

Does "Punishing Smarter" Work? An Assessment of the New Generation of Alternative Sanctions in Probation

We have witnessed a major revolution in criminal justice practices since Martinson's⁽²⁾ famous proclamation of "nothing works" in the mid-1970s. That statement praised the death of rehabilitation and rejoiced in the dawning of the new epoch of punishment. In this paper, we summarize the latest results of this new era. We ask ourselves whether intensive probation or parole -the new alternative sanctions - reduce recidivism, improve sentencing options, lessen prison overcrowding and lower the costs of corrections as they are purported to do. And we find our answers in the research evidence. The Past First, let's reminisce about the age of rehabilitation. From our vantage point, and we think our reading of past events has some validity, the primary goal of probation officers, and to a lesser extent prison staff, was to work within a rehabilitative framework to reduce clients' involvement with the law. Admittedly, in retrospect, it seems that much of what occurred in the name of rehabilitation in the 1960s and early 1970s was perhaps naive.

On the other hand, there were some bold and exciting initiatives during that time that were thoroughly evaluated and shown to reduce recidivism by up to 80%. These programs were grounded in behavioural principles of treatment, took individual differences into account and had program designers and supervisors who were trained in using clinical techniques to change offenders' behaviour.

The following examples, taken from probation settings,⁽³⁾ are illustrative of behavioural programs that reduced recidivism. Walter and Mill's Behavioural Employment Intervention Program for juveniles emphasized a token economy, contingency contracting and life-skills training. Programmers worked very closely and efficiently with employers and the courts to ensure the integrity of the program.

Andrews' and Kiessling's Canadian Volunteers in Corrections Program used professionals and volunteers from the public in an adult probation supervision program. The major features of the counselling and supervision practices were: the use of authority, anticriminal modelling and reinforcement, problem solving, use of community resources and quality of interpersonal relationships.

Finally, Robert E. Lee's Project CREST in Florida targeted "hard core" juvenile probationers. Paid doctoral students in counselling psychology or education programs were the primary therapists who worked on a one-on-one basis with clients. Therapy drew on a number of approaches, including reality, rational-emotive and client-centred therapies and some behaviour modification techniques. The threat or use of sanctions was left to the supervising probation officer. The Present Moving now to the present, we see that Martinson correctly predicted the future. With isolated exceptions, the new generation of programs for offenders are rooted in punishment. Excluding the dramatic increase in the use of incarceration, which can hardly be called programmatic or new, we are referring to what policy makers in the 1980s called "punishing smarter" alternative sanctions. By and large, these alternative sanctions can be found in probationary settings and are called intensive supervision probation programs, or ISPs.

As Billie J. Erwin so forcefully put it when referring to the Georgia ISP, which was considered by many to be a model for the United States: ...we are in the business of increasing the heat on probationers...satisfying the public's demand for just punishment.... Criminals must be punished for their

misdeeds.⁽⁴⁾ Or, as Joan Petersilia remarked, probation was becoming more dreaded than prison.⁽⁵⁾

The new generation of ISPs turned up the heat by:

- greatly increasing contact between supervisors and offenders;
- confining offenders to their homes;
- enforcing curfews;
- submitting offenders to random drug testing;
- requiring offenders to perform community service;
- requiring offenders to pay restitution to victims;
- electronically monitoring offenders; and
- requiring offenders to pay for the privilege of being supervised.

Various ISPs have employed these alternative sanctions to varying degrees.⁽⁶⁾ As well, shock incarceration and boot camps were often adjuncts to ISPs.

Given the new reality of punishment as the preferable option, it comes as no surprise that rehabilitative program components, specifically those that attempt to reinforce prosocial behaviour, have been greatly deemphasized. For example, in some recently studied ISPs that claimed to offer a meaningful amount of treatment services, evaluators⁽⁷⁾ found that services on average consisted of only three hours of personal contact per month between the offender and the supervising probation or parole officer.

Second, individual differences have been almost totally ignored. There have been no ISPs that deliberately matched clients with services or type of supervising officer.

All of this, then, is in stark contrast to the probation programs of the early 1970s described earlier in this article.

In summary, a profound shift in policy and practice has occurred in the field of parole and probation. The obvious question is: how effective are these new alternative sanction ISPs? The consensus in the literature is that these programs should improve sentencing options, reduce prison overcrowding, lower the costs of corrections and reduce offender recidivism. Do the programs achieve any of these objectives? Impact on Sentencing Policy and Options for Corrections According to supporters of the justice model,⁽⁸⁾ alternative sanctions provide more correctional and sentencing options to the criminal justice system and may restore or improve fairness in sentencing.

With ISPs, prosecutors, defence attorneys and judges have an additional intermediate option when considering release on bail and admission to pretrial intervention programs.

Judges also have additional choices for sentencing; they may choose an ISP rather than traditional probation or prison. It should be noted, however, that ISPs have had some negative consequences on sentencing policy. According to von Hirsch and others,⁽⁹⁾ judges appear to have used ISPs as a net-widening technique in some states.

Finally, as an option for corrections, ISPs provide correctional departments and parole boards with an additional program option. **Impact on Costs of Corrections** Several comparisons of ISPs and regular probation have been made. Researchers from the RAND Corporation reported that in the several locales they studied, ISPs were about 50% more costly than routine probation supervision. A recent American Probation and Parole Association survey, involving the second author, studied American jurisdictions using ISPs and reported the following daily cost estimates: regular probation - \$2 to \$5; ISP - \$7 to \$15; and prisons - \$35 to \$65.

Moreover, specific aspects of ISPs are very expensive. The costs of drug testing for about 200 offenders in an Arizona ISP⁽¹⁰⁾ added about half a million dollars to the annual budget.

While it was estimated that ISPs in New Jersey and Georgia saved about \$7,000 per participant compared with regular probation, Michael Tonry's⁽¹¹⁾ critique of these figures cast doubt on the extent of the savings.

In fact, ISPs may be more costly because they either inadvertently send offenders to prison who would otherwise be eligible for probation or they cater to low-risk offenders who may not need this level of supervision. As to the last point, Clear and Hardyman⁽¹²⁾ made a cogent observation about the "costs" of ISPs. They claimed that more resources have been poured into ISPs even though they tend to have lower-risk populations than regular probation does. Thus, many regular probation services, deprived of resources that have been diverted to ISPs, monitor higher-risk offenders less stringently, thereby jeopardizing public safety. **Impact on Prison Overcrowding** Recent research on ISPs has consistently found that they do not reduce prison overcrowding. In fact, they may contribute to the problem in both obvious and subtle ways.

The RAND studies in California estimated that at least 10% of offenders entering prison had their probation or parole revoked. Indeed, the figures may be higher elsewhere. ISP offenders are watched more closely, and as a result, technical violations are more likely to be detected and processed. Furthermore, ISP offenders typically have more release conditions and, because of this, may be at greater risk of rule violations.

It has been speculated that offenders who had probation revoked on technical violations may have been "going bad" and would have been incarcerated later for more serious crimes anyway. However, the evaluations of three California ISPs⁽¹³⁾ found no relationship between the number of technical violations an offender received and the number of subsequent rearrests.

Michael Tonry's analysis revealed other ways the courts may increase prison loads via ISPs. In New Jersey, some judges have sent potentially eligible probationers to jail on the assumption that they would then get into an ISP when, in fact, this sometimes did not happen. **Impact on Recidivism** As one would expect, the recidivism rates for ISP offenders are lower than for inmates who are released from prison into the community without participating in an ISP. For example, participants in the Georgia ISP had 18% fewer rearrests. Tonry and Will⁽¹⁴⁾ have criticized the prison-based comparison groups used in the Georgia evaluation since, if anything, these offenders were at greater risk for reoffending from the outset. The crucial question, however, is do ISPs produce lower recidivism rates than regular probation or

parole?

The answer: alternative sanctions either as stand-alone programs or incorporated into ISPs inevitably result in about the same or slightly higher recidivism rates than comparable regular probation programs which monitor inmates much less intensively. This conclusion is based on a comprehensive meta-analysis of the intermediate sanction literature conducted by the first and third authors of this article.⁽¹⁵⁾

A subset of these data merits attention. Researchers studied probationers who were randomly assigned to ISPs and control groups (for example, those on regular probation). These studies were replicated across several sites.⁽¹⁶⁾ It was found that 39% of ISP offenders had been jailed compared with 28% of offenders in the control groups. The comparable results for incarceration rates were 13% and 10% respectively.

Among all the negative results reported so far, four ISP studies deserve more discussion. The Pearson Evaluation of a New Jersey ISP⁽¹⁷⁾ This evaluation of the New Jersey Intensive Supervision program reported that ISPs reduced recidivism. Pearson reported two sets of results: one for a closely matched smaller sample and one for a less closely matched, larger sample.

In the smaller sample, the ISP group (N=208) had recidivism rates 10% lower than those of a closely matched regular probation group (N=95) for a two-year follow-up.

The second set of results was on a larger, more representative sample (ISP group, N=352; regular probation group, N=287), but the control group was not as closely matched. The latter results were analyzed using the offenders risk level. By far, the greatest reductions in recidivism were found among the high-risk offenders - high-risk offenders in the ISP had recidivism rates 30% lower than those on regular probation.

This finding supports Don Andrews' well-documented risk principle⁽¹⁸⁾ which predicts that higher-risk offenders should benefit most from interventions that positively reinforce behaviour. There is no data, however, to indicate that higher-risk offenders benefit more from punishment.

Unfortunately, Pearson did not provide outcome data by risk level for his more closely matched sample. At this point, we can tentatively conclude that the New Jersey program worked to some degree, but how well it worked is debatable given that the ISP and control groups were matched only approximately.

Why did this program appear to work? Based on published program descriptions and personal contacts, the New Jersey program offered more treatment than regular probation. Most program participants attended peer-support sessions led by an ISP officer and received specialized counselling (for example, drug and alcohol counselling).⁽¹⁹⁾ However, it was not statistically documented whether the ISP group received significantly more treatment services than the group assigned to regular probation.

This study is also important because it paid close attention to the program implementation process. The New Jersey ISP offered an attractive salary and recruited staff from statewide probation departments and social work agencies. Program designers had the luxury of selecting staff from a large pool of qualified applications, and the hiring process was not constrained by civil service or union seniority regulations.

Quality of staff is rarely addressed in ISP studies, yet having appropriate staff is clearly an important factor. The Byrne and Kelly Evaluation of Massachusetts ISPs⁽²⁰⁾ The second study of note was conducted in Massachusetts. It found no differences in recidivism between the ISP participants and the comparison groups at several sites. One reason for this was the poor implementation of the ISP model. Only 27% of the ISP offenders were supervised by their probation officers in the way that the program originally intended. This rather alarming result may be, in fact, fairly typical of ISPs.

The Massachusetts study did, however, provide some valuable information. The investigators found a relationship between the quality of an officer's supervision of probationers and recidivism. In both the ISP program and the regular supervision group, recidivism rates were 12% to 33% lower among offenders whose probation officer offered high-quality as opposed to lower-quality supervision. The authors concluded that their findings offered strong support for treatment and advocated that funding be provided for employment/education and substance abuse treatment rather than for new surveillance equipment. The Petersilia and Turner Study⁽²¹⁾ This important study had typical results: there were no differences in recidivism rates between ISP offenders and controls at three sites. At two of the sites, however, probationers who took part in programs (employment, counselling and restitution) had significantly lower recidivism rates. The Pappozzi and Gendreau Study of a New Jersey ISP⁽²²⁾ This study, carried out by New Jersey's Bureau of Parole, was unusual for an ISP. It deliberately targeted high-risk offenders, and it documented the fact that the ISP group received significantly more treatment services than the control group on regular probation. The study, using three measures of recidivism, reported reductions in recidivism of 21% to 29% for ISP offenders compared with a carefully matched sample of probationers in a regular probation program.

Pappozzi and Gendreau also reported that parole offices that were most supportive of the program had lower recidivism rates among their probationers - an important finding regarding implementation issues.

Second, they found that parole officers who had a balanced approach to their supervisory work had lower recidivism rates among their probationers (20% on average for three measures of recidivism) than officers who were "law enforcement" or "social work" in their approach.

One other finding deserves mention. Probationers under "law enforcement" officers had a 43% technical violation rate. Is it any wonder that ISPs have been found to have higher rates of technical violations (which lead to higher incarceration rates) when it is common knowledge that many ISPs have recruited officers with just this sort of supervisory approach?

In summary, none of these four ISPs assessed the quality of the treatment services delivered to probationers. The New Jersey Bureau of Parole study, as well as a recent review of probation services by the American Probation and Parole Association, has recommended that the highest priority be given to assessing the quality of treatment services using measures such as the Correctional Program Assessment Inventory.⁽²³⁾ Conclusion Using various alternative sanctions, correctional systems have been "turning up the heat" on probationers. But our study of these new sanctions found:

- no discernable improvement in the delivery of "better justice";

- a doubling of the cost compared with regular probation;
- a reduction in public safety;
- an increase in the prison overcrowding problem; and
- no effect on offender recidivism and a belated rediscovery that only the inclusion of treatment services will have any positive effect on reducing recidivism.

As to the so-called rediscovery of treatment services, it has been shown once again that ideology has little respect for evidence. From the late 1970s to 1990, about a dozen reviews have appeared in the literature indicating that treatment services can reduce offender recidivism and that punishment and sanctions cannot.

We need to revisit some of the classic studies of the 1970s (noted in the introduction) that showed reductions in recidivism. If policy makers choose not to be better informed, then it should be made crystal clear by supporters of alternative sanctions that retribution and control are the goals of the criminal justice system. It is time to stop hiding behind the smoke screen of "doing justice," reducing costs and reducing recidivism.

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- (1)Address all correspondence to: Paul Gendreau, Ph.D., Professor of Psychology, Department of Psychology, University of New Brunswick, P.O. Box 5050, Saint John, New Brunswick E2L 4L5.
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