flux
- Loss of faith in the system
- Reforms in probation departments
Orientation in flux

Orientation of both adult & juvenile probation officers consistently in flux

- 1993 study — concluded that probation officers who focused on youth identified their primary philosophy as therapeutic and expressed more support for case-management.

- In recent decades - the orientation towards law enforcement and surveillance for juvenile probation officers is more persistent.
  - 2004 study — concluded that juvenile probation officers were predominantly oriented towards law enforcement.
  - 2015 study — concluded that juvenile probation officers focus on law enforcement-oriented tasks, even as juvenile probation practices have shifted.

Sluder and Reddington (1993); Taxman (2008); Hsieh et al. (2015).
Loss of faith in the system

- Early 1900s
  - Despite innovation of new laws, discontent and disagreement grew about solutions - with “community reform groups on one side and judges and probation officers on the other.”

- Fast forward - a 2004 study confirmed that the shifts in probation officer orientations reflected “society’s disenchantment with the criminal justice system.”
  - The study also found that:
    - Varying managerial philosophies, institutional policies and constraints can shape and limit preferences and practices
    - Consequences of identity conflict are real – found to negatively affect service delivery and contribute to employee burnout
Many probation departments have adopted thoughtful reforms

- To shift their practices away from a law enforcement orientation towards youth development

- But recent research has concluded generally that still “[i]n most jurisdictions, probation is a punitive system that attempts to elicit compliance from individuals primarily through the imposition of conditions, fines, and fees that in many cases cannot be met.”
Probation in Los Angeles County

- Job descriptions
- Functions
- Operations
- Questions
Probation job descriptions

Reflects a role tension and debate

- 2006 Judicial Council of California’s task force final report concluded that there was no consistent, statewide information base about the details of the roles and services of officers and departments.

- Job descriptions of LA county Probation department - as an example, the first three duties for a field officer position are listed as:
  - Defends oneself with the help of others, against an attacking probationer or other individual or restrains with the help of others, a resisting or fleeing probationer.
  - Restrains adults or juveniles for the purpose of arrest and/or detention as an essential job function of the assigned duties in designated assignment within the Department, as indicated by the hiring unit.
  - Conducts field and community contacts, and searches and activities pursuant to arrest or court order, or as needed.
Functions of Probation

- Supervision of wards of the delinquency court
- Administration and evaluation of grants
- Secure confinement
- Informal supervision of youth
- Filing of petitions/violations
- Intake
- Field searches/interviews
- Pre-adjudication assessments
- Post-adjudication dispositional assessments, MDTs
- Placements, dual status collaborative supervision

Assessments:
- Pre-adjudication assessments
- Post-adjudication dispositional assessments, MDTs
Juvenile Operations

Number of Juvenile Employees
- Institutions: Budgeted - 2442
- Field: Budgeted - 988
- Total: Budgeted - 3430

Locations
- 16 Area Offices
- 2 Juvenile Halls
- 5 Probation Camps & Dorothy Kirby Center

FY2020-21 Budget: $555,560 million
- County - $391,644,000 (70%)
- State Funding - $132,338,000 (24%)
- Federal Funding - $25,096,000 (5%)
- Other Revenues - $6,482,000 (1%)
Questions

- What should we learn from probation’s history for the present and future in LA County - about balancing rehabilitation goals and law enforcement goals around public safety and accountability?

- What are lessons learned for LA County about the evolution of the state youth prison system? What are some of the most critical things that we should be considering with the proposed closure of DJJ?