

PSYCHOLOGY OF CRIME – II

Unit II

PROBATION AND PAROLE

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PROBATION AND PAROLE

Probation in criminal law is a period of supervision over an offender, ordered by the court instead of serving time in prison.

In some jurisdictions, the term probation applies only to community sentences (alternatives to incarceration), such as suspended sentences. In others, probation also includes supervision of those conditionally released from prison on parole.

An offender on probation is ordered to follow certain conditions set forth by the court, often under the supervision of a probation officer. During the period of probation, an offender faces the threat of being incarcerated if found breaking the rules set by the court or probation officer.

Offenders are ordinarily required to maintain law-abiding behavior, and may be ordered to refrain from possession of firearms, remain employed or participate in an educational program, abide a curfew, live at a directed place, obey the orders of the probation officer, or not leave the jurisdiction. The probationer might 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. Additionally, offenders can be subject to refrain from use or

possession of alcohol and drugs and may be ordered to submit alcohol/drug tests or participate in alcohol/drug psychological treatment. Offenders on probation might be fitted with an electronic tag (or monitor), which signals their movement to officials. Some courts permit defendants of limited means to perform community service in order to pay off their probation fines.

Types

Intensive

Home detention, GPS monitoring and computer management are highly intrusive forms of probation in which the offender is very closely monitored. 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.

Under terms of this kind of probation, a client may not change their living address and must stay at the address that is known to probation. GPS monitoring and home detention is common in juvenile cases, even if the underlying delinquency is minor. Some types of supervision may entail installing some form of monitoring software or conducting computer searches to ascertain what an offender is doing online. Cybercrime specialist in corrections, Art Bowker, noted "This is an area more and more community corrections officers are going to have to get up to speed on, learning how to enforce conditions that restrict and/or monitor cyber offenders' computer and internet use." Bowker, also observed "The use of social media is taking off in the field of community corrections".

Standard

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, such as alcohol/drug treatment, community service, and so on.

Unsupervised

Some probation does not involve direct supervision by an officer or probation department. The probationer is expected to complete any conditions of the order with no involvement of a probation officer, and perhaps within a period shorter than that of the sentence itself.

For example, given one year of unsupervised probation, a probationer might be required to have completed community service and paid court costs or fines within the first six months. For the remaining six months, he or she may be required merely to refrain from unlawful behavior. Probationers are allowed to go to their workplaces, educational institutions, or places of 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

Informal probation may occur with deferred adjudication, without the defendant's having been convicted of a criminal offense, or may occur following a guilty plea pending the completion of terms set forth in a plea agreement.

As with other forms of probation, terms may include drug testing or waiver of Fourth Amendment rights for the duration of the term of probation. At the end of the informal period, the case is typically dismissed. This is usually offered as part of a plea bargain or pre-trial diversion.

Shock

Some programs give a sentencing judge the power to reconsider an original jail sentence. The judge may recall the inmate from jail and put him or her on probation within the community instead.

The courts have a theory that a short term in jail may “shock” a criminal into changing their behavior. Shock probation can be used only between specific periods of 30–120 days after the original sentence, and is not available in all states.

Grant

Community corrections officials are key personnel in helping decide whether a criminal is granted probation. They determine whether the offender is a serious risk to public and recommend to the court what action to take. Correction officials first go through an investigation process during the pretrial period.

They assess the offender's background and history to determine whether he or she can be released safely back into the community. The officers then write a report on the offender. The courts use the report to determine whether the offender shall be put on probation instead of going to jail.

After the offender is found guilty, the probation officer puts together a pre-sentence investigation report (PSI). Courts base their sentencing on it. Finally, courts make their decisions as to whether to imprison the convict or to assign him or her probation. If a court decides to grant person probation, they must then determine how to impose the sentence based on the seriousness of the crime, recidivism, the circumstances of the convict, and the recommendations from the corrections officials.

Violation

A probation officer may imprison a probationer and petition the court to find that the probationer committed a violation of probation. The court will request that the defendant appear at a show cause hearing at which the prosecutor must demonstrate by a preponderance of the evidence that the defendant committed a probation violation.

If the defendant pleads guilty to a probation violation, or is found guilty of a probation violation after 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, possibly followed by a return to probation.

No law specifies when probation violation proceedings must be commenced, although probation violation proceedings are nearly certain to occur following the defendant's conviction of a subsequent offense or failure to report to the probation officer as ordered.

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).

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). It is possible that an innocent defendant would choose to accept a deferred sentence rather than incur the risk of going to trial. In such a case, a probation revocation can result in conviction of the original criminal charges and a permanent record of conviction.

Origin

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.

United States

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. Probation developed from the efforts of a philanthropist, John Augustus, who looked for ways to rehabilitate the behavior of criminals.

Massachusetts developed the first statewide probation system in 1878, 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.

Arming and increased authority

In the United States, most probation agencies have armed probation 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 commonly peace officers who possess limited police powers and in some instances, are employed via the court system and take on a more bureaucratic, social worker role.

The Advantages of Probation

The purpose of probation is to provide low-risk offenders the opportunity to pay their dues to society in lieu of incarceration.

Probation often is granted after the judge imposes a term of imprisonment. That term is then suspended for the duration of the probation period. If an offender fails to comply with the conditions in the agreement, the judge may revoke the term of probation and impose the original sentence.

Stability

While on probation, the offender can maintain employment and continue to be a contributing member of society. His life is not interrupted, which provides stability.

Cost

Incarceration can cost taxpayers hundreds of dollars a day per offender, whereas probation only costs a few dollars per day. Those on probation also contribute to the cost of their supervision by paying monthly fees in addition to fines or restitution.

Rehabilitation

Offenders on probation are evaluated and may be required to participate in rehabilitation.

Treatment professionals are able to guide an offender as challenges arise, teaching skills such as how to cope with daily life.

Supervision

Higher-risk offenders are monitored more closely than those of a lesser risk, protecting society from new offenses.

For example, these individuals have more face-to-face contact with the probation officer, and many have a curfew or drug testing. Lower-risk offenders may report to the probation officer once a month.

Clean Slate

Some first-time offenders who complete probation successfully may have their criminal record expunged. Usually, this is applicable only to first-time offenders who participate in a special program where the charges are dismissed upon successful completion of probation.

Still, the offender will have to file a motion to expunge with the court, and each state differs in how these types of cases are handled.

Parole

Parole is the early release of a prisoner who agrees to abide by certain conditions, originating from the French word "parole" ("speech, spoken words" but also "promise"). The term became associated during the Middle Ages with the release of prisoners who gave their word.

This differs greatly from pardon, amnesty or commutation of sentence in that parolees are still considered to be serving their sentences, and may be returned to prison if they violate the conditions of their parole.

Development of modern parole

Alexander Maconochie, a Scottish geographer and captain in the Royal Navy, introduced the modern idea of parole when, in 1840, he was appointed superintendent of the British penal colonies in Norfolk Island, Australia. He developed a plan to prepare them for eventual return to society that involved three grades.

The first two consisted of promotions earned through good behaviour, labour, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A violation would return them to prison and they would start all over again through the ranks of the three-grade process.

He reformed its ticket of leave system, instituting what many consider to be the world's first parole system. Prisoners served indeterminate sentences from which they could be released early if they showed evidence of rehabilitation through participation in a graded classification system based on a unit of exchange called a mark.

Prisoners earned marks through good behavior, lost them through bad behavior, and could spend them on passage to higher classification statuses ultimately conveying freedom.

In an instance of multiple discovery, in 1846, Arnould Bonneville de Marsangy proposed the idea of parole (which he termed "preparatory liberations") to the Civil Tribunal at Reims.

Debates and reform efforts on parole

Since the 1990s, parole and indeterminate sentencing have been the focus of debate in the United States with some emphasizing reform of the parole system and others calling for its abolishment altogether. These debates are fueled by a growing scholarship that criticizes U.S. parole boards and also the parole system more broadly.

Parole boards themselves are seen as lacking in efficient qualifications and too politicized in the appointment process. The decision for granting parole has been criticized for neglecting the due process of prisoners on a case-by-case basis.

Additionally, the process for being granted a commutation has been criticized, as many prisoners have been denied a commutation for not showing the right amount of "remorse" or proving substantially that they were ready to contribute again, which are aspects that many argue are too normative and subjective.

Most agree that, as was originally intended, the parole system puts a necessary focus on rehabilitation, despite its current problems which are widely debated. Critics note that it is becoming more and more expensive to the taxpayer, with little evidence of successful rehabilitation for prisoners.

The conditions of parole themselves are often attacked as well, critiqued for being overwhelmingly criminogenic and perpetuating mass surveillance and a permanent state of imprisonment that does little to ensure a smooth reentry into society. Critics note that greater discretion is required to decide which parolees require costly supervisory resources and which ones do not, rather than placing digital, physical, and structural restrictions on every parolee.

The U.S. Department of Justice (DOJ) stated in 2005 that about 45% of parolees completed their sentences successfully, while 38% were returned to prison, and 11% absconded. These statistics, the DOJ says, are relatively unchanged since 1995; even so, some states (including New York) have abolished parole altogether for violent felons, and the federal government abolished it in 1984 for all offenders convicted of a federal crime, whether violent or not.

Despite the decline in jurisdictions with a functioning parole system, the average annual growth of parolees was an increase of about 1.6% per year between 1995 and 2002.

A variant of parole is known as "time off for good behavior", or, colloquially, "good time". Unlike the traditional form of parole – which may be granted or denied at the discretion of a parole board – time off for good behavior is automatic absent a certain number (or gravity) of infractions committed by a convict while incarcerated (in most jurisdictions the released inmate

is placed under the supervision of a parole officer for a certain amount of time after being so released).

In some cases "good time" can reduce the original sentence by as much as one-third. It is usually not made available to inmates serving life sentences, as there is no release date that can be moved up.

Difference between parole and mandatory supervision

Some states in the United States have what is known as "mandatory supervision", whereby an inmate is released before the completion of their sentence due to legal technicalities which oblige the offender justice system to free them.

In the federal prison system, and in some states such as Texas, inmates are compensated with "good time", which is counted towards time served. For example, if an inmate served five years of a ten-year prison term, and also had five years of "good time", they will have completed their sentence "on paper", obliging the state to release them unless deemed a threat to society in writing by the parole board.

Where parole is granted or denied at the discretion of a parole board, mandatory supervision does not involve a decision making process: one either qualifies for it or does not. Mandatory supervision tends to involve stipulations that are more lenient than those of parole, and in some cases place no obligations at all on the individual being released.

Impact

According to a review of the academic literature by economist Jennifer Doleac, reductions in parole supervision was one of the most cost-effective ways to improve the reintegration and rehabilitation of the formerly-incarcerated.

Prisoners of war

Parole is "the agreement of persons who have been taken prisoner by an enemy that they will not again take up arms against those who captured them, either for a limited time or during the

continuance of the war." The US Department of Defense defines parole more broadly: "Parole agreements are promises given the captor by a POW to fulfill stated conditions, such as not to bear arms or not to escape, in consideration of special privileges, such as release from captivity or lessened restraint."

The practice of paroling enemy troops began thousands of years ago, at least as early as the time of Carthage. Parole allowed the prisoners' captors to avoid the burdens of having to feed and care for them while still avoiding having the prisoners rejoin their old ranks once released; it could also allow the captors to recover their own men in a prisoner exchange.

Hugo Grotius, an early international lawyer, favorably discussed prisoner of war parole. During the American Civil War, both the Dix–Hill Cartel and the Lieber Code set out rules regarding prisoner of war parole. Francis Lieber's thoughts on parole later reappeared in the Declaration of Brussels of 1874, The Hague Convention, and the Geneva Convention Relative to the Treatment of Prisoners of War.

In the United States, current policy prohibits US military personnel who are prisoners of war from accepting parole. The Code of the United States Fighting Force states: "I will accept neither parole nor special favors from the enemy."

The position is reiterated by the Department of Defense. "The United States does not authorize any Military Service member to sign or enter into any such parole agreement."

Aims of parole

The Parole and Probation Administration is mandated to conserve and/or redeem convicted offenders and prisoners who are under the probation or parole system.

Goals

The Administration's program sets to achieve the following goals:

1. Promote the reformation of criminal offenders and reduce the incidence of recidivism,
and

2. Provide a cheaper alternative to the institutional confinement of first-time offenders who are likely to respond to individualized, community-based treatment programs.

Functions

To carry out these goals, the Agency through its network of regional and field parole and probation offices performs the following functions:

1. to administer the parole and probation system
2. to exercise supervision over parolees, pardonees and probationers
3. to promote the correction and rehabilitation of criminal offenders

Conditions of Parole

Parolees have to live by certain conditions of release. Some conditions are standard; others depend on the case.

Parole imposes significant restrictions on parolees, people who have been released from prison on the condition that they abide by certain conditions. The conditions parolees have to live with are supposed to allow the authorities to retain some control and supervision while the parolee reintegrates into society.

Common parole conditions include:

- reporting regularly to a supervising officer
- living within a defined area and not leaving without permission
- promptly notifying a supervising officer of changes in employment status
- not possessing any guns or other weapons
- agreeing to law enforcement searches of one's residence, possessions, and self, and
- not breaking the law.

The conditions for supervised release, which has essentially replaced parole in the federal system, tend to be similar to those for parole.

General and Special Conditions

Many parole conditions, like several listed above, are general. Others are imposed case by case and are specifically tailored to the offender. Examples of these “special” conditions include treatment for drugs or alcohol and submitting to electronic monitoring.

A couple Pennsylvania statutes provide an example of a setup for parole conditions. One statute lays out general parole conditions for all parolees. Another requires that parolees abide by special conditions that the Parole Board or a parole agent imposes.

The second Pennsylvania statute also explains that a parolee with parole-condition problems or questions must consult the parole agent, who is responsible for helping the parolee interpret conditions. (The law mentions that a parolee who is unable to contact the parole agent should contact the agent in charge of the district parole office.)

Validity of Conditions

The government has a good deal of leeway in setting parole and supervised release conditions, which are designed to ensure public safety and help former prisoners live productive, law-abiding lives.

State Parole Conditions

On the state level, statutes often give authorities significant discretion in creating conditions. There are limits, though, on what entities like parole boards can require. The conditions generally have to be related to the parolee's reentry into society and can't unfairly restrict any fundamental rights.

In one California case, for instance, an appeals court held that a condition of parole that stopped a parolee from “possessing or having access to computers, the Internet, or camera equipment” without permission from the supervising parole department was valid. The court reasoned that the parolee had committed offenses involving computer use and had intentionally prevented the authorities from determining whether the Internet was involved in one of his offenses. Important to the ruling was that the parolee hadn't been completely banned from using the Internet.

In another California case, though, an appeals court struck down a condition preventing a parolee from using computers and the Internet. The court explained that the condition was too broad and didn't have anything to do with the conviction, which was for lewd conduct on a child under age 14 and didn't involve computer use.

Federal Supervised Release Conditions

Similarly, in federal cases, courts have broad discretion to impose special conditions of supervised release. But such conditions must relate to:

- the circumstances of the offense and the offender's history and characteristics
- deterrence of future criminal activity
- protection of society from the offender, or
- educational or career training, medical treatment, or other correctional treatment for the offender.

Parole Laws in India

Parole is defined as a temporary or permanent release of a prisoner before the completion of his sentence on the promise of good behaviour.

The grant of Parole in India is administered by the rules made under the Prison Act, 1894 and Prisoner Act, 1900. Each state in India has its own parole rules with some minor alternations from each other.

There are two major types of parole –1. Custody and 2. Regular

1. Custody Parole

The custody parole is a temporary parole that is limited only to the emergency circumstances like, death in a family, the marriage of a family member, serious illness etc. Custody parole is of a limited time span of six hours, during which the prisoner is allowed to visit the desired place and return back to the prison therefrom. The prisoners are generally escorted by police constables for public safety and assertion of the prisoner's timely return. The grant of the parole

is subjected to verification of the circumstances from the concerned police station. The final decision of parole allocation is taken by the Superintendent of the Jail and the petition is moved ahead for final approval

2. Regular Parole

Regular Parole is granted for a maximum period of one month, except in some cases, to the convicts who have served at least one year of imprisonment. Regular Parole is allotted on certain grounds like:

- Ø The marriage of a family member of the convict
- Ø Accident or Death of a family member of the convict
- Ø Serious Illness of a family member of the convict
- Ø Delivery of Child by the wife of the convict
- Ø Severe damage to life or property of the family of convict due to natural calamities.
- Ø Filing of a special leave petition by the convict or his family.

However, there are some convicts that are not eligible for being released on Parole those are:

- Ø Prisoners who have been or are involved in criminal activities against the state
- Ø Prisoners who are threats to national security
- Ø Prisoners who are not citizens of India

Also, Prisoners who are convicted of multiple murders or for murder & rape of a child or children are also exempted to Parole. However, in some cases, these convicts can still get parole at the discretion of the granting authority.

The procedure of obtaining Parole

1. A convict seeks parole and files a petition regarding the same.
2. Jail authority (Superintendent) asks for a report from the police station that had made the arrest
3. A report including all the necessary papers like case history of the convict, his behaviour in the prison, his medical report (in case of illness being a reason for parole) are collected by Superintendent
4. The report is then sent to the Deputy Secretary, Home (General), State Government who decides on the application either accepting or rejecting it

In some states, the application of the parole along with the detailed police report and recommendation is sent to the Inspector General of the Prison, which is further forwarded to the District Magistrate. The District Magistrate along with the consultation of The State Government takes the decision of either accepting or rejecting the application of the Parole.