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# Women's Justice Center Centro de Justicia Para Mujeres

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**Espanol** [www.justicewomen.com/handbook/probationsp.html](http://www.justicewomen.com/handbook/probationsp.html)  
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## Advocating for Victims of Violence Against Women in Departments of Probation and Parole

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## ~ Introduction ~

**If a perpetrator is on probation or parole for whatever crime, one of the best things you can do for a victim of violence against women is to connect her to the probation or parole officer assigned to the case, and explain what probation and parole officers can do for her.**



More than any other officials in the criminal justice system, probation and parole officers (POs) want to hear the full story and work on the big picture. They're on a case for the long haul - often for years - to monitor the abuser's behaviour, maximize rehabilitation, assure accountability, and to protect the safety of the victim and community. At their best, POs build relationships with all involved.

Despite the unique powers and resources POs have to offer victims of violence against women, they are so often unused and unknown to victims and advocates. This text aims to outline the many kinds of help probation and parole officers can give in supporting and protecting victims of violent crimes against women and children.

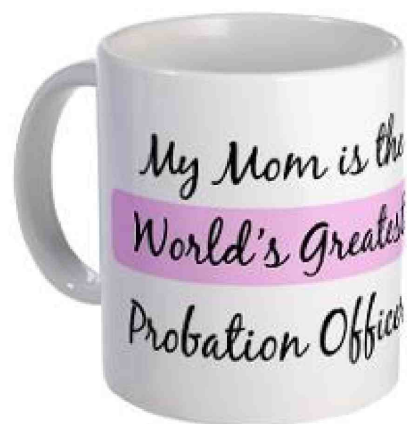
Probation and parole officers are law enforcement officials. They are the third pillar in the law enforcement trio of police, prosecutors, and POs. Though they have the power of arrest, their main function is to see beyond the details and remedy the full context of the crime; working with everything from the perpetrator's history to his future, to the impact of the crime on the victim, to the long term safety of victims and communities.

Like other criminal justice officials, some POs fall short of their mission ideal. But situated as they are, outside the adversarial battles of determining 'who exactly done what exactly', POs, in general, can be more open to listening and responding to victims' safety concerns. Connecting victims to the PO on her case, and explaining the powers and resources of these officials, can bring long term safety and well being to victims of violence against women, long after other law enforcement officials have moved on to the next case.

## 1. What it Means When an Individual is 'On Probation'.

When someone is on probation it means the individual has already been convicted of a crime. They have been sentenced to jail time, but the sentence has been suspended. The convicted person is instead allowed to be out in the community, 'on probation', as long as he or she abides by the terms and conditions of the probation.

The terms and conditions of probation can vary and are usually customized to the individual case. For violent crimes, the conditions of probation usually include bans on possessing firearms, and mandates against abuse, harassment, and often contact with the victim, in addition to mandates that the individual obey all laws, pay a fine, get counseling, drug testing, and do community service. The term of probation for violent offenders is usually from 1-5 years.



In domestic violence, sexual violence cases, stalking, human trafficking, and child abuse cases, state laws usually mandate even stricter terms and conditions of probation. You can find out mandated terms and conditions of probation for a given crime in your state by googleing "the crime, terms of probation, the state". For example you might google, "domestic violence terms of probation California".

And you would find that,

California Penal Code 1203.097 mandates the following terms and conditions for domestic violence offenders granted probation:

\* A Minimum three years on probation, an order not to harass or threaten the victim, pay a fine, do community service, attend a 52 week batterer's treatment program, and more.

In domestic violence and sex offenses, state laws also sometimes mandate that any violations of the terms and conditions must be reported to the court.

**Because a person on probation or parole has already been convicted of a crime, and already has a suspended jail or prison sentence hanging over their head, they can be arrested at any time for minimal violations, on a low standard of evidence, and be put in jail and held on a no-bail hold.**

This is one reason that POs can be very helpful to victims whose abusers are on probation or parole, whether for violence against the victim or for any other crime. The victim can report her problem with the abuser directly to the PO on the abuser's case. Reporting directly to a PO isn't necessarily the best way to report, but if police aren't responding properly, or if the abuse doesn't rise to the level of a crime, a PO may very well have the power and the will to arrest the abuser.

#### **NOTE: What is the difference between formal and informal probation?**

Depending on the legal requirements where you live, perpetrators of domestic and sexual violence may be put on formal or informal probation. Formal probation means the perpetrator is assigned a probation officer and monitored by that officer. This is the most effective form of probation, and all perpetrators of violent crimes should be given formal probation, though sometimes they are not.

Informal probation is probation that is monitored by the court. This is a much less effective, because the court has so many other competing obligations, and cannot give anywhere near the level of supervision and monitoring that can be done by a probation officer. Nonetheless, even if a perpetrator is on 'informal' probation, that individual must still meet the terms and conditions of their probation, and can be arrested and held on a no-bail hold for any violation of those terms and conditions.

## **2. What It Means When an Individual is 'On Parole'?**

When a person is 'on parole' it means the individual has been released early from a prison sentence. Instead of finishing their time in prison, the individual is allowed to be in the community under terms and conditions of parole which are much like the terms and conditions of probation.

Like a person on probation, a person who is on parole can be arrested for any violation of the conditions of their parole, and sent back to prison on a no-bail hold. Individuals on parole are assigned a parole officer to supervise and monitor the individual's compliance with the terms and conditions of parole, and to protect the safety of the victim and the community.

Parole officers differ from probation officers in that their function is pretty much limited to monitoring individuals who are on parole. We'll make note of where this difference affects victims as we go along.



### **3. Using Probation or Parole Officers Before the Perpetrator is Convicted**

Though most of a probation officer's work comes into play after a perpetrator has been convicted, there are a number of points where POs can be of help to a victim right from the start of a case. Here are three examples:

#### **a. In Determining or Denying Bail:**

In the early days after arrest, many defendants request a bail reduction hearing. In some of these cases,

usually depending on a judge's request, a probation officer is assigned to put together a quick overview study of the defendant's criminal history and the safety concerns of the victim and community. From that information the probation officer makes specific bail recommendations to the court. Both prosecutors and judges generally follow these PO recommendations in determining whether or not to set bail, the amount of bail, and in setting the terms and conditions of bail.

Right after a suspect's arrest, many victims have urgent concerns regarding the suspect's bail status. In addition, she often has valuable information relevant to bail decisions. She can express these concerns to the prosecutor on the case, or, if the suspect has requested a bail reduction hearing, she can call the probation officer assigned to prepare the bail recommendation. Or best, she can communicate her concerns to both the prosecutor and the probation officer.

But the person most likely to incorporate the victim's wishes and concerns is the probation officer. This is because the victim's statements and wishes serve to bolster the POs arguments and recommendations to the court. In addition, the probation officer is usually the easiest to get a hold of.

#### **b. When Abusers are on Probation or Parole for Other Crimes:**

Even before a victim reports the crime against her to police, many times the abuser is already on probation or parole for another crime. If that's the case, even if she is not the victim of that crime, there are benefits to her in almost every aspect of her current case.

But first, she has to know that the abuser is on probation or parole. Abusers are often able to hide this fact from a victim. So always double check. To find out if an individual is on probation or parole, and to find out the terms and conditions of that probation, simply call your local probation or parole department. This information is always available to the public. The district attorney's office should also be able to give you the same information.

Advantages for the victim if her abuser is already on probation or parole:

\* All officials in every part of the justice system -from police to prosecutors, advocates, family law

officials, child protective officials, to clerks - will be much more likely to treat a victim's case seriously if they know the suspect is already on probation or parole. So remind victims to always inform officials that the abuser is already on probation or parole. As her advocate, you, too, should make this fact known in any of your conversations with officials regarding the case. Don't assume officials are aware of this information.

\* If police know the abuser is on probation or parole, police can make an arrest on much less evidence than is needed if the abuser is not on probation or parole. So if you talk with a victim prior to her going to police, be sure and have her inform police that the abuser is on probation or parole. Don't assume police have this information when they respond to a call. They very often don't!

\* If an abuser is arrested when on probation or parole, the individual can be, and should be, held on a no-bail hold. A no-bail hold means exactly that, the individual is not eligible for bail.

\* If police or prosecutors aren't providing adequate response to your client, go directly to the perpetrator's probation or parole officer. Remember, POs can make arrests. And they are often much more responsive to a perpetrator's violations than police.

\* Because POs are more knowledgeable of an individual's record, they are often more willing to make an arrest when an abuser violates any of the conditions of probation or parole.

### **c. Answering Yours and the Victims' Questions**

In the course of their work, probation officers are in the courtrooms, on the streets, over at the jail, and working in tandem with victims, police, prosecutors, defence attorneys, advocates, child protective services, and more. They know the all players, and they have an insider's knowledge of how they function. Probation officers, more than any other official in the system, have a bird's eye view of the whole .

At the same time, because POs are not locked into the investigatory and prosecution vs. defence battles, they are generally much less guarded than other criminal justice officials. If you need good straight answers about any part of the system functions, ask a probation officer.

**NOTE:** Parole officers, because their jobs are more narrowly limited to monitoring individuals who are released early from a prison sentence, don't have as big a scope in the system as probation officers, but they can still be helpful in responding to victims' questions related to the prison system.

## **4. Using Probation Officers at the Sentencing Phase**

### **a. Victim Input on the pre-sentencing probation report**

Many victims want to have a say in how the perpetrator is punished. They are often informed that in felony cases they can make a 'victim impact statement' to the court on the day of sentencing.





What most victims and many advocates don't realize is that victim impact statements usually have no effect on the sentence the judge is about to deliver, for the simple reason that the sentencing decision has almost always already been made.

But there is a much more effective way for victims to put meaningful input on the sentencing. In the days after a defendant is found guilty, and usually a couple weeks before the sentencing, the case is usually assigned to a pre-sentencing probation officer. (This is done in almost all violent felonies, and in many violent misdemeanors.) It's this probation officer's job to pull together the big picture of the defendant's life and crimes, including the crime's impact on the victim, and then to make a recommended sentence to the judge. Judges usually closely follow the probation officer's recommendation in determining the sentence meted out to the defendant.

So the most effective way a victim can influence the sentencing is to communicate with the probation officer who has been assigned to do the pre-sentencing probation report. It's important that she does so as soon as possible after the defendant has been declared guilty, as these pre-sentencing reports and recommendations generally need to be wrapped up and delivered to the judge a week before the sentencing date.

Simply call the probation department and ask to speak to the probation officer assigned to do the pre-sentencing report in your client's case.

For more information on this process, see,

**Victim Impact Statements and Pre-Sentencing Probation Reports**

[http://www.justicewomen.org/handbook/part2\\_h.html](http://www.justicewomen.org/handbook/part2_h.html)

**b. Obtain a Copy of the Pre-Sentencing Probation Report right after sentencing.**

Obtaining a copy of the pre-sentencing probation report can be invaluable to the victim, both in making decisions about her future, and in dealing with any other disputes she may have with the perpetrator, such as regards custody, housing, financial, and other matters.

The pre-sentencing probation reports contain a wealth of information gathered by the probation officer in the course of that officer's investigation into the perpetrator's history, the perpetrator's attitude toward the crime, and the probation officer's evaluation of the perpetrator. These reports almost always contain information that the perpetrator has previously managed to keep hidden from the victim. It is also an official rendering of the perpetrator's criminal and life history which can be used by her when her own words may not be taken as seriously.

Pre-Sentencing reports are generally available to the public for a limited period of time following sentencing as defined by the state's law. In California, pre-sentencing reports are available to the public for a period of 60 days following sentencing, and then the reports are sealed.

At the very least, let victims know that these reports are available for her inspection.

## **5. Using Probation and Parole Officers After the Perpetrator has been Convicted**

**Once a perpetrator has been placed on probation or parole, this is where the long term work of a probation or parole officer begins.**

**a. Victims should have the name and contact number of the probation or parole officer on the perpetrator's case. They should have a copy of the terms and conditions of the perpetrator's probation or parole. And they should be informed of what these officers can**

**do for her.**

Under the standards of practice for today's probation and parole officers, it really is the officers who should reach out and make contact with the victim. But that doesn't always happen. So, if the victim hasn't been contacted by the probation or parole officer soon after the perpetrator is sentenced, or soon after release from prison in the case of parole, have the victim call the officer, introduce herself, and make her wishes and concerns known to the officer.

Many victims of violence against women have successfully kept the abuser's behavior in check by being willing to call the abuser's probation or parole officer at the first sign of trouble. Sometimes all it takes is for the PO to contact the abuser and remind him, in no uncertain terms, that he can be sent back to jail or prison in a heartbeat.

Given that the probation or parole officer is likely monitoring the abuser for long periods of time, usually years, you can see how valuable this person can be for victims.

Keep in mind, that anyone, not just the victim, can call the abuser's probation or parole officer to report problems with the individual.

The victim should also obtain a copy of the terms and conditions of an individual's probation or parole. These are available to the public for the asking. As usual, in order to obtain this information, you'll need the name and usually the date of birth of the perpetrator.

**b. When an abuser is on probation or parole, always give this information whenever dealing with any other law enforcement officers, cps officials, family court officials, and to anyone else with whom the victim is dealing regarding her case.**

**c. Make sure the victim understands that while on probation or parole, the abuser can be arrested for simply violating the conditions of probation or parole, even if that violation does not constitute a crime.**

**Remember, number one, that when arrested, a person on probation or parole, can, and should, be held on a no-bail-hold. If the abuser is arrested, and for whatever oversight, is not being held on a no-bail-hold, both the district attorney and the probation or parole officer should be notified immediately. Remember, too, that the probation and parole officers have the power to arrest.**

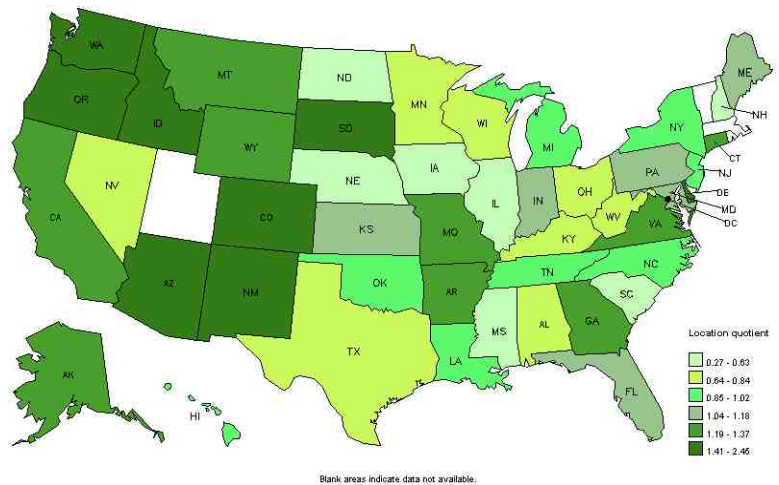
d. When an abuser violates the terms of probation or parole, the victim can either call the probation officer, or she can call the police. The only general rule would be that if the violation is a new crime, it is probably best if she calls the police. If the violation doesn't constitute a crime, or if she isn't getting a good response from police, she will likely do best if she calls the probation or parole officer.

## **6. Violation of Probation Hearings/Violation of Parole Hearings**

**When an individual is believed to have violated any of the conditions of their probation or parole, they can be arrested and ordered to appear at a violation of probation or violation of parole hearing.**

The purpose of the violation of probation or violation of parole hearing is to determine if, in fact,

Location quotient of probation officers and correctional treatment specialists by state, May 2010



the individual did or didn't violate the terms and conditions of their probation or parole.

A violation of probation or parole hearing is like a mini-criminal trial. However, there's one very significant difference. A criminal trial requires the highest standard of evidence for proof to convict. A violation of probation or parole hearing only requires the preponderance of evidence for proof, the lowest standard of evidence. This means that the district attorney and probation officer only have to prove that it's 'more likely than not' that the individual violated.

Victims are usually not called to testify in these hearings, though there is always that possibility.

If the individual is found to have violated the conditions of probation or parole, the judge has a number of options. The judge can remand the individual to jail or prison to fill out the the sentence that was suspended.

(Remember, a person on probation or parole has already been convicted and sentenced to incarceration time.) Or, the judge can issue a fine, or extend the period of probation.

The latter options lead to one of the most common and dangerous injustices for victims of violence against women, as you'll see in the following.



## **7. BEWARE of THIS! What to Watch Out For When an Individual on Probation or Parole Commits a New Crime**

When a person is on probation and commits a new criminal offense, the district attorney has the choice of filing the case as a new criminal charge, as a violation of probation, or as both. Unfortunately, in too many of such cases, the district attorney chooses to file the case as a violation of probation only, and fails to file any new criminal charges. This decision is often unjust and frequently poses great danger to the victims. It often results in the absurd outcome that the defendant gets off easier for his second violent offense than he did for his first offense, as you'll see in the example a couple paragraphs down.

Whenever a district attorney decides to treat a crime of violence against women as a simple violation of probation, you should examine the situation carefully. (The same is true when a violence against women case is treated as a violation of parole.)

**If there is enough evidence to file new criminal charges against the defendant, the district attorney should always do so!** Do not let the district attorney file your case as a simple violation of probation, unless a) no crime was committed, or b) there truly is not enough evidence to support a criminal charge.

Here's just one true life story of how this decision can lead directly to the woman's murder.

**Example:** Jason was convicted of misdemeanor domestic violence against Jenna. The judge sentenced Jason to one year in jail, suspended the sentence, and ordered that Jason be on probation for three years. This is a typical sentencing for a first time misdemeanor domestic violence conviction in California.

While on probation Jason was arrested again for domestic violence against Jenna. This time the police arrested and booked Jason on three domestic violence felonies. There



was more than enough evidence in this new case for the district attorney to now file three felony criminal charges. Given that Jason's violence was obviously escalating, and especially that he was escalating while on probation, it was urgent that Jenna's safety be treated seriously, and that Jason be fully held to account.



What happened next is where Jenna's life was treated as a joke. Instead of filing new criminal charges, the district attorney filed the case as a violation of probation. This decision saves the district attorney all the work of having to prove a new criminal case. A violation of probation (VOP) hearing is a much less formal affair than a criminal proceeding, and it requires a much lower standard of proof. After joking around for a few minutes in the VOP hearing, as can be seen in the transcript of this case, the judge let Jason out on bail, and extended his probation by a few months. That was the sum total consequence of Jason's escalating violence against Jenna. Within days, Jason found Jenna and shot her to death.

**Unfortunately, this is a true story, and it is not an isolated story. It is all too common when perpetrators commit a new crime while on probation or parole, for the district attorney to file the case as a simple violation of probation or parole.**

**Here are a couple things that should help you understand why charging domestic or sexual violence solely as a violation of probation is so unjust and dangerous:**

\*\* A violation of probation charge is not a criminal charge. Violation of probation hearings are not criminal proceedings. Unlike a criminal proceeding, violation of probation hearings are very informal and non-rigorous. The standard of evidence in a violation of probation hearing is the lowest standard of evidence, the 'preponderance of evidence' standard. Under this standard the prosecutor only needs to show that it's 'more likely than not' that the offense was committed. This is a far cry from the 'beyond a reasonable doubt' standard required for proof in a criminal proceeding. This is the main reason many district attorneys choose to file a violation of probation only, rather than to file a new criminal charge. It saves them a heap of work. But read on to see what this costs in terms of the safety of the victim and the community.

\*\* At the conclusion of a violation of probation hearing, if the defendant has been found to have violated probation, even if that violation was a new criminal offense, the defendant cannot be sentenced to a new jail term - because he has not been convicted of a new crime. To be sure, the judge has the option of remanding the defendant to jail to serve out the sentence that had been previously suspended. But what so often makes matters worse is that even when the violation was an act of violence against women, judges rarely even reinstate the suspended sentence, and the district attorney at these hearings rarely fights back. What is most common is that the judges give the perpetrator a lecture and merely extend the probationary period by a few months.

In addition, no matter how serious the new offense, the perpetrator's criminal record does not indicate the nature of the new criminal offense. The record will only indicate that there has been a violation of probation. It is not uncommon for perpetrators of violence against women to be dangerously escalating their violence, while the record only shows repeated

violations of probation. Anyone looking at the public criminal record cannot tell whether the defendant violated probation for jaywalking or for holding a knife to his girlfriend's throat.

\*\* So you can see the terrible injustice that is done. A perpetrator commits a second offense of domestic violence while already on probation for a first offense, and ends up getting a lighter consequence for the second offense.

Not surprisingly the defendant is likely to see it all as a big joke. The second time he beats his wife is treated less seriously than the first time, and it doesn't even show on his record. Amazingly, this sequence can sometimes go on for offense after offense after offense. It's as if in reward for his first conviction for domestic violence, the system now gives him a kind of immunity to keep on committing domestic violence without serious consequence.



In sum, if someone is arrested for a new criminal act while on probation, especially for a crime of violence, the district attorney should charge that person with a new criminal charge (assuming, of course, there is sufficient evidence), as well as handling the case as a violation of probation. If the district attorney files the case solely as a violation of probation, you should protest to get this corrected, for the sake of the victim, the community, and justice.

**NOTE: Violation of Parole.** Probation and parole are similar in that a person on probation or a person on parole have both been convicted of a crime. Probation, however, refers to someone who has been convicted (of a misdemeanor or felony) and has been sentenced to the county jail. This usually means a sentence of one year or less. If someone is on parole it generally means that they have been convicted of a felony, been sentenced to prison, served some of that sentence, and then been let out early on the conditions of parole.

If someone commits a new crime while on parole, the district attorney, similar to the probation situation, has the option of filing new criminal charges or of turning the defendant over to the parole agent for a parole hearing similar to a probation hearing. If found guilty of the parole violation, the defendant, at worst, has to fill out the sentence on the original conviction.

## **8. What to Do When a Victim isn't Getting a Proper Response from a Probation or Parole Officer.**

When victims aren't getting proper and prompt response from probation or parole officers it's critical that you and she respond immediately. Probation and parole officers should stay in regular contact with victims, return calls promptly, and always be attentive and concerned about victim safety. And they must take immediate action to protect a victim's safety.

When a probation or parole officers fails to fulfill these basic obligations, you and the victim shouldn't delay in getting the situation corrected. You don't have to follow these steps in order. The important point is don't stop until the victim gets the help she needs.

- A. Call the officer's supervisor,
- B. Call the head of the department.
- C. Meet with the officer's supervisor or with the head of the department.



See, Face to Face Meetings with Authorities  
<http://www.justicewomen.org/handbook/part3.html#meetings>

D. Write a letter to the head of the department

See, How to Write an Effective Letter to Make the System Work for You  
[http://www.justicewomen.org/handbook/part3\\_write.html](http://www.justicewomen.org/handbook/part3_write.html)

E. Go to the police, or to the District Attorney.

## 8. Resources

**\*\* Community Corrections Response to Domestic Violence, Guidelines for Practice**  
<http://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>

**\*\* Domestic Violence and Probation**  
<http://www.mincava.umn.edu/documents/bwjp/probationv/probationv.html>

**\*\* Speak Out! Domestic Violence, A Probation Officer's View**  
<http://www.appa-net.org/dv/docs/sp99appa18.pdf>

**\*\* Community Treatment and Supervision of Sex Offenders, How it's Done in California and Across the Country**  
<http://www.library.ca.gov/crb/04/12/04-012.pdf>

**\*\* American Probation and Parole Officers' Association, Public Hearing on Victim Issues in Probation and Parole**  
<http://www.appa-net.org/eweb/docs/APPA/pubs/PHVIPRR.pdf>

**\*\* Responding to Stalking, A Guide for Community Corrections Officers**  
<http://www.appa-net.org/eweb/docs/appa/pubs/RSGCCO.pdf>

**\*\* Probation Supervision of Domestic Violence Offenders**  
[http://www.cwlc.org/m/2011/02/Chapter\\_Seven.pdf](http://www.cwlc.org/m/2011/02/Chapter_Seven.pdf)

**\*\* Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges**  
<http://www.nij.gov/nij/topics/crime/intimate-partner-violence/practical-implications-research/ch6/toc.htm>

**\*\* DA's report slams Garrido's supervision**  
<http://www.mtdemocrat.com/online-features/garrido-case/das-report-slams-garridos-supervision/>

**\*\* Jaycee Dugard Case Findings - full report**  
<http://documents.latimes.com/garrido-dugard-case-findings/>

**\*\* Probation Officer Requirements and Training Information**  
[http://education-portal.com/probation\\_officer\\_requirements.html](http://education-portal.com/probation_officer_requirements.html)

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