

UNIVERSITY OF MINNESOTA

PROBATION REVOCATION AND ITS CAUSES:

Profiles of State and Local Jurisdictions

A publication by the Robina Institute of Criminal Law and Criminal Justice

**BELL COUNTY,
TEXAS**



PROBATION REVOCATION AND ITS CAUSES: Profiles of State and Local Jurisdictions

A publication by the Robina Institute of Criminal Law and Criminal Justice

Bell County, Texas



By

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This report is the first in a series on:

***Probation Revocation and Its Causes:
Profiles of State and Local Jurisdictions***

PROBATION REVOCATION AND ITS CAUSES:

Profiles of State and Local Jurisdictions

Introduction

The Bell County Community Supervision and Corrections Department (CSCD or "Department") services Bell County and Lampasas County, Texas.¹ The CSCD had 87 employees in 2014, including 45 probation officers and technicians, dispersed over four units. The Department's annual budget was about four million dollars, about half of which came from state funding. Roughly 50 percent of the Department's FY2014 budget was funded by supervision fees paid by probationers under the terms of their sentences, which is not unusual for probation departments statewide.²

The index crime rate in Bell County is slightly higher than the statewide average in 2014: 3,420.6 versus 3,349.6 per 100,000 residents.⁵

Bell County, Texas Crime Rates, 2014

	Murder	Rape	Robbery	Aggravated Assault	Burglary	Larceny	Auto Theft	Total
Rate Per 100,000	5.7	55.2	91.6	237.9	741.3	2155.9	133	3,420.6

Source: TEX. DEPT. OF PUBLIC SAFETY, CRIME IN TEXAS 2014, Chap. 10b, http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm.

Bell County is the 16th largest county in Texas with a population of 316,144. Fifty percent of the population is white, 20% are African American, and 22% are Hispanic. The median household income in Bell County is \$50,060, which is slightly below the median income for Texas as a whole (\$51,900).

In June 2015, 3,126 individuals were under direct probation supervision in Bell County. Over the past four years, the overall size of Bell County's probation population has not substantially changed, but the number of probationers under supervision for a felony has decreased while the number under supervision for a misdemeanor has increased. The county's probation supervision rate was an estimated 1,314 per 100,000 adult residents as of November 2014, which is 64 percent lower than the average rate for the entire state. In 2013, the statewide probation supervision rate in Texas was 2,043 per 100,000 adult residents, the 9th highest rate among all states.³ Statewide, the probation supervision rate has been falling over the past 10 years, from 2,698 at yearend 2003⁴ to 2,043 at yearend 2013.

Texas courts are authorized to impose community supervision terms as follows:

- Felony: A period equal to the minimum term of imprisonment up to a maximum of 10 years.
- Certain third-degree felonies: A period equal to the minimum term of imprisonment up to a maximum of 5 years.
- State jail felony (certain drug possession offenses): A minimum of 2 up to a maximum of 5 years.
- Misdemeanors: Up to 2 years.

Source: Tex. Code Crim. Proc., art. 42.12 §§ 3(b), 4(b), 5(a), 6(a), 15(b).

In 2014, the average length of probation sentences pronounced for misdemeanor cases was 14 months; for felonies it was 74 months or approximately 6 years. The ten most common primary offenses for which individuals are directly supervised by Bell County are listed in the table on the next page.

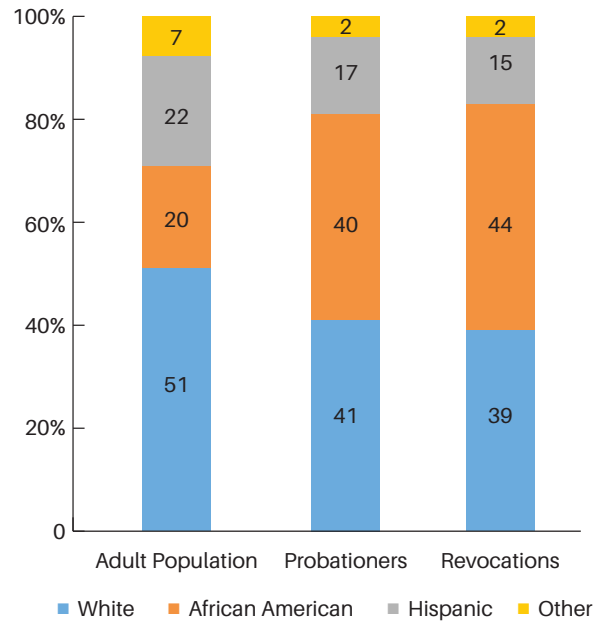
Top Ten Primary Offenses for Probation Among 3,113 Probationers Under Direct Supervision on 8/25/15

Offense	Felony	Percent
Driving While Intoxicated, 3rd offense or more	x	6.55%
Possession of a controlled substance, penalty group 1, less than 1 gram ^a	x	5.36%
Theft of property between \$50 and \$500		5.04%
Possession of Marijuana, less than 2 ounces		4.63%
Driving while intoxicated		4.37%
Burglary of habitation	x	4.21%
Assault, causes bodily injury to family member		3.57%
Aggravated assault with a deadly weapon	x	3.41%
Theft of property between \$1,500 and \$20,000	x	2.41%
Driving while intoxicated, 2nd offense		2.31%
		41.86%

^aPenalty group 1 includes drugs such as cocaine, heroin, methamphetamine, ketamine, oxycodone and over 300 mg of hydrocodone.

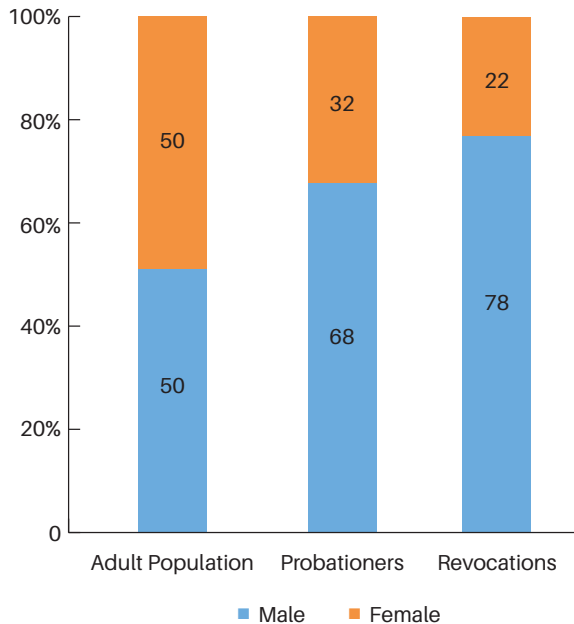
Forty-one percent of probationers were white (compared to 50% of the population); 40% were African American (compared to 20% of the population), and 17% were Hispanic (compared to 22% of the population). The African-American probation supervision rate was more than two times the white rate; while the Hispanic supervision rate was about ten percent higher than the white rate.

Bell County Demographics by Race

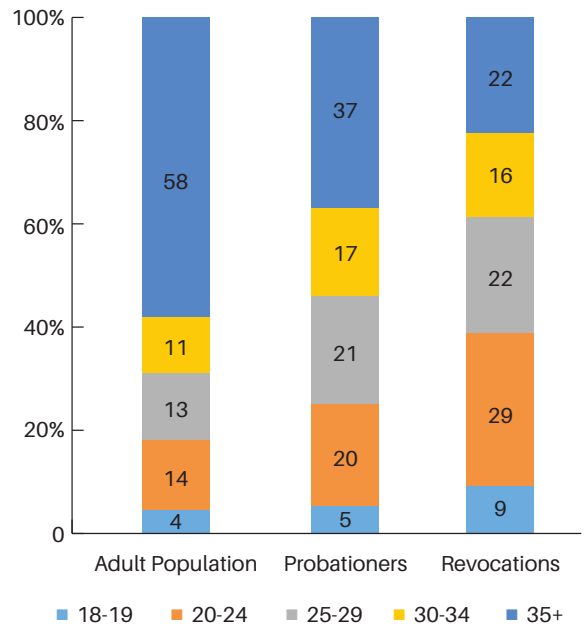


The majority of individuals on probation in Bell County in 2014 were male (68%). More than a third of probationers were 34 or older, while about a fifth were 20 to 24, a fifth were 25-29, and about a seventh were 30-34.

Bell County Demographics by Gender

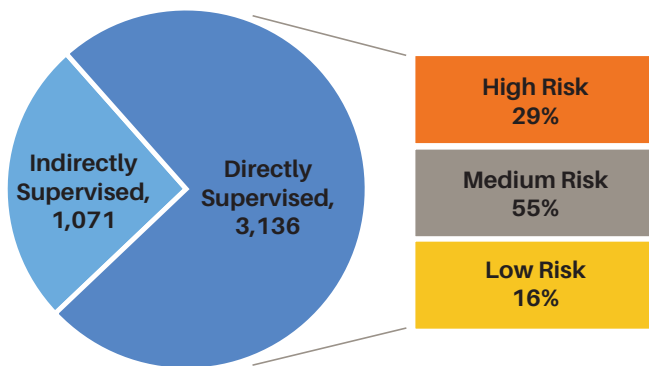


Bell County Demographics by Age



Prior to January 1st, 2015, the department used the Wisconsin risk assessment instrument. Starting on January 1st, 2015, the state mandated the use of the Texas Risk Assessment System (TRAS) which is based on the Ohio Risk Assessment System (ORAS). The risk level indicated by the assessment determines the frequency of probation appointments, home visits, drug tests, treatment, and whether a supervision plan is required. For example, high risk probationers (level 1) must report to probation in person monthly and a home visit must be conducted every 180 days. Low risk probationers (level 4), must report in person every 80 days, report by mail during the months where no appointment is required; home visits are only conducted as needed. Just over half of the probationers who were directly supervised by Bell County were categorized as medium risk, while 16% were low risk, and 29% were high risk. An additional 1,000 cases were "indirectly supervised," during 2014, which includes cases transferred to another jurisdiction and absconders. The average caseload across all employees was 85. Not counting supervisors, part-time employees, and specialized caseloads, the average caseload was 118 among officers who supervise a regular caseload full-time.

Probationer Supervision by Risk Level



There are specialized caseloads within the Bell County Community Supervision and Corrections Department that include sex offender, substance abuse, mental health, and domestic violence cases. The CSCD is currently exploring opportunities to create caseloads specifically focused on veterans. Due to the proximity of Fort Hood, there are high numbers of individuals on probation who have served in the armed services or are active duty military personnel.

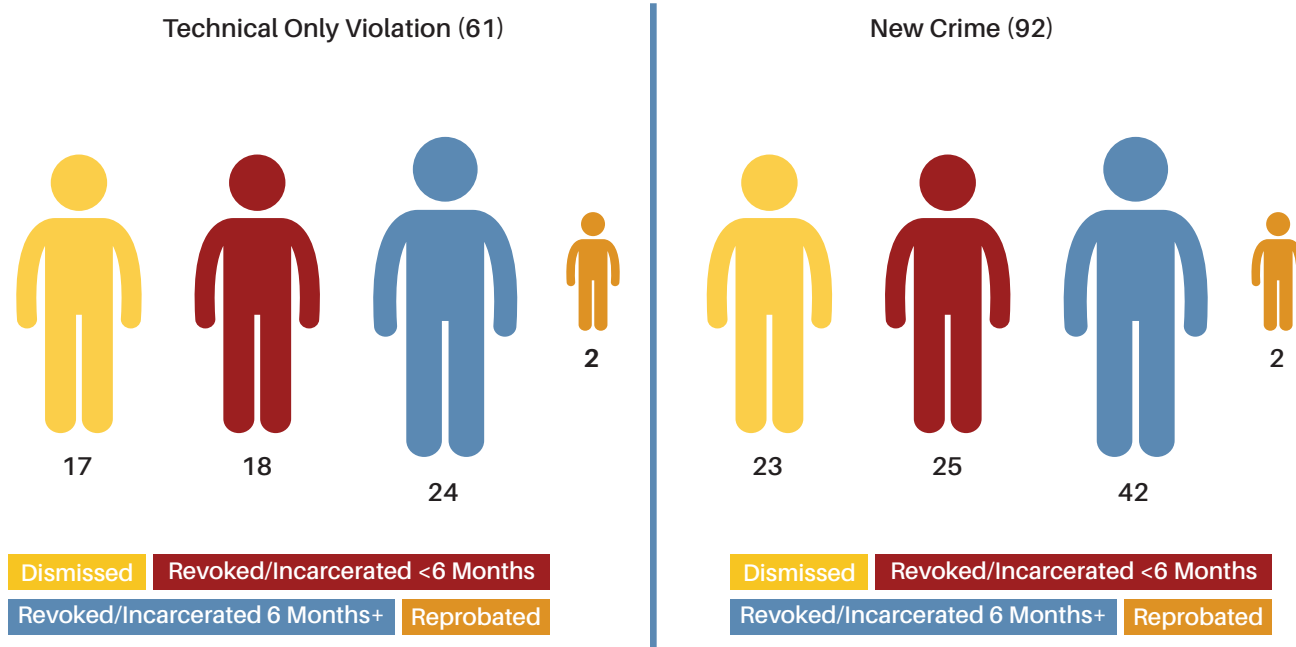
The court can revoke community supervision "when a preponderance of the evidence supports one of the state's allegations that the defendant violated a condition of community supervision."* If the violation is solely based on a failure to pay attorney fees, fines, or court costs, the state must prove by a preponderance of the evidence that the defendant was able to pay and did not.**

Sources: **Leonard v. State*, 385 S.W.3d 570, 576 Tex. Crim. App. 2012) (West 2015).
 **Tex. Code Crim. Proc., art. 42.12 § 21(c) (West 2015).

The court may continue, extend, modify, or revoke community supervision based on a finding of a violation of a condition of supervision. If supervision is continued or modified, the court may impose any other condition deemed appropriate, including community service, an increased period of supervision, increased fines, or placement in a substance abuse felony punishment program. If the term of community supervision is extended, the term for a first, second, or third degree felony cannot exceed ten years. For a misdemeanor, an extension may not cause the defendant's term to exceed three years unless the extension is based on the defendant's failure to pay fines, costs, or restitution, in which case the term may be extended for a further two years if the court finds an extension would increase the likelihood of payment. Tex. Code Crim. Proc. art. 42.12 §§ 21(b-2), 22 (West 2015). Additionally, the court can extend the term for probationers convicted of certain sex offenses for a further 10 years if the probationer "has not sufficiently demonstrated a commitment to avoid future criminal behavior and that the release of the defendant from supervision would endanger the public." Tex. Code Crim. Proc. art. 42.12 § 22A (West 2015).

Process Analysis of Violations Hearings in Bell County

Outcomes for 153 Hearings (September-October 2013)



If the court revokes probation, the potential consequences depend on the type of probation. For regular community supervision, the maximum period a probationer faces in prison is 10 years. For persons placed on probation in conjunction with a deferred adjudication, however, the consequences include entry of conviction and any sentence that could originally have been imposed for the offense of conviction—which in some cases could be considerably longer than 10 years.

In the year ending August 31st, 2014, eighteen percent of the felony direct supervision probation caseload ended in revocation and thirty-nine percent of the misdemeanor direct supervision caseload resulted in a revocation. The rate for the felony caseload is similar to the statewide rate: in fiscal year 2012 (the most recent available data), the revocation rate was 14.5% for the state.⁶

In a two-month sample of violations hearings in Bell County during September and October 2013, probationers were revoked in more than 87 percent of all hearings. Nearly one-third of the revocations were for “technical-only” violations. Among probationers revoked and incarcerated for more than six months, more than a third were for technical-only violations. Statewide, about half of revocations for felony

probation cases are a result of technical violations, while the other half are for subsequent new offense convictions or arrests. In fiscal year 2012, revocations of felony probation cases in the state accounted for thirty percent of prison admissions and forty-three percent of state jail admissions.

Interview Data

The remainder of this report summarizes the views of 43 people interviewed in Bell County, including 23 probation officials (both supervisors and line officers), 15 probationers, and several judges, defense attorneys and district attorneys. The interviews give important insight into the perspectives of those who participate in the county’s probation system, but do not reflect the opinions or conclusions of the Robina Institute. Many interview subjects are quoted directly, but the material below is presented in a way that protects the identities of those interviewed.

The narrative is organized to reflect the main subjects our interview subjects chose to speak about: (1) conditions of probation, (2) length of probation terms, (3) fees and restitution, (4) sanctions, administrative actions, and treatment services, and (5) motions, judges, hearings, and revocations.

1. Conditions of Probation

Background: Texas law includes a long list of potential conditions that may be ordered. These conditions range from requiring probationers to remain law abiding to requiring them to submit for alcohol testing or electronic monitoring.* Specific conditions apply to defendants convicted of DWI offenses, offenses committed because of bias or prejudice, certain violent offenses, domestic violence offenses, and offenses involving substance abuse.** In addition, the court can impose “any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant.”*** The court can impose confinement as a condition of community supervision. For a misdemeanor, confinement must not exceed 30 days. For a felony, it must not exceed 180 days.****

Sources: *Tex. Code Crim. Proc. art. 42.12 § 19(a) (West 2015).
 **Tex. Code Crim. Proc. art. 42.12 §§ 13, 13A, 13D, 14 (West 2015).
 ***Tex. Code Crim. Proc. art. 42.12 § 11(a) (West 2015).
 ****Tex. Code Crim. Proc. art. 42.12 § 12(a) (West 2015).

The court must order all defendants granted community supervision to pay a fee of \$25 to \$60 per month. The judge may make payment of the fee a condition of granting or continuing the community supervision. The judge may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment would cause the defendant a significant financial hardship. Sex offenders must be ordered pay an additional mandatory \$5 supervision fee. Tex. Code Crim. Proc. art. 42.12 § 19(a), (e) (West 2015).

In Bell County, there are approximately 25 standard conditions for all probationers (see Appendix A). Additional conditions, such as attending a treatment program or increased reporting, are sometimes added as sanctions for noncompliance. While misdemeanants can initially be assessed as low risk and report less frequently, those convicted of felonies must be supervised for six months before they can be moved to a less frequent reporting status. Sex offenders on probation in Bell County have a longer list of mandatory conditions than most other probationers, and the entire sex offender caseload is supervised by two officers. Their positions are grant

Summary of Views Expressed About Probation Conditions

Too many conditions are imposed during probation and conditions are not personalized at sentencing.

Probation conditions may interfere with employment.

Conditions are usually explained well at the beginning of probation.

Conditions of probation can be manageable.

The numerous conditions can cause probation to be perceived as more difficult than incarceration.

The probation officer plays a role in ensuring that conditions are perceived as reasonable and fair.

funded by the state and their caseloads are capped at 50 per officer. If their caseloads are full, there are additional officers who can fill in.

Details from Interviews

Too many conditions are imposed during probation and conditions are not personalized at sentencing.

One criminal justice official said there were so many conditions that he could not even list them all.

“[The conditions] used to be able to fit on one page, but both the number of conditions and the related fees have grown tremendously in the past twenty years.”

Other probation officials felt that the conditions are sometimes are too “cookie-cutter,” and not tailored properly to individual probationers. For example, these officials commented that probationers who do not have alcohol or drug problems should not be required to attend substance abuse programming. The judicial perspective was similar: there are many conditions, and while the judges would like to be able to personalize them, there is often not the time or resources to do so. One noted exception was specialty courts, such as mental health court. Interviewees expressed the belief that because specialty courts involve smaller caseloads, probation officers are better able to make individualized recommendations to the court.

One probationer also suggested that conditions should be more personalized:

“The probation officer should be able to go to a judge and say this person has been doing good and take away some of the unnecessary things. Maybe they are having a problem financially but are really breaking their necks. They are treating these people like cattle and they should help get people off.”

Some officers were frustrated when probationers were given conditions they viewed as unreasonable. For example, one probation officer relayed a case judge assigned a person with a serious disability to complete a large number of community service hours. In another case, the court imposed 300 hours of community service on a person with advanced kidney failure who was in need of a transplant, received daily dialysis, and was wheelchair-bound. The probation officer was able to get the community service dismissed by a judge—an outcome the officer thought was rare.

Probation conditions may interfere with employment.

Having too many probation conditions can also interfere with employment. The probationers at one site felt that the high number of conditions were too onerous to abide by them all. One said that the conditions were not fair because of the probation officers:

“[They] want you to find a job, but then they require so much from you even just to report. My probation officer throws a lot of stuff on my to-do list but I have to work.”

However, others reported having probation officers who were flexible and scheduled reporting times around their work schedule. This group felt that the conditions of probation were not easy, but they were possible to follow.

“It’s very easy to say, and true, that the way that probation is set up it is not simple for everyone to succeed. It is set up to keep people in the system. Some people are motivated and it is not impossible to succeed, but . . . you have to have an address. . . maybe [because of their] their life and certain circumstances, they can’t make it. ‘Thanks for letting us be free, but if you can’t pay \$175, oh well too bad.’”

Conditions are usually explained well at the beginning of probation.

Probationers generally felt that the conditions of probation were clearly explained to them at the beginning of their supervision. Probationers at one site reported that they went through an orientation where they were told what was expected of them. One probationer recalled going over the conditions at the first reporting meeting as well. However, at another site, the probationers reported having little understanding of their conditions before beginning probation.

“From the time I was in jail in county to the time I came to the probation office, I was lost. I was in front of the judge and she was going over everything so fast, so I didn’t really find out until I got to probation what I had agreed to. Then I was pretty good, they explained it all to me.”

Conditions of probation can be manageable.

One officer stated that:

“Most of the conditions that are imposed, law abiding citizen would do anyways. Yes some of them are pretty basic. Basic. Basic. Basic. When they are adding new conditions such as take this class and this class and that is at their own cost, then it becomes too much.”

Another probation officer said that:

“Probation is not just about punishment. If courts wanted to just punish, they would just send them to prison. Probation, especially for the young probationers, is a learning process. If you just are hard on probationers and it seems unrealistic, they just won’t come back.”

Probation officers have the option of not enforcing all of the conditions at once, and some suggested that they can take the conditions one at a time to avoid setting people up for failure. For example, a person could be ordered to complete a class, and then move on to other requirements. This incremental enforcement is especially important to officers involved with probationers with mental health problems.

The numerous conditions can cause probation to be perceived as more difficult than incarceration.

One probation officer suggested that a jail or prison sentence can be easier than a probation sentence as probation sentences are longer, more expensive (because of probationer fees), and have more requirements—a perspective that was echoed by many of the people we interviewed. However, when probation is given in conjunction with a deferred conviction, the added benefit is avoidance of a criminal record. Another officer stated that feeling often changes sometime during the initial six months of probation.

“Often the probationer realizes they can do probation. . . A lot of those who just want to serve their time [in custody] are younger or have served lots of time in the past. I encourage the probationers to give it a shot and take it one step at a time. If the person doesn’t want to comply, they will end up revoked. When they are actually facing going back to prison, they don’t want to go. At the end of probation, they often say that they didn’t realize how easy it would be.”

One probationer, after being on supervision for some time, felt that the conditions were better than being incarcerated, though others in the county jail told him that he should not take probation because of all of the conditions that would be imposed on him. He accepted probation anyway, since he had five children and did not want to be incarcerated away from them.

The probation officer plays a role in ensuring that conditions are perceived as reasonable and fair.

The probationers at both sites where interviews were conducted generally felt that the conditions were fair, with the exception of fees (see the Fees and Restitution section of this report). One probationer reported that his probation officer works with him and helped him get into a lot of classes, including batterer’s intervention and substance abuse classes. Sometimes the probationer is allowed to report to his officer by phone, instead of reporting in person. “[A]s long as I’m straight with him, he is good to me.”

As a general rule, the conditions of supervision were deemed reasonable by the probationers when they had officers they found to be understanding, and the conditions were deemed difficult when they perceived their officers as inflexible. One probationer stated: “Some of [the probation officers] understand you have work, have six children.”

Some probationers, however, found the conditions themselves challenging, regardless the officers’ demeanor:

“If you don’t have a car and miss an appointment. . . I usually like seeing my probation officer. I missed an appointment one day because [I] didn’t have a vehicle, so now I have to come in every day, and all my friends have jobs and their own lives [so they cannot give me a ride], and I was only a day late reporting.”

Some probationers found their ability to comply with the conditions of probation was greatly enhanced by officers who offered extra support. One probationer relayed the following story:

“[My probation officer] is awesome. That man is so awesome. Like if I have a problem, I can call him about anything. He is almost like my counselor instead of my probation officer. Like I can call him and, like, Mr. [probation officer] this is a problem and he is like okay, [probationer’s name], come see me this day and we will see what we can do to fix this. He has helped me a whole lot. Like for me to get community service done, to work, and raise my grandbaby and have some very unruly children that cause me problems. . . I mean he had helped a lot. He’s told me who to go to talk to help me get me help with my grandbabies to get me financial help on that part. He helped me get school clothes for my granddaughter. He’ll refer me to everywhere; if not, he will help me himself. He’s really good. If they were to put me with anyone else, I don’t think I could come anymore because that man is awesome. . . He is an amazing probation officer. He really is. I think if I would have gotten someone else, I don’t think I would have been as successful on probation as I have been because he is amazing. I can come to him with anything.”

2. Length of Probation Terms

Background: The length of probation is capped by law at 10 years for felonies and 5 years for low level felonies and misdemeanors. In 2007, a bill was passed that decreased lengths from 10 to 5 years for certain offenses, including third degree felonies. Interviewees reported that they felt that this has caused the length of probation sentences to decrease.

Another reason for the perceived shorter terms is new legislation that simplifies the process for petitioning for early termination of probation. After a probationer has served a third of his or her sentence, the probationer may file a pro se motion with the sentencing court. Previously, petitions for early release had to be filed by attorneys, making the process prohibitively expensive for most probationers. Even under the new law, however, probationers are not eligible for early release unless they have fully paid all outstanding fees. Tex. Code Crim. Proc. Ann. art. 42.12 § 20(a)(West 2015).

Summary of Views Expressed About the Length of Probation Terms

Criminal justice officials perceive that probation sentences are shorter than in the past.

The ability of probationers to petition for early release appears to serve as an incentive once probationers are aware of the possibility.

Many criminal justice officials feel that they know early on in a sentence whether someone will be successful on probation.

Details from Interviews

Criminal justice officials perceive that probation sentences are shorter than in the past.

Several respondents indicated that probation sentences have become shorter, on average, and with the growing popularity of these shorter sentences, a wider range of sentencing options is possible:

"We moved away from standard ten years. I feel that ten years should only be given for very special cases. Most should be five years or less. It is also a question for the judge because they make the decision, but now with new judges, they are giving appropriate sentences. Laws have also changed as we now have state jail offenses."

At the other end of the spectrum, for some crimes, ten year sentences were seen as necessary to protect the community. Examples include: repeated DWI, aggravated assault, sex offenses, and any felony with a large amount of damage to property. For probationers with large restitution payments, ten years was seen as necessary in order to ensure compliance with financial obligations. One officer believed that in a case with \$396,000 in payments, the judge gave a ten year long sentence just to give the probationer time to pay his fees. A probation officer stated that:

"Six month terms... are tough because they have huge fees and cannot pay them in that time. Especially in felonies, they have lots of fees. If someone accepts probation, they have to pay for the court appointed attorney."

Similarly, another officer stated:

"I believe there should not be a six month probation. In a DWI with a \$1,000 fee, they cannot pay in that time. I would rather help someone file for early release than struggle to get them done in six months. We may not even be able to get them in a program in that time."

The ability of probationers to petition for early release appears to serve as an incentive once probationers are aware of the possibility.

One probationer informed the rest of the focus group that early release was not often advertised to probationers, but he felt that it is possible to obtain:

"When you get put on probation, you don't have to be on probation that whole time; they don't tell us that. You only have to be up to date on fees not pay it all off, and you can get off after two-thirds of your time is done. You have to pay all of your restitution and do all of your community service, but only have to be up to date on fees."

Another responded that he had learned about early release well into his probation sentence, only after he went to court for a probation violation and the court appointed lawyer informed him. Another probationer knew about early release and was actively trying to obtain early termination:

"I'm paying almost double every month so I can get it done early. I have already talked to the DA and if I get all my stuff paid off early and do everything I need to do, I can ask for an early release and he would go for it, would just be up to the judge. But, probably won't happen now [that I had some] dirty UAs."

Probation officials reported that early release happens “quite often,” though they do not keep records of the frequency of petitions or grants of early termination. One judge said of this process:

“I dismiss probation regularly [on early termination] and I don’t often have a hearing for them. It can usually be done by letters. If they have completed classes and done what they needed to do, I am happy to let them off.”

Many criminal justice officials feel that they know early on in a sentence whether someone will be successful on probation.

One perspective from the prosecutor’s office was that a probationer’s success could be determined in the first few years of supervision:

“We need [a term of probation] long enough to see if people will be successful, and we need about two years to see that. Most recidivism studies are based on three to five years.”

The judicial perspective was similar: “I don’t have any issues with the length [of probation]. I think you will know within an amount of time whether someone will be successful.” Another judge stated that:

“Ten years is kind of long. You know the state will come in with ten years of probation and [I am] apt to approve but I think research has shown beyond six years is probably too long. Some people may take seven or eight years to get it and that’s okay but as long as it is not used as a gotcha situation.”

Technology

- Probation representatives suggested that younger clients prefer to communicate with officers via text message, and are much less likely to answer phone calls or letters. The department is exploring new opportunities for interactions, such as FaceTime. One benefit of technology is that officers can spend more time in the field because they can access their work anywhere. This freedom may also improve job satisfaction and their capacity to supervise.
- Technology improvements may also allow officers to see what other officers are doing, such as how they respond to violations. Technology may also increase the tracking of violations as every instance can more easily be recorded. This may allow the officer to spend less time researching a probationer’s past violations. Additionally, communication between counties has been increasing with the greater use of email. This may assist officers who handle transfer cases as they need to be able to communicate quickly with probation offices in other counties.

3. Fees and Restitution

Background: About half of the probation department's budget, including salaries, comes from probationers' payments. This degree of reliance on fee collection from probationers to meet basic operating needs is consistent across the state. Regular probation supervision costs the state \$1.63 per day and costs the probationer \$1.57 per day.⁷ The state pays more for intensive supervision probation and specialized caseloads, while the burden on the probationer remains roughly the same. Fees were an important and salient issue throughout the interviews. Respondents stated that probationers are required to pay for pre-sentence investigations, supervision fees, drug testing, counseling, and fees added by the state legislature as well as restitution and fines.

Summary of Views Expressed About Fees and Restitution

Fees are necessary for probation to function.
Officers regularly confront the issue of probationers being behind on payments.
Fees reduce the incentive and ability to grant early termination and may cause sentences to be extended or lead to sanctions.
Officers were supportive of the use of restitution, though restitution payments could be very high.
Probationers viewed fees as more burdensome and more punitive than did criminal justice officials.

Details from Interviews

Fees are necessary for probation to function.

Probation officers said that they felt pressure to collect fees so that the probation department could continue to run smoothly and their salaries could be paid. Though they often did not enjoy this part of their job, they stated that they didn't disagree with the fees because people needed to get paid and the department couldn't run without them. Both administrators and supervision officers understood how integral probationers' fees were to their jobs, and monitored the amount of fees individual officers were able to collect.

One respondent said:

"Probation is a business. But, we need to keep the human piece in it. You wouldn't have a job if it weren't for the probationer. We need to treat them like a person with challenges and feelings. . . Each month, collections between sites are compared."

Officers regularly confront the issue of probationers being behind on payments.

One officer stated that only a very small percentage of probationers stay current in making their payments. Officers often reported feeling like "bill collectors." One officer stated, "It is such a challenge for most [probationers] who don't have a car or have six kids. [It] is an uphill battle [to collect fees] from the first day." According to some respondents, a lot of what the court orders is provided free of charge. Probation can also refer people to programs free of charge. However, a common theme in the interviews was that payment of fees is a problem. One office developed a (free) program as a sanction for individuals who fall behind on their payments. This is a progressive, six week program meant to open probationers' eyes to the consequences of not paying, connect them with employment resources, and show them what will happen if they don't pay.⁸

One officer reflected on the struggle to collect fees:

"Money is the hardest thing about probation, collecting money. We have a collection compliance class. It's a sanction for people who are behind on their payments. This is one of the hardest things to talk to our clients about and then you have these situations when people say they only have enough money to put food on the table and take care of their family and what do you want me to do? They just don't have any money. There is no income. A lot of them have problems getting employment because of their criminal history and that makes it difficult and if they do have a job, it is minimum wage and what takes precedent? Or, they're on a fixed income and they can only pay so much. We try to implement a payment plan and we have talked to [someone in the District Attorney's office] who will let them expire if they have done everything else on probation. We will also extend and give them more time to pay what they owe but we will not tack on [additional] supervision fees. It is not going to do any good to send them to prison so we will tack on a year or two [so they can have more time to pay]. Sometimes, the courts have gone so far as to have the probationer do community service in exchange for fee."

An administrative perspective was that because fees can be a burden to probationers, reducing fees can be used an incentive:

"Offenders are generally going to have to pay for most of their treatment and have a lot of court fees, supervision fees, etc. But a lot of it is a psychological thing. A lot of them aren't going to pay anyways or can't pay, so when you waive the fee, it is really a relief for them and they can focus on paying other fees. There is no sense to keep it on the books."

Some judges stated that they try to waive fees for people who are not able to pay. One said that:

"I do know that our probation officers work really hard if [the probationers] are making some kind of payment. I have heard them say, 'Hey, they are working really hard, can we cut the probation on this?'"

Another judge stated:

"If the defendant does not have the financial capacity to afford probation and they can provide that proof, I might look at that real briefly and then look at what's left. More are indigent, especially on my docket with mental health. I don't really look at the fees. Now, I am not for giving people excuses but if that is all this person is doing is that they haven't paid versus are they committing new crimes..."

Fees reduce the incentive and ability to grant early termination and may cause sentences to be extended or lead to sanctions.

Probationers who are successfully complying with their conditions (including paying their fees) are the ones for whom early termination is possible. However, once probation is terminated, no more supervision fees can be collected—meaning that every early termination deprives the probation agency of a portion of its anticipated budget. Several criminal justice officials noted that probation sentences are extended in order to collect unpaid fees (and restitution). Sometimes fees or community service can be reduced. However, there are some cases where probationers meet all of their conditions but are unable to pay all of their fees. Sometimes these cases are revoked and sometimes probation is extended until the fees are paid. According to one respondent:

"I see that as the number one challenge. The revocation piece, it doesn't make sense to have a very successful caseload and then they have all these fees at the end."

The respondents who were interviewed did not have a clear or consistent idea of the frequency with which nonpayment of fees due to inability to pay actually leads to additional sanctions or revocation. One prosecutor explained:

"I have never seen someone revoked if they were trying, if they showed up, if they weren't earning enough working to pay, and I have never seen a probation officer bring someone up for revocation for those reasons."

However, sometimes probationers who were not current on their payments but had completed all of the other requirements were placed on a "report and pay" docket. One probationer relayed that he had been paying \$10 a month for since 1997. Once he is paid in full, his probation will terminate. A supervisor stated that she can review a probationer's ability to pay and set up a payment plan or have fees waived if the probationer truly cannot pay. When asked how often this occurred, she said, "More-so often than not, especially in the last few years. . . [We] have gone towards looking at an individual and helping them succeed . . . [they] can use community service to pay fees."

Conversely, other respondents *did* believe there was a link between inability to pay and sanctions and revocations. They reported filing a revocation at the end of supervision if fees were unpaid. One supervision officer stated that:

"I have never seen probation revoked for fees. The only way for fees alone is if there is no time left and we have extended probation, and just have no more time [beyond the maximum 10 years for felonies and 2 years for misdemeanors]. If the person is legitimately trying, then [I] would much rather extend than revoke. I can't recall filing on someone for money unless I am out of time."

A judge tied fees to other types of noncompliance and suggested the probationers abscond when they cannot pay their fees, and the absconding leads to revocation:

"I'm not going to revoke someone over money especially if that's the only violation, but that is usually coupled with failure to report because they were told, if they don't pay, they would be revoked."

Probationers described how the ability to pay their fees affected their supervision. Sometimes the inability to pay led to incarceration and/or an extended term of probation. One probationer said that he served five years of probation and was \$175 short on his payments. Because of this, his probation was extended for an additional two years. He couldn't find a job so was sent to jail. He stated,

"There are times when I didn't have money and they made me do an UA and sign things, but if you got money, you can just pay it and be on your way."

Another probationer described how she had been on probation for thirteen years total. She stated she had never had any violations except for not being able to pay her fees and restitution. Because of this, her probation was extended. In addition, she was required to pay for services that she did not feel were necessary:

"I am not even on a drug related charge and I have to go to NA/AA and drug test and that costs us extra money. I am on disability. My payment is almost \$2,000 and I can only make \$200. They put me on felony probation [because of the fees] and I have a felony on my record and I don't think that is very fair. I will be on felony probation until my restitution is paid off and I still have \$10,000 more dollars to pay. I mean the rest of it like community service and all that, that stuff is part of it so, that doesn't bother me. It is just like the AA or NA classes. Why [am I] having to go through this and fork out more money for something I don't even need? You have to go to those classes until your probation officer tells you to stop. . . The only [violation] I had was after 7 years and I didn't have my restitution paid, they had to put a revocation to revoke my probation so I had to go back to court so they could re-do it and put me on felony probation. That is only one that I've had. I am doing everything I am supposed to do. It is just very hard. Very hard, very complicated because I am raising my grandchildren."

Officers were supportive of the use of restitution, though restitution payments could be very high.

Officers were generally supportive of the use of restitution. Though it may vary case-by-case, they felt that if someone had stolen, damaged property, or committed fraud to receive public assistance, the person should have to pay it back. One officer recounted that she had two probationers who owed over \$300,000 each. Another reported having a probationer with \$396,000 in restitution as ordered by a judge and was required to pay \$3,500 a month. The officer came to an agreement with the probationer to pay \$400 a month. But the officer was sure that the probationer will end

up being delinquent the whole time, and the officer will end up needing to talk to the judge. There is a victim in this case and the probationer has a ten year probation sentence, which is the maximum, so the supervision term cannot be extended. The officer said that he cannot disagree with the fees, as they are owed. The officer also stated:

"This probationer is older and in bad health. I'm not even sure if he will live the entire ten years. I don't want to file on him for money; I will end up talking to the judge. If I talk to judge when I am out of time, the judge can put them on a report and pay docket so if the person continues to make payments, the case is continued each month until the fee is paid."

Probationers viewed fees as more burdensome and more punitive than did criminal justice officials.

While the criminal justice officials were divided on their opinion of fees and payments, probationers overall felt that the fees were burdensome and led to more negative repercussions. If they didn't pay, they were threatened with incarceration, told to complete classes, and had to report more frequently. One stated, "The only thing I don't like [about the conditions of probation] are the payments. They don't go off your incomes." Another said, "They just expect you to come up with the money. . . I work but it's not easy."

The amounts owed varied, but were not insubstantial. In one site, one probationer reported owing an \$1,800 balance. At the beginning, the payment was \$60 a month, then around \$200. The probationer didn't know why the payment amounts changed or for what the money was owed, and was simply given a paper by his probation officer indicating how much to pay each month. Another reported paying \$285 a month to probation and \$200 a week for child support. Many of the probationers expressed the difficulty they had finding a job with their records.

"I got to come up with it somehow. [Someone in the office] suggested that I get a third job and threatened to lock me up."

"I have to pay about \$260 every month. I don't even have a high school diploma, so it is hard to get a job, have to do construction. I live on my own, have to pay bills. . . sometimes I don't even have money to eat."

"My probation officer said I will go to jail if I'm behind on payments. Once I was behind about \$400 and she threatened to send me to jail."

"The most ridiculous thing about probation is the fees. Being on probation I live paycheck to paycheck."

While probationers often felt that the officers were helpful as a general matter, they reported that officers could be less flexible when it came to fees—and this caused problems. One probationer said about a supervision officer, “She just wants her money and doesn’t want to help you.”

In one site, monetary payments were reported to be especially burdensome. Probationers reported having fees and restitution between \$5,000 and \$12,000. One said that a good rule of thumb is that probation entails over \$1,000 a year in costs. Another questioned the many programs court fees are used to fund:

“We are paying for restitution, court costs . . . Why are we paying for Crime Stoppers? I don’t even do drugs or drink, but I’m paying for stuff that deals with drugs . . . I understand the restitution the court costs and the lawyers—even though they say you get a free lawyer but if you lose you have to pay them back. The first payment is a very large payment, and you just got out of jail, so you get set back. I couldn’t make up the lost money. Now I have a job and it took a long time to make up that lost money. . . Some of the probation officers want to work with you, some won’t budge.”

A probationer described how the fees impacted her life:

“I caught this misdemeanor, had gotten so far behind on probation and had lost my job, was about to be put out of my apartment. . . I had to pawn some stuff to pay for my apartment and fees. Then, I couldn’t get my stuff out of the pawn. . . It got to be so much. I got to a point that I was homeless and had to stay at the VA. They are still on me about my fees. The only issue I’ve had is having to pay for my fees. Once I got on probation, it was hard to find a job. I lost my house, car, lost everything.”

Another probationer reported that the supervising officer suggested selling her car to pay for the fees, but then she would have no way to travel to her probation appointments. Another underscored how hard it was for probationers to cope with the fees:

“That may not seem like much for someone making \$30- \$40- \$50,000 a year. . . but for someone with kids, who doesn’t have a car and has to pay someone to get a ride, to watch their kids, it is a lot.”

Incentives

- While incentives were seen as important, they are rarely used. The administrative perspective was that probation officers preferred using punishment. However, a bill was recently passed by the Texas legislature to increase the use of incentives/credit in probation throughout the state. Fee reductions may also be used as an incentive. As one officer stated, “bargaining over fees can be a good tool.”
- An incentive program that allows a probationer to earn credit toward fulfilling his or her community service obligations by successfully completing certain court-ordered programs is also in place. The probation department reports an increase in participation and successful completion of programming as a result of the incentive program.

4. Sanctions, Administrative Actions, and Treatment Services

Background: Policies determine some of the ways that sanctions are used (see section 5: Motions, Judges, Hearings, and Revocations). For example, automatic revocations are prescribed for a new felony, two class B misdemeanors, and absconding after 90 days of the officer making every effort to contact the probationer. These efforts include house visits, phone calls, and letters.

On the other hand, discretionary use of intermediate sanctions occurs for other types of violations. Sanction procedures are in writing and a sanctions grid lays out options for ways to respond to violations that do not require a revocation (see Appendix B). The sanctions grid provides options for violations ranging from letters of explanation and increased reporting to jail time or referrals for inpatient treatment. The sanction guidelines were created within the department by a committee and more sanction options have been added over time.

Summary of Views Expressed About Sanctions, Administrative Actions, and Treatment Services

Graduated sanctions were viewed as good practice, while still allowing officers to have discretion.

There are numerous alternatives to incarceration, though many gaps in available services and treatment still exist.

Many officers felt that part of their role was to act as a social worker.

Practices vary between offices, even within the same county.

Officers with specialized caseloads use sanctions differently.

The probationers' experience with the sanctioning process is affected by their attitude toward their probation officers.

Details from Interviews

Graduated sanctions were viewed as good practice, while still allowing officers to have discretion.

Many respondents felt that using a variety of graduated sanctions to address minor violations as they occur was a better approach than allowing violations to accumulate over time without intervention. Officers generally felt that the guidelines were helpful for ensuring that everyone

was on the same page and following the same rules. At the same time, they felt that they still have discretion within the guidelines as they can choose between many types of sanctions. One respondent stated that there should be opportunities for probationers "to resolve whatever problems put them in this position and give them the opportunity to be successful." A supervisor stated that sanctions should generally be a form of treatment; they are meant to be rehabilitative not just punitive. Another respondent stated.

"Each case is unique, but [probationers] still need to be accountable. At times, revocation and going back to the courtroom best serves society, especially if they are creating new victims. If they are mostly complying and just have technical violations and just their situation is making is difficult, [we] try to work with them."

There are numerous alternatives to incarceration, though many gaps in available services and treatment still exist.

Several supervisors felt that there were sufficient alternative sanctions to incarceration. These options include classes and intermediate sanction facilities (i.e., secure residential drug treatment).

However, other respondents felt that there were not enough community sanctions that could be used as alternatives to incarceration, though the respondents' perceptions of where the gaps existed were varied. Some cited a waiting list for outpatient treatment, the lack of a homeless shelter, and only one battered women's shelter in the county. Without resources for the homeless, it is difficult to know where homeless probationers are staying, and sometimes this leads officers to file motions for revocation. One judge indicated that there is a lack of funding and resources for drug treatment. Another respondent expressed concern that the same level of services were not available for females and veterans as for other probationers. Another felt that there were more options for substance abuse treatment compared to treatment for mental health, sex offenses, and aggravated assault offenders. A lack of educational opportunities for probationers was also cited, particularly opportunities that address probationers' past negative experiences in school. Another problem was employment. Criminal records hinder obtaining jobs, though the probation officers have a good relationship with community employment service providers, such as Goodwill. Additionally, as the area is largely rural, public transportation is lacking which makes it difficult for the probationers to get to and from their jobs and programs.

New partnerships in the county have recently expanded the availability of services. One probation officer explained how the county is working with Texas A&M to provide \$5 counseling sessions. The department is also starting a low-cost anger management class. Another officer expressed the need to have longer hours of operation, a change that is currently underway, in order to be able to offer more programs in the evening and to allow probationers to report during non-work hours. Additionally, one officer expressed the lack of ability to order short jail sentences in lieu of a revocation.

"I want to be able to file a motion that [the probationer] could do 30 days in jail without having to send them to prison because there are guys that just need a wake up. I don't know why we don't do it here. It is a lot to have to do a motion guys go to prison or get continued to probation. We need just one strong sanction before prison."

Another respondent brought up funding for programs and felt that the problems were outside of the criminal justice agencies:

"The biggest problems are that the legislature decides that we have programs, funds them for a period of time, and then stops. We can afford to do some things but not everything. If you implement a program [because the state requires it], if you can continue to show success, the program should continue to be funded. There are limited programs for people with substance abuse that are long-term. Most substance abuse programs are short, but they often need year-long programs. Job training programs that address life skills and substance abuse are also needed. Resource and program availability could be improved and we need more funding. There are some examples of good programs on the east coast in big cities. . . Here, we are not metropolitan, but not rural. We are moving towards bigger city issues here."

Some examples of creative use of sanctions were given. One officer stated that, in response to technical violations, some responses could be "increased reporting, having them speak to a group; doing something to make them think." Another said:

"For people who do not want to do community service or report, they may be ordered to do a community volunteer project but not get [credit for] any hours for it. So, when they complete their original hours, they greatly appreciate getting credit for it. So, it works."

Sanctions and fees are also related. As one officer explained, classes are often used as sanction. But sometimes probationers cannot afford the required fees, which results in their being sanctioned for being unable to comply with the sanction.

"Then you sanction on top of sanction. If they don't do the sanctions then you sanction them again."

Many officers felt that part of their role was to act as a social worker.

Some officers expressed an understanding that their jobs entailed some degree of social work. Officers have to deal with basic issues like helping probationers secure housing and transportation before they can deal with problems directly related to the criminal charge. According to one officer:

"For me, [successful probation] means finishes successfully without revocation, they get better, they know how to access services, helps their family (sometimes have three generations on probation), and have a positive impact on their community."

Other officers felt pressure not to be social workers. The high caseloads were cited as a reason why officers are not able to have the time to find good, helpful responses to each probationer's needs.

"I have been told that this is not social work and I shouldn't spend more than thirty minutes with a person. But it establishes rapport and cannot be replaced. I need to get to know the person. But, for some officers, this is just a job or they get cynical. For others, this isn't the case. But if you don't care about the probationer, this shows through."

Practices vary between offices, even within the same county.

Even within Bell County, practices differ between offices in response to differences in their communities. Some respondents believed that harsher sanctions were necessary in one of the offices, located in a more transient area, as the clients in this area were viewed as more dangerous and less concerned with adhering to the rules of supervision.

Officers with specialized caseloads use sanctions differently.

Officers supervising probationers on a mental health caseload reported much more flexibility regarding how sanctions are used. One interviewee's perspective was that sanctions in mental health cases are meant to benefit the person; for example, by requiring counseling. Efforts have been made to develop creative sanctions that are useful (such as increased counseling) rather than sanctions that are not useful (such as having to watch an outdated video). As is the case for regular probation caseloads, sufficient resources are not available in the community to provide an adequate range of sanctions and treatment for the mental health caseloads as well. One officer stated:

"In the past couple of years, we are getting a lot of cases with people on medication. It is very hard when you get someone who can't tie their own shoes and you want to talk about following conditions. . . We are getting a lot more individuals with mental health problems. I just think courts don't want to deal with them. They just want to wash them away. But guess what? Now we have to deal with this situation."

The county also has a special domestic violence caseload. In contrast to mental health cases, there is very little leeway given to probationers with domestic violence problems. There are few intermediate sanctions, and any new offense is likely to lead to full revocation.

Probationers' experience with the sanctioning process is affected by their attitude toward their probation officers.

Probationers reported different experiences with the sanctioning process that seemed to match their attitudes toward their probation officers. One probationer said that she wasn't told at orientation that she would go to jail for violations and was told that instead she would have to take classes or complete community service. However, her probation officer later told her that she would go to jail if she was behind on payments. Another explained that probationers were told, "Do what I say or go to jail. It's a privilege to be out here." Others reported:

"I had a dirty UA and am taking a 4 week class. . . This is my last week of class. The probation officer handled it well. I told her I was dirty and she just told me to take the class."

"My sanction was classes and job search time. . . wasn't too bad. . . wasted my time but wasn't too bad. . . already had a job just couldn't pay my fees."

5. Motions, Judges, Hearings, and Revocations

Background: In Bell County, a motion must be filed whenever a probationer commits any new felony, two class B misdemeanors (which includes driving without a license), or any new crime similar to the original charge. Additionally, motions to revoke are mandatory for certain classes of offenders who commit certain violations or have contact with a victim.⁹ For other types of violations, the officers may work with the probationer until all alternative options and resources have been exhausted. Condition 1 violations (new offenses) and absconding (after 90 days) were reported in the interviews as the two most common reasons that motions to revoke are filed.

Motions filed to the court contain several elements, including allegations of noncompliance as well as a violation report or case history that lists programs attended, sanctions already-imposed, and the probationer's past violations. There are multiple levels of review before a motion is actually filed with the court, with the goal of increasing quality control. Motions move from the officer to the section leader, to the unit supervisor, to the assistant director/operations officer. According to the interviews, once in court, revocation motions are often resolved by plea bargains.

Summary of Views Expressed About Motions, Hearings, and Revocations

Supervision officers file a motion to revoke as a last resort, when they have exhausted all other alternatives and want the person to be incarcerated.

The probation department's relationships with prosecutors and judges are generally good, though their goals do not always align.

The revocation process varies in the amount of time it takes.

Revocations involving transfer cases, drug courts, and mental health courts are unique in some ways.

Details from Interviews

Supervision officers file a motion to revoke as a last resort, when they have exhausted all other alternatives and want the person to be incarcerated.

Probation officers reported giving probationers "every opportunity" to comply before seeking revocation. Officers reported that they only file motions to revoke if they want

a person to go to prison. Some felt that, once they get to court, judges tend to continue probation more often than they revoke it.

"Going back to court is going to be a punishment which should not be confused with discipline. Sanctions are discipline. Hopefully we can use sanctions as a teachable moment, but if they are not learning then it is time to go back to the judge for a more severe sanction and that could be jail time or prison time. There are some people so enmeshed in the criminal thinking and that's all they know. . . So sanctions are to try to get them to feel uncomfortable and change what they are doing."

"The violation reports that we do are the last resort. If we have done everything possible with someone who is not in compliance, basically if we have done everything we could do, if they pick up new offenses, if they are coming up against expiration and they have not done what they needed, we file on them. . . If I am going to get in there, in a court of law, we have done everything. We have gotten where we have two pages of sanctions and it's like, come on. . . We have some people where it is kind of ridiculous we have given people so many chances so I really feel confident that when it gets to court, we have done everything possible that we could."

The criminal justice officials interviewed perceived that the frequency of revocations is lower than twenty years ago. This was attributed to more effective tools being available in facilities and the community, as well as simply more programs and alternatives to incarceration. For example, according to the prosecutor's office, twenty years ago it may have been common to seek a revocation by the second positive drug test, but that is not the case anymore. One supervision officer estimated in an interview that a motion is filed after a probationer has tested positive for drug use approximately three times. When an officer files a motion to revoke, it indicates that they do not feel that the probationer will complete their supervision successfully:

"Motions involve a lot prep work and quality management. It usually takes a couple of weeks to get it done and if I go through the trouble of filing a motion to revoke, they should go through. The majority of time [judges] do revoke more so than they continue on probation. When they don't revoke, the judge may

see another opportunity to give the individual another chance but unfortunately, in our experience, the majority of time, within another six months we are filing on them again. Rarely anyone that has been continued makes it off of probation successfully. None of us want to see anyone go to jail; we are not about that. We want to see people get successfully off probation but there are people who are never going get it."

Several judges said that they saw incarceration as a last resort. One judge said, "Sometimes I think that. . . [probation] can't get the defendants' attention and they hope that I can." Other judges said:

"The starting point for me - most people don't come back better after going to the penitentiary. To me incarceration is the very last alternative and for people who are dangerous."

"[I put] more emphasis on people who have committed new offenses versus the technical violations. I kind of put technical violations to the side. Are there new offenses? I try to look at each of them on a cases by case basis."

"There are some people who don't need probation; they are never going to do what they got caught for again. They embarrassed themselves and their family but [we need] to assess in a meaningful way. I don't like revoking probation. I may put someone in jail for a short time and as law I can do up to 180 days which seems kind of long to me, so maybe 30 days. So, maybe if they sit in jail for two weeks we can get their attention. I have alternatives, whether or not they work. If I don't see them back I consider that a good sign."

While most officers felt that a new crime warranted a revocation hearing, they said they would like to have discretion for less serious offenses. While most respondents agreed with the requirement to file motions for certain crimes, some expressed a desire for more leniency for minor offenses, particularly in cases like driving with a suspended license or class B theft by an individual with no prior history of theft. One respondent said: "Some of these situations don't warrant going back to court because they aren't going to be revoked and it's a waste of money. But, we still need to protect the department."

The review process, which goes through several levels of supervisors, is important to ensure that a revocation is really warranted, but the process can reduce the voice of the officer. Administrators did not believe that the process should be quicker as they need to be careful when filing motions because of the effect on the probationers' lives and the lives of their families. One officer stated that: "What you put in the paragraph, and by the time it goes through the supervisors, it may not be what you say."

The probation department's relationships with prosecutors and judges are generally good, though their goals do not always align.

In Bell County, probation officers prepare the revocation motions, but are represented at court by the District and County Attorney's Office. There is a good working relationship between probation and the prosecutors, which has reportedly improved over the years. Probation officers feel prosecutors have confidence in their work. The prosecutor's office expressed faith in the probation officers and expressed the belief that revocation motions are drafted for a good reason and only after sufficient efforts have been made to address noncompliance.

The probation office communicates with the district attorney and county attorney's offices when dealing with "marginal" cases. If a probation officer questions whether a motion should be filed, he or she will contact the DA or county attorney first before the judge. Sometimes, before a judge rules on a motion, the probation officer will send monthly or weekly updates to the judge about how the probationer is doing. Sometimes, the judge will call a probation officer, though not all officers had this experience. Overall, probation reported a good relationship with prosecutors and little direct contact with court appointed representation.

The revocation process varies in the amount of time it takes.

One anecdote was given of a pending misdemeanor case that had been dragging out for two years. In the interim, the probationer came in time after time testing positive for marijuana, but the officers could not send him to treatment while a new offense was pending. The probation officer tried to file a motion, but it was "kicked back." While cases like these were not common, they are frustrating as the probationer knows that there is nothing the officer can do.

On the other end of the spectrum were cases that moved extremely fast. In another anecdote, a motion was filed for a probationer who received a DWI (required because DWI

was a class A offense due to a previous offense). The motion went through the internal review chain, went to court, probation was revoked, but the new charge was dismissed. While the case dragged on for two years in county court, the DWI case was in district court which reportedly moves faster. One judge said:

"I would love to figure out how we can get [misdemeanor] cases processed faster, especially when there is a new condition 1 violation. I think the court system, because of the sheer volume, can get so bogged down that cases don't get pushed to the front."

A defense attorney described the speed of filing motions as follows:

"They file slow sometimes in the standpoint that people get very small violations and let them build up a year or two and then file on them. That gets hard for me to make a case for the judge that my client has been doing what they need to. What I would rather see is immediate sanctions when a violation has been committed."

The probationers' experiences with their violation hearings were positive overall, but there was often a long wait between the occurrence of the violation and the hearing:

"I got a DWI while I was on probation. . . I knew that I had messed up and the next day I called my probation officer and she knew and had put a motion in. I didn't go to court for two years and was just on probation during that time. She told me that at the next appointment the cops would be there. She worked with me."

"She [my probation officer] was fair. From her point of view. I asked her why she had to put in the motion and couldn't wait, she said she had to. Maybe the reason my old probation officer wasn't working here anymore was that he didn't follow that. . . My probation officer said it [the violation hearing] would probably take a month and gave me a heads up, she knew that I had kids. I had paid my attorney and bail bonds ahead of time."

Revocations involving transfer cases, drug courts, and mental health courts are unique in some ways.

One unique situation is transfer cases. While revocations generally work the same way, if the probationer is out of state, he or she will be extradited back when a motion is filed.¹⁰ Sometimes, according to the interviews, motions take longer to be filed with transfer cases because the other county takes a long time to send violation reports or arrest information.

Another unique type of case is probationers involved in the drug court. While the drug court officers sanction noncompliant probationers as a team, the judge can also decide if he wants to impose something else. Drug court cases have quick access to the court and sanctions are almost immediate. While motions for revocation are processed slowly in regular probation, in drug court it happens the same day. Drug court officers described the process:

"The only reason we would file motion to revoke is if they get a new felony for the same offense, a new drug case we will file a motion to revoke, or they stop reporting or don't respond and stop participating in drug court. But we do our best to not file cases and fill up the court with that."

"[In] regular probation you got someone who is doing x, y, z, you have to wait, you have sanction, sanction, sanction. . . but then you can file a motion but with drug court and you can go in front of a judge right away and the [probationers] are scared and wondering what the judge is going to do and they need that."

Another unique situation is cases that are handled in a mental health docket. These cases have more discretion with mandatory motions, depending on the type of offense. Once a motion goes to mental health court, the judge and officer will look into what else can be done. The motion can be pending for up to a year to ensure that the person has access to treatment and is complying. According to the interviews, most motions in this caseload were filed for positive drug tests and motions were not filed for only nonpayment of fees or failure to complete community service.

Summary

This profile describes the structure and operations of probation in one county in Texas. It presents the perspectives of the individuals who participate in the county's probation system and how they navigate issues surrounding probation violations and revocations. The picture it paints is one of a complex system, tasked with ensuring that those under supervision abide by a lengthy list of conditions and remain crime-free, all while working within the realities of probationers' daily lives. Though many of the probationers had limited financial means, the probation system in Bell County—and across the state—is largely funded by probationers' fees, turning probation officers into "bill collectors" to finance the system and burdening the probationers who already struggle with financial instability.

The Bell County Community Supervision and Corrections Department directly supervises over three thousand probationers at any given time. Nearly one-third of revocations in the county are for violations of technical conditions only, rather than a new offense, and about sixty-nine percent of these revocations led to incarceration. Thirty-nine percent of the revocation hearings for technical violations led to revocation and incarceration for six months or more. Probation officers favored the use of graduated sanctions to address noncompliance, and tended to file a motion to revoke as a last resort when they believed that incarceration was the only option left. Officers reported having discretion regarding whether to file a motion, with the exception of certain crimes for which a revocation is mandated.

The vast majority of those who were interviewed expressed their confidence in the probation system. However, they also drew on their experiences and looked to the future to envision ways in which the system could be improved. One interviewee hoped for additional funding for long-term programs. He felt that:

"[T]he biggest problems are that [the] legislature decides that we have programs, funds them for a period of time, and then stops. We can afford to do some things but not everything. If you implement a program because the state requires it, if you can continue to show success, then [that] program should continue to be funded. There are limited programs for people with substance abuse [issues] that are long-term. Most substance abuse programs are short, but [probationers] often need year-long programs. Job training programs that address life skills and substance abuse also needed. Resource and program availability could be improved and need more funding. There are some examples of good programs on the east coast in big cities. I keep an eye on those. Here, we are not metropolitan but are also not rural. We are moving towards bigger city issues here."

Another respondent stressed that the resources also need to be affordable. Probationers who are working are likely only making minimum wage. If a probationer needs mental health resources, he or she may not be able to pay for counseling on top of the other required fees. Though the department tries to put together what it can with available resources, officers have to deal with basic issues (like housing and transportation) before they can deal with charge-related problems. Probation officers often have to act as social workers, and are given that responsibility when the judge tasks the probation officer to find housing, employment, and other resources for the probationer. They must balance the pressure to collect fees from probationers in order to fund the probation system—and their jobs—with the reality that probationers often have limited means to pay the fees and that the strain of the high payments may negatively affect probationers' lives.

The roles of social worker and supervisor are often competing, and several of those who were interviewed suggested emphasizing the former. As one officer noted, while there is pressure to not act as a social worker, it is important to spend more than a few minutes with each probationer in order to build rapport; there is no substitute for this. In order to promote this practice,

"caseloads need to be lower. . . Probation is a business. But you need to keep the human piece in it. You wouldn't have a job if it weren't for the probationer. You need to treat them like a person with challenges and feelings."

Another interviewee said that he

"would like to see more attention paid to the whole person. We get someone from a dysfunctional family and order them to complete classes, but then send them right back to their environment—it is probably not that helpful. It would be helpful to know more about their environment."

Probation officers in Bell County are faced with a challenging and important task, and the numerous actors involved in the probation system offer a multifaceted perspective of how probation operates. As one probation officer stated, success on probation means that the probationer "finishes successfully without revocation, they get better, they know how to access services, help[] their family (who sometimes have three generations on probation), and they have a positive impact on their community."

Appendix A

Bell County Community Supervision and Corrections Department Standard Conditions of Supervision

1. Neither commit nor be convicted of any offense against the laws of the State of Texas; or any other State; or of the United States of America.
2. Avoid injurious or vicious habits and abstain from the use of illegal drugs in any form, and not consume, transport, purchase, trade for or possess any alcoholic beverage.
3. Avoid all places and persons of harmful or disreputable character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang, including persons with criminal records, (except at CSCD approved activities), persons and places where illegal drugs are possessed, used or sold; and places where alcoholic beverages are sold and consumed except incidental to the sale of food.
4. Obtain drug/alcohol screening and/or testing and counseling as indicated under the direction of the Community Supervision Officer at own expense.
5. Report to the Community Supervision Officer as directed by the Judge and monthly thereafter unless otherwise directed by the Community Supervision Officer.
6. Participate and cooperate in the Community Supervision and Corrections Department assessment, classification, and habilitation/rehabilitation programs. Obey all rules and regulations of the Community Supervision and Corrections Department.
7. Permit the Community Supervision Officer to visit you at your home or elsewhere, which visit could be digitally recorded, saved and reproduced, should circumstances warrant.
8. Report any change of address, change of job or arrest to the Community Supervision Officer within 48 hours. .
9. Remain within Bell County, Texas, unless permitted in writing to depart by the Judge and/or Community Supervision Officer.
10. Not leave the State of Texas, without the written consent of the Judge filed among the papers in this cause. Comply with all requirements of the Transfer Request/Order.
11. Report by mail monthly, when transferred out of Bell County and within the State of Texas.
12. Comply with all conditions of community supervision/probation as required by the receiving County or State. Remain in county or state of transfer unless permission from said county Supervision Officer is granted.
13. Submit to literacy testing and training as directed by Community Supervision and Corrections Department. Obtain GED or High School Diploma within one year or provide proof of having.
14. Obtain and keep gainful full-time employment in a lawful occupation with referral to Texas Workforce Commission and Texas Rehabilitation Commission at any time unemployed.
15. Support dependents you now have or may acquire during the term of this community supervision.
16. Participate in substance abuse testing and submit a urine/saliva/breath specimen upon direction of the Community Supervision Officer. Do not attempt to alter, manipulate or otherwise corrupt the test result.
17. Do not own, possess, use, or transport a firearm or ammunition, except while performing active military service with government issued weapon.
18. Do not enter into any agreement to act as "informer" or special agent for any law enforcement agency without approval of the Judge.
19. Maintain on your person at all times a current, valid State issued driver's license or State/U.S. government issued photo identification card.
20. Attend a Victim Impact Panel at such time deemed necessary and warranted by the Community Supervision Officer.
21. Participate in and successfully complete the Cognitive Program, as directed, at own expense.
22. On or before June 15th of each year during this community supervision, defendant shall insure that his community supervision officer receives a true and correct copy of his Federal Tax Return for the previous year and a copy of all W-2's, 1099's, etc. attached thereto.
23. Pay the total of court ordered payments indicated below through the community supervision office at no less than the rate specified. All payments are effective at supervision begin date and due at the end of each month thereafter. A one-time \$25.00 "time payment" fee is imposed if any part of court costs, fine or restitution is not fully paid by the 31st day of this order. Total of court ordered payments must be paid thirty days prior to expiration. When placed in a facility in this Cause where unable to be employed and with no other source of income, all payments are held in abeyance until release.
 - a. Court Costs to be paid \$__ per month.
 - b. Fine to be paid \$__ per month.
 - c. Restitution to be paid \$__ per month. (Payable to: __)
 - d. Texas Department of Public Safety Lab fee to be paid \$__ per month.
 - e. Court Appointed Attorney to be paid \$__ per month.
 - f. Crime Stoppers fee.
 - g. Life Skills program fee.
 - h. Pre-Sentence Investigation report fee.
 - i. Substance Abuse Questionnaire fee.
 - j. Supervision fee per month for each month of the supervision period.
 - k. \$25.00 Substance Abuse Test fee per month for each month of the direct supervision period while on specialized caseload/
\$10.00 fee per month for each month of the direct supervision period while on regular caseload.
24. Participate in and successfully complete the Life Skills program, as scheduled by Community Supervision Officer.
25. Work faithfully and satisfactorily participate in approved community service project(s) by completing _ hours of community service at a rate of no less than _ hours per calendar month.

Appendix B

SECTION 4-15

CONTINUUM OF SANCTIONS (Regular Caseload)

Revised 02/07

VIOLATIONS (FAILURE TO:)	STAGE 1 (1 st Violation)	STAGE 2 (2-3 Violations)	STAGE 3 (3-4 Violations)	STAGE 4 (4+ Violations)	STAGE 5 COURT
Report	Risk Options	Risk Options	Risk Options	Risk Options	
	Letter of Explanation	Increased CSR* Supervisory Hearing ReOrientation	Administrative Hearing	Instant CAPIAS	
Maintain Curfew▶ (Optional)▶ (Optional)▶ Bell County Jail* (7-14 days straight time, weekends or work release)				Bell County Jail* (15-30 days straight time, weekends or work release)	
	Accomplish Court Ordered Programs (i.e. LS/CSR/DWI)	Increased Reporting Curfew*	Cognitive Group* Vehicle Interlock* Prison Deterrence Program*	ISF* Collections Compliance	State Jail felony only* (120-180 days straight time)
	Needs Options	Needs Options	Needs Options	Risk & Needs Options	
Pay	Monthly Budget Review w/ W-2's, pay vouchers & Income Tax forms	Employment Referral (2 nd job, if necessary)	Restitution Center*		MTR
Drug Use +All apply w/ 1 st positive UA. Misdemeanor: See Memo, Chapter 5, Special Procedures.	+ Bridge Group + SASSI Evaluation & referral, as appropriate	Credit/Debt Counseling Family Intervention Out-Patient Counseling Victim Impact Panel SAG Group	Residential Treatment* (Placement referral) Specialized Caseload* SAFPF*	SAFPF* SAFPF Relapse*	
New Offense	Refer to Chapter 5 Special Procedures	AA/NA (increased)	Antabuse (voluntary with medical approval)		

NOTES:

1. Sanctions identified with an asterisk* require a court order/amended judgment.
2. Supervisory staffing required in multiple violation situations.
3. **Need Options** should relate to a specific situation/problem to be addressed.
4. CSO may apply more than one listed sanction per violation in category.
5. CSO may apply unused sanctions in lesser category in addition to current category.
6. Community Referral must directly relate to a specific problem/need or violation (i.e. Anger Management, Parenting Classes, MHMR).

END NOTES

- ¹ In preparation of this report, site visits were made only to the Bell County offices.
- ² Interview subjects reported that, in some Texas counties, as much as 75 percent of probation departments' budgets were dependent on the collection of supervision fees.
- ³ Erinn J. Herberman and Thomas P. Bonczar, *Probation and Parole in the United States*, 2013 (U.S. Department of Justice, Bureau of Justice Statistics 2014), at 16 app. table 2.
- ⁴ Lauren E. Glaze and Seri Palla, *Probation and Parole in the United States*, 2003 (U.S. Department of Justice, Bureau of Justice Statistics 2004), at 3 app. table 2.
- ⁵ http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm
- ⁶ http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf
- ⁷ http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf
- ⁸ Bell County Probation Department policies provide: "If a payment is not the correct amount of payment, the CSO/ASO will confront the defendant, create a new payment plan and apply sanctions if warranted. The longstanding policy in the Killeen office is that if a defendant becomes \$200.00 or more delinquent in Court fees they will be sanctioned to attend Collection Compliance class until they are current on their payments. If a payment plan has been accepted by both the CSO/ASO and defendant, and the defendant is abiding by the payment plan they will not be required to attend Collection Compliance class." Bell County Probation Dept. Policies, § 2-3, paragraph B (rev. 5/13) (on file with author). The collections compliance class is a series of six sessions facilitated by a probation officer. Probationers are allowed to miss one session; if they miss more they are considered unsuccessful. Paying \$100 will allow a defendant a "free pass" from class. Probationers who successfully complete the program but remain delinquent with fees and/or continue to make no effort towards compliance may be required to repeat the program. The sessions cover financial goals, budget review, applications for employment, interviewing for employment, tips to be a great employee, and an overview from the Goodwill Learning Center.
- ⁹ Department policies section 3-7 indicates that a motion to revoke must be filed when a probationer: 1) is charged or accused of committing a felony or Class A misdemeanor offense; 2) commits a first class B misdemeanor which is violent or assaultive, is the same or similar offense to the one for which community supervision was granted, or the offense involves the same victim; 3) commits a second class B misdemeanor; 4) commits one or more class C misdemeanors which are violent or assaultive, are the same or similar offense to the one for which community supervision was granted, or the offenses involve the same victim; 5) tests positive for the presence of a controlled substance or marijuana and refuses to participate in a program recommended by the department or refuses to accept sanctions. When the decision is discretionary, the following guidance is given: "The filing of a motion (MTA/MTR) signifies to the court all attempts to ensure defendant compliance with the conditions of court ordered supervision (COS) have proven unsuccessful and the defendant is no longer considered a viable candidate for community supervision." Bell County Probation Dept. Policies, § 3-7 (rev. 5/13) (on file with author).
- ¹⁰ If a probationer is transferred to another state through the Interstate Commission for Adult Offender Supervision, the probationer is required to place into an escrow account funds sufficient to extradite the person to Bell County. This escrow account is refundable if the people completes community supervision, returns to the state voluntarily, or is not substantially delinquent in court ordered fines, fees, and costs. For probationers who abscond and leave the state, the decision of whether to extradite is decided on a case by case basis by the District Attorney's Office. Any extradition costs are borne by Bell County.