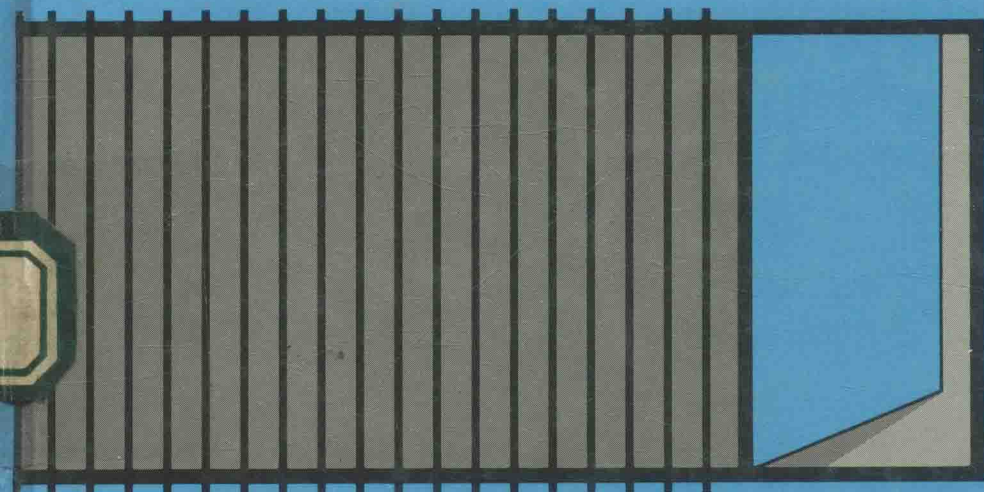


PROBATION & PAROLE

THEORY AND PRACTICE

FOURTH EDITION

HOWARD ABADINSKY



Fourth Edition

PROBATION AND PAROLE

Theory and Practice

Howard Abadinsky



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and to dedicated probation and parole personnel everywhere*

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Preface

The first edition of this book was written while I was a senior parole officer with the New York State Division of Parole. Since that time a great deal has changed – determinate sentencing gained popularity during the late 1970s and then waned as new realities began to set in. The political right and left fought it out over just deserts, and for the most part the right was victorious: The criminal justice system became less flexible and more punitive. Control models of offender supervision, long disparaged in the “progressive” corrections community, gained new adherents, particularly as the public attitude toward offenders hardened and the prison population surged to all-time highs. This edition reflects the swirling world of criminal justice of which probation, prisons, and parole are important parts.

Instead of merely depending on the scholarly literature, often written by researchers with little or no experience as probation and parole officers, this book continues to make extensive use of agency materials received from practitioners throughout the country. This edition has also retained the curriculum format with twelve chapters designed for the typical fifteen-week course. Chapters 1 through 8 and Chapters 11 and 12 should require about one week each; Chapters 9 and 10 should require about two weeks each. Review and examination should complete the course. (The instructor’s guide available for this book provides a model curriculum.)

ABOUT THE AUTHOR

Howard Abadinsky is professor of criminal justice at Saint Xavier College, Chicago. He was an inspector for the Cook County Sheriff's Office for eight years, and a parole officer and senior parole officer in New York for fifteen years.

The author has a bachelor of arts degree from Queens College of the City University of New York, a master's degree in social work from Fordham University, and a Ph.D. in sociology from New York University. He is the author of several books in the field of crime and justice. Dr. Abadinsky encourages communication about his work and can be reached at Saint Xavier College, 3700 W. 103rd Street, Chicago, IL 60655.

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ONE

Probation and Parole in Criminal Justice

Probation and parole are linked to particular segments of the criminal justice system, and criminal justice is tied to a system of laws most frequently invoked against a distinct type of offender. Law reflects the need to protect the person, the property, and the norms of those who have the power to enact laws—the criminal law reflects power relations in society. Thus, the harmful activities of those with power are often not even defined as criminal (for example, antitrust violations) but may instead constitute only a civil wrong. For example, the Eleventh District Court of Appeals overturned the fraud convictions of five Texas oilmen involved in a Florida fuel-oil pricing conspiracy that occurred in the mid-1970s. As a result of the scheme customers of the Florida Power Corporation paid as much as \$7.5 million in overcharges. The court ruled that although the actions may have been “against the public interest,” they were not illegal (*Chicago Tribune*, December 17, 1981: sec. 2: 3).

Marshall Clinard and his associates note that when the criminal law is invoked the results may represent distinctions in power; burglary prosecutions, for example, routinely invoke more significant penalties than business crime:

A single case of corporate law violation may involve millions and even billions of dollars of losses. The injuries caused by product defects or impure or dangerous drugs can involve thousands of persons in a single case. For example, in the electrical price-fixing conspiracy of the 1960s [see R. A. Smith, 1961], losses amounted to over \$2 billion, a sum far greater than the total losses from the 3 million burglaries in any given year. At the same time, the average loss from a larceny-theft is \$165 and from a burglary \$422, and the persons who commit

these offenses may receive sentences of as much as five to ten years, or even longer. For the crime committed by large corporations the sole punishment often consists of warnings, consent orders, or comparatively small fines. (1979: xix)

In 1980, for example, thirty-seven manufacturers were accused of being part of an eighteen-year nationwide conspiracy to fix the prices of corrugated containers and sheets, a multibillion-dollar scheme that defrauded American consumers. Thirty-four manufacturers merely settled “out of court,” an option not available to most persons who become the clients of probation and parole agencies (*New York Times*, June 17, 1980: D1). In 1985 General Electric pleaded guilty to defrauding the Air Force by filing 108 false claims for payment, and E. F. Hutton pleaded guilty to 2,000 counts of wire and mail fraud. Ralph Nader states that these incidents constitute “crime without criminals” since not a single person was imprisoned (1985: 3F). In that same year, Eli Lilly and Company pleaded guilty to failing to report the dangers of the arthritis drug Oraflex which had been linked to at least twenty-six deaths—the company was fined \$25,000 (*New York Times*, September 1, 1985: 6E). A similar situation involved the SmithKline Beckman Corporation, a drug company whose product was tied to the deaths of thirty-six persons—the firm was fined \$100,000 (Shenon, 1985a, b).

Robert Lefcourt argues:

The myth of “equality under law” would have us believe that everyone is subject to society’s laws and those who violate laws are subject to prosecution. Yet in criminal courts across the country it can be easily observed that law enforcement affects most exclusively the working-man and the poor. . . . The other criminals, the extremely wealthy, the corporations, the landlords, and the middle-class white-collar workers are rarely prosecuted and almost never suffer the criminal court process as defendants. (1971: 22)

Or, as the title of a book by Jeffrey Reiman (1990) points out: *The Rich Get Richer and the Poor Get Prison*.

WHAT IS A CRIME? WHO IS A CRIMINAL?

Quite simply, a *crime* is any violation of the criminal law, and a *criminal* is a person convicted of a crime. This raises an important question: Is a person who violates the criminal law a “criminal” if he or she is not apprehended and/or convicted? We need to consider that most reported crimes do not result in an arrest and conviction. Furthermore, studies indicate that most crimes simply are not reported to the police. Thus, has a probationer or parolee who is not arrested again been rehabilitated, or have they become more successful at avoiding detection?

Index Crimes

Crime Statistics are regularly compiled by the Federal Bureau of Investigation and divided into eight categories known as *The Uniform Crime Report*. The eight categories, or "index crimes," are those most likely to be reported by victims, that occur frequently, and that are serious by nature or as a result of their frequency of occurrence. They are divided into crimes against persons and crimes against property.

Crimes Against the Person

1. *Homicide*. Causing the death of another person without legal justification or excuse.
2. *Rape*. Unlawful sexual intercourse by force or without legal or factual consent.
3. *Robbery*. The unlawful taking or attempted taking of property that is in the immediate possession of another, by force or threat of force.
4. *Assault*. Unlawful intentional inflicting or attempted inflicting of injury upon the person of another.

Crimes Against Property

5. *Burglary*. Unlawful entry of any fixed structure, vehicle, or vessel used for regular residence, industry, or business, with or without force, with the intent to commit a felony or larceny.
6. *Larceny-Theft*. Unlawful taking or attempted taking of property other than a motor vehicle from the possession of another, by stealth, without force, and without deceit, with intent to permanently deprive the owner of the property.
7. *Motor Vehicle Theft*. Unlawful taking or attempted taking of a self-propelled road vehicle owned by another, with the intent of depriving him or her of it, permanently or temporarily.
8. *Arson*. The intentional damaging or destruction or attempted damaging or destruction by means of fire or explosion of property without the consent of the owner, or of one's own property with or without the intent to defraud.

Other relatively frequent (non-index) crimes include those that are *victimless*, referring to violations of the law unlikely to be reported by their victims, particularly drug offenses, prostitution, and gambling; *fraud*: using deceit or intentional misrepresentation of fact with the intent of unlawfully depriving a person of property; *driving under the influence* (DUI): operating any motor vehicle while drunk or under the influence of liquor or psychoactive substances; and *public order offenses*: violations of the peace or order of the community or threats to public health through unacceptable public conduct, interfering with governmental authority, violating civil rights or liberties, weapons offenses, bribery, and tax law violations. And there are also corporate crimes that include restraint of trade, securities violations, environmental pollution, and toxic waste-related offenses.