



# The Pennsylvania Community Corrections Story

By Vincent Schiraldi<sup>1</sup>

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## Background

The [sentencing](#) of Philadelphia rap artist Meek Mill to imprisonment for probation violations committed a decade after his original offense has focused attention on probation and parole practices nationally and in Pennsylvania (NBC News 2017; Jay-Z 2017).

Unfortunately, Pennsylvania serves as a good example of how high rates of probation and parole can go hand-in-hand with, and contribute to, high incarceration rates. Pennsylvania has the highest incarceration rate in the Northeast, coupled with the third highest percentage of its citizens on probation and parole in the country. According to the Council of State Governments Justice Center (2017), Pennsylvania's incarceration rate increased by 16% from 2005 to 2014, compared to New York's and New Jersey's which have declined by 18% and 24%, respectively.

While one out of every 53 adults is supervised by probation and parole nationally, in Pennsylvania, one out of every 34 adults is under community supervision, a rate 36% higher than the national average (Kaeble and Bonczar 2016). Only Georgia and Idaho have higher rates of community supervision than Pennsylvania.

It is important to put these supervision rates into international context. As U.S. community supervision rates are five to ten times the rate of European countries (Phelps and Curry 2017), Pennsylvania supervises its citizens at one of the highest rates in the Western world.

While Pennsylvania's rate of probation supervision is 19% higher than the national average (1,814 vs. 1,522 per 100,000 adults) (Kaeble and Bonczar 2016), its parole supervision rates truly stand out. Pennsylvania has both the highest number (112,351) and rate (1,109 per 100,000 adults) of parole supervision in the U.S.

Pennsylvanians are more than three times as likely to be under parole supervision as are adults in the rest of the

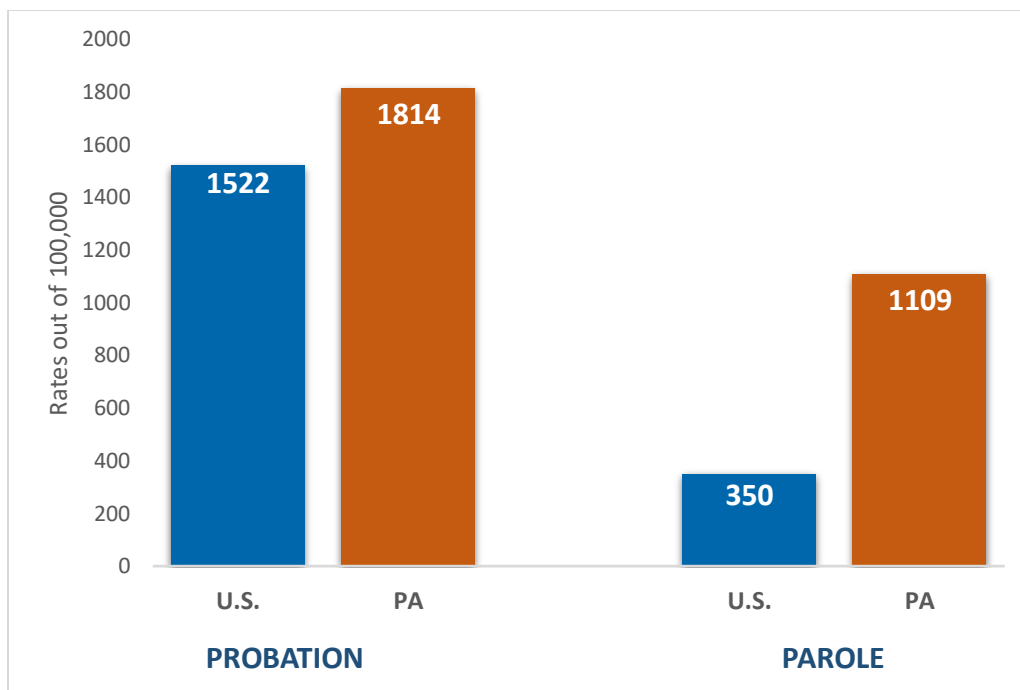
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U.S. (the average rate for U.S. states is 350 per 100,000 adults, see figure 1). About as many people reside in Pennsylvania (12,784,227) as in the states of Alabama, Mississippi and South Carolina combined (12,813,145), yet there are more than five times as many people on parole in Pennsylvania as in those three deep South states (21,583 people were on parole in AL, MI and SC in 2015).

Furthermore, while probation and parole populations are declining nationally, they are growing in Pennsylvania (Kaeble and Bonczar 2016). In 2015, community supervision in Pennsylvania grew by 5.3% adding 14,900 individuals to the 281,000 people already under supervision, for a total supervised population of 296,000, almost the population of the city of Pittsburgh (303,625). One out of every 22 adults in Philadelphia is under supervision, more than twice the national rate (PA Board of Probation and Parole 2015a; PA Board of Probation and Parole 2015b; US Census Bureau n.d.). The 5.3% growth of community supervision in Pennsylvania in 2015 represented the sixth fastest community supervision growth rate in the U.S that year. Meanwhile, the number of people on community supervision nationally declined by 77,200 (-1.5%) in 2015.

**Figure 1: Rates of Probation and Parole in the U.S. and Pennsylvania out of 100,000**



Source: Appendix Tables 2 and 3 in Kaeble, Danielle, and Thomas P. Bonczar. 2016. *Probation and Parole in the United States, 2015*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available: [www.bjs.gov/content/pub/pdf/ppus15.pdf](http://www.bjs.gov/content/pub/pdf/ppus15.pdf)

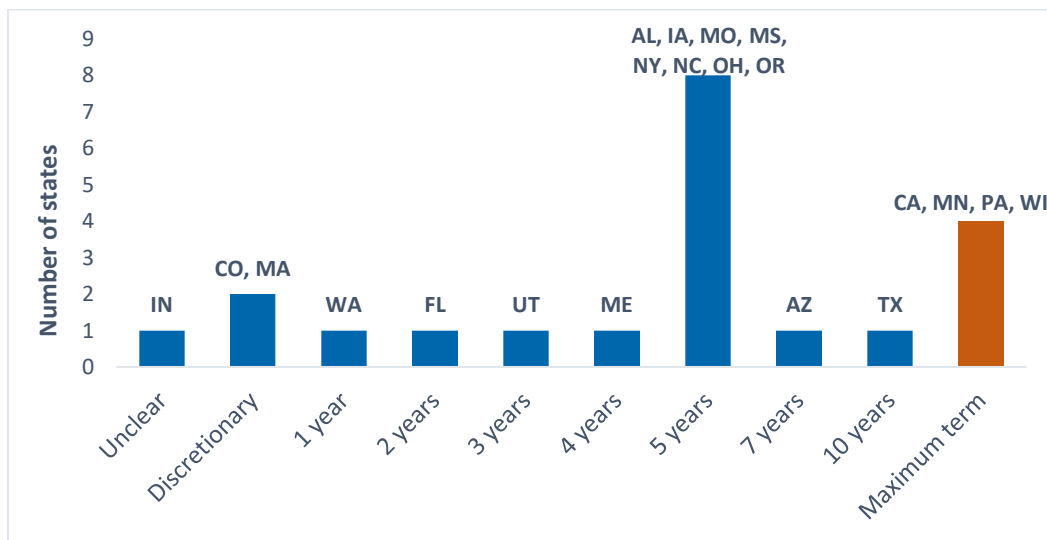
Perhaps not surprisingly, a 2017 report by the Council of State Governments Justice Center found that nearly one-third of Pennsylvania's prison beds are occupied by people who have violated conditions of probation or parole, costing the state \$420 million a year. While 28% of admissions to prison in the United States in 2014 were the result of a parole (or conditional release) violation, 45% of prison admissions in Pennsylvania were the result of parole violations.

## What contributes to Pennsylvania’s high rates of community supervision?

Several provisions of law stand out that contribute to the state’s high rates of community supervision.

- Persons sentenced to prison for indeterminate ranges in Pennsylvania are required to be supervised on parole for the duration of the remainder of their maximum sentence which is sometimes quite long. So if someone receives a 10 to 20-year prison sentence in Pennsylvania, and they are released at their minimum of 10 years, they are supervised on parole for an additional 10 years (Pennsylvania General Assembly, Title 42 § 9755, § 9756).

**Figure 2: Maximum Length of Felony Probation**



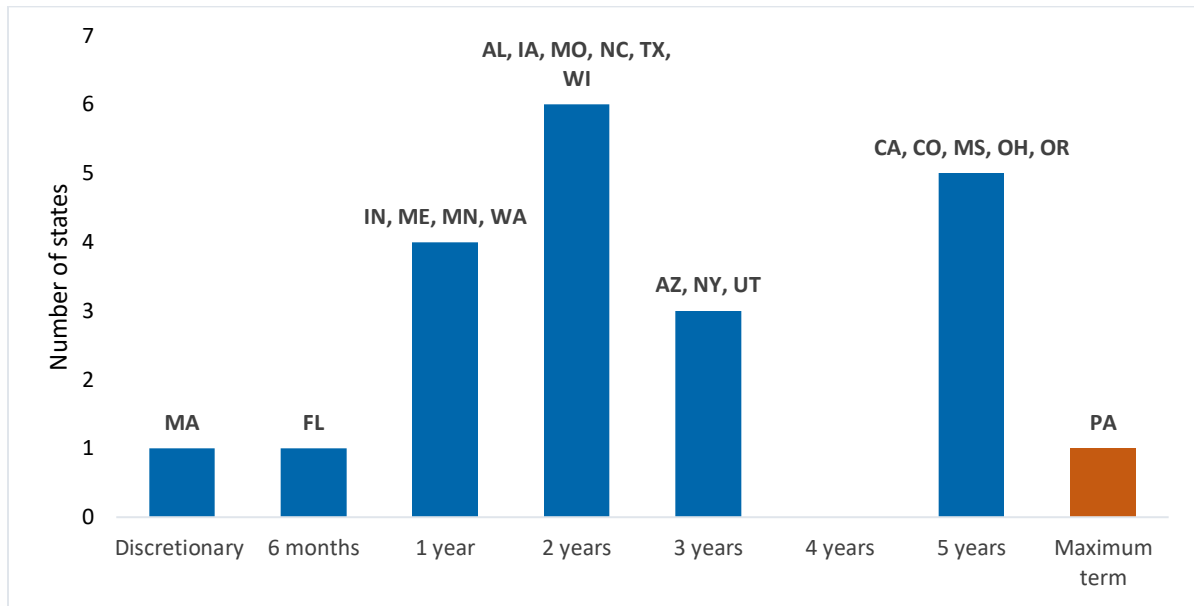
Source: Watts, Alexis. 2016. *Probation In-Depth: The Length of Probation Sentences*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. Available: [robinainstitute.umn.edu/publications/data-brief-probation-depth-length-probation-sentences](http://robinainstitute.umn.edu/publications/data-brief-probation-depth-length-probation-sentences)

- Pennsylvania permits probation terms to equal the statutory maximum for a person’s offense; many other jurisdictions limit the duration of a probation term (see below). So, if the maximum period of punishment for a person’s offense is 20 years, they can receive a 20-year sentence to probation, a probationary period unheard of in many states. If that individual violates probation, the judge can sentence him or her to the maximum term of 20 years. Judges can also resentence persons who have not succeeded on probation to even longer terms of probation (Pennsylvania General Assembly, Title 42 § 9754).

According to a 2014 analysis of 21 states by the University of Minnesota’s Robina Institute of Criminal Law and Criminal Justice, Pennsylvania stands out in this regard (Mitchell et al. 2014). It is one of only four states examined where felony probation terms could be the maximum allowable sentence, and the only state examined where misdemeanor probation terms could be the maximum misdemeanor

sentence (see figures 2 and 3).<sup>2</sup> Likewise, according to the Council of State Governments Justice Center, 62% of all states (31 states) cap most probationary sentences at five years or less (Reynolds et al. 2016).

**Figure 3: Maximum Length of Misdemeanor Probation**



Source: Watts, Alexis. 2016. *Probation In-Depth: The Length of Probation Sentences*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. Available: [robinainstitute.umn.edu/publications/data-brief-probation-depth-length-probation-sentences](http://robinainstitute.umn.edu/publications/data-brief-probation-depth-length-probation-sentences)

- Pennsylvania courts are permitted to sentence people to probation following their prison/parole terms. Thirty percent of prison sentences in Pennsylvania were followed by a probation term with a median length of three years in 2014 (Reynolds et al. 2016).
- Pennsylvania also allows courts to sentence individuals to consecutive terms of probation. So people can receive multiple probation terms for multiple counts, “stacked” additively upon one another (Pennsylvania Commission on Sentencing 2017).
- While early discharge from probation is allowable upon the motion of the defendant, it is not administratively granted like it now is in many other states, greatly limiting its utility (The Pew Charitable Trusts 2016).
- When an individual is accused of a probation violation in Pennsylvania, they are often held on a local county detainer, meaning they are not entitled to pre-hearing release either on bail, their own recognizance, or under supervision. There is also no time limit to this detention (Briggs 2016). This is

<sup>2</sup> Misdemeanor terms in Pennsylvania can extend up to five years, which is also unusual, and may indicate that some offenses that are considered felonies in some states are classified as misdemeanors in Pennsylvania. While this is a fair point, it fails to justify lengthy probation terms for misdemeanor (or felony) offenses, as probation terms beyond one to three years have limited public safety utility.

no small matter, as half of those in the Philadelphia jail system are held on probation or parole detainees (Ewing 2017).

## Considerations for policy makers

In August 2017, the nation’s leading probation and parole administrators signed a [\*Statement on the Future of Community Corrections\*](#), in which they noted that “community corrections has become a significant contributor to mass incarceration” but that “increasingly sophisticated research has shown that we can responsibly reduce probation and parole populations” and that “it is possible to *both* significantly reduce the footprint of probation and parole *and* improve outcomes and public safety.” In February, 2018, 20 current and former probation and parole administrators collaborated on [\*Too Big to Succeed: The impact of the growth of community corrections and what should be done about it\*](#), recommending that community corrections populations be cut in half in America and resources focused on those on probation and parole at greatest need. The following recommendations are offered toward the goal of creating a more focused, safer and more just and equitable community corrections system in Pennsylvania.

- **Reduce probation and parole terms to between 1 and 3 years, except in rare circumstances, and eliminate consecutive probation terms.** Probation should be a sentence granted in lieu of imprisonment, not an add-on. Such terms should be only as long as is necessary to achieve the rehabilitative and accountability purposes of probation, and no longer. Most re-offenses under community supervision occur within the first year or two of supervision, after which the impact and utility of supervision wanes (Austin 2010; Klingele 2013). Lengthy probation terms not only stretch out already strained probation resources, but they serve as unnecessary trip wires to technical revocations.

According to a 2017 Pew Charitable Trusts report, eight Justice Reinvestment (JRI)<sup>3</sup> states (AK, AL, GA, HI, LA, MT, TX, and VT) have shortened probation terms (Gelb and Utada 2017). The Harvard Kennedy School Program in Criminal Justice Executive Session on Community Corrections recommends combining shortened supervision terms with the ability to earn time off supervision for meritorious behavior (see below), “Supervision periods should have a relatively short maximum term limit — generally not exceeding two years — but should be able to terminate short of that cap when people under supervision have achieved the specific goals mapped out in their individualized case plans, a milestone often marked by a special ceremony to highlight the significance of the event”(Executive Session on Community Corrections 2017, pg. 4). The American Law Institutes’ Model Penal Code: Sentencing (MPCS) likewise recommends, “For a felony conviction, the term of probation shall not exceed three years. For a misdemeanor conviction, the term shall not exceed one year. Consecutive sentences of probation may not be imposed” (American Law Institute 2017, § 6.03(5), pg. 61).

The MPCS provides the following list of states that have substantially shortened probation periods along with their code sections (pg. 82):

11 Del. C. § 4333(b) (2 year limit for violent felonies; 18-month or 12-month limits for all other offenses); Fla. Stat. § 948.04 (2-year maximum, with exceptions for crimes of sexual battery and abuse of children); Georgia Code § 42-8-34.1(g) (2 years “unless specially extended or reinstated

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<sup>3</sup> NB: this is not meant to be a comprehensive list of states with these provisions, but rather a list of *JRI states* with these provisions.

by the sentencing court upon notice and hearing and for good cause shown”); Iowa Code § 907.7 (5 years for felonies, 2 years for misdemeanors); Ky. Rev. Stat. § 533.020(4) (5 years for felonies, 2 years for misdemeanors); La. Code Crim. P., Arts. 893 & 894 (5 years for felonies, 2 years for misdemeanors); Miss. Code § 47-7-37 (5 years); Mo. Rev. Stat. § 599.016 (5 years for felonies, 2 years for misdemeanors); Nev. Rev. Stat. § 176A.500 (5 years); N.H. Rev. Stat. § 651:2(V)(a) (5 years for felonies, 2 years for misdemeanors); N.J. Stat. § 2C:45-2 (maximum prison sentence for offense or 5 years, whichever is shorter); N.C. Gen. Stat. § 15A-1342 (5 years); Ohio Rev. Code § 2929.15(A)(1) (“The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years.”); Utah Code § 77-18-1(10) (3 years for felonies; 1 year for misdemeanors). In Connecticut, if a probation term is more than two years, the probation agent must submit a report after 18 months to the court concerning whether the probationer should be discharged at the two-year mark. See Conn. Public Act No. 08-102 (Substitute House Bill No. 5877).

Reducing community supervision terms would allow Pennsylvania’s probation and parole supervising agencies to focus on individuals for the period of time they are at the greatest risk of offending, rather than exposing them to technical violations long after they have committed their original offense while increasing workloads for overburdened community supervision workers.

- **Allow persons under community supervision to earn “merit time” or “earned compliance credit” off their probation and parole terms.** The Pew report indicates that, in 18 JRI states (AK, AR, AZ, DE, GA, ID, KS, KY, LA, MD, MO, MS, MT, NH, OR, SC, SD, UT) people can shorten their supervision periods by up to 30 days for 30 days of compliance (Gelb and Utada 2017). Earned compliance credits both provide an incentive for persons on probation and parole to perform well under supervision, and help focus scarce community supervision resources on those most in need of them.

In 2012, policy makers in Missouri granted 30 days of earned compliance credit for every 30 days of compliance while under supervision for certain people on probation and parole. As a result, 36,000 people on community supervision were able to reduce their terms by 14 months, there was an overall 20% reduction in the number of people under supervision, and reconviction rates for those released early were the same as those discharged from supervision before the policy went into effect. When New York City Probation increased early discharges nearly six-fold from 2007 to 2013, only 3% of persons discharged early were rearrested for a felony within a year of discharge, compared to 4.3% of those who were on probation for their full term (New York City Department of Probation 2013).

The Harvard Executive Session, the Model Penal Code and the *Statement on the Future of Community Corrections* all recommend allowing persons to earn early discharge from community supervision.

- **Minimize supervision for persons at low risk of offending.** Research shows that providing supervision and services to persons who are at low risk of reoffending actually *increases* their likelihood of rearrest (Executive Session on Community Corrections 2017). Pennsylvania can achieve better outcomes and reduce the unnecessary deprivation of liberty by sentencing individuals to conditional

discharges or informal supervision, or by administratively placing lower risk people onto banked caseloads supervised by voice recognition software or electronic kiosks.

From 1996 to 2014, probation caseloads in New York City declined by 69%, during which time the city's violent crime and incarceration rates also plummeted by 57% and 55%, respectively (Jacobson et al. 2017; New York State Division of Criminal Justice Services n.d.). By 2014, 25.8% of persons arrested for felonies in New York City were sentenced to conditional or unconditional discharges or other informal sentences, compared to only 4.3% who were sentenced to probation (Greene and Schiraldi 2016).

Meanwhile, city probation officials began supervising low risk clients through the use of monthly check-ins at electronic kiosks (like an ATM). When the city's probation department expanded the use of kiosks to nearly two-thirds of their caseload, rearrests for low *and* high risk people on probation fell as probation officers were able to spend more time focusing on high risk people on probation (Wilson, Naro and Austin 2007). In 2012, the City's probation violation rate was 3.1% compared to 11% statewide (Jacobson et al. 2017).

- **Fiscally incentivize counties to reduce commitments and revocations to jail and prison.** In too many states, it is cost-free for county budgets when local judges sentence someone to prison, but maintaining them locally on probation and in community programs is a cost borne largely or exclusively by counties. This creates a perverse incentive for local officials to imprison people and draws state funds toward more punitive and less effective prisons and away from community programming (Still et al. 2016; Raphael 2014).

Since 1988, Michigan's Community Corrections Act has reduced this skewed incentive system by encouraging counties to reduce commitments of persons convicted of felonies to state prison (Phelps and Curry 2017). Counties that develop a Community Corrections Advisory Board and create a comprehensive plan for reducing state prison commitments and improving probation services receive grants from the state for services to people on probation. From 1989 to 2010, the commitment rate to prison for new felony offenses in Michigan declined from 35% to 21%, even more remarkable considering the trend towards higher felony commitment rates nationally during that time period.

- **Require the use of graduated sanctions and rewards systems prior to revoking people under supervision to incarceration.** Graduated responses allow supervising agencies to hold people accountable for technical violations like failed drug tests or missed appointments short of incarcerating them, through the use of proportionate sanctions like community service, curfews, or enhanced supervision (Gelb and Utada 2017). For best results, any graduated sanctioning system should be coupled with a system of rewards or incentives for positive behavior so probation and parole are not just punishment vehicles. According to Pew, 22 states have such provisions in law (AK, AL, AR, DE, GA, ID, KS, KY, LA, MD, MS, MT, NC, ND, NE, NV, PA, SC, SD, TX, UT, and WV).
- **Cap revocation terms.** Research into the impact of punishment and incarceration consistently shows that it is the certainty, not the severity or length, of sentences that carries the greatest impact on public safety (Solomon, Jannetta, et al. 2008; Solomon, Osborne, et al. 2008). Multi-year sentences for persons

who fail technical terms of their probation or parole, years after they committed their original crime and were released from incarceration, reduce system legitimacy and add to incarceration populations while providing little in the way of public safety benefits. According to Pew, 16 Justice Reinvestment states have put caps or guidelines on how long individuals can serve for a technical violation of supervision conditions (AK, AL, AR, GA, HI, ID, KS, LA, MD, MO, MS, MT, NC, OK, PA, UT) (Gelb and Utada 2017).

In 2011, California legislators enacted Criminal Justice Realignment legislation with several provisions (California Department of Corrections and Rehabilitation 2013a):

- Persons already in prison on non-violent, non-serious, non-sex felonies would be supervised by local probation departments instead of state parole upon release for six months to a year if there is no new offense, and for a maximum of three years under any circumstance;
- People sentenced for non-violent, non-serious, non-sex felonies from the date of the law's enactment forward would serve their sentences in local jails, not state prison; and
- With rare exceptions, people on probation or parole who violate conditions could no longer be sent to state prison, but can only go to county jail for a maximum of 180 days (which, with day-for-day statutory good time, often results in 90 days served).

According to the California Department of Corrections and Rehabilitation (CDCR) (2013b), realignment in California resulted in a 25,000-person reduction in state prisons.

One billion dollars of prison cost savings was realigned to counties in 2013-2014. According to CDCR, there was little difference between the one-year arrest and conviction rates of individuals released pre- and post-realignment, with a slightly lower arrest rate (59% compared to 62%) for the post-realignment group. Separate studies by Stanford University and the Public Policy Institute of California have reported no rise in violent offending since realignment's enactment.

- **Eliminate or seriously limit pretrial confinement for technical violations.** The detention of persons accused of community supervision violations is no small matter; about half of the individuals in jail in Philadelphia were held on such detainers in 2017 (Ewing 2017), up from 18% in 2009 (Briggs 2016). Persons accused of technical violations should be placed on higher levels of supervision – rather than incarcerated – until their cases are heard in a court of law. At worst, they should be detained for no longer than 72 hours until the court decides whether their detention is necessary.
- **Realign savings to community programs.** If the above policies are enacted, a portion of the savings from the reduction in parole, probation and incarcerated populations should be funneled back into community supports like housing, drug treatment, education and employment services and focused on the remaining population of those under community supervision.



## Conclusion

Pennsylvania is oddly and significantly out of step with the rest of the nation when it comes to the volume of people supervised on probation and parole and the length of their supervision. As a result, far more people are incarcerated in Pennsylvania for probation and parole violations than is the case in other states, costing hundreds of millions of dollars annually, and delegitimizing community corrections in the eyes of the very communities it purports to protect.

In other words, Meek Mill is not alone.

State policy makers should use the attention that the Mill case has generated to bring Pennsylvania into step with national trends and best practices, shrinking the footprint of its community corrections system, focusing rehabilitative resources on those most in need of it, and legitimizing Pennsylvania community corrections for the 21<sup>st</sup> century.

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