

Probation to Prison: Race and the Structure of Sanctions in Probation Supervision

Abstract: Over two-thirds of the individuals under criminal justice supervision in the United States are serving a term of probation, parole, or post-release supervision. Due to the extensive use of incarceration as a punishment for conditions violations, these community supervision programs have played a substantial role in high rates of incarceration in the U.S. and, as this study finds, can play a significant role in exacerbating racial disparities produced in the criminal justice system.

In recent years, jurisdictions throughout the country have made reforms to their probation systems. A popular trend in probation reform is the integration of “swift and certain” sanctions modeled after the Hawaii Opportunity Probation with Enforcement (HOPE) program. This program, originating with Judge Steven Alm in Hawaii, aimed to decrease rates of conditions violations by creating a system of swift, certain, and proportionate sanctions for conditions violators.

After the original HOPE program produced promising results, the swift and certain style of probation sanctions gained traction and many jurisdictions quickly integrated HOPE-style reforms into their probation systems. The HOPE program also gained interest among researchers, who began studying the effects of the program on rates of conditions violations, recidivism, and incarceration in the jurisdictions adopting this new form of probation.

The potential impact of HOPE-style probation on racial disparities, however, is largely unstudied. Past research suggests that the range of options available to a decision-maker, the structure of those choices (the choice architecture), and the discretion involved in those choices can have important implications for the consistency and equity of outcomes. Therefore, the significant changes to the structure of sanctioning associated with HOPE-style reforms present a unique opportunity to better understand the relationship between discretion, choice architectures, and racial disparities in the criminal justice system.

In this paper, I study a statewide reform that implemented swift and certain sanctions in Kansas and present new empirical evidence on the mechanisms underlying racial disparities in the punishment of probation violations. Although Kansas’s implementation of swift and certain sanctions did not reduce the overall rates of imprisonment and new felony convictions among probationers, I do find that racial disparities in the use of prison decreased substantially after the new probation sanctioning regime was enacted. Prior to the reforms, Black probationers were sent to prison 50 percent more often than non-Black probationers, but rates of imprisonment among Black and non-Black probationers are about equal after the reforms. I explore the potential mechanisms and implications of these findings as well as the possible limitations of the results.