

Foreword

Offenders in the Community: Reshaping Sentencing and Supervision

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Mass incarceration rates in the United States have received no shortage of scholarly, media, and political attention. Less known, however, is that a parallel problem is developing in the context of programs designed to ameliorate our overreliance on prisons—community supervision. The number of Americans participating in state-run community supervision programs quadrupled from just over 800,000 to more than four million from 1970 to 2010, a growth rate that nearly matched that of incarceration.¹ Though often praised as a cost saving sentencing alternative, the observation that over half of jails and a third of prisons in the United States are filled with probation or parole violators suggests that community supervision has become “no more than a deferred sentence of incarceration.”²

The notion that community supervision may have simply created a longer circuit on the way to prison is not the only problem plaguing our modern criminal justice system. Broader, systemic issues remain unaddressed by states that administer

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1. Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. LAW & CRIMINOLOGY 1015, 1018 (2013).

2. *Id.* at 1020.

supervision programs. The financial implications of convictions—particularly in the form of supervision fees, costs, and fines, along with other collateral consequences of convictions in such realms as voting, employment, and housing—are causing legislators in Minnesota and across the country to rethink traditional paradigms of punishment and sentencing. Could it be that our current supervision models are undermining the very goal of reintegrating offenders into the community?

The *Minnesota Law Review's* Volume 99 Symposium anticipated the next step in this national debate about mass incarceration and the criminal justice system. As the first law review in the country to exclusively dedicate a symposium to critiquing the status and direction of supervision policy, we aimed to question conventional narratives about the role of supervision programs, debate reform efforts designed to increase the effectiveness of probation and parole, address the tension between the goals of the justice system and conviction-related debt, and shine a spotlight on the consequences of conviction that inhibit offenders from fully participating in society. With over three hundred lawyers, policymakers, academics, civil servants, and students in attendance, the *Minnesota Law Review's* Symposium broke new ground on the often overlooked and complex policy issues related to community supervision.

The Symposium began with an introduction by Michelle Phelps, Assistant Professor of Sociology at the University of Minnesota. Professor Phelps set the stage for the day's conversation with a presentation on "The Current Status of Community Supervision in America." Thereafter, our keynote panelists took the floor to debate competing academic perspectives on one of the leading models of probation and parole reform in the United States: Hawaii's Opportunity Probation with Enforcement (HOPE) program.

The central question our keynote speakers debated was whether policymakers should, in fact, "Keep HOPE Alive." *New York Times* best-selling author, Professor Mark Kleiman of the UCLA Luskin School of Public Affairs and CEO of BOTEC Analysis Corporation, delivered the first address. Professor Kleiman, in his talk entitled, "The Outpatient Prison Cell," explored the foundational underpinnings of the HOPE model, relating HOPE's design and success to the failings of traditional supervision, behavioral science models, and positive outcomes of HOPE-inspired programs across the country. Professor Kleiman advocated for a critical reassessment of probation and parole norms and expansion of the "swift, certain, and fair"

model to other alternative modes of supervision, particularly for offenders sentenced for drug-related crimes.

Next, Assistant Professor Cecelia Klingele of the University of Wisconsin-Madison Law School offered a different lens through which to evaluate the HOPE model. In particular, Professor Klingele highlighted that in our efforts to reduce the probation-to-prison pipeline, the criminal justice community cannot leave basic considerations like fairness and proportionality by the wayside. Professor Klingele also encouraged policymakers to carefully evaluate data gathered from HOPE-inspired programs. By defining success in more comprehensive terms, Professor Klingele argued that reform efforts would be better situated to address long-term outcomes without sacrificing short-term compliance.

To follow up our academic debate on the HOPE program, the Symposium featured three distinguished guests to discuss “HOPE in Practice.” Leading off this panel was an address by the Honorable Steven Alm, Judge for Oahu’s First Circuit of Hawaii and founder of HOPE. Judge Alm explained the history, design, and logic for what he described as a “swift, certain, consistent, and proportionate” sanction model. He reported positive outcomes not only in his own courtroom but also across the Hawaiian courts that have implemented similar programs. HOPE’s founder also acknowledged, however, that significant resource and procedural barriers continue to stifle widespread implementation of HOPE. Although further research on appropriate sanctions and coalition building with community stakeholders will be vital to further development of this reform effort, Judge Alm emphasized that taxpayer savings and the associated social benefits with reducing the supervision population are worth the efforts of this challenge.

Also providing a perspective from the bench, the Honorable Donovan Frank of the United States District Court for the District of Minnesota brought the conversation “home” by explaining the efforts that federal courts in Minnesota have taken to assist offenders convicted of drug crimes with reentering communities. By providing a suite of programming and treatment resources concerning employment, housing, and education, the District reduced its average revocation rate to twenty-three percent. Judge Frank explained that similar programs across the country are attaining success when emphasizing certain “core elements,” which include assessment and planning, active oversight, management of support services, accountability to the community, graduated sanctions, and rewards for success.

In sum, Judge Frank argued that by reimagining the supervision paradigm, probation and parole programs could fill crucial rehabilitative needs for high-risk populations.

Lastly, Dr. Ronald Corbett, Project Director for the Robina Institute's Community Sanctions and Revocations Project and former Acting Commissioner of the Massachusetts Probation Department, offered his perspective on the status of probation and parole reform in the United States. Dr. Corbett placed the modern supervision crisis in a historical perspective and offered various systemic explanations for the revocation problems experienced across the country. Dr. Corbett concluded by offering a meaningful reform agenda that will bring probation back to its original, rehabilitative aims.

The Symposium then shifted gears to address a novel component of community supervision reform. Specifically, the second panel addressed "The Future of Economic Sanctions." Professor Kevin R. Reitz, University of Minnesota Law School's James Annenberg La Vea Land Grant Chair in Criminal Procedure Law and Reporter for the American Law Institute's (ALI) first-ever revision of the Model Penal Code (MPC), began the discussion by explaining a recent legal shift proposed by the ALI regarding economic sanctions imposed on probationers and parolees. Professor Reitz recounted that over the course of the last forty years, the United States has steadily increased reliance on fines, asset forfeitures, and other costs, fees, and assessments levied against offenders. The ALI's latest revision to the MPC, however, calls for a significant shift in this neglected domain of sentencing policy in order to minimize the economic burdens placed on offenders.

In the same panel, Professor Barry Ruback of The Pennsylvania State University outlined an elegant and thorough framework from which to evaluate the effectiveness of criminal economic penalties. In particular, Professor Ruback proposed that policymakers systematically analyze costs, fees, fines, and restitutionary measures across dimensions of time, target, and impact. While ultimately concluding that costs and fees were the least defensible sanctions under this critical model, he also acknowledged the array of practical issues that must be addressed should this area of the law be meaningfully reformed.

Building on Professor Ruback's address, Jessica Eaglin, Counsel for the New York University Law School's Brennan Center for Justice, offered her experience working toward economic sanction reform. Specifically, Ms. Eaglin explained the intense political tensions associated with economic sanction

policy, as states often rely on income generated from offenders to fund community supervision programs. Ms. Eaglin argued, however, that effective reform must not only remain sensitive to the financial reliance that state's currently place on fees levied from offenders but also critically examine whether these sanctions undermine or further the core aims of the justice system. Noting that more than eighty percent of offenders incarcerated in prison and jail today are impoverished, Ms. Eaglin encouraged policymakers to remain responsive to the complex set of stakeholders affected by criminal justice debt.

The final panel of the Symposium took a broader look at issues associated with probation and parole reform by considering the "Collateral Consequences Affecting Offenders on Community Supervision." This panel began with an address by Professor Christopher Uggen, Distinguished McKnight Professor of Sociology and Law at the University of Minnesota. Professor Uggen explained that while there has been increasing attention paid to collateral effects of imprisonment, far less attention has been devoted to collateral consequences during and after periods of community supervision. This observation ignores the reality that offenders under community supervision likewise experience wide-ranging effects, including limits on education, employment, family rights, housing, and voting. The danger of disregarding these aftershocks of conviction is serious, as collateral sanctions may be impeding successful completion of probation and parole, and perhaps even compromising, rather than enhancing, public safety.

Following Professor Uggen, Mark Haase, Co-Chair of the Minnesota Second Chance Coalition and former Chief Lobbyist and Vice President of the Council on Crime and Justice, surveyed Minnesota's own political efforts to curb the effect of collateral consequences, particularly in the realm of voting. Mr. Haase highlighted that although Minnesota has one of the lowest rates of incarceration in the United States, it likewise has some of the highest rates of felon disenfranchisement, especially for African Americans. In describing the policies that have led to this phenomenon, Mr. Haase explored the idea that Minnesota's relatively lenient incarceration laws have helped to mask and perpetuate a system that is extremely punitive in effect. Lastly, to conclude our Symposium, Professor Phelps provided a summary of the day's conversations in a presentation entitled, "Change for the Future: The Direction of Supervision Reform."

The 2014 *Minnesota Law Review* Symposium illuminated

the need for policymakers, academics, advocates, and civil servants to critically examine community supervision policy as part of the larger effort to reduce incarceration rates in America. The risks of ignoring this important aspect of criminal justice policy are grave and could threaten public safety, perpetuate mass incarceration rates, and work fundamental injustices on probationers, parolees, and society at large. Our discussions, however, also revealed that momentum for achievable reform does exist. By moving beyond political rhetoric and reconnecting the design and effect of probation and parole programs to the fundamental goals of the criminal justice system, it is the *Law Review's* desire that the Symposium discussions and the Articles contained herein will fuel social and legal progress in the field of community supervision.