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## Reform in Name Only: The Difficulties of Dismantling Mass Supervision in Pennsylvania

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### Recommended Citation

Ramakrishna, Srinidhi, "Reform in Name Only: The Difficulties of Dismantling Mass Supervision in Pennsylvania" 30 March 2022. *CUREJ: College Undergraduate Research Electronic Journal*, University of Pennsylvania, <https://repository.upenn.edu/curej/266>.

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## Abstract

Pennsylvania has one of the highest rates of people on probation in the United States. Probation reform legislation has repeatedly emerged in the Pennsylvania legislature since controversy arose in 2017 over rapper Meek Mill's long probation sentence. However, probation reform initiatives that would reduce the use of probation in Pennsylvania have been obstructed or amended to actually increase its use and severity. To understand what makes achieving such probation reform difficult, this thesis analyzes three significant roadblocks – the phenomenon of devolution and the actions of two advocacy groups. This thesis is grounded in ten interviews conducted with key actors whose work intersects with the Pennsylvania probation system. These interviews are analyzed alongside scholarly literature, reports from advocacy organizations, and news and legislative materials. The analysis finds that firstly, the consequences of devolution encourage funding probation departments, create entrenched stakeholders, and impede anti-carceral activist efforts. Secondly, the REFORM Alliance, a national advocacy organization particularly active in Pennsylvania, is complicit in punitive changes to the bills it endorses, excludes community organizers, and maintains a neoliberal alliance with the carceral state under the guise of reform. Thirdly, the Pennsylvania District Attorneys Association greatly shapes probation reform measures to be more punitive, benefiting from a political landscape in favor of tough-on-crime district attorneys despite some prosecutorial fragmentation. By identifying key institutional barriers, this thesis aims to assist efforts to end mass supervision in Pennsylvania.

## Keywords

probation reform, community supervision, mass incarceration, criminal justice reform, social policy, abolition, anti-carceral activism, celebrity activism, devolution, prosecutorial power, elite-grassroots tensions, historical institutionalism, REFORM Alliance, Marie Gottschalk, Political Science, Social Sciences

## Disciplines

American Politics | Civic and Community Engagement | Criminology and Criminal Justice | Inequality and Stratification | Law and Politics | Law and Society | Law Enforcement and Corrections | Politics and Social Change | Public Policy | Social Control, Law, Crime, and Deviance | Social Policy | Sociology of Culture

**Reform in Name Only: The Difficulties of Dismantling Mass Supervision in Pennsylvania**

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Senior Honors Thesis in Political Science

University of Pennsylvania

Spring 2022

## Table of Contents

<b>Acknowledgements</b>	<b>2</b>
<b>Abstract</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
Local Analyses, the Two-Pronged Politics of Reform, and Methodological Implications	9
Background and Recent History of Probation in Pennsylvania	13
<b>Chapter 1: Devolution and Decentralization</b>	<b>17</b>
Underfunding: A Positive Feedback Loop	20
Entrenched Interests and Evidence-Based Practices	24
Devolution and Anti-Carceral Activism	29
<b>Chapter 2: The REFORM Alliance</b>	<b>31</b>
REFORM, Legislation, and Advocacy	33
REFORM, Celebrity Activism, and the National Elite	40
<b>Chapter 3: The Pennsylvania District Attorneys Association</b>	<b>46</b>
The Power of the PDAA	48
The Slow Fragmentation of Prosecutorial Politics	52
The PDAA and the Deceptive Promise of Reform	55
<b>Conclusion</b>	<b>57</b>
<b>Appendix</b>	<b>60</b>
List of Interviewees	60
Recent Probation Reform Bills	60
<b>Bibliography</b>	<b>63</b>

## Acknowledgements

The completion of this honors thesis would not have been possible without the support of many people.

First and foremost, I deeply appreciate my advisor, Professor Marie Gottschalk, who has been an incredible source of inspiration ever since taking my first class with her during my sophomore year at Penn. Thank you for extending my understanding of the carceral state through our discussions in and out of the classroom. In addition, thank you for supporting me personally and intellectually throughout the development of this thesis. Your patient feedback and suggestions were crucial in structuring my research process and refining my argument. It has been an honor to complete this thesis under your guidance.

I also thank the anti-carceral community advocates who lent their time and insight for the purposes of this thesis, as well as the many abolitionist organizers who I have worked with and learned from over the past several years. Your efforts inspired this project. I hope it does your words justice and can benefit those chipping away at the mass supervision regime in Pennsylvania in some way.

I am indebted to all of my mentors and friends who have read my drafts, provided feedback, and encouraged my pursuit of this thesis. I am particularly grateful to Dr. Eileen Doherty-Sil, who gave me the opportunity to begin this journey. I extend special appreciation to Anjali Mahajan, who worked alongside me over the course of the year, becoming a valued writing partner and friend. I could not have done this without you.

Finally, thank you to my family for always supporting my intellectual pursuits. The qualities you cultivated ensured I remained dedicated to this project even when it seemed insurmountable, and I am so glad I saw it through.

### **Abstract**

Pennsylvania has one of the highest rates of people on probation in the United States. Probation reform legislation has repeatedly emerged in the Pennsylvania legislature since controversy arose in 2017 over rapper Meek Mill's long probation sentence. However, probation reform initiatives that would reduce the use of probation in Pennsylvania have been obstructed or amended to actually increase its use and severity. To understand what makes achieving such probation reform difficult, this thesis analyzes three significant roadblocks – the phenomenon of devolution and the actions of two advocacy groups. This thesis is grounded in ten interviews conducted with key actors whose work intersects with the Pennsylvania probation system. These interviews are analyzed alongside scholarly literature, reports from advocacy organizations, and news and legislative materials. The analysis finds that firstly, the consequences of devolution encourage funding probation departments, create entrenched stakeholders, and impede anti-carceral activist efforts. Secondly, the REFORM Alliance, a national advocacy organization particularly active in Pennsylvania, is complicit in punitive changes to the bills it endorses, excludes community organizers, and maintains a neoliberal alliance with the carceral state under the guise of reform. Thirdly, the Pennsylvania District Attorneys Association greatly shapes probation reform measures to be more punitive, benefiting from a political landscape in favor of tough-on-crime district attorneys despite some prosecutorial fragmentation. By identifying key institutional barriers, this thesis aims to assist efforts to end mass supervision in Pennsylvania.

## **Introduction**

Current trends in criminal legal reform are unstable. On one hand, condemnation of the United States' correctional system has grown increasingly common over the last two decades. Faced with the world's highest incarceration rate, phrases like "mass incarceration" and "criminal justice reform" have become political buzzwords utilized by Democrat and Republicans alike. The American public has also been clamoring for reform. A meta-analysis of public opinion results between 2014 and 2016 conducted by the Opportunity Agenda found that Americans are growing less punitive and more supportive of rehabilitative measures.<sup>1</sup> Additionally, national polling conducted by the American Civil Liberties Union (ACLU) and Benenson Strategy Group in 2017 found that 91% of Americans thought that the criminal justice system needed to be fixed.<sup>2</sup> Protests in the summer and fall of 2020 following heightened public awareness of recent police murders led some analysts to characterize Black Lives Matter as the largest movement in US history.<sup>3</sup> Widespread public outcry decrying police violence, demanding prison and police reform, and exploring alternative possibilities of decarceration and abolition have hinted that the country is a unique moment in which dismantling the carceral state is, for once, possible.

Despite this time's seemingly historic nature, the number of changes shrinking the carceral state have been limited. In the summer of 2020, many anti-carceral activist groups called for a fundamental reimagining of public safety, such as reductions in the incarcerated population, police defunding, and significant investments in social and economic infrastructure.<sup>4</sup> However,

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<sup>1</sup> "A New Sensibility: An Analysis of Public Opinion Research on Attitudes Towards Crime and Criminal Justice Policy" (The Opportunity Agenda, 2016).

<sup>2</sup> "91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds," *American Civil Liberties Union* (November 16, 2017), accessed December 14, 2021, <https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds>.

<sup>3</sup> Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," *The New York Times*, July 3, 2020, accessed December 14, 2021, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

<sup>4</sup> The Washington Post Editorial Board, "Reimagine Safety," *The Washington Post*, March 16, 2021, accessed December 14, 2021, <https://www.washingtonpost.com/opinions/interactive/2021/reimagine-safety/>.

actions undertaken in response resulted in little more than symbolic reforms like name changes on buildings and few policies, if any, to combat police misconduct, many of which further funded police departments.<sup>5</sup> Furthermore, in the midst of hyperbolic media coverage of national surges in violent crime over the last year, some state legislatures have in part turned back to tough-on-crime beliefs and reversed their support of reform measures.<sup>6</sup> While some states, like New Jersey, New York, and California, have made significant progress over past decades in reducing their incarcerated population, others continue to maintain extremely punitive penal systems.<sup>7</sup>

In particular, Pennsylvania is an anomaly among its neighbors in terms of punishment. The state maintains the *highest* incarceration rate per capita in the Northeast.<sup>8</sup> Although the current population in its state-run correctional facilities, 36,743, is its lowest since 2001, its prison populations have drastically increased overall over the decades, rising by 504% between 1980 and 2016.<sup>9</sup> Pennsylvania's exceptionally punitive outlook is somewhat unexpected. Scholars have traced how the histories of the South and Southwest, rooted in slavery, de jure racial hierarchies, and restricted state power, have molded harsh traditions of mass incarceration in states like Texas and Arizona.<sup>10</sup> Unlike "classically" punitive states in the former Confederacy, Pennsylvania, as well as the Northeast at large, is historically rooted in a reformist political culture. Louis N. Robinson, former Pennsylvania Board of Parole Chairman, writes that "prison

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<sup>5</sup> Keeanga-Yamahtta Taylor, "Did Last Summer's Black Lives Matter Protests Change Anything?," *The New Yorker*, August 6, 2021, accessed December 14, 2021, <https://www.newyorker.com/news/our-columnists/did-last-summers-protests-change-anything/>;

Sarah Holder, Fola Akinnibi, and Christopher Cannon, "We Have Not Defunded Anything": Big Cities Boost Police Budgets," *Bloomberg CityLab*, September 22, 2020, accessed December 14, 2021, <https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/>.

<sup>6</sup> TCR Staff, "State Legislatures Turn 'Defensive' on Justice Reform, Panel Told," *The Crime Report*, March 8, 2022, accessed March 18, 2022, <https://thecrimereport.org/2022/03/08/state-legislatures-turn-defensive-on-justice-reform-panel-told/>.

<sup>7</sup> Marc Maurer and Nazgol Ghandnoosh, "Fewer Prisoners, Less Crime: A Tale of Three States" (The Sentencing Project, July 13, 2014), <https://www.sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf>.

<sup>8</sup> ACLU, "Blueprint for Smart Justice: Pennsylvania" (American Civil Liberties Union, 2018).

<sup>9</sup> "Gov. Wolf Announces Pennsylvania Prison Population Reaches 20-Year Low," *Pennsylvania Pressroom*, October 7, 2021, accessed October 20, 2021, [https://www.media.pa.gov/pages/corrections\\_details.aspx?newsid=522](https://www.media.pa.gov/pages/corrections_details.aspx?newsid=522); ACLU, "Blueprint for Smart Justice."

<sup>10</sup> Michael C. Campbell, "Politics, Prisons, and Law Enforcement: An Examination of the Emergence of 'Law and Order' Politics in Texas," *Law & Society Review* 45, no. 3 (September 1, 2011), 631-665. <https://doi.org/10.1111/j.1540-5893.2011.00446.x>; Mona Pauline Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford, CA: Stanford Law Books, 2010).



reform in this country began in Philadelphia,” driven by Quaker thought and exemplified by the 19th-century “Pennsylvania system” of penology.<sup>11</sup>

Not only does Pennsylvania have the highest incarceration rate in the Northeast, it also has the third highest rate nationwide of citizens on probation or parole, also known as community supervision.<sup>12</sup> When the Prison Policy Initiative categorized states by their amount of correctional control, taking into account both incarceration and community supervision, Pennsylvania was ranked second.<sup>13</sup> Although often seen as a “better” alternative to incarceration, probation is an alternative to freedom – a punishment in and of itself, and a pit stop in a long, inescapable cycle of supervision and incarceration.

Probation is a proxy for understanding Pennsylvania’s process of executing reform and why it remains a penal outlier. Advocates, legislators, journalists, and members of the public called attention to the state’s community supervision practices when Meek Mill, a popular North Philadelphia rapper who had cycled through a series of prison, probation, and parole sentences for more than a decade, was re-imprisoned on a parole violation in 2017 for allegedly popping a wheelie on a dirt bike.<sup>14</sup> The REFORM Alliance, now a well-known national advocacy organization, arose from this controversy. Following the viral #FreeMeek movement, probation reform legislation has emerged multiple times, often championed by REFORM. The issue remains salient today, and advocacy groups and media outlets continue to hotly support or contest many such bills.<sup>15</sup> However, probation reform legislation in Pennsylvania has been

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<sup>11</sup> LeRoy B. DePuy, “The Walnut Street Prison: Pennsylvania’s First Penitentiary,” *Pennsylvania History: A Journal of Mid-Atlantic Studies* 18, no. 2 (April 1951): pp. 130-144. The Pennsylvania System extolled the use of solitary confinement and penal labor in place of torture as a way of promoting self-reformation.

<sup>12</sup> Vincent Schiraldi, “The Pennsylvania Community Corrections Story” (New York: Columbia University, April 25, 2018).

<sup>13</sup> Wanda Bertram, “New Report Ranks States on ‘Correctional Control,’ Showing Huge State Disparities in Use of Probation,” Prison Policy Initiative (Prison Policy Initiative, December 11, 2018), accessed March 2, 2021, <https://www.prisonpolicy.org/blog/2018/12/11/correctional-control/>.

<sup>14</sup> Hannah Giorgis, “The Revelations of Meek Mill’s Legal Limbo,” *The Atlantic*, August 9, 2019, accessed October 20, 2021, <https://www.theatlantic.com/entertainment/archive/2019/08/free-meek-jay-z-and-trickiness-celebrity-activism/595768/>.

<sup>15</sup> Ron Southwick, “Pa. Lawmakers Push Again to Change Probation System, but Can They Get It Done?,” *Penn Live*, October 26, 2021, accessed December 15, 2021, <https://www.pennlive.com/news/2021/10/pa-lawmakers-push-again-to-change-probation-system-but-can-they-get-it-done.html>.

largely unsuccessful, either in securing passage or in including measures that would seriously reduce the state's probation population. This situation exemplifies the difficulty of meaningfully changing community supervision in the state.

This difficulty can be attributed to specific state-level institutional configurations and power dynamics along the political-legal dimension. It is not enough to chalk up the lack of reform to missing political will. As probation's salience in state politics proves, there is a desire to change the probation system in Pennsylvania. One must dig deeper to show why proposed reforms continue to be defanged of more ambitious, decarceral initiatives. An analysis of this nature would offer a first look at the structural elements that, if chipped away, could mean real probation and criminal legal reform in Pennsylvania is within reach. Evidence presented here could offer strategies for identifying and eradicating similar structural elements in other states, hopefully facilitating more widespread reform that could transform the lives of millions under carceral control in the United States.

The United States seems to be inching towards meaningful criminal legal reform, and the public seems to increasingly reject mass incarceration. Why has Pennsylvania struggled to reduce its extraordinarily high numbers of residents on probation? Why do reform measures that are put forth fail to make serious dents in the massive reach of the probation system? In other words, what sustains Pennsylvania's status as a national outlier when it comes to community supervision?

The following investigation into probation in Pennsylvania finds three cornerstone elements which explain why reducing the state's use of probation has been so difficult. Subsequent to a literature review and a description of methodology, Chapter 1 examines the many ways Pennsylvania's political decentralization, especially in the probation system, fuels its

institutional power. Because underfunded county departments struggle to function on their own, the scope of future reforms are limited to those which allocate more funds to departments to better supervise their increasing caseloads. A horizontal, devolved probation system also results in escalating numbers of entrenched government and non-governmental probation stakeholders, as the implementation of evidence-based practices demonstrates. Lastly, such a system poses issues to anti-carceral activists, who struggle to identify oppositional actors and make broad calls for change when conditions in various counties vary widely.

Chapter 2 focuses on the actions of the REFORM Alliance, the national, bipartisan criminal justice advocacy organization founded by Meek Mill, Jay-Z, and Michael Rubin. Bolstered by celebrity power and the wealth of its elite board, REFORM has held large influence over recent probation reform bills, accommodating punitive amendments which would strengthen mass supervision despite calls from numerous community organizers to do the opposite. REFORM's actions are based on its need to maintain an amenable reputation nationwide, and in doing so, it reproduces neoliberal, elite ideologies which legitimize the carceral state and sideline local advocates.

Finally, Chapter 3 considers how the Pennsylvania District Attorney's Association (PDAA) has achieved great control over the legislature, blocking or seriously altering probation reform on the floor. An organization closely listened to by legislators, many believe the PDAA speaks for all DAs in the state, a presumption that was somewhat challenged when Philadelphia DA Larry Krasner, a "progressive prosecutor," exited the association. Nevertheless, Krasner's inability or unwillingness to advocate against the PDAA on probation showcases the institution's continued ability to stop probation reform despite some fragmentation in prosecutorial politics.

*Local Analyses, the Two-Pronged Politics of Reform, and Methodological Implications*

Past literature clarifies why it is important to undertake a micro-level analysis of Pennsylvania as opposed to a macro-level analysis of the United States. It also introduces a framework to differentiate between reforms that strengthen or weaken carceral institutions.

Scholars have utilized a multitude of theoretical frameworks to explain the development of the carceral state. Many scholars have taken a national or international approach, using macro-level demographic and economic factors, to explain policy change. While David Garland writes how contemporary responses to crime in the United Kingdom and the United States are caused by social organization inherent in late modern society, Michael Tonry identifies the root of America's carceral buildup in the public's harsh sensibilities, which cause moral panics and cyclical, short-term swings in public attitudes.<sup>16</sup> Jonathan Simon focuses on the American government's exploitation of fear of crime; he argues that by re-conceptualizing social problems as criminal ones and the ideal citizen as a crime victim, it has increased its power to intervene in everyday life and "govern through crime," thus reshaping democracy.<sup>17</sup> Furthermore, Loïc Wacquant finds the criminal legal system functions to manage marginalized groups like Black Americans, constituting the notion of race itself in a manner similar to the Jim Crow system.<sup>18</sup> Katherine Beckett and Christopher Seeds also analyze important ideologies. Their works both highlight that contemporary reform discussions, instead of representing progress, represent a modification in which groups of individuals are "bifurcated" for different treatments under the

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<sup>16</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001); Michael H. Tonry, *Thinking about Crime: Sense and Sensibility in American Penal Culture* (Oxford: Oxford University Press, 2004).

<sup>17</sup> Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

<sup>18</sup> Loïc Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society* 3, no. 1 (2001): pp. 95-133, <https://doi.org/10.1177/14624740122228276>.

criminal legal system and fiscal arguments reign supreme.<sup>19</sup> Such discourses re-entrench mass incarceration.

However, many scholars alternatively claim that the most consequential penal policies are formulated and executed at the state level, not the national level. Such scholars and their case studies – Ruth Wilson Gilmore and Joshua Page (California), Vanessa Barker (California, Washington, New York), Mona Lynch (Arizona), Heather Schoenfeld (Florida), and Lisa Miller (Pennsylvania) – have all outlined how localized political dynamics shape the crime policies that most affect residents.<sup>20</sup> In fact, Miller’s work traces how the state crime policy process in Pennsylvania involves overwhelming representation of interest groups representing criminal legal agencies and professional or single-issue coalitions, while broader citizens’ groups representing the poor and urban minorities at risk of violence are shut out.<sup>21</sup> Barker succinctly sums up the argument for a localized analysis preceding her own case studies:

Penal regime change, continuity, and difference are significantly shaped by localized institutional configurations as well as by national and global trends...People tend to experience and understand the common conditions of late modernity in ways that are reflective of their immediate context, their past traditions, and in ways that help them make sense of the changing world around them.<sup>22</sup>

While trends identified in macro-level analyses most certainly shape the conditions under which local actors function – such as fundamental conceptions of citizenship, democracy, and crime, or agenda-setting concerning which crime responses are ever considered – they cannot thoroughly

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<sup>19</sup> Katherine Beckett, Anna Reosti, and Emily Knaphus, “The End of an Era? Understanding the Contradictions of Criminal Justice Reform,” *The Annals of the American Academy of Political and Social Science* 664, no. 1 (2016): pp. 238-259, <https://doi.org/10.1177/0002716215598973>; Christopher Seeds, “Bifurcation Nation: American Penal Policy in Late Mass Incarceration,” *Punishment & Society* 19, no. 5 (2016): pp. 590-610, <https://doi.org/10.1177/1462474516673822>.

<sup>20</sup> Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, CA: University of California Press, 2007); Joshua Page, *The Toughest Beat: Politics, Punishment, and the Prison Officers' Union in California* (Oxford: Oxford University Press, 2011); Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (Oxford: Oxford University Press, 2009); Mona Pauline Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford, CA: Stanford Law Books, 2010); Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law & Society Review* 44, no. 3 (2010), 731-767. <http://www.jstor.org/stable/40926316>; Lisa L. Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (Oxford: Oxford University Press, 2008).

<sup>21</sup> Miller, *The Perils of Federalism*.

<sup>22</sup> Barker, *The Politics of Imprisonment*.

explain the outcomes of local politics on their own. Micro-level analyses can better discern the specific processes that explicitly help or hinder certain forms of penal reform.

When determining which reforms can be considered “true reform” – that is, which initiatives succeed in reducing Pennsylvania’s carceral footprint – one must distinguish between “reformist reforms” and “non-reformist reforms.” Only non-reformist reforms will truly end the state’s punitive penal regime.

A distinction first developed by André Gorz, reformist reforms aim to simply tweak the status quo, while non-reformist reforms operate within the wider scope of human needs. As Gorz writes, “a non-reformist reform is determined not in terms of what can be, but what should be.”<sup>23</sup> Often a framework utilized by anti-carceral activists who distinguish between criminal legal reform and prison and police abolitionist efforts, reformist reforms maintain or provide *more* power to carceral institutions, while non-reformist reforms shrink their authority, funding, or population under their control.

A variety of scholars in addition to Gorz, including Liat Ben-Moshe, Thomas Matthiessen, Michelle Alexander, Marie Gottschalk, and Angela Y. Davis, have expanded upon the dynamics of reformist reforms, examples of which include using electronic supervision as a prison alternative, building more correctional facilities to address overcrowding, singling out certain groups as exceptions to reform, or simply providing more funding and resources to law enforcement and corrections divisions.<sup>24</sup> Organizers with Critical Resistance contend that reformist reforms are often “common reforms that create or expand cages anywhere, including under the guise of ‘addressing needs’ or as ‘updated’ replacements.”<sup>25</sup> On the other hand,

<sup>23</sup> Mark Engler and Paul Engler, “André Gorz’s Non-Reformist Reforms Show How We Can Transform the World Today,” *Jacobin*, July 22, 2021, accessed October 20, 2021, <https://www.jacobinmag.com/2021/07/andre-gorz-non-reformist-reforms-revolution-political-theory>.

<sup>24</sup> Liat Ben-Moshe, “The Tension between Abolition and Reform,” in *The End of Prisons: Reflections from the Decarceration Movement*, eds. Mechthild E. Nagel and Anthony Nocella II J. (Amsterdam, Netherlands: Editions Rodopi B.V., 2013), 83-92; “Reformist Reforms vs. Abolitionist Steps to End Imprisonment,” Critical Resistance (Community Resource Hub for Safety & Accountability, 2021), accessed February 2, 2022, <https://communityresourcehub.org/resources/reformist-reforms-vs-abolitionist-steps-in-policing/>.

<sup>25</sup> Critical Resistance, “Reformist Reforms vs. Abolitionist Steps to End Imprisonment.”

non-reformist or abolitionist reforms may entail decarceration, closing prisons, reducing funding and contact with law enforcement, or creating new community infrastructure.<sup>26</sup> In brief, while reformist reforms maintain or increase the power and presence of carceral institutions, non-reformist reforms, which Pennsylvania requires to pull back its penal regime, do the opposite.

Reviewing the literature points towards the need to conduct a localized, qualitative case study examining the intractability of modern-day probation in Pennsylvania and the difficulties of achieving reform. Such an investigation effectively uncovers the institutional factors that drives carceral reliance as seen in Pennsylvania’s probation system. To draw inferences, process tracing methodology, which follows causal processes within a case as opposed to solely focusing on original causes and final outcomes, is used. Specifically, a systems understanding of mechanisms is employed, in which mechanisms are “systems of interlocking parts that transmit causal powers or forces between a cause (or a set of causes).”<sup>27</sup> Through this interpretation, causal processes and their constituent components are explicitly unpacked in order to identify how a combination of certain entities engaging in activities leads to the end result. Process tracing therefore helps to understand how Pennsylvania institutions, both governmental and nongovernmental, interact with each other to produce certain political dynamics in probation reform.

A variety of sources form this research – news articles, reports from political and advocacy groups, legislative archival materials, scholarly literature, and interviews with relevant actors conducted from January to March of 2022. Ten people deeply involved in the case of probation in Pennsylvania were interviewed, including those involved in governmental

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<sup>26</sup> Ibid.

<sup>27</sup> Derek Beach, “Process-Tracing Methods in Social Science,” *Oxford Research Encyclopedia of Politics*, January 25, 2017, <https://doi.org/10.1093/acrefore/9780190228637.013.176>.

administration (legislators, state officials), probation administration, and advocacy. A full list of those interviewed can be found in the Appendix.

### *Background and Recent History of Probation in Pennsylvania*

To contextualize Pennsylvania's use of probation, the state's rate of citizens on community supervision is surpassed only by Georgia and Idaho.<sup>28</sup> Restrictive policies allowing for stacked probation terms, indeterminate sentencing, high rates of revocation (reimprisonment) for technical violations, and more have resulted in a situation where 1 in every 34 Pennsylvanians are under community supervision and about a third of prison beds are taken by those who violated their probation or parole conditions.<sup>29</sup> Probation populations in Pennsylvania have consistently grown despite national declines. In 2020, probation populations decreased in 42 states; on the other hand, Pennsylvania's probation system saw an increase of 12,642 people, the single biggest increase nationally.<sup>30</sup>

With 180,000 people on probation alone, Pennsylvania's probation sentencing guidelines are much more punitive than those of other states.<sup>31</sup> While most states institute a maximum length for probation sentences (often five years for felonies and two for misdemeanors), Pennsylvania is one of eight states that allow both probation terms and incarceration in response to probation violations to stretch up to the maximum penalty for the original offense.<sup>32</sup>

Notably, Pennsylvania maintains no probation sentencing guidelines for judges in response to an offense or violation beyond the length of the maximum original penalty. Judges

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<sup>28</sup> Schiraldi, "The Pennsylvania Community Corrections Story."

<sup>29</sup> Ibid.

<sup>30</sup> Danielle Kaebler, "Probation and Parole in the United States, 2020" (Bureau of Justice Statistics, December 2021), NCJ 303102, <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>

<sup>31</sup> Southwick, "Pa. Lawmakers Push Again to Change Probation System"

<sup>32</sup> Ibid; Samantha Melamed and Dylan Purcell, "Judges Rule," *The Philadelphia Inquirer*, October 24, 2019, accessed December 15, 2021, <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-judges-criminal-justice-system-20191024.html>.



may continue probation, issue a new term, or incarcerate a defendant as they wish.<sup>33</sup> On average, a Pennsylvania probation term is three years, but judges vary widely in their sentence lengths – 10% of probation terms are five years or longer – and sentences, especially when stacked, can run decades.<sup>34</sup> If a defendant’s initial offense received a sentence of up to 20 years (i.e. certain drug-dealing charges), a 20-year probation term could be imposed post-release, in a practice that juvenile justice policy expert Vincent Schiraldi calls “unheard of in many states.”<sup>35</sup> A probation violation – which could include missing an appointment with a probation officer, leaving the county, failing to pay supervision fees, or not complying with arbitrary conditions like refraining from certain locations, people, or behaviors – could even result in reimprisonment through the revocation process or probation for another term of up to 20 years.<sup>36</sup> In fact, over half of those in Philadelphia’s jails are there because their supervision has been revoked.<sup>37</sup>

Such was the situation for Meek Mill. A 2007 charge dealt him more than a decade of probation, in which he was repeatedly resentenced to prison on probation violations ranging from performing without permission to reckless endangerment.<sup>38</sup> Mill’s controversial reimprisonment for two to four years for a 2017 parole violation led several prominent public figures to rally around the rapper. As a result, the REFORM Alliance was founded in 2019 by Mill, rapper Jay-Z, and Philadelphia 76ers co-owner Michael Rubin. The organization, which advocates for parole and probation reform, garnered a long list of celebrity and business supporters.<sup>39</sup> Five of its ten-member Board of Directors are business or finance executives, and seven are billionaires

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<sup>33</sup> Melamed and Purcell, “Judges Rule.”

<sup>34</sup> Ibid.

<sup>35</sup> Schiraldi, “The Pennsylvania Community Corrections Story.”

<sup>36</sup> Ibid; Human Rights Watch and American Civil Liberties Union, “Revoked: How Probation and Parole Feed Mass Incarceration in the United States” (Human Rights Watch, July 2020),

[https://www.aclu.org/sites/default/files/field\\_document/embargoed\\_hr\\_waclu\\_revoked\\_parole\\_and\\_probation\\_report\\_002.pdf](https://www.aclu.org/sites/default/files/field_document/embargoed_hr_waclu_revoked_parole_and_probation_report_002.pdf).

<sup>37</sup> Schiraldi, “The Pennsylvania Community Corrections Story.”

<sup>38</sup> John Duchneskie, “A Chronology of the Meek Mill Case,” *The Philadelphia Inquirer*, April 24, 2018, accessed December 15, 2021, <https://www.inquirer.com/philly/news/a-chronology-of-the-meek-mill-case-20180424.html>; Nick Vadala, “Meek Mill Arrested, Charged with Reckless Endangerment in New York City,” *The Philadelphia Inquirer*, August 18, 2017, accessed December 15, 2021, <https://www.inquirer.com/philly/entertainment/celebrities/meek-mill-arrested-charged-with-reckless-endangerment-in-new-york-city-20170818.html>.

<sup>39</sup> Giorgis, “Meek Mill’s Legal Limbo.”

or married to billionaires (including Jay-Z and Rubin).<sup>40</sup> As the Mill case drew increased attention to probation in Pennsylvania, many probation reform bills were proposed, although none have yet become law. A table more fully detailing the most relevant bills is in the Appendix.

Advocacy and grassroots organizations in Pennsylvania had long been working on probation reform measures even before REFORM's entrance. For example, Senator Anthony Williams (D-Philadelphia, Delaware) contacted the ACLU of Pennsylvania to work on a probation bill multiple legislative sessions prior to him officially sponsoring the first major piece of probation legislation in this time period.<sup>41</sup> Community organizer Reuben Jones also recounts that Senator Williams, Senator Sharif Street (D-Philadelphia), and Representative Jordan Harris (D-Philadelphia), all future sponsors of influential probation legislation, were in favor of setting hard caps on probation sentences in early meetings.<sup>42</sup> Despite initial proposed measures including elements that would drastically reduce the length of probation sentences and release many from supervision, punitive amendments often watered down progressive intentions within legislation over the course of debate.

For example, Senate Bill 14 gained widespread public attention when it was proposed in the 2019-20 legislative session. Although the initial bill implemented caps for probation terms and automatic measures to terminate probation, the final version (heavily influenced by the amended version of an earlier bill, HB 1555) not only scrapped these more ambitious initiatives, but created a new type of indefinite probation for failure to pay restitution.<sup>43</sup> It also created

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<sup>40</sup>Meet REFORM," REFORM Alliance (REFORM Alliance, November 8, 2021), accessed December 14, 2021, <https://reformalliance.com/meet-reform/>; Lorenzo Jones and Gabriel Sayegh, "Opinion: Grassroots Movements Are Needed to End Mass Incarceration," *City Limits*, December 13, 2019, accessed March 1, 2022, <https://citylimits.org/2019/12/13/opinion-grassroots-movements-are-needed-to-end-mass-incarceration/>.

<sup>41</sup> Elizabeth Randol, interview by Srinidhi Ramakrishna, January 27, 2022.

<sup>42</sup> Reuben Jones, interview by Srinidhi Ramakrishna, February 23, 2022.

<sup>43</sup> Elizabeth Randol, "RE: OPPOSITION TO SB 14 PN 1834 (WILLIAMS)," ACLU Pennsylvania (ACLU Pennsylvania, October 19, 2020), accessed December 15, 2021, [https://www.aclupa.org/sites/default/files/field\\_documents/aclu-pa\\_opposition\\_to\\_sb\\_14\\_pn\\_1834\\_house\\_judiciary\\_2020-10-19.pdf](https://www.aclupa.org/sites/default/files/field_documents/aclu-pa_opposition_to_sb_14_pn_1834_house_judiciary_2020-10-19.pdf).

burdensome mandatory probation reviews where none existed previously.<sup>44</sup> Supported by the REFORM Alliance, the PDAA, and legislators as a way to revamp the probation system, SB 14 was unanimously passed by the Senate.<sup>45</sup> Here, the disconnect between the measures this alliance proposed and the measures grassroots groups stress as crucial to decarceration was especially apparent. As the REFORM Alliance continued to endorse the final bill, grassroots groups and the ACLU, which was involved in initial legislative brainstorming, renounced their support and publicly disavowed it.<sup>46</sup> As the ACLU argued:

This bill makes probation worse. It will keep poor people on probation indefinitely because they are unable to pay their restitution. It will make it easier to incarcerate people for technical violations of probation...the bill creates a far more convoluted and restrictive process for terminating probation than current law provides.<sup>47</sup>

SB 14 exemplifies a reformist reform shaped by elite interests that failed to address the underlying problems with the probation system.

Senate Bill 913, proposed in the 2021-22 session, exhibited many of the same characteristics as the amended SB 14. Instead of capping probation sentences or prohibiting stacked and split sentencing practices, SB 913, like SB 14, invoked new authority to incarcerate people on probation violations, established a form of indefinite probation for failure to pay restitution, and instituted mandatory probation review conferences.<sup>48</sup> Although the ACLU and 54 other grassroots, advocacy, and legal organizations released a joint statement in opposition to SB 913, it passed the Senate in a 46-4 vote on December 15, 2021, and awaits the House.<sup>49</sup>

It is clear that probation reforms that are seriously considered by legislators do not

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<sup>44</sup> Ibid.

<sup>45</sup> Ron Southwick, "Pa. Senate Unanimously Passes Bill to REFORM Probation System; Supporters Call It A 'Milestone,'" *Penn Live*, July 15, 2020, accessed October 20, 2021, <https://www.pennlive.com/news/2020/07/pa-senate-unanimously-passes-bill-to-reform-probation-system-supporters-call-it-a-milestone.html>.

<sup>46</sup> Ibid.; Jonathan Ben-Menachem, "How Legislation Meant to Overhaul Probation and Parole in Pennsylvania Strayed from Its Roots," *The Appeal*, September 16, 2020, accessed October 20, 2021, <https://theappeal.org/probation-pennsylvania/>.

<sup>47</sup> "ACLU-PA Statement on State Senate Passage of Probation-Related Legislation," ACLU Pennsylvania (ACLU Pennsylvania, July 15, 2020), accessed October 24, 2021, <https://aclupa.org/en/press-releases/aclu-pa-statement-state-senate-passage-probation-related-legislation>.

<sup>48</sup> "Joint Statement | Opposition to Senate Bill 913 (PN 1144)," ACLU Pennsylvania (ACLU Pennsylvania, November 8, 2021), accessed December 15, 2021, [https://www.aclupa.org/sites/default/files/field\\_documents/joint\\_statement\\_opposition\\_to\\_senate\\_bill\\_913\\_pn\\_1144.pdf](https://www.aclupa.org/sites/default/files/field_documents/joint_statement_opposition_to_senate_bill_913_pn_1144.pdf).

<sup>49</sup> ACLU Pennsylvania, "Opposition to Senate Bill 913"; Pennsylvania General Assembly, "Bill Information: Senate Bill 913."

include changes, such as hard caps on probation term lengths, that would begin to alleviate the mass supervision crisis in Pennsylvania. These measures actually give more authority to law enforcement agencies to incarcerate probationers (those who are on probation), or make it more difficult to facilitate releases. Given that many probation reform bills were more ambitious at first, but later had punitive amendments tacked on, it is clear certain structures are interfering with the success of reforms that would reduce the usage and intensity of probation. An examination of political and legal dynamics in Pennsylvania finds that non-reformist probation reform has been hindered due to devolution, the influence of the REFORM Alliance, and institutionalized prosecutorial power held by the Pennsylvania District Attorneys Association.

### **Chapter 1: Devolution and Decentralization**

Pennsylvania is an extraordinarily localized state. Since colonial times, localism – the philosophy of investing more power in smaller-than-state geographical spaces rather than in state governments – has exerted powerful influence on Pennsylvania’s political structure.<sup>50</sup> With 4,897 local administrations, Pennsylvania now has more local governments than any state besides Texas and Illinois.<sup>51</sup>

In alignment with this history, Pennsylvania’s probation system operates at the county level, not the state level. It is one of just ten states that administers adult probation in this way.<sup>52</sup> Pennsylvania has 65 adult county probation departments out of 67 counties in total.<sup>53</sup> Each

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<sup>50</sup> Richard Briffault, “Our Localism: Part II - Localism and Legal Theory,” *Columbia Law Review* 90, no. 2 (1990): 447, <https://doi.org/10.2307/1122776>; Richard C. Schragger, “The Limits of Localism,” *Michigan Law Review* 100, no. 2 (2001): 373, <https://doi.org/10.2307/1290541>.

<sup>51</sup> Irina Zhorov, “Why Does Pa. Have so Many Local Governments?,” *WHYY*, September 16, 2014, accessed March 2, 2022, <https://whyy.org/articles/why-does-pa-have-so-many-local-governments/>

<sup>52</sup> Carl Reynolds, “Probation in Pennsylvania: Statement of Carl Reynolds, Senior Legal & Policy Advisor” (The Council of State Governments Justice Center), accessed March 2, 2022, <https://judiciary.pasenategop.com/wp-content/uploads/sites/42/2019/06/carl-reynolds.pdf>.

<sup>53</sup> April Billet-Barclay, “Public Hearing on Justice Reinvestment II (Senate Bills 500, 501, 502),” County Chief Adult Probation and Parole Officers Association of Pennsylvania, June 17, 2019, accessed March 2, 2022, [https://www.legis.state.pa.us/WU01/LJ/TR/Transcripts/2019\\_0077\\_0002\\_TSTMNY.pdf](https://www.legis.state.pa.us/WU01/LJ/TR/Transcripts/2019_0077_0002_TSTMNY.pdf). Probation in Mercer and Venango counties are provided by the Pennsylvania Board of Probation and Parole.

department is led by a county chief probation officer, and each department reports to the President Judge of its corresponding judicial district.<sup>54</sup>

County probation departments in Pennsylvania have widely varying operations, resource levels, and methods of criminal procedure. All administer supervision to those already sentenced to probation via the courts. Although juvenile probation in Pennsylvania is also administered at the county level, the Juvenile Court Judges Commission (JCJC), a state agency, provides the broad oversight adult probation lacks.<sup>55</sup> Contrastingly, JCJC's adult counterpart, the County Adult Probation and Parole Advisory Committee (CAPPAC), provides only non-binding guidance on supervisory practices, probation administration, and funding.<sup>56</sup> Thus, adult probation practice in the state is minimally standardized.

The county probation system reflects the practice of *devolution*, in which institutions and policies are delegated to lower levels of government as opposed to the state. With community supervision rates skyrocketing over the last several decades, increasing numbers of Pennsylvanians have fallen under the control of county probation departments. Though “community” control over institutions is seen as an egalitarian shift, administering probation at the county level does not change its primary functions, nor does it address the system's problems – astonishingly high rates of supervision, punitive surveillance measures, enduring practices biased against poor and racial minority offenders, and more.

Research into devolution has described how it shrouds the responsibilities of governing agencies and can lead to unequal policy applications and impacts.<sup>57</sup> In a 2015 talk, the scholar

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> “County Adult Probation and Parole Advisory Committee,” Pennsylvania Commission on Crime and Delinquency (Commonwealth of Pennsylvania), accessed March 2, 2022, <https://www.pccd.pa.gov/AboutUs/Pages/County-Adult-Probation-and-Parole-Advisory-Committee.aspx>.

<sup>57</sup> Joe Soss, Richard C. Fording, and Sanford F. Schram, “The Color of Devolution: Race, Federalism, and the Politics of Social Control,” *American Journal of Political Science* 52, no. 3 (July 2008): pp. 536-553, <https://doi.org/10.1111/j.1540-5907.2008.00328.x>; Donald F. Kettl, “The Transformation of Governance: Globalization, Devolution, and the Role of Government,” *Public Administration Review* 60, no. 6 (2000): pp. 488-497, <https://doi.org/10.1111/0033-3352.00112>; Jacob S. Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden

Ruth Wilson Gilmore explained how devolution off-loads social welfare to state and non-state institutions, limiting the efficacy of social services. With localities experiencing “new obligations that are either unfunded mandates or tied to narrowly targeted funding streams,” devolution “prevents the hands of the vulnerable from extracting the social wage.”<sup>58</sup> Gilmore also writes that “the dominant trend that goes hand-in-hand with mass incarceration is devolution.”<sup>59</sup> Gilmore’s scholarship illuminates the link between devolution and marginalization. As such, probation reform in Pennsylvania demonstrates how devolution within agencies of the carceral state itself further hinders efforts to reduce the number of people on probation.

In Pennsylvania, devolution makes non-reformist probation reform difficult. Firstly, devolution and its resulting impacts on funding has led to chronically under-resourced probation departments. This has pressured new reform efforts to include measures that reallocate yet more funds to probation departments and has limited the discussion and viability of broad-based interventions reducing the use of probation. Such a positive feedback loop permits the continued sentencing of new offenders to community supervision. Secondly, devolution results in a ballooning network of entrenched interests invested in the continued use of probation, as seen in the large numbers of stakeholders involved in the shift towards evidence-based practices (EBP) in many Pennsylvania counties. Thirdly, with counties varying widely in their approaches to probation, devolution greatly complicates the efforts of Pennsylvania activists to expose constitutional violations and challenge probation’s use.

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Politics of Social Policy Retrenchment in the United States,” *American Political Science Review* 98, no. 2 (June 21, 2004): pp. 243-260, <https://doi.org/10.1017/s0003055404001121>.

<sup>58</sup> Ruth Wilson Gilmore. “Organized Abandonment and Organized Violence: Devolution and the Police.” *The Humanities Institute at UCSC*. Lecture, February 27, 2022.

<sup>59</sup> Ruth Wilson Gilmore, “Abolition Geography and the Problem of Innocence,” in *Futures of Black Radicalism*, ed. Gaye Theresa Johnson and Alex Lubin (Verso, 2017), 235.

*Underfunding: A Positive Feedback Loop*

The county probation system faces serious struggles with funding. The burden of funding is disproportionately borne by Pennsylvania counties and not the state. In FY 2013-14, when the last study of the costs of Pennsylvania’s county adult probation system was coordinated, 58% of total funding came from counties while just 8% came from the state.<sup>60</sup> However, in the late 1990s, counties covered 45% and the state 20% of total costs.<sup>61</sup> County funding capabilities fluctuate widely between counties. The same study found that while 11% of Huntingdon County’s funds came from the county, 85% of Bedford County’s funds came from the county.<sup>62</sup> The state funding mechanism, the Grant-in-Aid (GIA) program, was amended in 1986 with the goal of funding 80% of county probation staff salaries.<sup>63</sup> GIA funding steadily diminished over the decades that followed, and in FY 2013-14, it covered just 18% of eligible salaries.<sup>64</sup>

Consequently, county probation departments have buckled under intense caseload responsibilities. According to the most recently available Pennsylvania Board of Probation and Parole (PBPP) Annual Statistical Report in 2018, the statewide average active caseload was 105 probationers per probation officer – more than double the American Probation and Parole Association recommendation.<sup>65</sup> Caseloads range from a low of 23 people per officer, as in Sullivan County, to a high of 299 people per officer, as in Delaware County.<sup>66</sup> According to April Billet-Barclay, Director of York County Probation Services and President of the County Chief Adult Probation and Parole Officers Association of Pennsylvania (CCAPPOAP), “caseloads are high and continue to grow.”<sup>67</sup> The CCAPPOAP, which supports hard caps on probation sentences

<sup>60</sup> “Funding of County Adult Probation Services: Conducted Pursuant to House Resolution 2014-69” (Harrisburg: Pennsylvania General Assembly, 2015), S-2.

<sup>61</sup> Rick Jones, “Funding of County Adult Probation Services” (Legislative Budget and Finance Committee, 2015).

<sup>62</sup> “Funding of County Adult Probation Services,” S-2.

<sup>63</sup> Ibid, S-4.

<sup>64</sup> Ibid, S-6.

<sup>65</sup> “County Adult Probation and Parole Annual Statistical Report 2018” (Pennsylvania Board of Probation and Parole, 2018), 1.

<sup>66</sup> Ibid.

<sup>67</sup> Billet-Barclay, “Public Hearing on Justice Reinvestment II.”

and reducing officer caseloads, has frequently clashed with legislators over previously described bills like HB 1555, SB 14, and most recently, SB 913. Helene Placey, CCAPPOAP's Executive Director, wrote in one such disagreement over HB 1555 that "there are a lot of individuals who claim that they want probation reform, who don't seem to understand county probation."<sup>68</sup>

With insufficient funding, increasing caseloads, and off-loaded responsibilities, county probation departments in Pennsylvania are in a permanent state of crisis. Billet-Barclay explains that "you can't focus on implementing change when you're carrying a caseload of 130 to 180 people...you're struggling to survive."<sup>69</sup> One of the resulting effects is that criminal legal reforms bend towards increasing funding for county probation departments, as opposed to sweeping interventions that would reduce violence or the use of probation at large. Prioritizing the manufactured, immediate crisis of underfunding over the sustained societal crisis of poverty and carcerality reflects how Gilmore understands devolution as encouraging policies rooted in "excessive narrowness."<sup>70</sup>

Pennsylvania's justice reinvestment movement showcases "excessive narrowness" in its tendency to keep providing the probation system with more funding. Originally a reform initiative aimed at allocating money used for prisons and jails back into community infrastructure, in practice, justice reinvestment often entails directing funds for prisons and jails back into other sectors of the criminal legal system, such as law enforcement agencies and community corrections.<sup>71</sup> As developed by political elites and law enforcement stakeholders as opposed to citizens' groups representing those most affected by incarceration and violence, justice reinvestment in Pennsylvania is a reformist reform. In fact, the term's originators Susan

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<sup>68</sup> Elizabeth Hardison, "With Vote Looming Pa. Probation Officers Line up against Parts of House Reform Bill," *Pennsylvania Capital-Star*, January 22, 2020, accessed March 2, 2022, <https://www.penncapital-star.com/criminal-justice/with-vote-looming-pa-probation-officers-line-up-against-parts-of-house-reform-bill/>.

<sup>69</sup> April Billet-Barclay, interview by Srinidhi Ramakrishna, January 31, 2022.

<sup>70</sup> Gilmore, "Abolition Geography," 230.

<sup>71</sup> Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton, NJ: Princeton University Press, 2016), 98-99.



Tucker and Eric Cadora pointedly write it may “institutionalize our massive incarceration rates for many decades to come.”<sup>72</sup> Still, justice reinvestment is frequently praised by political leaders nationally across party lines, leading Tucker and Cadora to state that “by focusing on state-level political and administrative policymakers, the JRI process has too often marginalized well-established local advocates and justice reformers who bring knowledge of local conditions and politics to the table, and who have a vested interest in providing long-term implementation oversight and ensuring sustainability of reforms.”<sup>73</sup>

Pennsylvania legislators have repeatedly supported justice reinvestment, undertaking Justice Reinvestment Initiative I (JRI I) in 2012 and Justice Reinvestment Initiative II (JRI II) in 2019, while rooting both efforts in county probation’s need for more resources. After JRI I, the state boasted it was able to provide \$8.5 million in law enforcement grants and \$5 million to county probation departments with the money saved.<sup>74</sup> Although populations under supervision and corrections spending continued to increase past 2012, JRI I was considered a success by Pennsylvania leaders and the Council of State Government Justice Center, an association of state government officials which has spearheaded justice reinvestment across the country.<sup>75</sup> JRI II funded the new probation advisory committee (CAPPAC), created authority to detain parolees for reimprisonment and revoke probation, and revised sentencing guidelines, including establishing mandatory minimums for certain crimes against minors.<sup>76</sup> Pennsylvania’s JRI II working group composition reveals this initiative’s base of support. Out of 36 members, only two represent public defenders, and no community groups are represented; the majority are

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<sup>72</sup> James Austin et al., “Ending Mass Incarceration Charting a New Justice Reinvestment,” (2013).  
<https://www.proquest.com/neirs/docview/1426991614/40D090F0165E4239PO/1>.

<sup>73</sup> Austin et al., “Charting a New Justice Reinvestment.”

<sup>74</sup> “The Justice Reinvestment Initiative Helps Law Enforcement Keep Communities Safe,” Council of State Governments Justice Center (CSG Justice Center, October 2019), accessed October 19, 2021,  
<https://csjusticecenter.org/publications/the-justice-reinvestment-initiative-helps-law-enforcement/>.

<sup>75</sup> “Justice Reinvestment in Pennsylvania,” Council of State Governments Justice Center (CSG Justice Center), accessed October 19, 2021,  
<https://csjusticecenter.org/projects/justice-reinvestment/past-states/pennsylvania/>.

<sup>76</sup> Katie Meyer, “Despite Controversial Amendments, Pa. House Passes Justice Reinvestment Bills,” *WHYY*, December 19, 2019, accessed October 19, 2021, <https://whyy.org/articles/despite-controversial-amendments-pa-house-passes-justice-reinvestment-bills/>.

government officials or representatives of police, prison, probation, or prosecutorial departments.<sup>77</sup> In seeking to improve aspects of the probation system, justice reinvestment prioritizes elite and pro-carceral voices, providing the probation system with more resources to punish.

Increasing funding to county probation incentivizes the maintenance and escalation of correctional control. Billet-Barclay reports that more funding would “allow county probation departments to further address caseload size,” such as by hiring new officers.<sup>78</sup> As Kay Whitlock and Nancy Heitzeg illustrate in *Carceral Con*, the current moment of “reform bipartisanship” consistently presents “the regime of overcriminalization and mass imprisonment as problematic not because of its harm to criminalized individuals, but because of its strain on budgets, its inefficiency, and its failure to produce meaningful ‘public safety.’”<sup>79</sup> In doing so, proposed reforms do not invest in social services, but instead fund “more training, new agencies, or additional technology” in an attempt to perfect the process of criminalization.<sup>80</sup> Such practices expand and institutionalize correctional control and the salaries of those who sustain it.<sup>81</sup> Funding county probation departments, as JRI 2 did, reaffirms the structurally violent purpose of probation. It continues a positive feedback loop that would increase the reach of the carceral state disguised by the desire for “better” supervisory practices, and embolden judges to sentence even more to probation, sparking yet more funding needs.

Devolution results in underfunded county probation departments struggling to fulfill

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<sup>77</sup> “Justice Reinvestment in Pennsylvania: First Presentation to the Pennsylvania Justice Reinvestment Working Group,” Council of State Governments Justice Center (CSG Justice Center, March 9, 2016), accessed October 19, 2021, <https://csgjusticecenter.org/wp-content/uploads/2020/10/PA-Launch-Presentation.pdf>.

<sup>78</sup> April Billet-Barclay, “The Pa. Legislature Must Do Better on Probation Reform next Session | Opinion,” *Pennsylvania Capital-Star*, October 25, 2020, accessed March 2, 2022, <https://www.penncapital-star.com/criminal-justice/the-pa-legislature-must-do-better-on-probation-reform-next-session-opinion/>; Billet-Barclay, interview.

<sup>79</sup> Charlotte Rosen, “The False Promise of Criminal Justice Reform,” *The Nation*, January 5, 2022, accessed March 2, 2022, <https://www.thenation.com/article/culture/carceral-con-review/>.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

dispersed state responsibilities, and it shrinks the scope of future reform to just revolve around giving county probation additional resources. This phenomenon does not imply that funding county probation departments more would alleviate the inherent, problematic nature of community supervision; doing so would exacerbate it. Identifying the structural conditions that lead to these reformist reforms sustaining supervision, though, can help counter narratives that make non-reformist reform difficult. Dolly Prabhu, Staff Attorney with the Abolitionist Law Center, notes that public education distinguishing between anti-carceral and pro-carceral reforms – namely, those which reject or promote government spending on state control – has proven effective.<sup>82</sup> This is critical if the feedback loop is to be interrupted.

#### *Entrenched Interests and Evidence-Based Practices*

Devolution has increased the sheer number of stakeholders supporting the sustained use of probation, causing institutional entrenchment and impeding reform in Pennsylvania. With 65 county probation departments operating separately, every initiative departments undertake multiplies the number of political actors, external contractors, and service providers partnered with the probation system. Donald Kettl documents this phenomenon nationally, writing that partnerships with other governmental and nongovernmental agencies have rapidly expanded at all levels of government, especially the state and local levels.<sup>83</sup> He also points to how this type of horizontal growth in government “muddies accountability,” and asks how society can “ensure accountability in extended service networks where administrative responsibility is widely shared and where no one is truly in charge.”<sup>84</sup>

Scholars have investigated how devolution in Pennsylvania’s juvenile justice system has

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<sup>82</sup> Dolly Prabhu, interview by Srinidhi Ramakrishna, February 1, 2022.

<sup>83</sup> Kettl, “The Transformation of Governance,” 494.

<sup>84</sup> *Ibid.*

constructed an extremely robust private-sector network linked to youth corrections. Reimbursed with public money, external providers invested in expanding juvenile detention programming increase the punitive reach of the state. Through private community programs and political alliances, local-level punishment in Pennsylvania is entrenched. As policy solutions grow local, neoliberal ideology locates criminal behavior in individual behavioral defects, especially through the adoption of the evidence-based practices movement. Bolstered by goals of fiscal austerity in light of an underfunded county system, Sarah Cate writes that “the only valid solution to delinquency continues to be through individualized behavioral interventions carried out by the private-sector at the local level,” not social or economic structural change limiting deprivation and violence at large.<sup>85</sup> County-level juvenile justice officials and politicians in Pennsylvania together claim that contracting out to the private-sector cuts costs and addresses criminality.<sup>86</sup> Although Pennsylvania’s adult probation system has not been privatized to the extent of the juvenile system, its devolution and steady incorporation of more external interests reflects Cate’s analysis.

The rise of evidence-based practices (EBP) in the adult probation system after initially being adopted by the juvenile system escalates the horizontality of county probation and threatens to further entrench probation. Justified as a cost-saving measure that improves public safety by probation officials, EBP is defined as “the application of science into operational practice for services and programs for offenders.”<sup>87</sup> The use of various actuarial risk assessment tools to evaluate individual’s risk levels (i.e. low risk, moderate risk, high risk) and needs is

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<sup>85</sup> Sarah Cate, “The Politics of Prison Reform: Juvenile Justice Policy in Texas, California and Pennsylvania” (dissertation, Publicly Accessible Penn Dissertations, 2016), 299.

<sup>86</sup> *Ibid.*, 298.

<sup>87</sup> “EBP Implementation,” County Chief Adult Probation and Parole Officers Association of Pennsylvania (County Chief Adult Probation & Parole Officers Association of Pennsylvania), accessed March 18, 2022, <http://www.ccappoap.com/public/ebpimplementation/>.

considered the “foundation of EBP” in Pennsylvania.<sup>88</sup> Such tools – like the popular Ohio Risk Assessment System – are informed by “risk, need, and responsivity” principles, that dictate who to supervise most intensely, which “criminogenic needs” to address during supervision, and what services will positively engage probationers. Another important component of EBP is motivational interviewing, an approach originating in the medical field that aims to address “criminogenic” risk factors by modifying how officers talk with those on probation. Motivational interviewing centers on “engaging the offender more and focusing on motivation to change,” such as by encouraging them to recognize the harmful effects of their behavior.<sup>89</sup> Scholars note that the usage of motivational interviewing represents probation departments moving into the “business of behavior change.”<sup>90</sup>

Despite the words “evidence-based practices” (EBP) hinting at a tamer, more lenient iteration of the criminal legal system, EBP expands, not reduces, correctional control over individuals. By attempting to stop crime at an individual level via psychological coercion, and by developing new methods to manage large populations of justice-impacted individuals more efficiently, EBP promotes the idea that the state’s role is to closely surveil groups deemed as unruly.<sup>91</sup> Indeed, probation administrators interviewed embrace EBP not because the current system is morally objectionable, but because EBP saves money and provides supposedly data-driven, scientifically backed results.<sup>92</sup> They also mention the complications of implementing EBP due to large disparities in long-standing practices among different county probation departments.<sup>93</sup> Regardless, as EBP is slowly adopted, it ignites a greater problem. Because EBP

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<sup>88</sup> “Evidence-Based Practices Strategic Plan: Blueprint for EBP Implementation,” County Chief Adult Probation and Parole Officers Association of Pennsylvania (County Chief Adult Probation & Parole Officers Association of Pennsylvania, June 2019), accessed March 2, 2022, [https://static-cdn.edit.site/users-files/191c64648f234b7be82bd1e65fd0f6c9/blueprintebpimplementation\\_-6-2019\\_.pdf?dl=1](https://static-cdn.edit.site/users-files/191c64648f234b7be82bd1e65fd0f6c9/blueprintebpimplementation_-6-2019_.pdf?dl=1).

<sup>89</sup> “Blueprint for EBP Implementation”; Helene Placey, interview by Srinidhi Ramakrishna, January 31, 2022.

<sup>90</sup> Michael Clark et al., “Motivational Interviewing for Probation Officers: Tipping the Balance Toward Change,” *APA PsycInfo* 70, no. 1 (2006): pp. 38-44.

<sup>91</sup> Cecelia Klingele, “The Promises and Perils of Evidence-Based Corrections,” *Notre Dame Law Review* 91, no. 2 (February 2016): pp. 537-584, <http://scholarship.law.nd.edu/ndlr/vol91/iss2/2>.

<sup>92</sup> Billet-Barclay, interview.

<sup>93</sup> *Ibid*; Placey, interview.

multiples the number of stakeholders involved in administering probation and reinscribes the value of carceral practices like probation under the neoliberal guise of “data-driven” practices, it cuts off the possibility of dismantling probation in and of itself.

Placey, for example, explains how Pennsylvania probation departments are working closely with a national consulting firm, The Carey Group, to roll out adult EBP.<sup>94</sup> The Carey Group was also involved in launching EBP within the juvenile system, and much overlap exists between the juvenile and adult probation systems in Pennsylvania – 39 county chiefs oversee both juvenile and adult probation services.<sup>95</sup> The CCAPPOAP and several county probation departments are also working with additional external contractors: the Alliance for Criminal Justice Innovation, for implementation leadership training; the Center for Strength-Based Strategies, to train staff in motivational interviewing; the University of Cincinnati Corrections Institute, to provide additional training to officers; BTM Software Solutions and Connetxtrex, to install case management systems with better data capabilities, and others.<sup>96</sup> The backing of more external and internal stakeholders, like county commissioners, district attorneys, defense counsel, correctional facilities, victim services, treatment providers, judges, and probation staff, is also crucial to administering EBP.<sup>97</sup>

York County’s probation system and its EBP-derived forays into healthcare demonstrates how a devolved probation system and resulting expansion of stakeholders entrenches carcerality. Billet-Barclay, York’s Director of Probation Services, underscores the “heartbreaking” criminalization of those with mental illness in which mentally ill offenders are wrongfully incarcerated in an attempt to force compliance with treatment.<sup>98</sup> Billet-Barclay then argues that

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<sup>94</sup> Placey, interview.

<sup>95</sup> Ibid.

<sup>96</sup> “Blueprint for EBP Implementation”

<sup>97</sup> Ibid.

<sup>98</sup> Billet-Barclay, interview.

one of the main problems with typical mental health services is that they are voluntary.<sup>99</sup> As she states, instead of telling the criminal justice system to “deal with” mentally ill offenders who do not want mental health treatment, mental health practitioners need to “step up more” and integrate into the probation system, as in her own county.<sup>100</sup> Importantly, Billet-Barclay’s view does not consider the need for affordable mental healthcare access for individuals before they enter the criminal legal system, nor does it consider the dangerous effects of integrating probation and health care. In 2021, York County partnered with a private health provider, WellSpan Health, to create the Special Treatment and Recovery Team (START) clinic – a “one-stop shop” where probation, reentry, mental health, and physical health services are consolidated under one roof.<sup>101</sup> According to Billet-Barclay, START represents “breaking down the silos between the systems...for the betterment of the individual.”<sup>102</sup>

START demonstrates how increasing numbers of local, non-carceral social services can grow enmeshed with the probation system, especially when managed at the county level. Although there is a pressing need to support the health of justice-impacted individuals, START reveals tensions when viewed through the lens of coercive care.<sup>103</sup> When probation officers mandate health care for probationers under the threat of revocation – which would entail forced removal from one’s home and family – they send harmful, mixed messages. Studies in other counties nationwide that integrate health and probation services find that the threat of revocation, as a health stressor in and of itself, is associated with worsened health given the invasive conditions of probation.<sup>104</sup> In other words, *probation* is a major health stressor. It is also

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Bernadette McSherry and Ian R. Freckelton, *Coercive Care: Rights, Law and Policy* (London: Routledge, 2015).

<sup>104</sup> Michelle S. Phelps et al., “Mass Probation and Health: Lessons Learned from an Interdisciplinary Research Project,” Robina Institute of Criminal Law and Criminal Justice (University of Minnesota, July 20, 2021), accessed March 2, 2022, <https://robinainstitute.umn.edu/news-views/mass-probation-and-health-lessons-learned-interdisciplinary-research-project>.

damaging to bring into probation's fold even more social service providers that may begin to rely on the use of probation to sustain their institutions. START reinforces that some "community" solutions that integrate probation into daily life entrench punitive practices at the local level by requiring probationers and those who deliver probation-related services to have even more contact with the carceral state.

As exemplified by EBP implementation and START, devolution encourages opportunities to privatize probation and incorporate external stakeholders, entrenching the carceral state and making reform difficult.

### *Devolution and Anti-Carceral Activism*

One of the most explicitly detrimental aspects of decentralization on probation reform is the problem it presents to anti-carceral activists. With little regulatory oversight from the Pennsylvania state government, county departments enact varying interpretations of probation services, supervisory conditions, and criminal procedure. Such carceral geographies complicate the options available for anti-carceral activists to challenge probationary practices. Gilmore writes:

"The doctrine of devolution results in a constantly fragmenting array of centers of struggle and objects of antagonism for people who seek equal protection, to say nothing of opportunity. In crisis, in resistance, in opposition: To whom, at whom, against whom does one carry one's petition or raise one's fist?"<sup>105</sup>

Anti-carceral activists in Pennsylvania struggle to determine the scope of the problem, which of the 67 counties to focus on, and the best-suited strategies for different community landscapes. As most activist groups are based in Philadelphia, Pittsburgh, or Harrisburg, devolution also hinders the formation of broad, state-wide coalitions encompassing both urban and rural locales in the

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<sup>105</sup> Gilmore, "Abolition Geography," 229-30.



state.

Every activist group interviewed brought up how the structural conditions of devolution make their advocacy harder. Elizabeth Randol, Legislative Director at the ACLU of Pennsylvania, emphasizes that if any proactive changes in the probation system are to occur, they must come from the county level.<sup>106</sup> Given a consistent trend of legislators advocating for actively harmful probation bills, Randol says the ACLU has considered not relying on the legislature for change at all.<sup>107</sup> However, fragmentation and the “wildly different ways courts operate and probation departments work” pose a roadblock to county-level advocacy.<sup>108</sup> For example, some counties do not lodge probation detainers at all, while others fill the majority of their jails with pretrial populations on detainers.<sup>109</sup> Launching multiple localized challenges to supervisory practices strains the resources of activists in ways that consolidated, state-level campaigns do not.

Prabhu describes how different counties have endless minute, but important, differences in criminal procedure related to probation sentencing, hampering the Abolitionist Law Center’s (ALC) work. As she reports, “there’s so many questions just for one single county, there’s no way to get those answers for every small county across the state. [Fact gathering] was the biggest challenge, and [it] took a really long time.”<sup>110</sup> Data collection and record-keeping – if counties agree to divulge data with the ALC at all – is inconsistent, preventing its staff from identifying patterns. Because no standardized processes exist, it is difficult for the ALC to “even show there are certain policies and practices are in place that are perpetuating constitutional violations.”<sup>111</sup> Devolution obscures the responsibility of probation and frustrates the possibility of statewide

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<sup>106</sup> Randol, interview.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Prabhu, interview.

<sup>111</sup> Ibid.

bottom-up movements for material change in the use and conditions of probation across Pennsylvania.

Altogether, carceral devolution in Pennsylvania emerges as a key underlying institutional factor that makes Pennsylvania an outlier and obstructs non-reformist reforms. With probation populations and unfunded state mandates increasing, under-resourced county probation departments' constant state of crisis results in constrained political imaginations. Reforms further fund probation departments due to their immediate financial needs and fail to explore non-reformist paths that would bring about the defunding of mass supervision. The resulting ideological dominance of fiscal austerity contributes to the rise of phenomena like EBP – multifaceted initiatives involving numerous external, private collaborators which entrench the legitimacy of probation. Because of devolution, these initiatives threaten to exponentially increase the numbers of people and institutions who are invested in the probation system. Such programs, deployed at the community level, also ensure punitive practices bleed into the very fabric of local life. Finally, devolution hinders the efforts of activists, who cannot adequately assess the current landscape of probation or easily coordinate coalitional, state-level goals.

This does not imply a centralized probation system would make probation “better” or more humane for those who undergo its intrusive conditions. However, understanding how devolution is deployed, by design or not, to maintain the carceral state, is critical to combat the narratives it accompanies and challenge the legitimacy of probation from the ground up. In other words, the structure of probation must first be understood in order to work against it.

## **Chapter 2: The REFORM Alliance**

While devolution at the local level hinders attempts to decrease the use of probation,

interest groups in Pennsylvania are also key in shaping state legislative decisions regarding probation legislation. The power of interest groups is not a phenomenon specific to Pennsylvania, but the groups at hand – the REFORM Alliance and the Pennsylvania District Attorney’s Association (PDAA) – reveal unique political dynamics. As a newly formed, high-profile national organization, REFORM’s entrance into Pennsylvania highlighted power hierarchies and provoked a situation already influenced by the powerful, tough-on-crime PDAA. The next two chapters investigate these two interest groups.

Lisa Miller’s analysis of Pennsylvania state politics finds that the types of interest groups who participate in legislative processes are lopsided. Data on the legislature’s crime hearings from 1965 to 2004 shows criminal legal agencies to be overrepresented. Nearly 40% of witnesses in such hearings were police, prosecutors, corrections officers, judges, and related actors.<sup>112</sup> Professional associations made up the next most represented interest groups, while citizens’ groups comprised just 14% of witnesses.<sup>113</sup> Even so, such citizens’ groups tended to be high-profile or single-issue groups such as the ACLU or Mothers Against Drunk Driving (MADD).<sup>114</sup> Notably, broader citizens’ groups advocating for racial minorities or the urban poor, who are most at risk of crime victimization, are “almost entirely absent from state legislative hearings on crime.”<sup>115</sup> This absence is amplified by Pennsylvania’s decentralization, which localizes the legislative venues broad citizens’ groups seek to enter.<sup>116</sup>

The state legislative process maintains differentiated routes of access to influence. Identifying certain interest groups like state agencies, the PDAA, MADD, and more as “frequent fliers” who have regular interactions with legislators, Miller writes:

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<sup>112</sup> Lisa L. Miller, “Interest Groups and Crime Politics at the State Level,” in *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (New York: Oxford University Press, 2008), 12.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*, 2.

<sup>115</sup> *Ibid.*, 32.

<sup>116</sup> *Ibid.*, 8.

As with congressional hearings, legislative hearings in Pennsylvania are hardly democratic affairs. Groups are either on or off the legislative radar. When they are on it, they sometimes receive an invitation to a public hearing...Public hearings and informational meetings are generally well-coordinated affairs consisting of scheduled speakers and/or organized panels of participants.<sup>117</sup>

Pennsylvania's political landscape omits the viewpoints of community organizations and grassroots groups representing the poor and racial minorities, reserving influence for certain favored interest groups and lobbyists. It is prone to high-profile advocacy groups focused on a single issue like REFORM, or prosecutor-oriented interest groups like the PDAA, having an outsized impact on the scope of probation reform. Indeed, Prabhu notes that "probation reform is one of the easiest ways for far-right, conservative groups, or even just liberal groups that are pro-carceral for many reasons, to latch on and support what seems like a positive criminal justice reform bill."<sup>118</sup> Given how reforms to probation, which is often seen as an alternative to incarceration instead of a punitive measure in and of itself, can be disguised as beneficial, the interplay between REFORM, the PDAA, and the Pennsylvania legislature is crucial to understanding how probation is institutionalized.

### *REFORM, Legislation, and Advocacy*

The founding of the REFORM Alliance led political actors, media figures, and many members of the public to champion co-founders Meek Mill, Jay-Z, and Michael Rubin as symbols of criminal justice reform. Upon its launch, REFORM recruited political commentator Van Jones as its CEO. A variety of business leaders and venture capitalists became founding partners, including Nets co-owner Clara Wu Tsai, hedge fund executive Daniel Loeb, cryptocurrency tycoon Michael Novogratz, private equity investor Robert Smith, and Patriots

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<sup>117</sup> Ibid.

<sup>118</sup> Prabhu, interview.

owner and Trump confidante Robert Kraft.<sup>119</sup> The organization employs both conservative and liberal policy staff and consistently emphasizes its bipartisan approach.<sup>120</sup> REFORM has captured significant media attention and many celebrity and business endorsements. Simultaneously, REFORM and its founders have garnered controversy over their support of harmful criminal justice measures and misguided uses of wealth, including a recent \$15 million scholarship donation for underserved youth who attend private and parochial schools in Philadelphia that was criticized for undermining the public education system.<sup>121</sup> REFORM's work in Pennsylvania reveals how the dominance of elite-driven activism sparks elite-grassroots tensions and hinders anti-carceral probation reform.

Although REFORM has since worked in other states, its first major legislative action was to introduce HB 1555 in Pennsylvania in 2019 after reaching out to state Representatives Jordan Harris (D-Philadelphia) and Sheryl Delozier (R-Cumberland) to draft a probation reform bill.<sup>122</sup> Thereafter, REFORM has commanded significant power in the legislature. As discussed earlier, the initial version of HB 1555 included caps on probation sentences, earned time credits, and early termination language. However, amendments by House Judiciary Committee chairman Rob Kauffman (R-Franklin) eliminated caps and many early termination provisions while appending clauses that recommended incarceration for certain offenses, allowed warrantless searches, and instituted mandatory probation review conferences.<sup>123</sup>

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<sup>119</sup> "Meet REFORM"; Julian Kimble, "Is Meek Mill's Friendship With Trump Supporter Robert Kraft an Unholy Alliance?," *Pitchfork*, February 13, 2019, accessed March 23, 2022,

<https://pitchfork.com/thepitch/is-meek-mills-friendship-with-trump-supporter-robert-kraft-an-unholy-alliance/>.

<sup>120</sup> "Our Work," REFORM Alliance (REFORM Alliance, October 28, 2021), accessed March 23, 2022, <https://reformalliance.com/our-work/>.

<sup>121</sup> Stephanie King, "Meek Mill, Kevin Hart, and Michael Rubin Miss the Point with \$15 Million Scholarship Donation | Opinion," *The Philadelphia Inquirer*, January 20, 2022, accessed March 23, 2022,

<https://www.inquirer.com/opinion/commentary/meek-mill-kevin-hart-michael-rubin-philadelphia-schools-20220120.html>.

<sup>122</sup> REFORM Alliance, "REFORM Alliance Takes First Major Legislative Action to Transform Pennsylvania's Oppressive Probation & Parole System," *Cision PR Newswire*, May 31, 2019, accessed March 23, 2022,

<https://www.prnewswire.com/news-releases/reform-alliance-takes-first-major-legislative-action-to-transform-pennsylvanias-oppressive-probation--parole-system-300859840.html>.

<sup>123</sup> Ben-Menachem, "How Legislation Meant to Overhaul Probation and Parole in Pennsylvania Strayed from Its Roots"; "HB 1555 Analysis: Filed vs. Amended," ACLU Pennsylvania (ACLU Pennsylvania, October 2019), accessed December 16, 2021,

[https://www.aclupa.org/sites/default/files/field\\_documents/aclu-pa\\_analysis\\_hb\\_1555\\_filed\\_v\\_amended\\_2019-12-10.pdf](https://www.aclupa.org/sites/default/files/field_documents/aclu-pa_analysis_hb_1555_filed_v_amended_2019-12-10.pdf).

HB 1555 was eventually removed from the table in the House. That same year, a copycat bill, SB 14, was introduced in the Senate by Senators Anthony Williams (D-Philadelphia, Delaware), Lisa Baker (R-Luzerne, Susquehanna, Pike, Wayne, Wyoming), and Camera Bartolotta (R-Beaver, Washington, Greene) with the support of REFORM.<sup>124</sup> Sparking controversy, the amended SB 14 scrapped initial measures to implement term caps as well as bans on split and stacked sentencing which would prevent excessively long probation sentences; it also removed provisions for automatic termination of probation.<sup>125</sup> Instead, it added avenues to incarceration for technical violations, punitive measures towards those in need of drug or mental health treatment, and indefinite probation for those who could not pay restitution.<sup>126</sup> Importantly, although Pennsylvania law currently allows judges to terminate probation at any time, SB 14 also developed a convoluted, far less attainable process of “mandatory probation review conferences” after three or five years before probation termination could even be considered.<sup>127</sup> The ACLU described the path towards receiving such a hearing as a “byzantine maze of eligibility requirements, exclusions, and trip wires contained in a process that only gets a person to a ‘probation review conference’ with no guarantee that probation is terminated.”<sup>128</sup> Placey and Billet-Barclay, who endorse automatic early termination, vocally opposed this measure as burdensome and archaic to what individual counties were currently implementing.<sup>129</sup> Community organizers, too, opposed HB 1555 and SB 14.<sup>130</sup> Regardless, REFORM stood by the bill, and was named in Senator Williams’ final statement on its passage as a key collaborator.<sup>131</sup>

After passing the Senate unanimously, SB 14 was never voted on by the House and it

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<sup>124</sup> Southwick, “Pa. Senate Unanimously Passes Bill to REFORM Probation System.”

<sup>125</sup> Randol, “OPPOSITION TO SB 14 PN 1834.”

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Randol, “OPPOSITION TO SB 14 PN 1834.”

<sup>129</sup> Ben-Menachem, “How Legislation Meant to Overhaul Probation and Parole in Pennsylvania Strayed from Its Roots.”;

<sup>130</sup> Reuben Jones, “An Open Letter to Meek Mill: Pa. Needs Real Probation Reform | Opinion,” *Pennsylvania Capital-Star*, January 27, 2022, accessed March 23, 2022, <https://www.penncapital-star.com/commentary/an-open-letter-to-meek-mill-pa-needs-real-probation-reform-opinion/>.

<sup>131</sup> “Commonwealth of Pennsylvania Legislative Journal,” July 15, 2020, accessed March 23, 2022, <https://www.legis.state.pa.us/WU01/LI/SJ/2020/0/Sj20200715.pdf>.

failed to advance.<sup>132</sup> REFORM was next involved in the development of SB 913, which passed the Senate on December 15, 2021 and awaits consideration in the House.<sup>133</sup> Without even initially attempting caps on sentences like HB 1555 and SB 14 did, SB 913 was largely based on the amended version of SB 14, with measures for mandatory probation review conferences and new authority to incarcerate based on technical violations.<sup>134</sup> Hailed by legislators, REFORM, and the Pennsylvania Safety Coalition (a broad conglomerate of organizations including REFORM and conservative groups such as the American Conservative Union, Americans for Prosperity, and the Faith & Freedom Coalition) as beneficial due to its earned time credit system and removal of the often-abused ability to revoke a probationer for simply leaving a jurisdiction, SB 913 still greatly increases the reach of the probation system.<sup>135</sup> By permitting the state to lock up more probationers, creating new punishments and duplicative offenses, and further complicating the probation process, SB 913 dilutes the meaning of reform. Fifty-five community organizations and advocacy groups signed a joint statement urging state senators to oppose the bill; probation stakeholders Placey and Billet-Barclay also objected to its measures.<sup>136</sup> In light of these defections, REFORM's staunch loyalty to SB 913 continues to draw criticism.

It is crucial to contextualize the relative power REFORM holds in Pennsylvania's legislative process, especially compared to local advocacy organizations. As a high-profile national organization led by wealthy celebrity and business elites, REFORM wields enormous funding, media influence and lobbying access. Because it is a single-issue group focused on probation and parole, it can also concentrate its funding onto one campaign in ways broad

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<sup>132</sup> "Pennsylvania Senate Bill 14: 2019-2020," LegiScan (LegiScan),

<sup>133</sup> "Bill Information: Senate Bill 913, Regular Session 2021-2022," Pennsylvania General Assembly,

<sup>134</sup> ACLU Pennsylvania, "Joint Statement | Opposition to Senate Bill 913."

<sup>135</sup> Britton Smith, interview by Srinidhi Ramakrishna, February 16, 2022; Michael Rubin, "Pennsylvania's Probation System Needs Reform, and the Senate Should Do It Soon | Opinion," *Penn Live*, December 8, 2021, accessed December 15, 2021,

<https://www.pennlive.com/opinion/2021/12/pennsylvania-probation-system-needs-reform-and-the-senate-can-do-it-this-week-opinion.html>;

"About," Pennsylvania Safety Coalition, accessed March 23, 2022, <https://www.pasafetycoalition.com/about>.

<sup>136</sup> ACLU Pennsylvania, "Joint Statement | Opposition to Senate Bill 913"; Placey, interview; Billet-Barclay, interview.

organizations like the ACLU and other citizens' groups cannot.<sup>137</sup> REFORM additionally benefits from its “good faith bipartisan reputation” of being able to work with groups on the left and right, a reputation developed in part because of the networks of its board members and key staff members.<sup>138</sup> In describing how REFORM could grow its influence and work with him, Rep. Harris stated that, not unlike other organized interest groups, it “had the resources to hire government affairs professionals to advocate for their issues...who have relationships with legislators where you could get a meeting.”<sup>139</sup> On the contrary, “some grassroots groups may not know how to go about advocating.”<sup>140</sup> Through its ability to hire swathes of professional policy experts, REFORM effectively maneuvers the formalized governmental process and presents itself in a way which resonates with legislators.

Unlike other single-issue national advocacy organizations, REFORM operates with unmatched media power and influence that only an organization led by celebrities known worldwide could have. Rep. Harris highlights that REFORM has a voice, saying that “Meek got tens of millions of followers. Mike Rubin had hundreds of thousands of followers, Van Jones has hundreds of thousands of followers and was on CNN...they can get to my constituents.”<sup>141</sup> As a result, many legislators may be inclined to work with REFORM for positive media attention other groups may not bring. Accordingly, Randol mentions that “legislators who are solicitous of media attention, or who might be looking to run for a leadership position or another office...they can point to the high profile things that [they] did.”<sup>142</sup> One source, who wished to remain anonymous, hinted at REFORM’s off-book lobbying practices with legislators, such as getting their family members tickets to concerts, music festivals, or basketball games. Because they do

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<sup>137</sup> Randol, interview.

<sup>138</sup> Smith, interview.

<sup>139</sup> Jordan Harris, interview by Srinidhi Ramakrishna, February 10, 2022.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Randol, interview.



not have a political action committee, REFORM's explicit financial contributions are hard to ascertain. Still, the cultural power it holds is a compelling draw for Pennsylvania legislators.

REFORM's legislative efforts are also distinguished by its remarkable accommodation of punitive changes that anti-carceral organizers, probation officers, and even internal stakeholders within REFORM disagree with. Both Britton Smith, REFORM's Senior Organizing Strategist, and Rep. Harris state that they were never in favor of the amendments to SB 14 or HB 1555.<sup>143</sup> Smith explains that REFORM continued to endorse the bill in order to present a good-faith show of support to maintain its bipartisan reputation and hopefully rework the bill later on in the House.<sup>144</sup> Randol describes this all-consuming desire for a success as harmful, such that "in the mad dash to get across the finish line, sometimes they've accommodated so many changes and amendments to a bill that they're left with some pile of carnage that they're dragging across the finish line to get to the win."<sup>145</sup> Distorting its own initial goals, REFORM's concessions threaten to expand probation.

This strategy is closely linked to REFORM's status as a national organization operating in multiple states, functionally removed from local dynamics. Unlike the slow work of grassroots movement building, the drive to build a national reputation privileges individual, visible forms of success – such as bills passed – in order to more clearly grow delocalized power and publicize one's work to broader audiences. As expected, Smith agrees that one of the reasons REFORM continually endorsed the bills they did, even if it contradicted their initial goals, was to maintain an agreeable reputation for campaigns in other states.<sup>146</sup> On the other hand, Reuben Jones, Executive Director of Frontline Dads and a Philadelphia-based community organizer, explains how organizers do not measure success by grabbing wins or headlines. He and his peers

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<sup>143</sup> Smith, interview; Harris, interview.

<sup>144</sup> Smith, interview.

<sup>145</sup> Randol, interview.

<sup>146</sup> Smith, interview.

prioritize changing the narrative in the long run through generating conversations on the ground and individually meeting with legislators, even if doing so does not result in immediate legislative outcomes.<sup>147</sup> Unlike REFORM, Jones notes that “we preferred no bill to a bill that contributed to expanding the carceral system,” highlighting his emphasis on gradual movement work and value consistency.<sup>148</sup>

A focus on individualized instances of success has warped understandings of current probation conditions and the line between positive and negative reform, permitting legislators to characterize bills like SB 14 as at least a small step in the right direction. Moreover, the impact of REFORM’s accommodation to pro-carceral amendments is not limited to the legislation. Randol notes that before the vote on SB 14, “every comment on the Senate floor right before the vote was like one long subtweet,” with Democratic senators in particular expressing veiled criticism of the ACLU and grassroots groups in opposition by remarking that that “some are going to say it doesn’t have caps, but...we can’t always get everything we want.”<sup>149</sup> REFORM’s entry has caused a spiraling effect in which its acquiescence to punitive, conservative measures portrays the ACLU and other grassroots groups as obstructionist and demanding in comparison, hurting the latter’s future ability to advocate for progressive probation reforms.<sup>150</sup> Tellingly, when interviewed, Rep. Harris’ most critical comments were levied not against tough-on-crime conservative lawmakers, but against those on the left “jumping up and down screaming and shouting that ‘this isn’t doing enough, this is going to make things worse.’”<sup>151</sup>

REFORM’s advocacy is bolstered by a wealth of resources local organizations advocating for probationers and the formerly incarcerated do not have. In part due to its actions,

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<sup>147</sup> Jones, interview.

<sup>148</sup> Jones, “An Open Letter to Meek Mill.”

<sup>149</sup> Randol, interview.

<sup>150</sup> Randol, interview.

<sup>151</sup> Harris, interview.

harmful legislative ideas capture more political ground. Its strategy of positioning itself as amenable to conservatives results in increasingly punitive measures disguised as reform, and threatens to further jeopardize the power grassroots organizations hold in Harrisburg long after REFORM leaves the state.

*REFORM, Celebrity Activism, and the National Elite*

REFORM's policy positions and modes of operation are closely tied to neoliberal ideology and its elite leadership. The Made in America music festival, a multi-day concert series founded by Jay-Z held on Philadelphia's Benjamin Franklin Parkway, features the "Cause Village," an area reserved for social justice organizations to set up tent stations. In 2019, the REFORM Alliance, one of the festival's main charity partners, maintained a branded truck and a fenced-off turf section in Cause Village.<sup>152</sup> Throughout the day, volunteers and REFORM staff were at this station preparing flyers and handing out materials. At one point, several volunteers were in the truck setting up their next task when they were suddenly told to exit – Ben Simmons, then-star 76ers basketball player, was going to arrive for a celebrity appearance and needed the truck. After being quickly ushered off to the margins of the fenced-off area, a disgruntled volunteer spoke up. Why was REFORM catering to celebrities? Were they not an organization "for the community?"<sup>153</sup>

This anecdote demonstrates how the REFORM Alliance must be analyzed through a lens of celebrity activism, Black celebrity activism in particular, and the relationship of both to neoliberalism. With increased technology and globalization, large advocacy groups have increasingly claimed to represent all by focusing on non-residential concerns, facilitating

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<sup>152</sup> REFORM Alliance (@REFORM), "#REFORM is at @MIAFest today by Cause Village," Tweet, August 31, 2019, <https://twitter.com/reform/status/1167892548083257345>

<sup>153</sup> Author's personal experience, August 31, 2019.

increased participation by the “power elite” such as celebrities.<sup>154</sup> Literature on the role of celebrities in politics highlight how as elite, non-state agents, celebrities may shape public opinion but do not undergo processes of public accountability, like elections.<sup>155</sup> They derive influence from their wealth, relationships with other elites, and sociocultural currency enabling them to hold the attention of the public.<sup>156</sup> This concept, termed by Archer et al. as “epistemic power,” enables celebrities to influence others’ beliefs while either enabling or disabling others from doing the same.<sup>157</sup> One of the most relevant applications of epistemic power is agenda-setting, or the ability to specify both the subject and scope of public debates.<sup>158</sup>

To be sure, epistemic power is not a phenomenon unique to celebrities, and some forms of epistemic power are entirely legitimate. REFORM’s epistemic power is partially derived from its employment of professional policy experts and strategists. However, a large part of REFORM’s epistemic power is also driven by its association with celebrities like Mill and Jay-Z – celebrities who express their views and lend credence towards others involved with REFORM like Rubin, Kraft, and policy staff. For example, Van Jones stated that REFORM’s “trick” is that it has “major celebrities and billionaires setting the table.”<sup>159</sup> Thus, REFORM is empowered to define the most pressing problems with probation and the possible breadth of reforms while discrediting others who imagine different scopes for reform that do not involve elites at the helm.

Scholars have also linked celebrity activism to neoliberalism, reflected in the policy advocacy of REFORM. Nathan Farrell writes how celebrity activism is often aligned with

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<sup>154</sup> Samantha Majic, Daniel O’Neill, and Michael Bernhard, “Celebrity and Politics,” *Perspectives on Politics* 18, no. 1 (March 17, 2020): pp. 1-8, <https://doi.org/10.1017/s1537592719004602>, 3; Michael Saward, “Authorisation and Authenticity: Representation and the Unelected,” *Journal of Political Philosophy* 17, no. 1 (January 19, 2009): pp. 1-22, <https://doi.org/10.1111/j.1467-9760.2008.00309.x>; Nadia Urbinati and Mark E. Warren, “The Concept of Representation in Contemporary Democratic Theory,” *Annual Review of Political Science* 11, no. 1 (June 15, 2008): pp. 387-412, <https://doi.org/10.1146/annurev.polisci.11.053006.190533>.

<sup>155</sup> Majic et al., “Celebrity and Politics,” 1; Lena Partzsch, “Powerful Individuals in a Globalized World,” *Global Policy* 8, no. 1 (September 9, 2016): pp. 5-13, <https://doi.org/10.1111/1758-5899.12367>.

<sup>156</sup> Barrie Gunter, *Celebrity Capital: Assessing the Value of Fame* (New York: Bloomsbury, 2014).

<sup>157</sup> Alfred Archer et al., “Celebrity, Democracy, and Epistemic Power,” *Perspectives on Politics* 18, no. 1 (March 17, 2020): pp. 27-42, <https://doi.org/10.1017/S1537592719002615>, 28-29.

<sup>158</sup> *Ibid.*, 31.

<sup>159</sup> Shawn Setaro, “How JAY-Z and Meek Mill’s REFORM Alliance Plans to Improve the Criminal Justice System,” *Complex*, February 15, 2019, accessed March 23, 2022, <https://www.complex.com/music/2019/02/jay-z-meek-mill-reform-organization-criminal-justice>.

dominant state political-economic ideologies, even if the celebrities in particular maintain “outsider” images.<sup>160</sup> According to Farrell, solutions proposed by celebrity activists are generally rooted in neoliberal frameworks, shaped by wealthy business elites and framed around notions of individual responsibility.<sup>161</sup> The fact that REFORM’s work is a bipartisan collaboration with venture capitalists, financial executives, and technology magnates no doubt shapes the policy solutions it advances. The organization’s public messaging and statements by those in support of REFORM-backed bills emphasize their moderation, with politicians repeatedly stating that they reward good behavior, only help people who had committed minor technical violations, and better match the punishment to the crime.<sup>162</sup> In an interview, Van Jones insisted that REFORM is solely focused on non-systemic reform in situations where an upstanding probationer commits a non-criminal technical violation long after their initial crime, not addressing the excessive use of punishment as a response to crime itself.<sup>163</sup> This discourse demonstrates the neoliberal practice of “bifurcation” – separating out certain people as personally deserving of reform while maintaining or increasing punishment towards others – which dismisses comprehensive anti-carceral change and which Seeds and Beckett note is endemic to the modern criminal legal system.<sup>164</sup>

The work of REFORM is also related to the long tradition of Black celebrity activism in politics. Scholars note that Black actors, musicians, and athletes are considered to have a “responsibility” to advocate on behalf of Black people.<sup>165</sup> However, as a Fox News host’s notorious comment towards LeBron James to “shut up and dribble” exemplified, the

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<sup>160</sup> Nathan Farrell, “Co-opting the ‘Losers’: Bob Geldof and Neoliberal Activism after the Financial Crisis,” in *The Political Economy of Celebrity Activism* (Abingdon, Oxon: Routledge, Taylor & Francis Group, 2021).

<sup>161</sup> Ibid.

<sup>162</sup> “Meeting to Consider SB 14, SB 1158, SB 1204, HB 256, HB 1855, and HB 1984,” Pennsylvania Senate Judiciary Committee (Senate of Pennsylvania, June 23, 2020), <https://judiciary.pasenategop.com/062420/>.

<sup>163</sup> Shawn Setaro, “JAY-Z and Meek Mill’s REFORM Alliance.”

<sup>164</sup> Beckett, “The End of an Era?”; Seeds, “Bifurcation Nation.”

<sup>165</sup> Christopher C. Towler, Nyron N. Crawford, and Robert A. Bennett, “Shut Up and Play: Black Athletes, Protest Politics, and Black Political Action,” *Perspectives on Politics* 18, no. 1 (March 17, 2020): pp. 111-127, <https://doi.org/10.1017/S1537592719002597>, 111.

acceptability of celebrity activism is racialized.<sup>166</sup> With this in mind, it is undeniably powerful for Meek Mill, someone with lived experience of prison and probation, to lead REFORM.

Nevertheless, Jay-Z's involvement with REFORM and long history of past activism also draws attention to REFORM's association with racial neoliberalism and Black capitalism. Jay-Z's musical expressions and cultural symbolism as a rags-to-riches icon have long exemplified the trend of the neoliberal "hip-hop mogul."<sup>167</sup> His consistent uplift of the wealth accumulation of individual Black people as momentous anti-racist acts, divorced from realities of class inequality, has been criticized for embracing corporate-driven solutions while marginalizing other Black activists.<sup>168</sup> After Jay-Z agreed to produce the Super Bowl halftime performance despite calls for him to boycott the NFL because of its lockout of athlete-activist Colin Kaepernick, abolitionist Derecka Purnell asserted that Jay-Z is a "quintessential black capitalist: professing that freedom is one's ability to own oneself and acquire wealth."<sup>169</sup> While his work with REFORM stems from genuine care, "the same forces that create and maintain billionaires rely on what Jay-Z is seemingly critical of: racism, poverty, xenophobia, incarceration and homophobia."<sup>170</sup> Jay-Z's neoliberal politics are echoed by Mill and bleed into REFORM's activities. The organization's elite-driven structure produces solutions which fail to seriously transform the carceral system.

Pointedly, REFORM represents a specific type of Black neoliberal celebrity activism that has sidelined Black community organizers in Pennsylvania. Reuben Jones – a formerly incarcerated person who spent fifteen years in prison before becoming a community organizer

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<sup>166</sup> David Niven, "Who Says Shut Up and Dribble? Race and the Response to Athletes' Political Activism," *Journal of African American Studies* 25, no. 2 (June 5, 2021): pp. 298-311, <https://doi.org/10.1007/s12111-021-09534-6>.

<sup>167</sup> Eithne Quinn, "Occupy Wall Street, Racial Neoliberalism, and New York's Hip-Hop Moguls," *American Quarterly* (Johns Hopkins University Press, May 11, 2016), [https://www.research.manchester.ac.uk/portal/en/publications/occupy-wall-street-racial-neoliberalism-and-new-yorks-hiphop-moguls\(29a05f57-aa0-4320-94b5-ea3b0089e274\)/export.html](https://www.research.manchester.ac.uk/portal/en/publications/occupy-wall-street-racial-neoliberalism-and-new-yorks-hiphop-moguls(29a05f57-aa0-4320-94b5-ea3b0089e274)/export.html).

<sup>168</sup> Ibid; Derecka Purnell, "Jay-Z Has Crossed the Picket Line with His NFL Deal," *The Guardian*, August 19, 2019, accessed March 23, 2022, <https://www.theguardian.com/commentisfree/2019/aug/19/sorry-jay-z-racial-justice-corporations-billionaires>.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

with a multitude of groups involved in supporting other returning citizens, reducing gun violence, and working against mass incarceration – published an open letter to Mill in January 2022. The letter details Jones’ disappointment with REFORM, given how it has sidelined community organizations, especially those led by formerly incarcerated people.<sup>171</sup> Though HB 1555, SB 14, and SB 913 were resoundingly opposed by organizers, Jones says REFORM “trampled over the voices of formerly incarcerated leaders like [him]self” by continuing to endorse the bills and not adequately consulting with directly impacted people.<sup>172</sup> Jones, also a former probationer who is now on parole, connects REFORM’s exclusion of formerly incarcerated people to the stereotype that they are “not intelligent enough, or well-versed enough, or researched enough on this topic to represent it publicly.”<sup>173</sup> He even hints that other organizers have heard REFORM executives spread rumors that the ACLU ghostwrote his open letter, a rumor that insults his intellectual ability to speak on his own personal experiences.<sup>174</sup>

Community groups recognize that while Mill himself is formerly incarcerated, the class privilege of many at the helm of REFORM blinds the organization to the needs of most formerly incarcerated people. Although REFORM was launched amidst a conversation on Mill’s excessively long sentence, Jones identifies how the organization quickly retreated from measures like sentence caps that would have helped Mill be released earlier. Instead, it has praised measures that would have had no effect, or even a negative effect, on a similar situation to Mill’s.<sup>175</sup> While REFORM’s influence allows “do-gooder billionaires who want to put a thumbprint on criminal justice” to court celebrities and elected officials, it has not gained the trust of the community.<sup>176</sup> Ultimately, community organizers suggest that REFORM utilizes

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<sup>171</sup> “Reuben Jones: Pennsylvania,” JustLeadershipUSA (JustLeadershipUSA), accessed March 23, 2022, <https://jlusa.org/leader/reuben-jones/>; Jones, “An Open Letter to Meek Mill.”

<sup>172</sup> Jones, “An Open Letter to Meek Mill.”

<sup>173</sup> Jones, interview.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid; Ben-Menachem, “How Legislation Meant to Overhaul Probation and Parole in Pennsylvania Strayed from Its Roots.”

<sup>176</sup> Jones, interview.

epistemic power to exclude the voices of formerly incarcerated, directly impacted Pennsylvanians.

REFORM's positioning as a national organization is also key to its actions in relation to local community organizers. Randol finds REFORM to represent a trend of national organizations "parachuting" in with little understanding of the convoluted criminal legal system in Pennsylvania and assuming they can deal with the situation better than people on the ground.<sup>177</sup> Even if not a malicious or intentional philosophy, the complicated, localized nature of probation means that unfamiliar organizations or legislators may easily think certain harmful reforms are actually a step forward. Smith rejects this characterization, saying that REFORM knows activists have been working on criminal justice issues in any state long before it arrives, and that the organization does not want to appear like "the large entity that is here to usurp all the oxygen out of the room."<sup>178</sup> Regardless, REFORM certainly benefits from its delocalized, elite, and young status. Smith says that being unknown on the political scene is positive in some ways because it has not yet "rubbed enough people in the wrong way" in a way local and state advocacy groups with established histories of activism may have.<sup>179</sup> Thus, REFORM is further able to implicitly dominate political conversation.

In many ways, the REFORM Alliance has commendable goals, and its advocates sincerely wish to change the criminal legal system. Nonetheless, its emphasis on bipartisanship at all costs has resulted in alliances that re-amplify carcerality. In attempting to link together the politics of formerly incarcerated people and billionaire Trump supporters, it disguises harmful changes under the banner of "reform." REFORM has used its influence stemming from national celebrity and elite power in service of neoliberal reformist reforms, hindering local activists

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<sup>177</sup> Randol, interview.

<sup>178</sup> Smith, interview.

<sup>179</sup> Ibid.



working for anti-carceral change in Pennsylvania. Its monopoly on the political landscape has hurt efforts to reduce the use of probation.

### **Chapter 3: The Pennsylvania District Attorneys Association**

The Pennsylvania District Attorneys Association (PDAA) is perhaps the most explicit roadblock which obstructs probation reform in Pennsylvania. The PDAA is a statewide prosecutors association designed to support Pennsylvania’s 67 District Attorneys, and it functions as both a trade association and lobbying group.<sup>180</sup> A highly organized operation, the PDAA benefits from an assumption of ideological uniformity among DAs and maintains unequaled institutionalized power in the legislative branch. It is extremely effective in shaping the outcome of all types of criminal legal legislation. The PDAA consistently opposes reform measures and lobbies almost entirely for bills which increase criminalization and sentencing; reform it does support is justified using cost-efficiency frameworks while reaffirming the need for punishment. An explanation for why Pennsylvania’s probation system remains extraordinarily punitive and has resisted reform must, therefore, take into account the actions of the PDAA.

Nationwide, statewide prosecutors associations matter far more than the attention they are typically given in campaigns for reform. Prosecutors have near-total control over the legal system due to their wide latitude in deciding the specifics of charging and plea bargaining – 96% of all cases in Pennsylvania result in plea deals.<sup>181</sup> Accordingly, scholars identify prosecutors as the most important driver of prison population increases.<sup>182</sup> As nonprofit, professional

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<sup>180</sup> “PDAA History,” Pennsylvania District Attorneys Association (Pennsylvania District Attorneys Association, May 7, 2019), accessed March 17, 2022, <https://www.pdaa.org/history/>.

<sup>181</sup> Pennsylvania Justice Alliance and Elizabeth Randol, “Who Keeps People In Prison? Exposing the Lobby of Mass Incarceration in Pennsylvania,” December 9, 2021, accessed December 11, 2021, <https://www.youtube.com/watch?v=dUYH8uomB6U>, 38:44.

<sup>182</sup> John F. Pfaff, *Locked in: The True Causes of Mass Incarceration and How to Achieve Real Reform* (New York: Basic Books, 2017).

organizations, prosecutors associations engage in lobbying, training, and public education efforts; they typically consist of dues-paying lead prosecutors from each state district or county.<sup>183</sup> An investigation by journalist Jessica Pishko found that as influential political actors made up of members with incredible individual power, district attorneys associations “do not just ‘enforce’ the law; in fact, they help to *make* it.”<sup>184</sup> Specifically, they nearly always advocate for tough-on-crime legislation to create new offenses, increase penalties, and provide more discretion to prosecutors while opposing legislation to decriminalize certain actions, reduce sentences, or protect defendants.<sup>185</sup> Across states, district attorneys associations routinely and successfully block even bipartisan criminal legal reforms supported by wide swathes of the public.<sup>186</sup> Their active influence is thus especially potent.

Writ large, most district attorneys associations share similar goals – disseminating resources among the state’s prosecutors, coordinating between prosecutors and state officials, advocating for the interests of their prosecutors, establishing prosecutorial standards, and providing training.<sup>187</sup> Indeed, the Pennsylvania District Attorneys Association lists its goals as assisting prosecutors in executing their duties and pursuing justice, championing the PDAA’s views to the government and public, and working with other agencies on “matters of mutual concern.”<sup>188</sup> State district attorneys associations are endowed with tremendous amounts of influence. They tend to sit on a vast number of state advisory boards, committees, and councils dealing with all aspects of crime (prevention, investigation, charging, sentencing, policy) in addition to those only tangentially related to crime.<sup>189</sup> They are especially vigorous state and

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<sup>183</sup> Jessica Pishko, “Prosecutors Are Banding Together to Prevent Criminal-Justice Reform,” *The Nation*, October 18, 2017, accessed March 17, 2022, <https://www.thenation.com/article/archive/prosecutors-are-banding-together-to-prevent-criminal-justice-reform/>.

<sup>184</sup> Pishko, “Prosecutors Are Banding Together.”

<sup>185</sup> Tyler Yeagain, “Prosecutorial Disassociation,” *American Journal of Criminal Law* 47, no. 1 (2020): pp. 85-138, 97.

<sup>186</sup> Pishko, “Prosecutors Are Banding Together.”

<sup>187</sup> Yeagain, “Prosecutorial Disassociation,” 89.

<sup>188</sup> “Mission,” Pennsylvania District Attorneys Association (Pennsylvania District Attorneys Association, April 22, 2019), accessed March 17, 2022, <https://www.pdaa.org/mission/>.

<sup>189</sup> Yeagain, “Prosecutorial Disassociation,” 92-96.

federal lobbyists, pushing for a more punitive criminal legal system.<sup>190</sup> As their members are elected officials themselves, district attorneys associations often exert influence over other elections by lending or withholding support for candidates; they also file amicus briefs and lead public campaigns in line with their ideological goals.<sup>191</sup> Despite the notion of the judiciary as neutral, district attorneys associations demonstrate the trend of prosecutors holding extensive control over not just the judicial branch, but the executive and legislative branch as well.

### *The Power of the PDAA*

Although every state has a prosecutors association, Pennsylvania's is especially notable. Founded in 1912, the PDAA is the second oldest association of its kind in America.<sup>192</sup> Through annual meetings, regular trainings, resource dissemination, and publications, it is one of the most active prosecutors associations in the country.<sup>193</sup> With a current membership of 66 out of the 67 DAs in the state, the PDAA is led by an Executive Director and a 12-member executive committee; it also includes three sub-committees, all populated by DAs.<sup>194</sup>

The PDAA has a long history of supporting punitive criminal justice measures and opposing reform. Randol strikingly states that “the single largest obstacle to getting anything meaningfully reformed in Pennsylvania as it pertains to the criminal legal system is the District Attorneys Association.”<sup>195</sup> In a presentation by the PA Justice Alliance, a statewide grassroots coalition of formerly incarcerated people, community members, and anti-carceral activists, she listed some of the PDAA's “Greatest Fails,” including:

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<sup>190</sup> Ibid, 97-103.

<sup>191</sup> Ibid, 104-110.

<sup>192</sup> “PDAA History.”

<sup>193</sup> Yeagain, “Prosecutorial Disassociation,” 90.

<sup>194</sup> Chris Palmer, “Philly DA Larry Krasner Withdraws Office from Statewide Prosecutors Group,” *The Philadelphia Inquirer*, November 16, 2018, accessed March 17, 2022.

<https://www.inquirer.com/philly/news/crime/philadelphia-da-district-attorney-larry-krasner-withdraws-pdaa-20181116.html>; Pennsylvania Justice Alliance and Elizabeth Randol, “Who Keeps People In Prison,” 41:15 - 41:57.

<sup>195</sup> Randol, interview.

- Shutting down measures to consider defendants' mental health in death penalty cases.
- Claiming that “there are no innocent people in prison in Pennsylvania.”
- Advocating for reinstating mandatory minimum sentences.
- Opposing civil asset forfeiture reform by calling it a “Drug Dealer’s Bill of Rights.”
- Blocking immunity for child sex trafficking survivors, arguing that they would be safer in the criminal legal system.<sup>196</sup>

A Pennsylvania grassroots organization, the Coalition to Abolish Death by Incarceration, had its efforts torpedoed by the PDAA in 2018. A bill providing parole eligibility for those serving life sentences was on the verge of successfully passing through the Senate Judiciary Committee, the first time a bill of its kind had advanced so far. Two days before the vote, the PDAA began an antagonistic campaign against two committee members, prompting them to withdraw support. According to Abolitionist Law Center’s Executive Director Robert Saleem Holbrook, this campaign set back the coalition’s fight by years.<sup>197</sup>

These anecdotes reflect the PDAA’s immense effectiveness in blocking reform. From 2015 to 2018, the PDAA only lobbied on 8% of criminal legal bills introduced. When the PDAA supported a bill, its pass rate was 52.6%, and when the PDAA opposed a bill, its pass rate was 0%.<sup>198</sup> In fact, it is customary for the Senate or House Judiciary Committee to not even list a bill for a vote if it is opposed by the PDAA.<sup>199</sup> Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing, affirms that the PDAA is especially influential in the

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<sup>196</sup> Pennsylvania Justice Alliance and Elizabeth Randol, “Who Keeps People In Prison,” 51:35 - 52:40.

<sup>197</sup> Pennsylvania Justice Alliance and Robert Saleem Holbrook, “Who Keeps People In Prison,” 22:40 - 23:55.

<sup>198</sup> “Prosecutor Lobbying in the States, 2015-2018” (University of North Carolina School of Law Prosecutors and Politics Project, June 2021), <https://law.unc.edu/wp-content/uploads/2021/06/Prosecutor-Lobbying-in-the-States-2015-2018.pdf>, 239-243.

<sup>199</sup> Pennsylvania Justice Alliance and Kris Henderson, “Who Keeps People In Prison,” 12:36 - 12:50.

House of Representatives and the Judiciary Committee.<sup>200</sup> Its members are “always active” and whenever the Sentencing Commission holds public hearings, “they are *going* to have a position and we are *going* to know what it is.”<sup>201</sup>

The PDAA holds institutionalized power in the legislature in a way which differentiates it from its adversaries. Unlike prosecutors, public defenders lack the funding and resources to handle their skyrocketing caseloads, let alone lobby.<sup>202</sup> Defenders lack a state office to unify divergent interests and advocate for their positions; defenders also represent individuals who are indigent, unlike DAs, who represent jurisdictions as elected officials.<sup>203</sup> No serious lobby exists for those who have experienced incarceration or who wish to make the legal system less punitive. As probation reform has become more salient, the dynamics of interest group influence in Pennsylvania remain an uneven playing field in which the PDAA holds the upper hand.

The PDAA exerts compelling influence over both Pennsylvania Democrats and Republicans for several reasons.<sup>204</sup> Legislators tend to be amenable to the PDAA’s perspective because of the importance of maintaining working relationships with their local DA for the purposes of constituent services.<sup>205</sup> As politically powerful actors, DAs criticizing certain legislators as soft-on-crime can harm a legislator in their next election.<sup>206</sup> Thus, the PDAA benefits from a preexisting tough-on-crime political culture in which the safest bet for legislators is to not aggravate the PDAA.<sup>207</sup>

In addition, given the convoluted nature of criminal law and the county probation system, the PDAA is often treated as a neutral source of legal wisdom, without acknowledgement of its

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<sup>200</sup> Mark Bergstrom, interview by Srinidhi Ramakrishna, January 21, 2022.

<sup>201</sup> Ibid.

<sup>202</sup> Randol, interview.

<sup>203</sup> Bergstrom, interview.

<sup>204</sup> Daniel Nichanian, “Larry Krasner Quit Pennsylvania’s DA Association. What Does Group Stand For?,” *The Appeal*, December 20, 2018, accessed March 17, 2022, <https://theappeal.org/politicalreport/spotlight-pdaa/>.

<sup>205</sup> Pennsylvania Justice Alliance and Kris Henderson, “Who Keeps People In Prison,” 15:34 - 16:30.

<sup>206</sup> Ibid, 16:35 - 17:25.

<sup>207</sup> Pennsylvania Justice Alliance and Elizabeth Randol, “Who Keeps People In Prison,” 46:55 - 47:37.

vested interest in pro-prosecutor and pro-carceral ideologies.<sup>208</sup> Randol notes that the onus is generally placed on reformers to amass significant amounts of data to justify their positions, whereas PDAA lobbyists are taken at face value.<sup>209</sup> Hence, the PDAA is invited to offer feedback on every step of the criminal legal policy process, even if the topics at hand are wholly separate from its members' responsibilities as prosecutors. Though Pennsylvania prosecutors are minimally involved with the administration of probation, they consistently weighed in on recent probation reform bills.<sup>210</sup>

Consequently, the PDAA has considerably shaped the direction of probation reform in Pennsylvania, blocking measures to shrink the state's probationary footprint, watering down legislation, and adding in more punitive elements. At the Senate Judiciary Committee's public hearing to consider SB 14, Greg Rowe (PDAA's then-director of legislation), Fran Chardo (Dauphin County DA), and Stefanie Salavantis (Luzerne County DA) testified on behalf of the PDAA. Rooting its testimony in the belief that probation is fundamentally an important, functioning form of punishment used to deter crime, rehabilitate, and mandate compliance with treatment, the PDAA asserted, contrary to statewide data, that stories of probationers having long sentences or being revoked for minor violations were outliers.<sup>211</sup>

Furthermore, the PDAA opposed banning consecutive (stacked) and split sentencing on the basis of not forgetting about different victims if multiple offenses occurred and maintaining judges' flexibility to decide the length and terms of supervision.<sup>212</sup> It also insisted against caps on probation sentences, which were then still included in the bill.<sup>213</sup> Arguing that Pennsylvania

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<sup>208</sup> Randol, interview.

<sup>209</sup> Ibid.

<sup>210</sup> Pennsylvania Justice Alliance and Elizabeth Randol, "Who Keeps People In Prison," 45:25 - 46:25.

<sup>211</sup> Fran Chardo, "Public Hearing to Consider Probation and Parole Reform (SB 14) – Part 1 of 2," Pennsylvania Senate Republicans (Senate of Pennsylvania, June 25, 2019), <https://www.pasenategop.com/blog/062519/>, 1:37:50 - 1:38:20.

<sup>212</sup> Fran Chardo, Stephanie Salavantis, and Greg Rowe, "Hearing on County Probation Reform Before the Senate Judiciary Committee: June 25, 2019," June 25, 2019, accessed February 26, 2022,

<https://judiciary.pasenategop.com/wp-content/uploads/sites/42/2019/06/Fran-Chardo-Stephanie-Salavantis-Greg-Rowe.pdf>, 4.

<sup>213</sup> Chardo et al., "Hearing on County Probation Reform," 4.

already has caps – that of the statutory maximum – the PDAA warned that caps would prevent longer supervision of “criminogenic” offenders, and weaken probation so much that judges may instead resort to incarceration for those they would normally place on probation (an argument some see as a veiled threat).<sup>214</sup> Finally, the PDAA suggested three pivotal measures in addition to scrapping restrictions on long sentences: mandatory periodic probationary status review conferences every three years, earned time credits, and graduated sanctions.<sup>215</sup>

At first, some legislators pushed back against the PDAA’s testimony. One Democratic senator commented that “your tone is that the system just needs some ‘tweaking’ to get back on track...I can’t agree there.”<sup>216</sup> Senator Williams, SB-14’s prime sponsor, interrogated DA Chardo’s lack of data and emphasized the staggering degree to which probation in Pennsylvania is out of step with other states.<sup>217</sup> Regardless, by the time the bill emerged out of the Judiciary five days later, SB 14 had been drastically amended. With all mention of sentence caps or bans on stacked and split sentencing eliminated, SB 14 now added new ways to incarcerate revoked probationers, and included a system of probation review conferences nearly identical to what the PDAA described.<sup>218</sup> A year later, SB 913 was supported by the PDAA and was largely similar to the amended version of SB 14. Ultimately, the PDAA’s testimony and its visible impact on bill content demonstrates its ability to dictate and dilute legislation.

### *The Slow Fragmentation of Prosecutorial Politics*

The PDAA can also smoothly obstruct reform because it intentionally acts as the voice of all DAs in the state, shutting out the opinions of prosecutors who may be more reform-minded

<sup>214</sup> Ibid, 3-4; Chardo, “Public Hearing to Consider Probation and Parole Reform,” 1:35:55 - 1:37:23, 1:40:55 - 1:41:18; Randol, interview.

<sup>215</sup> Chardo et al., “Hearing on County Probation Reform,” 2-3.

<sup>216</sup> Larry Farnese, “Public Hearing to Consider Probation and Parole Reform,” 2:09:46 - 2:09:56.

<sup>217</sup> Anthony Williams, “Public Hearing to Consider Probation and Parole Reform,” 2:00:05 - 2:01:10, 2:04:10 - 2:05:08.

<sup>218</sup> “Senate Bill No. 14 (PN 1834),” The General Assembly of Pennsylvania, June 30, 2020, accessed February 26, 2022, <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=S&billTyp=B&billNbr=0014&pn=1834>.

on certain issues. Legislators, journalists, and others assume that the PDAA's stance uniformly reflects that of all prosecutors in the state, making the organization more authoritative and its advocacy "annoyingly effective", despite individual differences in prosecutors' beliefs.<sup>219</sup> In reality, the policy positions of the PDAA are decided by its 12-member executive committee, and only DAs who attend the PDAA's two yearly conferences are invited to offer input to the committee.<sup>220</sup> This was an important reason Philadelphia DA Larry Krasner, one of the most famous "progressive prosecutors" in the country, gave for withdrawing his office from the PDAA in 2018. He asserted that the PDAA was "claiming that Philadelphia supports this absolute nonsense...and we do not...The [PDAA] will not claim legitimacy of its most important criminal justice jurisdiction."<sup>221</sup>

Krasner's exit revealed the fragmenting politics of prosecution, and the challenges DAs sympathetic to reform may face within the PDAA. Afterwards, the PDAA and its members denigrated Krasner, calling him "divisive" and Philadelphia a county riddled with "blight" liable to spread.<sup>222</sup> The Pennsylvania government, too, acted combatively. A bill was passed which only targeted Philadelphia during the length of Krasner's first term, allowing the state attorney general to prosecute firearms offenses his office did not prosecute; judges including those in the state Supreme Court were conspicuously opposed to Krasner's sentencing practices.<sup>223</sup>

Since its departure from the PDAA, the Philadelphia DA's office has been less willing to advocate for more progressive changes in state policy. Dana Bazelon, Senior Policy Advisor to DA Krasner, says that Krasner withdrew from the association with hopes of setting up an

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<sup>219</sup> Pennsylvania Justice Alliance and Elizabeth Randol, "Who Keeps People In Prison," 50:32 - 51:16; Daniel Nichanian, "D.A. Associations Should Own Up To The Splintering Politics Of Prosecution," *The Appeal*, February 14, 2020, accessed March 17, 2022, <https://theappeal.org/politicalreport/district-attorney-associations-political-conflicts-cdaa/>; Bergstrom, interview.

<sup>220</sup> Nichanian, "Larry Krasner Quit Pennsylvania's DA Association."

<sup>221</sup> Palmer, "Philly DA Larry Krasner Withdraws Office from Statewide Prosecutors Group."

<sup>222</sup> Ibid.

<sup>223</sup> Rachel Barkow, "Can Prosecutors End Mass Incarceration?," *Michigan Law Review* 119, no. 6 (April 2021): pp. 1365-1398, <https://doi.org/10.36644/mlr.119.6.can>, 1378, 1382.



independent progressive prosecutor's lobby in the future.<sup>224</sup> With no other DAs in the state having joined his ranks as of yet, his office has chosen to mostly abstain from Harrisburg politics, considering it an unwise use of resources.<sup>225</sup> Although Krasner's office opposed SB 14, Bazelon recounts that this decision angered even its regular allies, and the office has not publicly commented on SB 913.<sup>226</sup> Given the vitriol directed towards Philadelphia from the rest of the state, Bazelon contextualizes her office's inaction, noting that "...our meddling in anything that's going on in Harrisburg could have unseen negative consequences, because Larry has become... a figure of controversy."<sup>227</sup> Indeed, she emphasizes that Krasner outwardly supporting a bill would be the easiest way to make it fail.<sup>228</sup> The withdrawal of Krasner's office from state politics due to the intractable position of progressive prosecutors reflects how the PDAA has easily been able to dominate the political landscape and command state-level discussions on probation reform.

Here, it is critical to note scholarship criticizing the "progressive prosecutor" phenomenon. Many write that even well-intentioned prosecutors, embedded in an institution with a structural interest in punishing more people in harsher ways, cannot eliminate mass incarceration.<sup>229</sup> Krasner's silence reflects these impossibilities surrounding progressive prosecutorial activism. Nevertheless, the intense pushback towards Krasner points to how the PDAA's power derives from its assumed ideological consistency. Deconstructing that myth may weaken the PDAA's authority.

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<sup>224</sup> Dana Bazelon, interview by Srinidhi Ramakrishna, March 16, 2022.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ross Barkan, "Exterminating Angels: The American Myth of the Progressive Prosecutor," *The Baffler*, 46 (July/August 2019), <https://thebaffler.com/outbursts/exterminating-angels-barkan>; Alec Karakatsanis, *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System* (New York: The New Press, 2019); Richard A. Oppel, "These Prosecutors Promised Change. Their Power Is Being Stripped Away.," *The New York Times*, December 2, 2019, accessed February 26, 2022, <https://www.nytimes.com/2019/11/25/us/prosecutors-criminal-justice.html>.

*The PDAA and the Deceptive Promise of Reform*

The PDAA’s punitive actions on probation in Pennsylvania are often obscured by its supposed desire for “smart, balanced” reforms.<sup>230</sup> The association’s public statements on probation reform acknowledge critiques of probation as too long, too harsh, and prompting too much incarceration after revocation; as such, it claims to seek a “better probation system.”<sup>231</sup> Like in the Senate Judiciary hearing, the PDAA consistently qualifies support of reform with the overarching principle that probation is a fundamentally important, well-functioning tool which strengthens communities, and that certain flawed practices do not represent institutional failure.<sup>232</sup> After Meek Mill’s case drew attention, the PDAA attempted to exceptionalize his situation, releasing a statement saying that it could not “let one individual under very unique circumstances indict an entire system.”<sup>233</sup> As the PDAA encourages reform, it bifurcates probationers in the same breath, reaffirming punitive measures towards those who “remain dangerous, are in continued need of treatment, have not paid all of their restitution, or...violate the terms of their probation.”<sup>234</sup> This renders reform ineffectual and disavows systemic change.

In general, the PDAA advocates for reform only on the basis that the probation system needs to be more “balanced,” “streamlined,” or “efficient.”<sup>235</sup> Rarely does it identify the problem with probation as an ethical one as opposed to one concerned with resource allocation. This is an argument consistently made by so-called punishment bureaucrats, arbiters of the carceral state who claim to advance reform, enacting the barest of changes needed to uphold the current

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<sup>230</sup> “PDAA Responds to Governor Wolf and Meek Mill Call for Criminal Justice Reforms,” Pennsylvania District Attorneys Association (Pennsylvania District Attorneys Association, May 3, 2018), accessed March 2, 2022, <https://www.pdaa.org/pdaa-responds-to-governor-wolf-and-meek-mill-call-for-criminal-justice-reforms/>.

<sup>231</sup> “PDAA Supports Meaningful Changes to Pennsylvania’s Probation System,” Pennsylvania District Attorneys Association (Pennsylvania District Attorneys Association, September 2019), accessed March 2, 2022, <https://www.pdaa.org/blog/pdaa-supports-meaningful-changes-to-pennsylvanias-probation-system/>.

<sup>232</sup> Ibid.

<sup>233</sup> “PDAA Responds to Governor Wolf and Meek Mill Call for Criminal Justice Reforms.”

<sup>234</sup> “PDAA Supports Meaningful Changes to Pennsylvania’s Probation System.”

<sup>235</sup> Ibid; David Sunday, “Hearing on Probation Reform: Senate Judiciary Committee,” September 20, 2021, accessed February 3, 2022, <https://judiciary.pasenategop.com/wp-content/uploads/sites/42/2021/09/David-Sunday-York-Co-DA-Probation-Reform-Testimony-9-20-21.pdf>.

system's legitimacy and maintain the US as the "greatest incarcerator in the world."<sup>236</sup> An analysis of prosecutors across the country finds that when prosecutors have supported reform, they have done so not because the current system of mass caging and supervision is "unfair or inequitable," but because they hoped reform would result in a system that is "less costly and more efficient."<sup>237</sup> As legal scholar Michelle Alexander claims, this practice of "tinkering" at the margins of the carceral state – adding review conferences, rewording a few probation restrictions – leave its foundational ideologies untouched.<sup>238</sup> The PDAA and scores of state and national actors perpetuate carcerality while supporting reform via this framework. Ultimately, they inhibit future anti-carceral reforms that are rooted in the understanding that mass supervision in Pennsylvania is intrinsically unconscionable.

Pennsylvanians are increasingly growing aware of the PDAA's shrouded role in lobbying against criminal legal reform. The PDAA, one of the strongest associations of its kind, has consistently distorted probation bills and choked off possibilities for non-reformist transformational change that would require mass probation termination and significantly less punitiveness. Its institutional power is derived not from aggression, but the political influence of DAs, an assumption of broad expertise and neutrality, a climate amenable to tough-on-crime beliefs which treat the PDAA's beliefs as reasonable, and a perception of internal ideological consistency. Kris Henderson, executive director of the Amistad Law Project, observes that "power often accumulates...because we're unable to name it...Those in power want to act as if they're not, and [that] they're just expressing the common sense of the entire society."<sup>239</sup> As such, the PDAA refrains from explicitly claiming that they are in charge, instead couching its

<sup>236</sup> Alec Karakatsanis, "The Punishment Bureaucracy: How to Think About 'Criminal Justice Reform,'" *The Yale Law Journal* 128 (March 28, 2019), <https://www.yalelawjournal.org/forum/the-punishment-bureaucracy>.

<sup>237</sup> R. Michael Cassidy, "(Ad)ministering Justice: A Prosecutor's Ethical Duty to Support Sentencing Reform," *Boston College Law School Faculty Papers*, 2014, pp. 981-1025, <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1723&context=lsfp>, 991.

<sup>238</sup> Sarah Childress, "Michelle Alexander: 'A System of Racial and Social Control,'" *Frontline*, April 29, 2014, accessed February 26, 2022, <https://www.pbs.org/wgbh/frontline/article/michelle-alexander-a-system-of-racial-and-social-control/>.

<sup>239</sup> Pennsylvania Justice Alliance and Kris Henderson, "Who Keeps People In Prison," 18:06 - 19:04.

statements in the argument that its stances represent a common-sense consensus. As long as prosecutors – even progressive prosecutors – maintain singular control over the criminal legal system, it may be impossible to erase the influence of the PDAA on probation. However, exposing the PDAA’s influence on legislators and splintering off DAs who do not unilaterally agree with the PDAA’s positions may begin to loosen its suffocating hold on the probation reform conversation.

### **Conclusion**

Examining the struggle to achieve probation reform in Pennsylvania which moves the state towards decarceration reveals three key institutional roadblocks. Firstly, extreme political devolution in the probation system results in overburdened county departments in permanent crisis. This distracts mainstream calls for reform away from broad, state-level changes reducing the size of the probation system to reforms which merely increase funding to probation departments so that they can more easily carry out the same tasks. More research is needed into this process to show how explicit this change in institutional priorities has been in Pennsylvania beyond the example of justice reinvestment. Devolution also expands the number of stakeholders enmeshed in the probation system and entrenches the status quo, while complicating the efforts of activists by dispersing responsibility for excessive supervision among 65 counties.

The next roadblock is REFORM Alliance, a key non-governmental actor that has utilized elite power to gain both legislative and sociocultural influence, endorsing bills which disguise themselves as positive reforms while actually worsening probation. As a national nonprofit, REFORM’s strategy of accommodating conservative policies in bills like HB 1555, SB 14, and SB 913 has marginalized formerly incarcerated activists and reflected a phenomenon of

neoliberal celebrity activism. Though REFORM is an organization which operates in multiple states, and though other national nonprofits have also influenced probation reform in Pennsylvania to some degree in recent years, REFORM's roots in Pennsylvania due to the Meek Mill case, its deep engagement in the state, and lack of previous scholarly study make it a crucial piece of this argument.

Finally, the Pennsylvania District Attorney's Association is one of the most direct barriers to change. A tough-on-crime association with massive sway in the legislature, the PDAA was responsible for removing progressive elements from probation reform bills and attaching measures to increase their punitiveness. Reforms it does support reaffirm the legitimacy of the carceral system. The PDAA benefits from an assumption of ideological uniformity and, as DA Krasner's withdrawal from state politics demonstrates, progressive prosecutors can do little to erode its power.

A belief in the legitimacy of probation and community supervision is deeply ingrained into Pennsylvania institutions. The state's abnormally high incarceration rates rightfully attract ire. However, as the attention of criminal legal reform discourse centers largely on those who are physically incarcerated inside prisons and jails, a web of correctional control continues to quietly escape the cell and ensnare a staggeringly large number of Pennsylvanians outside. Bills which attempt to deal with mass supervision in Pennsylvania are being proposed. Still, legislators and advocates must take caution, for pro-carceral measures which increase the size and intensity of the criminal legal system are often branded as reforms despite strengthening the very forces they claim to want to end.

Although this investigation focuses on institutions specific to Pennsylvania, many of the circumstances highlighted – decentralization, the influence of national advocacy organizations,

and prosecutors' lobbies – are present in many states. Furthermore, a process of analyzing structural barriers is still applicable and salient even if the specific institutional mechanisms differ across states. Pennsylvania's recent experiences with failed probation reform highlight the pitfalls states may continue to face on the road to ending mass correctional control. As more grow aware of the need for decarceration and abolitionist change, identifying such pitfalls beforehand can convince people of the need to transform current reform discourse and strategies.

The epidemic of community supervision in Pennsylvania is a symptom of the larger carceral crisis in the state and across the nation. The full extent of this crisis is often concealed, because “reform” is a word that groups across the political spectrum seem to enthusiastically support. Too often, “reform” tweaks an already-broken system whose fundamental problem is that it amplifies existing societal hierarchies based on incorrect assumptions about what “crime” is and what causes it. Such reform does nothing more than reinscribe that system. Challenging community supervision in Pennsylvania is therefore a necessary step towards dismantling the carceral state and the ideologies it rests upon.

Appendix**A. List of Interviewees**

NAME	POSITION
April Billet-Barclay	President, Pennsylvania County Chief Adult Probation and Parole Officers Association; Director, York County Probation Services
Britton Smith	Senior Organizing Strategist, REFORM Alliance
Dana Bazelon	Senior Policy Advisor, Philadelphia District Attorney's Office
Dolly Prabhu	Staff Attorney, Abolitionist Law Center
Elizabeth Randol	Legislative Director, ACLU of Pennsylvania
Helene Placey	Executive Director, Pennsylvania County Chief Adult Probation and Parole Officers Association
Jordan Harris	State Representative (D), 186th Legislative District in Philadelphia
Mark Bergstrom	Executive Director, Pennsylvania Commission on Sentencing
Reuben Jones	Executive Director, Frontline Dads
Sheryl Delozier	State Representative (R), 88th Legislative District in Cumberland County

*\* All interviews were conducted over Zoom or telephone.*

**B. Recent Probation Reform Bills**

SESSION	BILL	DESCRIPTION	RESPONSE	STATUS
2019-20	HB 1555	Heavily amended – eliminates some location restrictions for those on probation and prohibits judges from using incarceration to “vindicate the	The ACLU, Philadelphia District Attorney Larry Krasner, and other grassroots groups	Passed the Judiciary committee, removed

		authority of the court.” Amended bill scrapped probation term caps, restrictions on punitive sentencing restrictions, due process protections, and time-off credits. Changes law to recommend incarceration for certain offenses and establishes mandatory probation reviews where none existed previously. <sup>240</sup>	opposed. <sup>241</sup> CEO of REFORM Alliance Van Jones supported, as well as a variety of self-described centrist, liberal, or conservative advocacy organizations. <sup>242</sup>	from table. <sup>243</sup>
2019-20	<i>SB 14</i>	Heavily amended – final version offers time-off credits for good behavior in probation, prohibits judges from using incarceration to “vindicate the authority of the court,” and prohibits tying probation conditions to failure to pay court fees. Amended bill scrapped probation term caps and automatic removals from probation, added mandatory probation reviews where none existed previously, increased length of incarceration for technical violations, and allowed judges to maintain probation indefinitely via loopholes if restitution cannot be paid. <sup>244</sup>	Passed the Senate unanimously with support of REFORM Alliance, the ACLU and other grassroots groups opposed. <sup>245</sup>	Passed the Senate unanimously, referred to Judiciary and died in the House. <sup>246</sup>
2021-22	<i>SB 5</i>	Caps probation terms, prohibits stacked sentencing and extending probation due to fine nonpayment, instructs court on caps to reimprisonment for revocation or alternatives to incarceration, and	Families for Justice Reform supports, many other advocacy groups have not yet taken a position. <sup>248</sup>	Pending in the Judiciary since 3/19/21. <sup>249</sup>

<sup>240</sup> ACLU Pennsylvania, “HB 1555 Analysis.”

<sup>241</sup> ACLU Pennsylvania, “HB 1555 Analysis”; Larry Krasner, “Philly DA Krasner: Gutted Pa. House Probation Bill Is Unconstitutional and Harmful | Opinion,” *Pennsylvania Capital-Star*, December 15, 2019, accessed December 15, 2021, <https://www.penncapital-star.com/commentary/philly-da-krasner-gutted-pa-house-probation-bill-is-unconstitutional-and-harmful-opinion/>.

<sup>242</sup> Van Jones and Holly Harris, “Pennsylvania Should Seize Chance for Probation Reform,” *Lancaster Online*, February 16, 2020, accessed December 15, 2021,

[https://lancasteronline.com/opinion/columnists/pennsylvania-should-seize-chance-for-probation-reform/article\\_91d36c68-4f44-11ea-8c1c-6745b36d95c7.html](https://lancasteronline.com/opinion/columnists/pennsylvania-should-seize-chance-for-probation-reform/article_91d36c68-4f44-11ea-8c1c-6745b36d95c7.html); John N Mitchell, “Pa. House Bill Introduced Aimed at Fixing Parole, Probation,” *The Philadelphia Tribune*, May 30, 2019, accessed December 15, 2021,

[https://www.phillytrib.com/news/local\\_news/pa-house-bill-introduced-aimed-at-fixing-parole-probation/article\\_3dc4a515-c823-54b0-aeb7-dae9a9723013.html](https://www.phillytrib.com/news/local_news/pa-house-bill-introduced-aimed-at-fixing-parole-probation/article_3dc4a515-c823-54b0-aeb7-dae9a9723013.html).

<sup>243</sup> “Bill Information - House Bill 1555, Regular Session 2019-2020,” Pennsylvania General Assembly, accessed December 17, 2021,

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&kind=0&body=H&type=B&bn=1555>.

<sup>244</sup> Randol, “OPPOSITION TO SB 14 PN 1834.”

<sup>245</sup> Southwick, “Pa. Senate Unanimously Passes Bill to REFORM Probation System.”; Ben-Menachem, “How Legislation Meant to Overhaul Probation and Parole in Pennsylvania Strayed from Its Roots.”

<sup>246</sup> “Pennsylvania Senate Bill 14: 2019-2020,” LegiScan (LegiScan), accessed December 17, 2021, <https://legiscan.com/PA/sponsors/SB14/2019>.

<sup>248</sup> Families for Justice Reform, “Bill Summary: Probation Reform in Pennsylvania SB 5.”

<sup>249</sup> “Pennsylvania Senate Bill 5: 2021-2022,” LegiScan (LegiScan), accessed December 17, 2021, <https://legiscan.com/PA/bill/SB5/2021>.



		requires early probation termination in some cases. <sup>247</sup>		
2021-22	<i>SB 913</i>	Based on SB 14 – eliminates some travel restrictions for those on probation, establishes time-off credits. Changes law to recommend incarceration for certain offenses, creates new mandatory probation review conferences. Does not reduce length of probation sentences or stacked / split sentencing practices. <sup>250</sup>	The ACLU and other grassroots, advocacy, and legal organizations released a joint statement in opposition; REFORM Alliance and the Pennsylvania Safety Coalition were in support. <sup>251</sup>	Passed the Senate on 12/15/21. <sup>252</sup>

<sup>247</sup> “Bill Summary: Probation Reform in Pennsylvania SB 5,” Families for Justice Reform (Families for Justice Reform), accessed December 17, 2021, <https://famm.org/wp-content/uploads/SB-5-Bill-Summary-2021.pdf>.

<sup>250</sup> ACLU Pennsylvania, “Opposition to Senate Bill 913.”

<sup>251</sup> ACLU Pennsylvania, “Opposition to Senate Bill 913”; Rubin, “Pennsylvania’s Probation System Needs Reform.”

<sup>252</sup> “Bill Information: Senate Bill 913, Regular Session 2021-2022,” Pennsylvania General Assembly, accessed December 17, 2021, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0913>.

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