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How Little Supervision Can We Have?

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Abstract

Use of probation and parole has declined since its peak in 2007 but still intrudes into the lives of 3.9 million Americans at a scale deemed mass supervision. Originally intended as an alternative to incarceration and a means of rehabilitation for those who have committed crimes, supervision often functions as a trip wire for further criminal legal system contact. This review questions the utility of supervision, as research shows that, in toto, it currently provides neither diversion from incarceration nor rehabilitation. Analysis of national supervision, crime, and carceral data since 1980 reveals that supervision has little effect on future crime and is not a replacement for incarceration. Case studies from California and New York City indicate that concerted efforts to reduce the scope of mass supervision can effectively be achieved through sentencing reform, case diversion, and supervisory/legal system department policy change, among other factors, without increasing crime. Therefore, we suggest extensive downsizing of supervision or experimentation with its abolition and offer actionable steps to enact each possibility.

1. INTRODUCTION

On September 17, 2021, New York State Governor Kathy Hochul signed the "Less is More" Community Supervision and Revocation Reform Act into law. Intended to alleviate the state's overreliance on revocation due to technical violations of supervision conditions—New York then incarcerated more individuals for noncriminal technical violations of parole than any other state in the country—the act eliminates incarceration for most technical violations, reduces the amount of time a person can be incarcerated for a violation, grants early discharge from parole for rule compliance, and provides due process rights prior to a person being incarcerated while they await a parole revocation hearing. Although the law does not take full effect until September 2022, upon signing Governor Hochul immediately released 191 individuals who had already served 30 days of their sentence and otherwise qualified in accordance with Less is More standards from Rikers Island, New York City's main jail complex (Off. Gov. Kathy Hochul 2021, Ransom 2021; **https://lessismoreny.org/**).

Isaabdul Karim was an individual who barely missed the Act's release criteria, with tragic results. Karim, who was paroled after release from prison in June 2018, was reincarcerated on August 18, 2021, on a technical violation after he failed to appear for parole appointments. He suffered from several compounding hardships: a history of poor health, including diabetes, hypertension, epilepsy, and psychiatric issues; a fall suffered while at Rikers; and contraction of COVID-19; all of which likely contributed to his death on September 19, 2021. He received minimal health care at the time of his fall and diagnosis with COVID-19 (Ransom 2021).

Karim died on his thirty-first day at Rikers. He missed the cutoff for immediate release under Governor Hochul's executive order by a single day because September 17 was his twenty-ninth day in custody. Furthermore, had Less is More been fully enacted prior to his incarceration, he would never have been held in Rikers in the first place. What began as unlucky timing and circumstance ended in an avoidable death.

Although Karim's fatal story is a dramatic example, research has found that the potential harm attendant upon both community supervision and incarceration for supervision violations is real and not outweighed by often specious potential benefits from such supervision. Probation supervision has often been found to merely delay, rather than supplant, incarceration (Austin & Krisberg 1981, Klingele 2013, Phelps 2013, Tonry & Lynch 1996). Parole, or postprison supervision, does not improve outcomes compared to those released without supervision and may actually serve as a risk factor for further incarceration due to both worsened labor market outcomes and concentrated scrutiny under criminal supervision (Harding et al. 2013, 2017a,b, 2019; Menefee et al. 2021). Writ large, the efficacy of community supervision is unsubstantiated by research.

As such, while designed originally as a front-end alternative to incarceration (probation) or a back-end release valve to reward in-prison program participation (parole), there is strong evidence that community supervision is largely serving as a net-widener and trip wire back into incarceration. In this article, we detail the current scope and scale of supervision, highlight efforts to mitigate the influence of supervision on the lives of the citizenry, and introduce innovative changes to the system.

2. WHERE WE ARE AND HOW WE GOT HERE

2.1. Brief History

Supervision is a reality for 3.9 million US residents, approximately 1 in 66 adults, on any given day. People on probation account for a little less than four-fifths of the total supervision population. Stunningly, these estimates are trending downward; the total number of adults under community supervision crested in 2007 (when the total supervision population equaled 5,115,500). Since then

(2007–2020), the aggregate supervision population has declined by 24% (Kaeble 2021). Penal policies in the United States put us squarely in an era of mass incarceration simultaneous with what we dub mass supervision in that our supervision rates are historically unprecedented, internationally unique, and racially concentrated (Garland 2001).

To understand how supervision currently functions, a brief history of its origination and intent is required. At inception, both probation and parole were not intended to be so expansive; rather, they were created as an individualized effort to mitigate time spent incarcerated and provide opportunity for rehabilitative programming. Community supervision practices began in the 1840s, with probation originating in the United States and parole abroad. Probation is accredited to John Augustus, a shoemaker by trade and staunch advocate for those he considered "unfortunates." Augustus was appalled at the treatment of those being charged at the Boston courthouse, so he offered to bail people out—often those who were unhoused or battling alcoholism—and rehabilitate them for a month's time. If, upon return to the courthouse, those Augustus bailed out were deemed competent to avoid further criminality, they were released and Augustus's bail was returned (Panzarella 2002). Modern-day parole is accredited in part to Alexander Maconochie, governor of Norfolk Island, an Australian penal colony. Upon his arrival, the governor witnessed the prison in a desolate state. To change this, Maconochie believed that release from imprisonment should be "work based" instead of "time based." He wrote, "When a man keeps the key of his own prison, he is soon persuaded to fit it to the lock" (Petersilia 2003, p. 56). Individuals released through Maconochie's mark system would have to maintain good behavior upon release. As demonstrated, both Augustus and Maconochie innovated, in response to inhumane and dangerous prison conditions, to reduce the scope and scale of legal system intervention. Thus, probation and parole were created in the spirit of belief in the possibility of rehabilitation and accountability to mitigate punishment.

The United States quickly adopted supervision in varied jurisdictions throughout the country, yet rapid industrialization and urbanization changed the political landscape and soon muddled supervision's intent. Both probation and parole would proliferate during the so-called Progressive Era, which was characterized by a newfound philanthropic interest in aiding the poor, intermingled with a desire to control and assimilate foreign-born and rural migrants moving into US cities (Rothman 2017).

Community supervision's inherent conflicts, pitting restoration against control, created the context for the conversion of probation and parole into tools of criminal legal system expansion. The pivotal Martinson Report, published by Robert Martinson in 1974, helped put any question of supervision's role as a productive alternative to incarceration to rest in the eyes of the public and many policymakers. Robert Martinson, an academic-gone-rogue, published a distillation of an inconclusive New York State report in the influential neoconservative journal *Public Interest*, claiming that rehabilitation was a futile hope for those who were system-involved. He argued that "nothing works" (Martinson 1974, p. 48) and attempts at rehabilitative programming should be abandoned. In an interview about his infamous report, he called probation "a standing joke" (Martinson 1976, p. 190). This growing skepticism about the rehabilitative ethic upon which community supervision was based, in combination with ill-resourced and poorly staffed probation and parole departments vilified in the media and rising intergenerational and cultural tensions post–World War II, turned the tides of "justice" toward punitive excess (Rothman 2017, Travis & Western 2021). Thus began the well-documented rise of mass incarceration, in which probation and parole were colored as dangerously discretionary and lenient mollycoddling of criminals. The federal system (and numerous state systems) went so far as to abolish parole release after the US Supreme Court found that "rehabilitation as a sound penological theory came to be questioned and, in any event, was regarded by some as an unattainable goal for most cases." They cited a US Senate Report that

"referred to the 'outmoded rehabilitation model' for federal criminal sentencing, and recognized that the efforts of the criminal justice system to achieve rehabilitation of offenders had failed" (Miller 1989).

Nonetheless, in local and state jurisdictions, probation and parole grew, pivoting from a rehabilitative ethic to one geared toward placating a public and body politic hungry for a no-nonsense approach to supervision. Intermediate sanctioning, electronic monitoring, "swift and certain" consequences, and house arrest all became commonplace. Probation and parole departments began charging people for supervisory sanctions, and private companies began providing supervision at a price, delaying release until monetary fees were paid (Am. Civ. Lib. Union & Hum. Rights Watch 2020, Harris et al. 2022). Conditions of community supervision (redubbed "community corrections") mushroomed in number and complexity. In 2014, former Massachusetts Probation Commissioner Ronald Corbett surveyed probation commissioners in several states to ask about the number of "standard" and "special" conditions generally imposed on their charges. Probation executives reported a high of 24 standard conditions (with an average of 17) along with 3–5 special conditions per person. Corbett (2015) concluded that this expansion of conditions was meant to bolster the credibility of probation and parole with the public and policymakers in line with the criminal legal system's "new punitiveness."

The embrace of social control and managerialism by probation and parole practitioners matched contemporary social forces in kind. Public sentiment in the second half of the twentieth century disavowed the importance of social support programming for those most in need, including the poor, people of color, the houseless, and single mothers, and instead promoted individualism and a bootstraps approach. This was reflected in neoliberal policymaking, in which government resources were drained from social policy and instead reallocated to defense, the criminal legal system, and economic interests (Wacquant 2009). These circumstances help explain the disproportionate impact of supervision by race and socioeconomic status today.

This historical context reveals that supervision's current manifestations are far different than its original intent. Both probation and parole originated as ways to reduce overreliance on incarceration in jails and prisons, either through alternative sanctioning or early release. In contemporary criminal legal systems, supervision serves an entirely different purpose: It is an additional sanction that extends punitive control and surveillance beyond the walls of carceral facilities and into the community. Next, we explore the burden of present-day carceral expansion through community supervision, including who shoulders it and in what capacity.

2.2. Our Current System

A substantial body of research has revealed that the criminal legal system disproportionately impacts Black and Brown people (Mauer 2011, Natl. Res. Counc. 2014, Pettit & Western 2004, Tonry 2010). Racial disparities are relatively less severe among supervised populations versus those incarcerated; in 2014, 54% of people on probation were White (versus 33% of people in prison), 30% were Black (versus 36%), and 13% were Hispanic or Latino (versus 22%). However, disparities function uniquely for those under supervision and, as a consequence, have potentially more harmful effects. Sociologist Michelle Phelps (2017, p. 56) suggests that smaller disparities might actually demonstrate that probation is more likely to be a true alternative to incarceration for White, affluent people while serving as an extension of punishment at sentencing for Black and Brown people. She notes that "probation supervision contributes to racial disparities in imprisonment, both by diverting more white defendants to probation initially and by revoking black probationers at greater rates."

Technical violations and revocation play a critical role in net-widening, i.e., the idea that supervision perpetuates criminal legal system involvement rather than replaces incarceration.

Conditions of supervision, as mentioned previously, are often prolific and suffocating. They include prohibition of alcohol use (even if your case did not involve substance abuse), zero contact with others with criminal records (even if they are friends and family), and enforcement of a strict curfew (even if you work night shifts). These conditions could be so burdensome that some considered community supervision more onerous than incarceration. In a survey of people who had been recently admitted to prison in Texas, 66%, 49%, and 32% of respondents said they would rather be incarcerated than on ten, five, or three years of probation, respectively (Crouch 1993). Black respondents were the most likely to prefer prison to probation, perhaps because they recognized that they were more likely to have their supervision revoked than were White people. One Texas probation director told the *Dallas Morning News* that if given the choice between probation and prison, he would choose prison (Dallas News Adm. 2016). Upon becoming Commissioner of New York City Probation in 2010, coauthor Vincent Schiraldi witnessed a woman "voluntarily" terminate her own probation, although the outcome of that termination was incarceration in New York City's notoriously violent Rikers Island jail complex. She tearfully explained to the court that she was unable to regularly attend required office meetings with her probation officer due to an inability to find childcare (children and dependents were not allowed to attend probation check-ins).

Supervisory trends in the past 40 years provide further evidence that supervision is indeed net-widening. **Figure 1** illustrates the massive growth of people under correctional supervision—prison, jail, probation, and parole—from 1980 to 2020, the most recent year for which we have national probation and parole figures. The growth of community supervision does not appear to have deterred the growth of mass incarceration. From 1980 to 2020, the incarceration rate grew by 251% (from 146 to 367 people per 100,000), whereas the community supervision rate grew 238% (from 179 to 426 people per 100,000) (Bur. Justice Stat. 2022, Carson 2021, Kaeble 2021, Minton & Zeng 2021). During this time, probation and parole populations generally increased and declined in step with incarcerated populations. If probation and parole were true alternatives

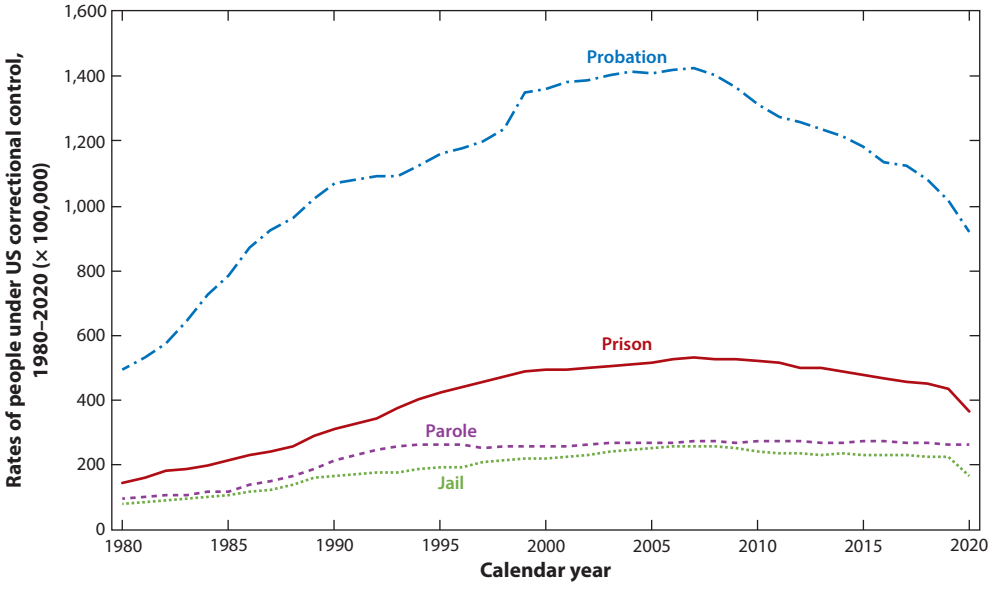

Figure 1

Rates of people under United States correctional control, 1980–2020.

to incarceration instead of net-wideners, jail and prison populations would have plummeted as the United States more than tripled the use of probation and parole. Therefore, in aggregate, supervision does not appear to be reducing our reliance on prison and jail but may in fact be expanding sanctions for those with system involvement and consuming further government resources.

To more carefully examine probation and parole's ability to supplant incarceration and reduce crime—ostensibly, their two primary goals—we analyzed carceral, supervision, and crime data from all 50 states from 1980 to 2019 to answer two primary questions: (*a*) Does the number of people under community supervision impact crime, and (*b*) does the number of people under community supervision impact incarceration?

To estimate the impact of changes in probation and parole supervision during each of these 40 years, we conducted a series of regression analyses examining the relationship between supervision rates and three outcomes in each state: the prison rate, violent crime rate, and index crime rate.[1] We regressed each of these outcomes on three independent variables, the probation rate, parole rate, and total supervision rate, creating nine sets of regressions. The models control for several factors correlated with variation in prison and crime rates, including poverty and unemployment rates, racial/ethnic composition of the population, political composition of state legislatures, and drug arrest rate. Additionally, the models control for year-specific (but state-invariant) and state-specific (but year-invariant) confounders with the addition of two-way fixed effects. We predicted the independent variables would affect the dependent variables in the following year, so each dependent variable was lagged to account for temporal ordering.[2]

Adjusting for confounders, a state's probation, parole, and total supervision rate were not statistically significantly related to the index crime rate the following year. Furthermore, there was no statistically significant relationship between probation and violent crime rates, but there was a positive and statistically significant relationship between parole and violent crime rates the following year ($p < 0.05$). Thus, the more people on parole in year 1, the more violent crime in year 2.

We further examined the impact of probation and parole on subsequent year incarceration rates to assess whether community supervision was supplanting incarceration. Rates of probation, parole, and total supervision were positively and significantly associated with incarceration rates the following year ($p < 0.01$). Thus, more probation and parole were associated with more, not less, incarceration. This finding supports the net-widening theory of community supervision, i.e., that probation and parole widen the net of social control rather than serve as true alternatives to incarceration (Austin & Krisberg 1981, Phelps 2013, Tonry & Lynch 1996).

Although the community supervision rate has declined since its peak in 2007, the number of people under supervision has actually grown compared to reported crime. **Figure 2** demonstrates the relationship between the numbers of people under supervision nationally and reported index crimes. Between 1980 and 2019, the rate of supervision per crime has steadily increased. Whether crime nationally was increasing or decreasing, the rate of supervision to crime grew. This relationship suggests that decreases in community supervision rates since their peak in 2007 have failed to outstrip declines in crime. Surely, some jurisdictions have implemented policies that reduced supervision even when compared to crime declines (see the discussion of community supervision in California and New York City below). Yet, the number of people under supervision has not correspondingly declined with crime nationally.

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[1] Violent crimes include murder and nonnegligent manslaughter, rape, robbery, and aggravated assault; index crimes include violent crimes plus the property crimes of arson, burglary, larceny-theft, and motor vehicle theft.

[2] Findings were similar when outcomes were not lagged but rather were contemporaneous with predictors.

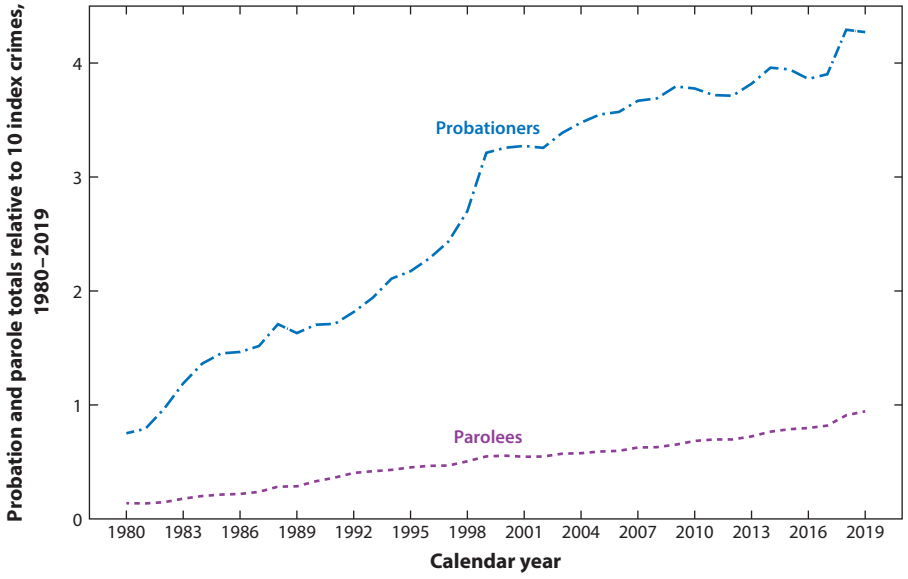

Figure 2

Probation and parole totals relative to index crimes, 1980–2019.

This evidence provides two important findings: (*a*) Supervision in sum as currently practiced is not achieving either of its dual goals of reducing incarceration and improving safety outcomes and (*b*) concerted policy efforts, including legislative and practice changes, are necessary to sustainably reduce the reach and punitiveness of supervision. Failure to do so will perpetuate the expansion of mass supervision, even as crime rates fluctuate.

3. REFORM EFFORTS IN TWO LARGE JURISDICTIONS

In the past 30 years, there have been increasing efforts to render community supervision smaller and less punitive (Executive Sess. Community Correct. 2017, Executives Transform. Probat. Parole 2019, Pew Res. Cent. 2020, REFORM Alliance 2022). California's approach to community supervision reform combined litigation and legislative changes to dramatically reduce supervision and revocations, whereas New York City's reforms were largely driven by practice and culture changes that eschewed the use of probation and incarceration for revocations. Both serve as innovative approaches to tackling mass supervision that are worth emulating.

3.1. The Case for Reform: California

California's reforms from 2007 to the present day present a case study of successful litigation, legislation, and ballot initiatives, along with advocacy, which massively curbed community supervision with simultaneous reductions in incarceration and crime. In 1991, the Supreme Court found in favor of the plaintiff in *Coleman v. Schwarzenegger*, a class action suit led by the Prison Law Office (Austin 2016). Despite construction of twenty-one prisons between 1984 and 1997, the effort was insufficient to keep up with a mushrooming prison population caused by tough-on-crime legislation (Ambrosio & Schiraldi 1997). This overcrowding caused serious human rights and constitutional violations, including unsanitary living conditions and lack of access to medical care. *Coleman* resulted in the California Department of Corrections and Rehabilitation's

placement under a consent decree, with the directive to correct the growing crisis (Austin 2016). But overcrowding continued: By 2006, California's prisons were imprisoning people at 200% of their capacity. In 2009, a special panel of three federal judges ordered the population to be reduced to 137.5% capacity. California appealed the decision to the United States Supreme Court, which upheld the state court's ruling in 2011 (*Brown v. Plata* 2011).

Court rulings in the 1990s and 2000s such as *Coleman*, along with a growing advocacy movement in California, prompted legislative action that significantly reduced both incarceration and supervision. Senate Bill 678 [CA Penal Code § 1228–1233.8 (2010)]—the Community Corrections Performance Incentive Act—incentivized counties to keep people on probation who had violated probation conditions in local custody for shorter time periods and eliminated parole supervision for lower-level offenses (Judic. Counc. Calif. 2020). Assembly Bill 109, the California Public Safety Realignment Bill of 2011, legislated that people convicted of felonies that were nonserious, nonviolent, and non–sex offenses could no longer be sentenced to state prison and parole, only to local jail and probation. Those already convicted of "non, non, non" offenses and currently incarcerated would also only be supervised on local probation. This meant that, if revoked, they could receive a maximum term of 90 days in jail (not years in prison) (Sundt et al. 2016). Proposition 47 [CA Penal Code § 1170.18 (2014)]—The Safe Neighborhoods and Schools Act—was the result of a successful ballot initiative led by Californians for Safety and Justice (CSJ) (2017). The law downgraded six felony offenses to misdemeanors,[3] reducing the population eligible for both prison and longer felony probation terms, diverting those convicted of the six downgraded misdemeanor offenses to (shorter and usually unsupervised) local probation. Furthermore, because persons convicted of those six offenses were no longer able to be sentenced to state prison (because their offenses were no longer felonies), they were also no longer eligible for postprison parole supervision, further trimming supervision roles in California (Judic. Counc. Calif. 2016). The ballot initiative also created the Safe Neighborhoods and Schools Fund, reinvesting hundreds of millions of dollars annually (depending on how much prison cost savings it yielded) from the prison budget to schools, victims services, and community supervision (Calif. Saf. Justice 2016). In 2020, California Governor Gavin Newsom signed Assembly Bill 1950 [CA Penal Code § 1203 (2020)], which reduced misdemeanor probation terms from a maximum of three years to one and felony terms from a maximum of five years to two. Finally, the governor also included a provision in his 2020–2021 budget that reduced parole supervision terms to two years, further reducible by up to 12 months for complying with parole rules (Newsom 2020).

The resulting reductions in the carceral state's reach in California are profound. In 2006, before these reforms were enacted, California had 175,512 people in prison (a rate of 487 per 100,000 people) and 477,733 people on probation and parole (1,326 per 100,000 people) (Glaze & Bonczar 2007, Sabol 2007). By 2020, the rate of prison incarceration had been cut nearly in half to 246 per 100,000 people (97,328 people total). Supervision rates experienced a similar reduction of 42% to 775 per 100,000 people (306,500 total) (Carson 2021, Kaeble 2021).[4] These new laws also saved hundreds of millions of dollars annually[5] from investment in prison facilities. All told, between

[3]The six categories of crime reclassified include "shoplifting, forgery, insufficient funds, petty theft, receiving stolen property, and petty theft with a prior" (Calif. Courts 2022).

[4]Calculated using data from the semiannual National Prisoner Statistics program, Annual Probation Survey, and Annual Parole Survey.

[5]State savings from implementation of SB 678 in year 1 (FY 2010–2011) amounted to $179 million (Adm. Off. Courts 2011); from AB 109 in year 1, (projected) $336 million (Legis. Anal. Off. 2011); and from Prop 47 in year 1 (for use in Safe Neighborhood and Schools Fund FY 2016–2017 and 2017–2018), $82.3 million (Yee 2018).

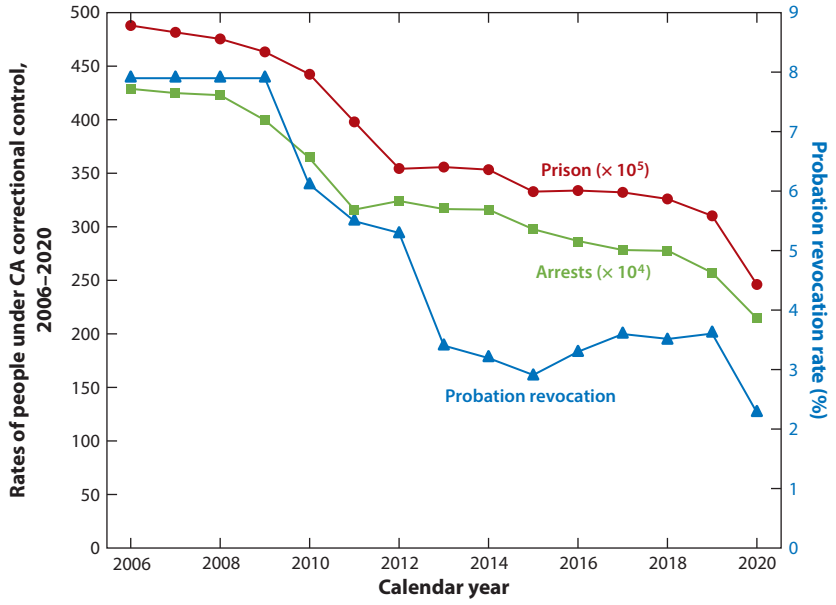

Figure 3

California prison, arrest, and probation revocation rates, 2006–2020.

2007 and 2020, the number of people incarcerated in prisons or under supervision in California dropped from 652,015 to 416,387, a 36% decrease (Carson 2021, Glaze & Bonczar 2008, Kaeble 2021, West & Sabol 2008).

Figure 3 shows rates of arrest (per 10,000) and imprisonment (per 100,000) and rate of probation revocation (as a percent of total people on probation) in the years 2006–2020. From the mid-2000s to the present day, the prison population, arrests, and probation revocations have declined significantly. Statewide probation revocation rates have declined 71% and both the prison population and number of arrests have declined 45%, respectively. Only 8 counties in California have increased their probation revocation rates since 2006, and 49 of 58 have experienced double-digit declines (Off. Justice Progr. 2022a,b; Judic. Counc. Calif. 2013, 2017, 2020, 2021).

Overall, during this time of massive decline in people under corrections system control in California, reported crime declined by 7.4% (Bartos & Kubrin 2018) and the National Academies of Sciences, Education, and Medicine (2020, pp. 3–14) found "no measurable effect on violent crime" as a result of California's reforms. Several studies analyzed the impact of Proposition 47 in particular. A report published by the Public Policy Institute found that Prop 47 led to lower recidivism among those convicted of lower-level offenses, reducing their rearrest and reconviction rates by 1.8 and 3.1 percentage points, respectively, compared to persons convicted of those offenses before the reform (Bird et al. 2018). Researchers at UC Irvine found that small upticks in crime in 2015 and 2016 (evidenced in **Figure 3** by increases in probation revocation and a less steep downward trend of arrests), around the time of Proposition 47's enactment, were not related to the new legislation, demonstrating that downsizing did not affect public safety (Bartos & Kubrin 2018). In summary, California has been able to have substantially less probation, parole, and incarceration while maintaining lower crime rates.

California has curbed its use of supervision and incarceration, but utilization of legal mechanisms has taken the Golden State only so far. In 2020, 7,879 Californians had their probation

revoked and were incarcerated in county jail or state prison, not including the number of people incarcerated for parole violations (Judic. Counc. Calif. 2021), and 293,700 people were still under supervision in California in 2020 (Kaeble 2021). To more elementally reduce overreliance on the carceral state, as incarceration and community supervision wane, community supports and viable alternatives to incarceration and supervision must wax as a primary solution to crime and be sustainably resourced. We offer one such example in one of the most densely populated and progressive jurisdictions in the country: New York City.

3.2. The Case for Abolition: New York City

Well-documented in research and popular culture,[6] New York experienced extremely high rates of crime toward the end of the twentieth century. Crime peaked in 1990, a year in which the New York City Police Department (NYPD) reported a staggering 174,942 total crimes (FBI 2022). The NYPD made nearly 150,000 felony arrests in the year prior (1989), a 73% increase from 1980 (Travis 2019). The population of the city's ailing jail system approached 22,000 in 1991, well over the number of people it was designed to hold, prompting riots and severely deteriorating conditions (Greene & Schiraldi 2016). Probation populations at this time were also severely bloated; by fiscal year (FY) 2000, there were 82,342 people on probation in New York City, a population that would have made it the sixth largest city in New York State (Mayor's Off. N. Y. 2000).

In the 1990s, crime, supervision, and incarceration numbers in New York City all began a sharp decline that lasted until the COVID-19 pandemic in 2020. The number of people on probation declined to 11,531 in FY 2021, an 86% decline since its FY 2000 peak (Mayor's Off. N. Y. 2000, 2021). From 1991 to 2020, the average number of people in New York City's jails dropped 77%, from 21,764 to 4,974 (Greene & Schiraldi 2016, NYC Board Correct. 2021).

The story of New York's turnaround, from a bleak landscape to what we have today—arguably the most decarcerated major urban area in the United States—was the result of several factors: (*a*) incremental changes to the criminal legal system; (*b*) durable, sizeable investments in social policy to preempt system involvement; (*c*) efforts by highly organized advocacy organizations; and (*d*) open-minded officials willing to implement changes. We turn to these in order, with a focus on the ways that these elements modified use of probation or parole, while still tamping down incarceration, in New York City.

Legal system change. In contrast to California's legislative approach, probation policy changed in New York largely through practice and culture. Within the probation system itself, the department experimented with a lighter touch of supervision. Michael Jacobson, commissioner of probation during the terms of Mayors David Dinkins and Rudolph Giuliani, initiated supervision via electronic kiosks. Those deemed less risky had their fingerprints read by a computer and answered a series of questions via kiosk rather than waiting in line to see an officer. Subsequent commissioner Martin Horn (2001) increased kiosk use, as did coauthor Vincent Schiraldi who followed him.[7] Probation under Schiraldi began experimenting with distance reporting by phone and computer as well as further increasing kiosk use (to about two-thirds of people on probation). If distance or kiosk reporting proved successful, Schiraldi required probation officers to request

[6] See, for example, movies like *The Out of Towners* (1970, 1999), *Taxi Driver* (1976), *The Warriors* (1979), and *Escape from New York* (1981).

[7] Research by Wilson et al. (2007) found that, when kiosk supervision was expanded, those reporting electronically had lower recidivism rates than people with similar risk levels who previously reported to a probation officer.

early release from the courts for those under supervision, increasing such requests nearly sixfold over a six-year period. This approach improved safety measures; a New York State evaluation of early discharges found that 4.3% of people who stayed on probation for their entire terms had a felony conviction a year after discharge, versus 3% of those released early. Persons supervised by kiosks also showed improved recidivism outcomes versus those representing similar risk who saw a probation officer. Additionally, the files of 15,000 probation absconders were reviewed, and, if the individual had not recidivated, their arrest warrant for absconding was dismissed. Revocation was discouraged as an agency practice, leading to a decrease in incarceration due to technical violations from 6% to 3% between 2009 and 2012 (NYC Dep. Probat. 2013). Ana Bermudez, the successor to Schiraldi, reduced incarceration revocations due to technical violations to one percent.[8]

Policies of system actors outside of the probation department also led to a smaller number of people under supervision. Certainly, fewer people were being arrested in sum. From 1989 to 2017, there was a 46% decline in felony arrests, and from 2010 to 2017, there was a 37% decline in misdemeanor arrests. According to Michael Jacobson, CUNY professor and former commissioner of both New York City corrections and probation, the decline in arrests in New York City, particularly felony arrests, explains approximately 60% of the decline in incarceration in the city.[9] From 2006 to 2017, police in New York City also issued 73% fewer summonses. When advocates and litigators launched a campaign against, and sued over, the city's stop-and-frisk practices, it precipitated a 98% decline in police stops (Travis 2019). Data from the New York State Division of Criminal Justice Services show that total case dispositions dropped 42% between 1996 and 2019. Sentencing also changed considerably during this period: The percent of total felony and misdemeanor dispositions diverted or dismissed increased by 14%. Simultaneously, sentencing rates to prison dropped by 51%; sentencing rates to a split sentence (probation and jail) dropped 81%; and sentencing rates to probation declined 58%. In sum, the activities of the major criminal legal system apparatus, including arrests, summons, stops, diversion, dispositions, and sentences, were mechanized in tandem to shrink populations interacting with the carceral state. For example, an outcome of dismissal or diversion became 8.5 times more likely than probation or split sentencing at time of disposition, the quantity of which was similarly in decline (N. Y. State Div. Crim. Justice Serv. 2020).

The development of specialty courts for substance abuse and mental health crises provided diversion for those for whom psychosocial factors were deemed inhibitive to their societal functioning. In 1996, 211 people were diverted to drug courts. By 2007, 2,095 people participated in drug courts and another 68 in newly founded mental health courts, a nearly 11-fold increase in specialty court participation in that 11-year period. Drug and mental health court participation dropped as felony and misdemeanor arrests declined, but, in 2019, there were still nearly twice as many participants in those courts as there were in 1996 (437 versus 211).[10] Although these numbers may appear small compared to the declines in the use of jail and probation, the ability to use courts to divert people provided another noncriminal sanction for sentencing or formal case processing. The mere suggestive nature of increased noncriminal sanctioning may have influenced judicial decision-making. Efforts to remain both parsimonious and equitable across defendant sentencing decisions suggest that if a single individual is diverted to drug court, others too might benefit and receive more merciful sentencing.

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[8]Information obtained from personal correspondence between the authors and R. Maccarone, New York State Department of Criminal Justice Services.

[9]Information obtained from personal correspondence between the authors and M. Jacobson.

[10]Data obtained from Michael Rempel, Director of John Jay College's Data Collaborative for Justice and former Research Director of the Center for Court Innovation.

Some research suggests that specialty courts improve recidivism rates and can reduce the use of probation or incarceration (King & Pasquarella 2009, Natl. Cent. Addict. Subst. Abuse 2003). The Drug Treatment Alternative to Prison (DTAP) program, established by Brooklyn District Attorney Charles Hynes in 1990, diverted people to treatment who were targeted by New York's Rockefeller Drug Laws, which mandated imprisonment. Research by Columbia University's Center on Addiction and Substance Abuse found that DTAP participants were 36% less likely to be reconvicted and 67% less likely to return to prison after two years than a matched comparison group (Natl. Cent. Addict. Subst. Abuse 2003). The DTAP model was subsequently replicated by district attorneys throughout New York City so much so that, when the Rockefeller Drug Laws were substantially reformed in 2009, it had very little impact on the number of people incarcerated for drug offenses in New York City. In the city, the DTAP program and other plea-bargaining practices had informally bypassed the draconian drug laws before they were formally reformed (Parsons et al. 2015).

Social reinvestment. With the increasing caseload of informally processed dispositions, New York City invested in Alternatives to Incarceration (ATI), which performed some of the functions for which probation originated: rehabilitation and diversion from incarceration. Case diversion to an ATI often took the form of court-mandated or voluntary assistance from a network of large and small community-based organizations like the Center for Alternative Sentencing and Employment Services (CASES), the Center for Community Alternatives (CCA), the Center for Court Innovation (CCI), the Center for Employment Opportunities (CEO), Common Justice, the Criminal Justice Agency (CJA), Exodus Transitional Services, Fortune Society, Getting Out and Staying Out, Girl Vow, H.O.L.L.A! (How Our Lives Link Altogether), Lead by Example, Osborne Association, Pure Legacee, Recess, the Vera Institute of Justice, and the Youth Justice Network, among others. This robust web of organizations provided social services like job training and placement assistance, housing, vocational and behavioral skills training, educational assistance, and peer mentorship. This programming was provided contractually through local nonprofits or through new organizations funded by individual or philanthropic donations rather than run by the government, lifting the criminal legal system's stranglehold on safety and justice creation throughout the city.

Government funding for these programs was tied to outcome evaluations that proved they were true alternatives rather than net-widening. The city evaluated eight ATIs run by CASES, the Center for Community Alternatives, the Fortune Society, the Osborne Association, and the Project Return Foundation. All but one program evaluated achieved net jail population displacement (Phillips 2002). Failure to complete ATI programming during felony court processing increased incarceration by 139 days more than if the individual completed formal processing and was sentenced to incarceration at the onset, yet high ATI completion rates and large incarceration reductions for those who did complete overcame the overall net-widening effect. A second study conducted by the New York State Department of Criminal Justice Services found that employment programming run by the Center for Employment Opportunities increased employment by 48% and decreased recidivism by 19% at a three-year follow-up. Less-resourced or more high-risk clients received the greatest benefits from participation. However, most benefits from employment attenuated over time (Redcross et al. 2012).[11] We qualify these positive outcomes by noting that there is no comprehensive analysis of the impact of New York's broad menu of alternative programming on the city's crime, incarceration, or supervision rates. Overall, alternatives to incarceration also provide alternatives to supervision and case dismissal, the latter of which some judges are reluctant to do for fear of public repercussions.

[11] For a fuller explanation of these attenuated results, see Seim & Harding (2020).

At minimum, increased funding to ATIs in the past twenty years suggests that the city and state find them useful. Personal outreach to various nonprofits by Schiraldi suggested impressive increases in program resources as incarceration and probation supervision were declining in New York City. CJA's budget grew from $11.7 million in 2001 to $29 million in 2020, initiating a supervised program to promote pretrial release of people arrested on felony charges. CEO, an offshoot of the Vera Institute of Justice, tripled the population served between its inaugural year (1996) and 2019 (1,081 versus 3,365). Their budget grew from $7 million to $57 million during that time period (some of which went to programs outside New York City). The Osborne Association's budget also mushroomed from $6 million in 1999 to $36 million in 2020.

Power sharing and advocacy. Formerly incarcerated people, advocacy groups, philanthropic organizations, and legal defense groups helped to both raise public awareness and apply pressure to the criminal legal system. Their work created the climate for power sharing among civilians and government actors.

New York City boasts a sophisticated advocacy community that has staged public dissent against mass incarceration locally and nationally—organizations like the Alliance of Families for Justice; the Center for NuLeadership on Human Justice and Healing; the Correctional Association of New York; the Drug Policy Alliance; the Freedom Agenda; the Independent Commission on New York City Criminal Justice and Incarceration Reform; JustLeadershipUSA; the Katal Center for Health, Equity, and Justice; the Legal Action Center; A Little Piece of Light; the New York Civil Liberties Union; the Prison Moratorium Project; VOCAL-New York; the Women's Community Justice Association; and Youth Represent, among others. New York's sizeable philanthropic community—including the Art for Justice Fund, the Francis Lear Foundation, the Ford Foundation, Galaxy Gives, the New York Community Trust, the New York Women's Foundation, Open Society Foundations, the Pinkerton Foundation, the Prospect Hill Foundation, the Redlich-Horwitz Foundation, the Robin Hood Foundation, the Schusterman Foundation, Trinity Wall Street, and the W. T. Grant Foundation—have provided critical support to advocacy, demonstration projects, convenings, research, communications strategies, and lobbying designed to promote an alternative paradigm to mass incarceration/supervision.

New and expanded legal defense organizations also helped funnel defendants away from incarceration and supervision while advocating for a less punitive system. In 1996 and 1997, a few years after a strike by Legal Aid Society attorneys (McKinley 1994), the city launched four additional nonprofit law firms to handle indigent defense cases: Bronx Defenders, Brooklyn Defender Services, New York County Defender Services, and Queens Defenders. These, in addition to the preexisting Legal Aid Society and Neighborhood Defender Service of Harlem, employed social workers and paralegals who helped attorneys advocate for nonincarcerative dispositions. Additionally, in 2009, New York State's Chief Judge Jonathon Lippman sponsored legislation to cap the number of cases indigent defense lawyers could carry. The law went into effect gradually between 2010 and 2014. By FY 2015, it resulted in a 35% increase in indigent defense budgets (an additional $55.6 million annually). One study of indigent defense in Brooklyn found that the law resulted in a 43% increase in indigent defense attorneys for Legal Aid and Brooklyn Defenders from 2009 to 2014, and a 29% caseload reduction (Labriola et al. 2015). Furthermore, in response to research showing that indigent legal services providers were inadequately staffed with social workers and paralegals, funding for those ancillary services was doubled in 2017 (Counc. City N. Y. 2016).

Open-minded officials. Little could have been accomplished without the willingness of those in power to initiate, or at least cooperate with, change. As mentioned above, probation commissioners instituted new department-wide policies to limit terms, conditions, and system interaction for

those under the purview of their department. Judges and prosecutors made less use of probation and custodial sentences while increasing their use of dismissals, adjournments in contemplation of dismissal, and conditional and unconditional discharges. Importantly, leaders from such organizations providing ATIs, like CASES, CCA, CCI, CEO, the Fortune Society, and the Vera Institute of Justice, have served in various positions in City Hall at the Department of Budget and the Mayor's Office of Operations and as Deputy Mayor, Correction Commissioner, Probation Commissioner, and Criminal Justice Coordinator for New York City (Greene & Schiraldi 2016). Thus, the same actors leading government agencies were often those pushing for less punitive sentencing and increased access to resources like housing, employment, education, vocational training, and healthcare for those impacted by the criminal legal system. These circumstances allowed for deep collaboration between government actors and community organizations and bred relationships of trust and transparency.

New York City's combination of incremental, system-based reform, ATIs and specialty courts, strategic advocacy and legal defense fortification, and open-minded and creative officials helped create what the Center for Court Innovation's Greg Berman (2011) dubbed a "thousand small sanities" allowing for steady decarceration over the past two decades. Surely, these efforts required major investments, the high costs of which many jurisdictions would struggle to accommodate. Significant shifts in funds from supervision and incarceration to communities are necessary, and less-affluent jurisdictions would require creativity and political courage to replicate New York's success.

Additionally, the recent upticks in crime since the onset of the COVID-19 pandemic challenge longstanding gains in safety and decarceration over the past several decades and jeopardize New York City's remarkable double-miracle: plummeting incarceration/supervision and plummeting crime. Only time will tell whether the substantial carceral declines New York City has enjoyed over the past two decades can persist in the face of the rising gun crime affecting the city as well as more heavily incarcerated jurisdictions nationally (Schiraldi 2022).

4. IMPLICATIONS AND CONCLUSION

A robust body of research demonstrates the negative impact of incarceration on myriad life outcomes, including future criminal behavior (Natl. Res. Counc. 2014). Yet little research to date has studied the impact of supervision on future life outcomes for individuals and community-level safety in aggregate. Several studies demonstrate more intensive or longer supervision terms do not improve recidivism (Baber & Johnson 2013, Barnes et al. 2010, Doleac 2018, Petersilia 2003), and others suggest any supervision has no significant effect on recidivism (Bonta et al. 2008, Solomon 2006). A study by Harding and colleagues (2017a) demonstrates parole supervision is a risk factor for reincarceration. In addition, the regression analyses we report on in this review show community supervision is not achieving either of its stated goals of improving community safety and reducing incarceration. In fact, we find evidence that community supervision may be increasing incarceration rates, consistent with the net-widening theory of community supervision. Despite the lackluster results from community supervision outlined throughout this review, we found a four-decade-long increase in the supervision-per-crime rate.

The efficacy of supervision is not supported by research, a conclusion made evident by the fact that twice as many people are under supervision as are incarcerated in the United States. The findings from our literature review, regression analyses, and case studies lead us to conclude that jurisdictions could benefit from at least experimenting with supervision downsizing. California and New York City demonstrate jurisdictions must be highly intentional to produce real reductions in the scope of probation and parole, but significant downsizing can be achieved without jeopardizing public safety.

In recent years, various entities have put forth clear and broadly applicable guidelines for reducing supervision. In 2019, a group of more than 100 current and former supervision practitioners formed EXiT (Executives Transforming Probation and Parole) to denounce the scale of current supervision systems and catalyze change-making. They called for probation and parole to be "substantially downsized, less punitive, and more hopeful, equitable, and restorative." Incremental reforms that can achieve such aims include (Columbia Univ. Justice Lab 2018, Executive Sess. Community Correct. 2017, Executives Transform. Probat. Parole 2019, Pew Res. Cent. 2020):

- shortening supervision terms to no more than 18 months or two years with allowance of earned-time credit to further shorten them
- elimination of supervision conditions irrelevant to the person's criminal charge
- elimination of court and supervisory fines and fees
- elimination of revocation that results in incarceration
- substantial investment in social support programming such as housing, employment, healthcare, and education resources.

However, our findings, which suggest that more probation and parole are associated with increased incarceration and fail to reduce crime, present a more elemental challenge to the continued use of community supervision that must be addressed. This is especially so given the large contribution technical violations make to incarceration, the lack of research to substantiate their use as an effective recidivism reduction practice, and their racially disparate impacts. If probation and parole are not improving public safety, are associated with higher incarceration rates, and are accompanied by negative outcomes, it is logical to ask not only why so many people are under supervision but also why it is used at all? Therefore, the authors advocate a step beyond downsizing: that abolishment of probation and parole be considered, carefully attempted, and researched. Furthermore, the authors suggest the savings from such a change be reinvested in communities to improve neighborhood cohesion and bolster informal supports.

If this idea feels ludicrous, recall that the two localities aforementioned as case studies—California and New York City—recently abolished another relic of nineteenth-century penological practice: juvenile carceral facilities. California Governor Gavin Newsom's 2021–2022 state budget proposal finalized the closure of the California Division of Juvenile Justice (full implementation by June 30, 2023) (Washburn 2021), once a brutal youth prison system housing more than 10,000 young people. After the death of a child in custody and a scathing federal investigation and lawsuit, New York City entirely stopped sending children adjudicated in its Family Court to state-operated youth prisons by 2016 (Weissman et al. 2019). As both jurisdictions have moved to eliminate their youth prison model, they have experienced declines, not increases, in youth crime (Schiraldi 2020). Although abolition should not be entered into cavalierly, a carefully planned and implemented withdrawal and reinvestment in neighborhood-driven services, supports, and opportunities for those who would otherwise be supervised is, in our view, worth trying, especially given the lackluster record of probation and parole. Overhauls of this type remind us not of how much there is to lose but rather how much there is to gain from watershed, rather than incremental, reforms.

The idea of supervision abolition is not a new concept. Scholars and practitioners like Von Hirsch & Hanrahan (1978) and Horn (2001) have proposed abolishing parole supervision. Scholar David Greenberg (1975, p. 577) wrote, "parole supervision seems incapable of preventing released prisoners from returning to crime. Instead, it functions as an obstacle, preventing those who have once been given a deviant social identity from returning to a normal existence." The conclusion of Bonta et al. (2008, p. 251) is perhaps most concise: "On the whole, community supervision does

not appear to work very well." Given recent public interest in reducing the reach of the carceral state, perhaps it is time to heed such calls.

Although it receives considerably less attention than mass incarceration, mass supervision ensnares far more individuals in carceral control and often serves, as Cecelia Klingele (2013) wrote, as merely "a delayed form of incarceration." Increased resources and research attention must be paid to the consequences of supervision, as the two systems beget one another. Furthermore, social policy must fortify informal community supports to preempt criminal activity and reduce reliance on the criminal legal system as a backend catchall for social ills. Reversing the increase in supervision per reported crime will take concerted, focused effort and the ability to reimagine system functioning. Downsizing, or even eliminating, probation and parole supervision and reallocating carceral resources to bolster community cohesion can put the "community" back in community supervision and holds the potential to yield more safety and equity as a result.

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