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# Probation violators: An examination of felony male adult probation violators in the state of Nevada

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PROBATION VIOLATORS: AN EXAMINATION OF FELONY MALE ADULT  
PROBATION VIOLATORS IN THE STATE OF NEVADA

by

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University of Nevada, Las Vegas  
1997

A professional paper submitted in partial fulfillment  
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## INTRODUCTION

On April 4, 2002 Clark County residents watched in horror as local news reporters delivered the story of the vicious attack that was perpetrated by seven time felon, Timmy “TJ” Weber. Weber was accused of killing his thirty eight year old girlfriend, Kim Gautier, her fifteen year old son, Anthony, and raping Gautier’s fourteen year old daughter in their downtown home (Oliver and Moller, 2002). Weber successfully alluded law enforcement for twenty four days following the attacks. He even earned himself a spot on America’s Most Wanted.

While most residents that viewed the Weber coverage probably thought of the heinous nature of the crime, I thought, “I bet he is on parole or probation.” The facts of his community supervision status proved otherwise. However, on February 9, 2002, just a few short weeks prior to the instant offense; Weber had been successfully and honorably discharged from parole. During the term of his original parole for possession of stolen property, Weber was arrested and his parole was revoked. The parole term in which he received an honorable discharge was actually a re-parole following a revocation that occurred on August 7, 2000.

Although Weber was not on probation at the time of the aforementioned offense, another notorious and admitted killer, John Evander Couey was on probation and in violation thereof at the time of his most recent offense. On February 23, 2005 nine year old Jessica Lunsford disappeared from her Homosassa, Florida home. Couey, a convicted sex offender who had been arrested 24 times in the past 10 years confessed to abducting Lunsford from her bedroom and killing her (People.com, 2005).

In examining the Weber and Couey cases, one might question; how could a person recently and successfully released from parole or a person still on probation commit such violent acts? One might question; why didn't the parole or probation officer recognize the violent tendencies of these offenders? In attempting to answer these questions, I must draw upon the knowledge and experience that I acquired during my two and a half year stint as a probation and parole officer.

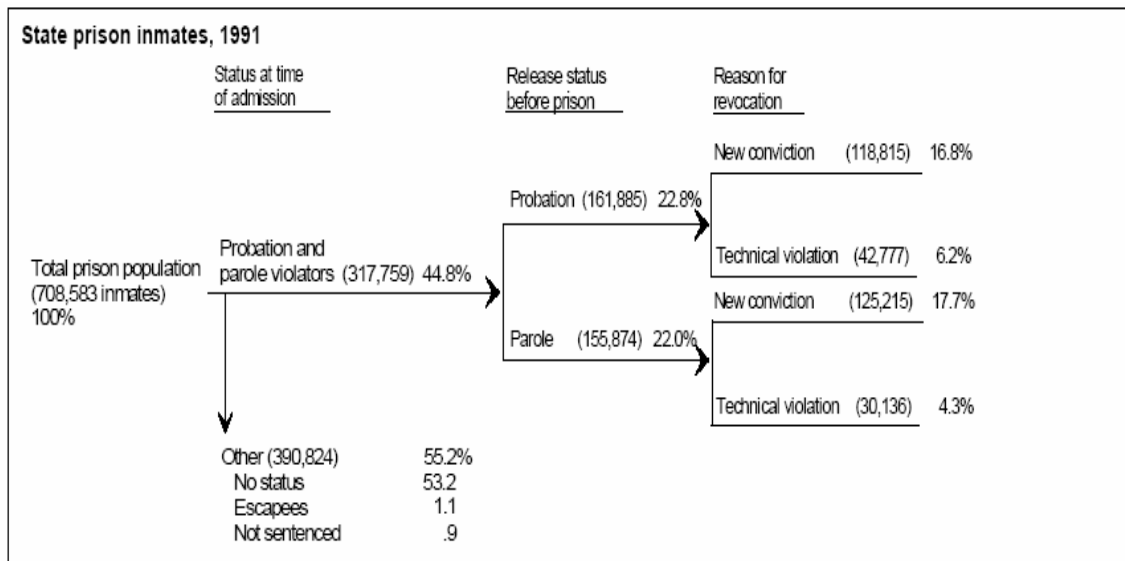
Often times probation officers observe characteristics of offenders' that are indicative of future or continued criminal behavior. A positive drug test is an indicator of continued criminal behavior. However, probation officers' powers are limited. Short of the formal power to arrest or hold probationers, there is normally little that probation officers can do to force compliance with the law (Clear and Dammer, 2000). A probation officer may respond to offender non-compliance by initiating the revocation process. Although the probation officer or the probation department may recommend revocation, only the court has the authority to revoke probation. The authority to revoke probation is discretionary, meaning that whether probation is revoked or not is solely up to the courts (Cromwell, Del Carmen, and Alarid, 2002).

It is unknown whether Weber or Couey violated the terms of their community supervision to the extent that a revocation hearing was warranted and possibly could have prevented these heinous crimes from occurring. It is important to note that even if Weber and Couey had violated the conditions of their community supervision, the ultimate decision regarding their continued supervision in the community is placed solely in the hands of a judge. The recommendation made by the probation officer who is the one

person in the judicial system most closely acquainted with the offender is merely an opinion.

The crimes committed by Couey and Weber serve as a small sample of the crimes that are committed daily by those supervised in the community. A 1991 survey of State prison inmates conducted by the Bureau of Justice Statistics indicated 161,885 probation violators in State prisons. Nearly 23% of State prison inmates were probation violators. Of the 161,885 probation violators in state prison, 74% percent had been convicted of a new offense and the remaining 26% had violated a technical condition of their community supervision. Based on the offense that brought them to prison, the 161,885 probation violators committed at least 7,400 rapes, 10,400 assaults and 17,000 robberies, while under supervision in the community an average of 17 months (Bureau of Justice Statistics [BJS], 1995). See Table 1.

**Table 1**



In 1974 probation violators comprised only 12% of the State prison population. By 1991, this number increased to 23% (BJS, 1995). Table 2 illustrates this phenomenon.



While the population of probation violators in prisons continues to rise one must consider what is happening to the remaining known probation violators.

**Table 2.**

Year	Percent of total State prison population			
	Violators			Other
	Total	Probation	Parole	
1974	17%	12%	5%	83%
1979	35	19	16	65
1986	44	21	23	56
1991	45	23	22	55

In my experience as a former probation officer I often felt as though very few of the probation violators on my caseload were afforded the opportunity to contribute to the number of probation violators admitted to State prison. It appeared to me that the judge presiding over the revocation hearing had no regard for my recommendation in favor of a revocation as is was often not followed.

I often left the courtroom feeling defeated as the disposition often contradicted my recommendation. My feelings of defeat prompted me to look more in depth at this phenomenon. In this research I examined all male felony adult probation violators in the State of Nevada during calendar year 2003. My goals were to answer the following questions: (1) How often does the judge follow the recommendation of the supervising officer? (2) Are there crimes with a higher or lower revocation rate? (3) Is there a correlation between race and recommendation or recommendation and outcome?

My hypotheses for this study is that judges follow the recommendation for revocation less than 50% of the time regardless of the crime. I further hypothesize that

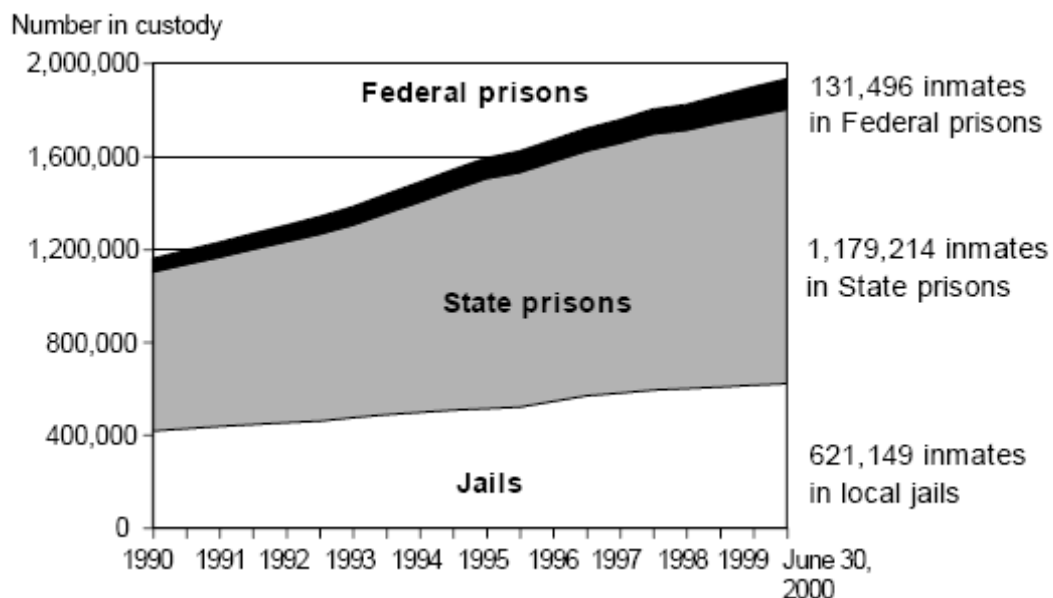
together reinstatements and modifications account for more than 50% of the dispositions in all cases.

### THE RISE IN THE PROBATION POULATION

Before one can look at probation, one must first understand what has happened to the prison population.

Prison overcrowding created a crisis in corrections. The move from indeterminate sentencing to determinate sentencing, mandatory minimum sentencing, and truth in sentencing laws have all contributed to the increase in the prison populations. Consequently, the incarceration rate in the United States has risen steadily over the past two decades. Table 3 illustrates the growth of the prison population from 1990 through June 30, 2000 (BJS, 2001).

**Table 3. The growth of the U.S. prison population from 1990-2000.**



At yearend 1980, 1 in every 453 U.S. residents were incarcerated; by yearend 1993 that figure grew to 1 in every 189. During 1994 prison populations increased in

sixteen states by at least ten percent (BJS, 1995). In 1994 Nevada's prison population increased by 16%; ranking it third among states with the highest increases in their prison population for the year. In 1994 Nevada ranked second among Western states with the highest incarceration rate and fifth among the top ten states in the United States with the highest incarceration rate (460: 100,000 residents). The incarceration rate for the state of Nevada in 1994 exceeded the national prison incarceration rate of 387 per 100,000 residents (BJS, 1995). See Table 4 below.

**Table 4. The prison situation among the States, yearend 1994**

10 States with the largest 1994 prison populations	Number of inmates	10 States with the highest incarceration rates, 1994*	Prisoners per 100,000 residents	10 States with the largest percent increases in the prison population			
				1993-94	Percent increase	1989-94	Percent increase
California	125,605	Texas	636	Texas	28.5%	New Hampshire	73.3%
Texas	118,195	Louisiana	530	Georgia	20.3	Connecticut	66.4
New York	66,750	Oklahoma	508	Nevada	16.0	Georgia	65.8
Florida	57,139	South Carolina	494	Virginia	14.6	Texas	60.5
Ohio	41,913	Nevada	460	Wisconsin	14.1	Virginia	59.9
Michigan	40,775	Arizona	459	New Hampshire	13.9	Vermont	56.7
Illinois	36,531	Georgia	456	Idaho	13.7	Washington	56.4
Georgia	33,425	Alabama	450	Colorado	13.3	Colorado	55.1
Pennsylvania	28,302	Michigan	428	Tennessee	12.9	Iowa	51.7
Virginia	26,192	Mississippi	408	Mississippi	11.9	Arizona	49.3

Note: The District of Columbia as a wholly urban jurisdiction is excluded.  
\*Prisoners with a sentence of more than 1 year.

Four years later, at midyear of 1998 the incarceration rate in the state of Nevada increased again by 10%. Nevada placed fifth among the top ten states with the highest incarceration rates for that year (BJS, 1999). See Table 5.

Table 5.

Prison population	Number of inmates	Incarceration rate, 6/30/98	Sentenced prisoners per 100,000 State residents*	12-month growth, 6/30/97 to 6/30/98	Percent change	Female prison population	Number of female prisoners
<b>10 highest:</b>							
California	158,742	Louisiana	709	North Dakota	19.5%	California	11,242
Texas	143,299	Texas	700	Montana	18.3	Texas	10,704
Federal	118,908	Oklahoma	629	Hawaii	13.6	Federal	8,772
New York	70,723	Mississippi	547	West Virginia	13.1	New York	3,609
Florida	66,280	South Carolina	543	Alaska	12.7	Florida	3,512
Ohio	49,289	Nevada	529	Iowa	12.0	Ohio	2,937
Michigan	44,501	Arizona	504	Tennessee	11.6	Illinois	2,522
Illinois	42,140	Alabama	501	Rhode Island	11.1	Georgia	2,473
Georgia	38,194	Georgia	492	Nevada	10.0	Oklahoma	2,110
Pennsylvania	35,644	California	477	Oregon	9.1	Louisiana	1,965

By yearend 2003, the incarceration rate in the state of Nevada was less than the national average of 482 per 100,000 residents. At yearend 2003, Nevada reported only 462 inmates per 100,000 residents. The inmate population in the state of Nevada only increased 0.6% between 2002 and 2003 which was the lowest among Western states (BJS, 2004). There are probably many factors that contributed to Nevada transitioning from being among states with the highest incarceration rate to one with the lowest incarceration rate.

One solution to the problem of prison and jail overcrowding in the face of rising crime rates is to supervise offenders in the community. Jail and prison overcrowding are factors that are considered by both prosecutors and judges Finn, P. (as cited in Champion, 1988). Probation is often the tool of choice that is utilized to attain the goal of reducing prison and jail overcrowding. Probation is the most common form of criminal sentencing in the United States (Petersilia, 1996). Judging by prior criminal records, current conviction crimes, and substance abuse histories, the crimes of the population of

persons sentenced to probation supervision have become increasingly serious (Cromwell et al., 2002). Probation sentences for adult felons have become so common that a new term has emerged in criminal justice circles: felony probation (Petersilia, 1985).

### **PROBATION DEFINED**

Probation is one of the two types of criminal sanctions under the umbrella of “community corrections”; parole being the other. Community corrections is defined as a nonincarcerative sanction in which offenders serve all or a portion of their sentence in the community. Community-based corrections consists of two basic types of supervision: (1) “front-end” sanctions, sentenced by judges, that serve as alternatives to incarceration; and (2) “back-end” programs, with participants chosen by corrections officials, that assist prisoners in community reentry after prison (Cromwell, et al. 2002).

Probation is a multifaceted concept and may be defined in several different ways. Probation may be defined as a sentencing option, a process, an organizational structure, or the legal status of offenders (McCarthy, B.R. and McCarthy, B.J.1997).

The American Correctional Association defines probation as: A court-ordered disposition alternative through which an adjudicated offender is placed under the control, supervision, and care of a probation staff member in lieu of imprisonment, so long as the probationer meets certain standards of contact. The Bureau of Justice Statistics defines a Probationer as: a criminal offender who has been sentenced to a period of conditional supervision in the community.

## **HISTORY OF PROBATION**

Probation, as it is known and practiced today, evolved out of ancient precedents in England and the United States devised to avoid mechanical application of harsh penal codes of the day. At the time of Henry VIII more than two hundred offenses were punishable by death, many of them relatively minor offenses against property (Cromwell et al., 2002). The objective of early British law was retribution and punishment which were met by the harsh penal codes. Offenders were severely punished by branding, flogging, mutilation, and execution. These harsh punishments were usually carried out publicly. Efforts to alleviate the strict punishments gradually evolved. One of the earliest recorded forms of relief granted to English subjects was a declaration of Athelstane, the Anglo Saxon King (895-940), that forbade the execution of anyone under the age of 15 years (Dillingham, Montgomery, and Tabor, 1990). Other precursors of probation that were practiced in England include; benefit of clergy, recognizance, and judicial reprieve.

### **Probation in the United States**

The earliest discussions of probation in modern terms dates back to 1831 however, the first probation officer did not surface until some time later, in 1841 (Hall, 1987). Boston shoemaker, John Augustus is credited with inventing probation in 1841. Considered the “father of probation” in the United States, Augustus was probably the first unofficial probation officer (Champion, 1988).

In 1841 John Augustus was observing the proceedings of the Boston Police Court. Mr. Augustus asked the presiding judge to allow him to stand sponsor for an individual who was otherwise headed to the House of Corrections. According to authentic records, this little known social pioneer carried out continuously for the remaining eighteen years of his life a system of probation supervision for more than two thousand offenders, young and old. His pioneer work embodied all the essentials of modern probation service (Hall, 1987). Augustus posted bail for these offenders and reappeared with them in court at a later date. If they behaved well in his care, the judge suspended the sentence and fined them a nominal amount (Bottomley, as cited in Champion, 1988). Augustus did not accept everyone for probation. He carefully screened prospective candidates through interviews and checked their backgrounds and social histories. These “pre-sentence investigations” enabled him to select the most successful candidates for probation (Champion, 1988).

Massachusetts was the first state to formally adopt probation by statute as an alternative to incarceration. Between 1878 and 1938, 37 states, the District of Columbia, and the federal government passed juvenile and adult probation laws authorizing judges to grant probation at their discretion. And by 1956, Mississippi became the last state to authorize adult probation (Allen, Eskridge, Latessa, and Vito, as cited in Champion, 1988). Table 6 illustrates the progress in the adoption of adult probation statutes (Chalan and Parsons, as cited in Champion, 1988).

**Progress in Adoption of Adult Probation Statutes 1878 - 1938**

**Table 6**

Jurisdiction	Year First Statute Passed	Jurisdiction	Year First Statute Passed
Massachusetts	1878	Wisconsin	1909
Missouri	1897	District of Columbia	1910
Vermont	1898	Delaware	1911
Rhode Island	1899	Illinois	1911
New Jersey	1900	Arizona	1913
New York	1901	Georgia	1913
California	1903	Montana	1913
Connecticut	1903	Idaho	1915
Michigan	1903	Virginia	1918
Maine	1905	Washington	1921
Kansas	1907	Utah	1923
Indiana	1907	Federal Government	1925
Ohio	1908	West Virginia	1927
Colorado	1909	Oregon	1931
Iowa	1909	Tennessee	1931
Minnesota	1909	Maryland	1931
Nebraska	1909	Kentucky	1934
North Dakota	1909	Arkansas	1937
Pennsylvania	1909	North Carolina	1937
		New Hampshire	1938

Initially, probation officers were volunteers who, according to Augustus, just needed to have a good heart (Petersilia, 2002). Prior to the general governmental regulation of probation, many probation programs were operated among jurisdictions on a private basis. Religiously based programs were common, as various reformist groups established centers or homes to house convicted offenders on probation (Champion, 1988).



## **Probation in Nevada**

Nevada's first Pardons Board was established in 1867 as a result of provisions being added to the States Constitution which allowed for granting pardons and commuting sentences. In 1909, the authority of the Pardons Board was expanded by the Legislature to include granting parole. Interestingly, the Governor's private secretary was designated as the Secretary of the Board and all paroled inmates were required to report to him at least once per month. The Pardons Board gradually evolved into the Parole Department which was created by the State Legislature in 1945. The 1951 State Legislature also passed laws allowing District Courts to suspend the execution of sentences and grant probation (Nevada Division of Adult Parole and Probation [NDAPP], no date). The responsibility for monitoring those receiving probation grants was also assigned to the Parole Department. Although the Parole Department was tasked with the responsibility of monitoring parolees and probationers, it was not until 1969 that the Nevada Legislature created the Department of Parole and Probation.

In 1993, the Department of Parole and Probation became a Division of the Department of Motor Vehicles and Public Safety. Following the 2001 Legislative Session, the Department of Motor Vehicles and Public Safety became two separate departments. The Division of Parole and Probation became part of the newly created Department of Public Safety (NDAPP, no date).

The Division of Parole and Probation, often referred to as "The Division," is divided into four Districts; District I - Carson City, District II - Reno, District III – Elko and District IV – Las Vegas. The two urban (District II and IV) offices, Reno and Las Vegas account for 80% of the workload. The rural offices, while accounting for 20% of

the workload are responsible for coverage of 87,699 square miles, or 75% of the state's geography (NDAPP, no date). Supervision officers have dual responsibilities in law enforcement and social work. The role of probation officers' is to protect the public and enforce the rules and conditions of probation.

### **Conditions of Probation**

Probation conditions are the requirements for conduct that must be observed by the probationer in order to remain on probation (Clear et al, 2000). There are two types of probation conditions; standard conditions and special conditions. Standard conditions are those that apply to all offenders receiving a grant of probation. A violation of a standard condition is termed a "technical violation." Special conditions are rules set specifically by a judge and usually are targeted toward a special circumstance of the offender. In Nevada there are eleven standard conditions of probation. The conditions of probation are referred to as "rules" and are outlined in the Probation Agreement. See Appendix A. for a copy of the probation agreement. Each offender acknowledges receipt and understanding of the conditions of probation by signing their probation agreement (Policy and Procedure Manual, no date). Violation of conditions can cause revocation of probation and incarceration of the offender. An offender's potential for violating his probation is determined by an initial assessment and assignment of a level of supervision.

### **Level of Supervision**

The Supervising Officer conducts an initial interview with the probationer as soon as practical after the individual has been placed on probation by the Court (Policy and Procedure Manual, no date). Upon meeting with a probationer for the first time the

probation officers utilizes a risk assessment program to determine the level of supervision that an offender will receive. The assessment takes into consideration the offenders' age upon first entering the criminal justice system, number of past arrest and convictions, the current crime, substance abuse history, and education.

There are five levels of supervision: minimum, medium, maximum, intensive and house arrest (Policy and Procedure Manual, no date). There are minimum personal contacts (PC) that are established by the Division of Parole and Probation and associated with each level of supervision. A personal contact is any in-person interaction between the Probation Officer and the offender that takes place in the offender's home, at their place of employment, in the probation office, or in the field (Policy and Procedure Manual, no date).

A minimum level of supervision requires a personal contact once every ninety days. A personal contact at the home of the offenders' is at the discretion of the supervising officer. Regardless of the assessment outcome, a new probationer is never initially supervised at a minimum level of supervision. Medium supervision contacts require a personal contact within every ninety days and a personal contact at the home of the offender every six months. Maximum supervision requires a personal contact every month. Maximum supervised offenders require a personal contact at their home at least quarterly. Intensive supervision offenders are assigned to specialized units. Intensively supervised offenders usually are placed on some form of electronic monitoring and/or daily contact with the supervising officer.

## **Revocation Process**

In Nevada, the initiation of the revocation process is two fold. First, a technical violation of probation or an arrest for a new crime must occur. In theory, the sentencing court expects to hear of any violations of probation, and supervision is organized to detect any misbehavior regarding the court order (Cromwell, et al., 2002). Revocation proceedings are contingent upon the probation officer notifying the sentencing court of the violation via a violation report. Probation officers have discretion to deal with probation violations without referral to the court so long as the infractions do not develop into a pattern or threaten public safety (Cromwell, et al., 2002). Sometimes the probation officer will tolerate a series of minor violations before taking the offender to court (Cromwell, et al., 2002). An incident report may be used by a probation officer to document and report minor infractions committed by the probationer to the sentencing judge. In cases where an offender is arrested for a crime of violence or other potentially dangerous act, a violation report is mandatory (Policy and Procedure Manual, no date). Depending on the violation, the offender may experience the revocation process either in or out of custody.

A violation report is a written report requesting a hearing before the appropriate authority and describing the manner in which the offender has violated the conditions of their supervision, including actions or recommendations made by the Division of Parole and Probation (Policy and Procedure Manual, no date)

The violation report is divided into four sections: violations, response to supervision, whereabouts and availability, and recommendation. The probation officer

usually makes one of the following recommendations to the judge; revoke, reinstate, modify, show cause, rescind or discharge the offender's probation.

Revocation of probation results in the offender being sentenced to their original sentence. No jail or prison credit is given for the time that the offender spent in the community on probation. A reinstatement of probation results in the offender being returned to probation with the same conditions. A modification of probation results in the offender being returned to probation with different or additional special conditions. Probation is usually modified whenever a problem with an offender is discovered after the grant of probation is given. For example, the offender may have a problem with drugs that the court was not privy to at the time of the pre-sentence investigation or sentencing. Once the probation officer learns of this problem via positive drug test or other means, the probation officer can request that the probation be modified to include drug counseling. A discharge from probation results in the offender being released from probation altogether. A discharge is either successful and honorable or unsuccessful and dishonorable.

In special circumstances such as deferred proceedings, the probation officer may only recommend rescission of the deferred proceeding. In cases of deferred proceeding, the court after a plea of guilt or nolo contendere, defers further proceedings without an adjudication of guilt and places the defendant on probation (Cromwell et al., 2002). Upon successfully completing the term of probation, the original crime will be removed from the offender's record. If the offender is not successful at completing probation, the original crime is charged and the offender is adjudicated guilty. The offender is then

returned to probation where future violations could result in revocation and the imposition of a prison or jail term.

Once the violation report is completed, the offender is “served” or given a copy of the violation report along with a Notice of Preliminary Inquiry Hearing form. All arrested probationers accused of probation violations shall be afforded a Preliminary Inquiry Hearing, except when the alleged violation is based on a new conviction or new criminal charges. The preliminary inquiry is an administrative hearing conducted before a certified Hearing Officer to determine if there is probable cause that a violation of probation did occur and that continued detention is justified (Parole and Probation Policy Manual, no date). The offender may also waive the preliminary inquiry hearing.

After the offender has been served the violation report is forwarded to the district attorneys’ office and the court of record for calendaring. A date is set for a revocation hearing. At the hearing the offender is given an opportunity to refute the allegations against him.

The final outcome of the revocation hearing is solely at the discretion of the presiding judge. The judge may choose to follow the recommendation of the supervising officer or to totally ignore it.

## **LITERATURE REVIEW**

Probation departments are more extensively involved with offenders and their cases – often starting at arrest – than any other justice agency. Many who are arrested and all who are convicted come into contact with the probation department (Petersilia, 1997). With more convicted offenders and convicted felons serving their sentences

outside of jails and prisons, the behavior of these probationers is of interest to many parties (Gray, Fields, and Maxwell, 2001).

There appears to be a correlation between the peaked interest in probationer behavior and probation research. The majority of probation research has focused on probation outcomes, effectiveness, or success. Probation outcomes, effectiveness, and/or success are used interchangeably and are usually measured by examining factors specifically associated with recidivism during or following a period of probation.

There are as many definitions for successful probation as there are jurisdictions that supervise probationers. McCarthy and McCarthy, 1997 identify several problems with using recidivism as the “sole measure of a program’s effectiveness” including both the wide range of operational definitions used to define recidivism and the lack of control over post-release conditions that may unduly influence or undermine the effect of a program on an offender. Studies on probation outcomes report recidivism rates ranging from 16 to 65 percent.

The studies which focus on probation outcomes can be classified into three categories: (1) studies that report probation failure rates only; (2) studies that report failure rates but also indicate significant factors correlated with that failure; and (3) studies that discuss factors influencing probation outcome only (Morgan, 1993).

Although my topic is outcome based, I was unable to locate any research that compared the recommendation suggested by the probation officer and the outcome imposed by the judge. Recommendations and outcomes fall somewhere along the spectrum of the three types of outcome studies. The outcome of a revocation hearing is

one variable in which conclusions can be made regarding the success or failure of a probationer.

The most widely cited study about the effectiveness of probation was conducted by the Rand Corporation (Clear et al., 2000). In the Rand study renowned author and researcher Joan Petersilia and her colleagues studied over 16,000 felons convicted in California's Superior Court during 1980, and recidivism data of a sub-sample of 1,672 who received probation in Los Angeles and Alameda counties (Petersilia, 1985). The probationers were followed for forty months. Details of their arrest, convictions, and incarceration were recorded. The findings of the study indicated that 65% of the total sample was rearrested and 53% had official charges filed against them. Of these charges, 75% involved burglary/theft, robbery, and other violent crimes (Petersilia, 1985). Fifty-one percent of the sample members were reconvicted and 34% were reincarcerated.

The data indicated that violent offenders and drug offenders were less likely than property offenders to recidivate. With the exception of drug offenders, probationers were most often rearrested and convicted of the same crimes they had originally been convicted of (Petersilia, 1985). The median time of first filed charge was 15 months for drug offenders, 5 months for property offenders, and 8 months for violent offenders (Petersilia, 1985).

The Rand researchers identified four factors that were significantly related to recidivism. These included: type of conviction crime (property offenders had the highest rates of recidivism), number of prior juvenile and adult convictions (the greater the number the higher the probability of recidivism) , income at arrest (presence of income



was associated with lower recidivism), and household composition (offenders living with a spouse or children had lower recidivism).

John T. Whitehead conducted a study of offenders who were placed on probation for robbery, burglary, and drug crimes in New Jersey between 1976 and 1977.

Whitehead strongly criticized the Rand study. He identified non random selection or convenience sampling, the fiscal and personnel problems facing the probation department in the two counties that furnished the data, and contradictory claims made by the Rand study authors as limitations of the study. In their defense, the Rand researchers chose Los Angeles and Alameda counties because at the time of the study, 43% of all California probationers were supervised there.

In his own research, Whitehead used three time intervals to conduct follow ups; three and four years post conviction, and total years measured from the commencement of probation until July 1, 1986. Recidivism was measured by arrest and convictions. Forty three percent of the sample had prior adult convictions and 6% had been in prison before the instant probation offense. Outcomes varied when comparing different measures of recidivism such as arrest and convictions. About 40% of the New Jersey felony probationers were rearrested at 36 or 48 months after sentencing; 31% were reconvicted at 36 months and 35% were reconvicted at 48 months (Whitehead, 1991). About 10% of New Jersey offenders were reimprisoned at either 36 or 48 month after sentencing and about 16% were reincarcerated (Whitehead, 1991). The reincarceration rate was significantly lower; 50% lower than that reported in the Rand study. The ten year follow up period indicated findings that closely paralleled those in the Rand study.

Those on probation for drug crimes had fewer rearrest and reconvictions at the four year follow up than their robbery and burglary counterparts. Thirty percent of the drug offenders were rearrested compared with 54% and 52% of burglary and robbery offenders respectively. Twenty six percent of drug offenders were reconvicted at the four year follow up compared with 47% of their burglary and robbery counterparts. Thirty one percent of both robbers and burglars had three or more charges after the original sentence compared with only fourteen percent of drug offenders. Those on probation for drug crimes were least likely to recidivate by committing the crimes of robbery, burglary, and assault. Drug offenders comprised 4% of those that were arrested for the aforementioned crimes compared with 17% and 11% of robbers and burglars respectively.

Gennaro F. Vito examined felony probationers in three counties in Kentucky. The sample included 317 convicted felons who were placed on probation in 1982. The probationers were tracked over a period of 36 months. Recidivism was measured by arrest, conviction, and reincarceration. The data indicated a total re-arrest rate of 22%. Eighteen percent of the sample were convicted, 11.7% were sent to prison for a new offense, and 2% were sentenced to jail. Misdemeanors and property felonies each accounted for 70% of the rearrest and reconvictions. Vito further examined the type of crime that was committed by probationers. Vito noted, "It is apparent that persons convicted of burglary were most likely to be charged with another property crime (55.6%), that probationers convicted of larceny-theft were most likely to be charged with a violent crime (30.7%) or a misdemeanor (36.4%), and that burglars accounted for

40.7% of all technical violators. Drug offenses accounted for only a small number (4) of all recidivist offenses”

Similar to the Rand and Whitehead research, the Vito study indicated that property offenders recidivated more quickly than violent offenders and drug offenders. The median time to recidivism for a property felony probationer was 375 days (approximately 12 months) versus 598 days (approximately 20 months) for a probationer convicted of a violent felony (Vito, 1985).

Gray et al., 2001 examined the rates and timing of technical violations versus new criminal offenses that probationers commit while under probation supervision. Gray et al. analyzed information about probation violations that was obtained from probation officers and official department of corrections' records for offenders in Michigan. A key variable for the study was the type of violation that the probationer committed. Violations were arranged into three broad categories: most serious violations, medium serious violations, and least serious violations. Most serious violations included new criminal charges and absconding, medium serious violations were violations of probation orders such as failure to attend treatment, and least serious violations included things such as failure to report or curfew violations. Probationers were categorized according to their most serious violation (Gray et al, 2001). A random sample (N=1500) of offenders committed to probation in February and March 1996 was utilized. Gray et al. examined demographic information, committing offense, indicators of drug and alcohol abuse, prior convictions, supervision level, and types of violations. Failure was defined as a violation of probation orders or conditions of probation. Gray et al. hypothesized that, “certain demographic variables would be associated with probation success or failure;

specifically, men would be more likely to fail as would younger probationers, and in terms of race, minorities would be likely to fail.” An interesting component in the analysis by Gray et al. was the examining of the timing of probation violations. Gray et al. calculated the time to failure for probation violators.

The findings were consistent with those found in general probation recidivism studies: minority, less educated offenders with prior drug use were more likely to have technical violations; of the unemployed probationers those with previous misdemeanor convictions, those convicted of assaultive crimes, and those with more technical violations were more likely to commit a new crime while on probation; probationers with assaultive crimes were more likely to commit technical violations and more likely to commit new crimes (Gray et al., 2001). Twenty eight percent of probationers studied committed medium serious violations. Probationers with most serious violations composed 23.8% of the sample. The mean number of violations for the entire sample was 2.6 (Gray et al., 2001). Gray et al. found that the most common new crime committed by probationers were non assaultive offenses. The second most common type of new crimes involved assaultive crimes (17% of the sample population).

Olson and Lurigio (2000) examined multi variable probation outcomes in a sample of more than 2,400 adult probationers in Illinois. The sampling frame included every adult probationer discharged from supervision during a 4-week period in November and December 1997. Predictor variables were grouped into three major categories: probationer characteristics, offense type, and sentence characteristics and were compared with three different probation outcomes: rearrest, technical violations, and revocations (Olson et al., 2000). Olson and Lurigio findings were consistent with

prior research, “we found that younger, minority, low-income, high school dropouts, with more overall prior convictions, with more prior convictions for violent offenses, and with a history of drug abuse or dependence are more likely than probationers without these characteristics to have their probation revoked, to be arrested for new crimes while on probation, and to be cited for technical violations” (Olson et al., 2000). Olson and Lurigio conclude that “it would be interesting to study what system or jurisdictional factors determine whether arrest or technical violations lead to probation revocations.

Interestingly, a study was conducted in Texas that responded to the question posed by Olson and Lurigio. The findings were presented in a report titled, *Trends, Profile, and Policy Issues Related to Felony Probation Revocations in Texas*. In the study, Barbee et al. examined the case records of all 2,193 felony probationers that were revoked from supervision in Texas in October 2001. Texas boasts alarming supervision and revocation rates. Texas has the largest felony population under probation supervision in the country with 240,306 felons in 2001 (Barbee et al, 2002). Approximately 9% of the population under supervision was revoked last year representing 21,765 revocations and \$470 million dollars in housing cost for the projected stay of those sentenced to prison (Barbee et al., 2002). The researchers concluded that judges:

Mainly revoke offenders that have been convicted of new crimes or have persistently failed to follow their rules of supervision. Less than one half of motions to revoke filed by local officials lead to revocation but when offenders are revoked, more than half (59%) are revoked for an allegation or conviction for a new offense. Almost half (47%) of the offenders revoked for a new offense had more than one law violation. Revocations for technical reasons represented 41%

of all revocations and most of those revoked for administrative violations violated more than one of their rules of supervision (51% violated two to five, and 41% six or more).

### **RESEARCH METHODS AND PROCEDURES**

The data for this study was provided by the State of Nevada Division of Adult Parole and Probation. The original dataset consisted of 2280 cases (N=2280). I focused this research on felony males that violated their probation in the year 2003. In examining the data, I realized that there were numerous duplicate cases and several incomplete cases. I was advised by the Division of Adult Parole and Probation that multiple violations resulted in multiple entries. In other words, if a probationer violated six conditions during one revocation process, the case was listed six times. As a result of this reporting style, I had to analyze each case individually. I removed the cases that had conflicting and/or incomplete information. Conflicting or incomplete information is characterized by cases with multiple inconsistent outcomes or missing data. An example of an inconsistent outcome is a case with a disposition of dishonorable discharge and revocation. Each of these dispositions is final and therefore could not be assigned to the same offender. Although some of these multiple dispositions may have been representative of multiple defendants utilizing the same case number, there was no simple way to ascertain if that was the case. I retained one of each of the duplicate cases that had consistent information. For example, if a case was listed three times with the same recommendation and outcome then it was counted as one incident of revocation. An incident of revocation is an instance in which the offender is recommended to return to court for a revocation hearing. If a case was listed three times with the same or different

recommendations and a non probation terminating outcome then it was counted as three incidents. A non probation terminating outcome is any disposition other than an honorable or dishonorable discharge or revocation.

Of the original data set only 859 cases or 38% of the cases required no adjustments. One thousand three hundred and twenty duplicate entries were condensed into 538 cases. Four percent or 93 of the original cases were excluded because of incomplete or inaccurate information. Eight cases were lost in the process of consolidating cases. The final data set included 1,406 records.

### **FINDINGS**

The crimes which represented the largest percentage ( $\geq 2\%$ ) of revocation hearings included: possession of controlled substance (12.6%), burglary (6.5 %), attempt burglary (6.2%), possession of controlled substance with intent to sell (4.3 %), possession of stolen vehicle (3.3%), forgery (3.1 %), grand larceny (2.6%), possession of methamphetamine (2.6%), attempt theft (2.3%).

Sixty seven percent of the possession of controlled substance crime was committed by Blacks followed by 57% Whites. Blacks committed 29% and 28% of the burglaries and attempt burglaries respectively followed by 66% and 72% of Whites. Blacks committed 52% of possession of controlled substance crime followed by 46% of Whites. Whites represented 70% of those that committed the crime of possession of stolen vehicle and Blacks represented 28%. Nineteen percent of the grand larceny was committed by Blacks and 78% by Whites. Nineteen percent of the possession of methamphetamine was committed by Blacks and 81% by Whites. Blacks committed 33% of the attempt theft followed by 61% of Whites.

The data from the Rand study indicated that property offenders were more likely to recidivate than drug and violent offenders. In examining the combined data of crimes representing 2% or more of the revocation hearings it appears that drug offenders (19.5%) and property offenders (21.7%) are proportionally represented in revocation hearings. This finding cannot be directly correlated to the finding in the Rand study because of differences in the definition of recidivism; however, it is noteworthy.

In examining the data of the crimes which represented the largest percentage ( $\geq 2\%$ ) of revocation hearings the data showed the following: for the crime of possession of controlled substance the revocation rate was 55%, followed by burglary at 49%, attempt burglary 48%, possession of controlled substance with intent to sell 54%, possession of stolen vehicle 45%, forgery 42%, grand larceny 54%, possession of methamphetamine 54% and attempt theft 78%. With the exception of attempt theft, the rates of revocation closely parallel the overall revocation rate of 52%. It is alarming that attempted theft has a higher revocation rate than attempted burglary or even actual burglary.

Table 7 illustrates the racial composition of those returned to court for revocation proceedings. According to the Bureau of Justice Statistics in 2003 Whites comprised 56% of those on probation, followed by Blacks at 30%, Hispanics 12%, Indians/Native American and Asians each comprised 1%. The data for those appearing for a revocation hearing parallels the racial demographics for the probation population in the United States in 2003. Adding the White and Hispanic populations together for those on probation in the US in 2003 renders a figure of 68% which is close to that represented in the data. Whites (including Hispanics) comprised the majority of those returned for a



revocation hearing (63.8%), followed by Blacks (31.7%), Asians (1.8%), and Indians (1.4%).

According to the 2000 United States Census, Whites comprised 65.2% of the population of the State of Nevada followed by 19.7% Hispanics, 6.8% Blacks, 4.5% Asian, 1.3% Indian or Alaskan Native, and 2.5% were other. Blacks represented a disproportionate number of those returned for revocation proceedings relative to their proportion in the state of Nevada.

**Table 7** NEVADA PROBATION VIOLATORS BY RACE

	Frequency	Percent	Percent of Nevada Population 2000	Percent of U.S. Population 2000
Asian	25	1.8	4.5	3.6
Black	445	31.7	6.8	12.3
Indian	19	1.4	1.3	0.9
Unknown	20	1.4	2.5	1.6
White	897	63.8	65.2	69.1
Total	1406	100.0		

### **Recommendations**

In an overwhelming percentage of the cases the probation officer recommended revocation of probation. Revocation accounted for 92% of the recommendations made by the probation officer. Table 8 below illustrates the frequency of the recommendations made by probation officers'. The judge concurred with the recommendation of revocation in 56% of the cases. The judge concurred with the recommendation of modification and rescission 52% and 69% of the time respectively. Table 8 illustrates the outcome of revocation proceedings compared with the recommendations. The probation

officer only recommended modification, rescind, and show cause 3.3%, 2.1% percent, and 2.4% respectively.

**Table 8 RECOMMENDATION BY PROBATION OFFICER**

	Frequency	Percent	Valid Percent	Cumulative Percent
MODIFY	46	3.3	3.3	3.3
RESCIND	29	2.1	2.1	5.3
REVOKE	1297	92.2	92.2	97.6
SHOW CAUSE	34	2.4	2.4	100.0
Total	1406	100.0	100.0	

The recommendation of “show cause” is essentially a recommendation for revocation. In cases of show cause, the offender must demonstrate why the probation should not be revoked. Including the recommendation of show cause as a recommendation to revoke, increased the percentage of time that the officer recommends revocation from 92% to 95%. Including show cause as a recommendation of revocation slightly decreased the percent of times in which the judge followed the recommendation of the probation officer; from 56% to 55%.

In examining the show cause recommendation, the data showed that 44% of the cases were reinstated, 27% percent were modified, 15% were revoked, 9% were honorably discharged, and 6% were dishonorably discharged or withdrawn.

The findings show that there was no relationship between recommendation and race. In the majority of cases regardless of race, the recommendation of revocation was made 91% of the time for Whites, 94% of the time for Blacks, 96% of the time for Asians, and 95% and 100% of the time respectively for Indians and Unknowns. Table 9 illustrates a comparison between race and disposition

**Table 9 DISPOSITION OF PROBATION HEARING BY RACE**

DISPOSITION	Race					Total
	ASIAN	BLACK	INDIAN	UNKNOWN	WHITE	
DISHONORABLE	1	54	1	4	62	122
HONDISCH	0	1	0	0	5	6
MODIFIED	5	62	5	0	107	179
REINSTATED	6	114	4	1	187	312
RESCINDED	0	3	2	0	19	24
REVOKED	13	198	7	15	502	735
WITHDRAWN	0	12	0	0	9	21

**Table 10 COMPARISON OF RECOMMENDATION AND DISPOSITION**

DISPOSITION	RECOMMENDATION				Total
	MODIFY	RESCIND	REVOKE	SHOW CAUSE	
DISHONORABLE	6	1	114	1	122
EXPIRED PRIOR	0	0	5	0	5
HONORABLE DISCHARGE	0	0	3	3	6
INTERSTATE COMPACT	0	0	1	0	1
MODIFIED	24	0	146	9	179
REINSTATED	10	2	285	15	312
RESCINDED	0	20	4	0	24
REVOKED	4	5	721	5	735
FAIL TO APPEAR	0	0	1	0	1
WITHDRAWN	2	1	17	1	21
Total	46	29	1297	34	1406

### **Disposition**

The majority of those appearing for a revocation hearing were revoked. Table 11 illustrates the frequency and percentage of all dispositions. Revocations represented 52% of all of the cases. A reinstatement was the second most likely outcome of a revocation hearing. Twenty two percent of those appearing for a revocation hearing were reinstated while nearly 13% percent received a modification of probation. Modifications and reinstatements combined represented 35%t of the total dispositions. Almost 9%received a dishonorable discharge. The disposition that an offender was least likely to receive as

a result of the revocation process was an honorable discharge. Honorable discharges represented less than one half of one percent of the dispositions. Of those receiving dishonorable discharges, Whites comprised 80% of the honorable discharges followed by Blacks with 20%. An honorable discharge was not received by any Asians, Indians, or Unknowns

**Table 11 TOTAL DISPOSITIONS BY TYPE**

	Frequency	Percent
DISHONORABLE DISCHARGE	122	8.7
EXPIRED PRIOR	5	.4
HONORABLE DISCHARGE	6	.4
INTERSTATE COMPACT	1	.1
MODIFIED	179	12.7
REINSTATED	312	22.2
RESCINDED	24	1.7
REVOKED	735	52.3
FAIL TO APPEAR	1	.1
WITHDRAWN	21	1.5
Total	1406	100.0

Whites represented 68% of those revoked from probation followed by 27% percent Black. Unknowns, Asians and Indians each represented less than 2% of those revoked from probation. The findings indicated that whites represented 59% of those that were reinstated to probation followed by blacks with 37% Unknowns, Asians, and Indians together represented 4% of those reinstated to probation. Whites represented 51% of probation violators that were dishonorably discharged followed by Blacks at 44%. Asians, Indians, and Unknown together comprised the remaining 5% of dishonorable discharges.

## CONCLUSIONS

Probation officers overwhelmingly recommended revocation (92%) for all violators regardless of the original offense, the age, or the race of the offender. White offenders were recommended for revocation 91% of the time. Black offenders were recommended for revocation 96% of the time. In this study I hypothesized that judges' follow the recommendation for revocation less than 50% of the time and that reinstatements and modifications account for more than 50% of probation dispositions. In the majority of cases, the judge follows the recommendation of the probation officer regardless of the type of recommendation. In cases in which the recommendation is modification, rescission, and revocation, the judge followed the recommendation 52%, 69%, and 56% of the time respectively. Modifications and reinstatements accounted for 35% of the dispositions, less than I hypothesized. .

Although judges may not always follow the recommendation of the probation officer to revoke probation, the data indicated that it is unlikely for a judge to revoke probation without a concurring recommendation from the probation officer. The judge only revoked probation in 1% of the cases without a concurring recommendation from the probation officer.

Prior research has demonstrated a correlation between recidivism and gender, age (Petersilia, 1985), marital status, race, number of previous convictions (Whitehead, 1991) and employment. In this study no data was provided regarding marital status, education, previous convictions, and employment therefore comparisons regarding these variables could not be made. Offenders aged 25 and under constituted 39% of all revocation hearings. Older offenders age 55 and up constituted 1.6% of all revocation hearings.

Property offenders represented 21.7% of the top 2% of all revocation hearings followed by drug offenders at 19.5%.

Drug offenses in the state of Nevada are very specifically classified. As a result of this specificity, the data representing drug offenses is skewed. Although methamphetamine; like marijuana and cocaine, is a controlled substance, there are different classifications of crimes for possessing each drug. Possession of cocaine, attempt possession of a controlled substance, possession of methamphetamine with intent to sale, possession of marijuana, to name a few, are all crimes which indicate the possession of a prohibited substance. In this study, possession of methamphetamine represented 2.6% of all cases appearing for a revocation hearing. Combining all of the revocation cases in which the original offense was drug related offenses increased the percentage of those appearing for a revocation hearing on drug related offense from 19.5% to 29.5%. Table 12 illustrates this phenomenon.

**Drug Related Charges Representing < 2% of Total Cases**

**Table 22**

NOC	Offense description	# of cases	% of cases
00789	Under influence of controlled substance (c.s.)	12	0.9
02518	Using/being under influence of c.s.	27	1.9
02194	Sale of controlled substance	14	1.0
00767	Possession of marijuana	12	0.9
00750	Manufacturing controlled substance	2	0.1
00765	Possession of cocaine	11	0.8
00777	Trafficking controlled substance	14	1.0
02334	Conspiracy to manufacture/cultivate c.s.	3	.2
02515	Attempt possession of controlled substance	3	0.2
02599	Conspiracy to possess controlled substance	1	0.1
00773	Possession of Marijuana with intent to sale	2	0.1
00771	Possession of cocaine with intent to sale	12	0.9
00779	Trafficking cocaine	1	0.1
02346	Conspiracy to traffic controlled substance	2	0.1
09995	Attempt manufacturing or compounding c.s.	1	0.1
00740	Transport a controlled substance	5	0.4
007702	Possession of methamphetamine with intent to sale	5	0.4
02195	Conspiracy to violate uniform c.s. act	7	0.5
06873	Attempt possession of controlled substance	10	0.7
02701	Possession of cocaine	1	0.1

## **Limitations**

The data that was used in this study included numerous duplicate records. The original data set included 2,280 records. Upon sorting through the records the data set was reduced to 1406 records. In the process of narrowing down the records, eight records were lost. The lost records only represented 0.4 percent of the original cases and 0.6 percent of the final data set had the eight records been included. The lost records represented a miniscule percent of the data set both before and after sorting and had no significant impact on the findings.

Other limitations in the study include the fact that Hispanics were counted in the dataset as being White. The Division of Parole and Probation only use five race classifications; White, Black, Indian, Asian, and Unknown. Examining the influences that demographic variables and case information about felony probationers have upon recidivism among Whites, Blacks, and Hispanics separately is important because of differing opportunity structures for the various groups in the United States (Benedict et al., 1997). Past research has demonstrated that young, minority non-white, offenders have higher recidivism rates. The inclusion of Hispanics as White may negatively skew the outcomes for Whites. Recording Hispanics as Whites somewhat “hides” Hispanics in the probation system and makes it more difficult to identify their needs and tailor programs to meet those specific needs.

Past research indicates that younger offenders are more likely to commit new crimes. In examining the data, I observed several different birth years listed for the same case. As I mentioned earlier, duplicate case numbers could represent multiple defendants and therefore may explain the various birth years. However, in narrowing the dataset, the



cases that appeared multiple times with the same recommendation and outcome were counted as one case. The first case was included and the remaining cases were discarded. This method of narrowing the dataset could skew any age data.

This study did not examine the violation that resulted in the revocation process being initiated. One measure of probation effectiveness and or success according to Geerken and Hayes is the contribution of those on probation to the overall crime in a community. A revocation hearing and disposition does not necessarily mean that the offender has “contributed to the crime problem.” A revocation outcome does indicate that the probationer has contributed to the jail and/or prison population which probation is theoretically designed to help alleviate.

This study only analyzed recommendation and outcome of felony males. This study did not examine any other factors that have been demonstrated through previous research to impact probation outcomes such as: current probation crime, previous criminal history, age, and education.

### **Future Research**

The research that has been conducted on a national level such as that sponsored by the National Institute of Justice and the Bureau of Justice Statistics has not included the state of Nevada. I was unable to locate any published research on probation outcomes or recidivism in the State of Nevada. The failure to include the state of Nevada in probation research opens countless avenues for future research encompassing the areas that were covered in the literature review.

**APPENDICES**

**Probation Agreement**

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