

## **A legacy of lax oversight and dubious claims**

**The troubles at the state Probation Department go way beyond patronage. Key programs have gone astray, with bloated budgets and indifferent management; caseload reports are wildly exaggerated; and a culture of secrecy has enveloped it all.**

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*This story was reported and written by the Globe Spotlight Team, reporters Scott Allen, Marcella Bombardieri, Andrea Estes, and editor Thomas Farragher.*

The prosecutor's report is chilling: A convicted rapist — just out of prison and still on probation — forced his way into a Framingham woman's home and tormented her for more than two hours in February, repeatedly raping her, then forcing her to bring him beer and drive him to an ATM.

All the while, an electronic device on William D. French's ankle was sending a signal to the Probation Department's 24-hour monitoring centers in Boston and Clinton, where six staff members could track his every movement on their computer screens. The device couldn't tell them what French was allegedly doing, but even when he triggered an alarm by cutting off the bracelet, probation employees didn't call police. Instead, they faxed an arrest warrant containing no information about French's location.

It took another three hours before the victim, bloodied after yet another assault, escaped from her captor and screamed until a neighbor notified police.

Ankle bracelets were supposed to make Massachusetts safer, at least that's what Probation Commissioner John J. "Jack" O'Brien and his legislative allies argued as they built one of the biggest, most expensive monitoring systems in the country.

"We are extremely proud of the heightened public safety which has resulted from the implementation of these electronic monitoring programs," O'Brien declared in December, adding that the monitors save the state millions by allowing people to remain free rather than in a cell.

But, like much of O'Brien's work during his 12-year tenure at the Probation Department, his claim for the benefits of electronic monitoring collides with the facts. The program, in fact, is an emblem for the many ways the department has been mismanaged under O'Brien, the Spotlight

Team has found.

If electronic monitoring hadn't been available, French might have been jailed two days before the alleged assault when he violated probation by testing positive for marijuana. But probation persuaded a judge to let him remain free if he wore a bracelet.

Nearly 1,000 criminals and suspects wearing ankle monitors are hit with arrest warrants in a typical year, probation data show, but the agency has only recently taken small steps to measure the risk to the public from the people in the program. They don't even track how many go back to prison for crimes committed while wearing a bracelet.

Any claim that electronic surveillance saves money is undercut by the fact that probation has hired more employees to provide the service — 59 — than any other state, a Spotlight Team survey shows. Many of them are politically connected job holders, including the godson of House Speaker Robert A. DeLeo and the wife of DeLeo's deputy, State Representative Thomas M. Petrolati.

O'Brien's Probation Department is relentlessly focused on creating jobs and filling them with his preferred candidates, but he doesn't take routine steps to make sure programs are worthwhile and money is spent wisely. His department significantly exaggerates its workload, giving legislative allies ammunition to increase his budget. Meanwhile, the \$19.5 million network of rehabilitation centers that is his signature initiative at the Probation Department is regarded as an empty shell by many of the judges and others who are expected to send troubled offenders to them.

In short, the agency has gone from one of the most respected in the nation to one whose practices mystify and chagrin many national probation specialists.

Exaggerated numbers and outdated techniques

Chief Justice Margaret H. Marshall and Judge Robert A. Mulligan, the trial court's chief justice for administration and management, suspended O'Brien from his \$130,000-a-year job on May 24, the day after a Spotlight report documented that he had hired or promoted at least 250 friends, relatives, and supporters of politicians and court officials.

The Globe investigation found that probation employees routinely give campaign contributions to top legislators such as DeLeo and Petrolati in hopes of winning promotions. Once hired, politically connected employees often go unpunished for poor performance, even for serious breaches such as leaking police information to criminals or simply not showing up for work.

Now, as an investigator appointed by the Supreme Judicial Court looks into potential wrongdoing by O'Brien, the acting probation administrator, Ronald P. Corbett Jr., must confront the enormous damage done to the operation and reputation of an agency that is supposed to keep the public safe from tens of thousands of criminals serving their sentences in the community.

During its investigation, the Spotlight Team found no shortage of hard-working probation staff members who do vital, often unheralded work and want to do the right thing. But the department's best are up against a culture of cronyism and exaggerated claims that casts doubt

on how probation performs its most basic functions.

For example:

- The Probation Department overstates its reported workload — perhaps by a factor of four, the Spotlight review found, creating the false impression in statistics published nationally that Massachusetts has one of the busiest probation departments in the country.

O'Brien contends that his probation officers supervise a staggering 167 probationers each, but the figure includes minor, administrative cases that his predecessors didn't bother to include because they require such trivial oversight. O'Brien further inflated the number by counting all cases for the year rather than at a particular time, the way other departments do.

Once the minor cases and questionable accounting practices are swept away, probation officers typically supervise, at any given time, about 40 criminals who present a potential risk to the public, based on a Spotlight Team review of monthly reports by probation offices at 84 district and superior courts. That's well below the national standard of 50 cases per officer recommended by the American Probation and Parole Association. The real caseload is probably even smaller, since probation offices tend to overstate their workloads compared with computerized court records, acting administrator Corbett has found.

And the workload is very unevenly distributed — another sign of lax management. Some probation offices report that their officers supervise nearly 100 major cases each, while officers in other courts handle 20 cases or fewer. As a result, Corbett said, one of his priorities will be to spread the work more evenly.

“The data from the Probation Department . . . lacks credibility,” said Len Engel, managing associate for policy at the Crime and Justice Institute, part of the Boston-based nonprofit Community Resources for Justice.

- The Massachusetts Probation Department, once a national leader, now relies on outdated techniques, including a 1980s-vintage questionnaire to determine which probationers are most dangerous. The survey results in too much supervision for most probationers and too little for those most likely to commit more crimes, specialists say.

At least two-thirds of probationers who take the eight-question survey are labeled “maximum” threats who have to check in twice monthly with their probation officers, according to agency records. That's more than triple the 15 percent to 20 percent that modern, scientifically tested screenings generally identify as high risk.

With so many “maximum” risk cases to manage, probation officers spend an average of only 2.75 hours per month on each one, according to probation documents. Other states allow four to five hours a month to manage more difficult cases, according to a 2007 court consultant's report.

Corbett told the Globe he wants the questionnaire to be replaced by a more accurate screening

method.

■ One of O'Brien's proudest achievements — a statewide network of rehabilitation centers where offenders go for drug testing, counseling, and other services — is increasingly shunned by the public safety officials who are supposed to send probationers, parolees, and inmates for treatment.

Referrals to each of the Office of Community Corrections centers — there are currently 25 of them — chiefly by judges and county sheriffs, dropped an average of 19 percent in three years. During that time, the average center's budget grew by 24 percent.

Many judges, law enforcement officials, and staff members say that the underlying concept behind the community centers is sound, but that their rigid regulations and often lackluster antidrug and education programs can be counterproductive for clients. Community service field work managed by the community corrections staff often amounts to little more than half-hearted litter pickup patrols and idle time, based on direct observation by Globe reporters. The nearly 50 van drivers who shuttle probationers to those community service jobs earn full-time salaries for work that on many days takes them five to six hours.

Middlesex Sheriff James V. DiPaola argues that inflexible and indifferent management undermines the centers' effectiveness.

“There was a sense of never wanting to sit down and . . . try to make the program better,” said DiPaola, who has fought with Probation Department officials about the program. “To them it was all just, ‘We have good jobs, good pay. Let’s get through the week.’ ”

■ The Probation Department's penchant for secrecy about its operations has seriously undermined efforts by everyone from judges to county sheriffs to coordinate oversight of hundreds of thousands of men and women in the state court and prison systems.

When public safety leaders — judges, prosecutors, police, and community activists — gather to chart strategy, discuss common goals, or exchange information, the Probation Department, they say, is usually represented by an empty chair at the table.

“I have no idea what he looks like,” said Lael Chester, executive director of Citizens for Juvenile Justice, a statewide advocacy group, referring to O'Brien. “Everyone else is at conferences, hearings,” but not probation.

Corrections Commissioner Harold W. Clarke, whose prisons release people to probation and collect them again if they don't follow the rules, said he has met O'Brien only once in 2 1/2 years and has never had a substantive discussion with him. Clarke said that, when he first took office, he went to O'Brien's office for a meeting. Upon arrival, he found out the session had been canceled.

“I don't think I've spoken to him since,” Clarke said.

Under O'Brien, the Probation Department now releases less information about its work than almost any other state's probation agency, based on federal statistics. Its annual statistical report is confined to a single page.

"I do a lot of work around the country and no one knows anything about what they're doing in Massachusetts," said Edward J. Latessa, director of the School of Criminal Justice at the University of Cincinnati. "They're not even on the radar screen."

Dubious workload claims help boost the budget

Eastern Hampshire District Court in Belchertown is a sleepy place that had only two probation officers on staff when O'Brien took office in 1998. But, by the new math of O'Brien's Probation Department, Belchertown has become one of the busiest courts in Massachusetts, busier than the courts in Springfield, Worcester, or even Boston, by one key measure.

The probation office, located in a town with fewer than 15,000 residents in the legislative district of Representative Petrolati, reports handling more "conditional release" probationers than any other office in the state. Nearly 900 of these offenders, mainly convicted of minor crimes such as underage drinking, troop through the Belchertown office each month, signing papers that commit them to pay fines or perform community service, the Probation Department reports. That's 10 times more than in Boston Municipal Court.

These extraordinary numbers help explain why the probation staff in Belchertown has swelled from two to 11 under O'Brien, providing jobs for the husband of Petrolati's chief aide, Petrolati's former aide, and four of his financial backers. Applying the formula O'Brien uses to calculate staff needs, the Belchertown office still needs nine more probation officers to handle all the work chief probation officer Robert Ryan reports.

Yet, one court official there, who asked not to be identified out of fear of retribution, told the Spotlight Team that probation work in Belchertown is like "semiretirement . . . You can really do the job standing on your head."

Ryan, husband of Petrolati aide Colleen Ryan, didn't respond to a written request to explain his workload reports, but he's not the only chief whose reports include implausibly large workload claims. The second-busiest court for conditional release offenders, according to probation, is located in Dudley, a tiny Central Massachusetts town where the probation staff doubled under O'Brien.

Most probation offices are more accurate in their reporting than Belchertown, but acting administrator Corbett has found that district court probation offices collectively claim a higher workload than court computer records show. And that tendency to overstate has contributed to the impression, at least on paper, that the state has been overrun by a tidal wave of crime.

In O'Brien's first year on the job, 1998, the agency reported supervising 61,621 people. A decade after O'Brien's arrival, the probation population had reached 256,952 — more than four times more.

But there was no crime wave: The number of people arraigned on criminal charges of all kinds remained about the same the whole time.

Instead, O'Brien and his staff rewrote the way the Probation Department tallies its work, adding categories his predecessors thought were too trivial to count. They began listing every person who had even minimal contact with probation during the entire year — and sometimes listed them twice, according to a recent state audit.

By 2008, Massachusetts had the third-largest percentage of its residents on probation in the country, according to Justice Department statistics.

“It’s difficult to understand that number,” said Donald V. Giancioppo, state Parole Board director, referring to the claimed caseload. “It doesn’t exactly make a lot of sense based on the demographics.”

Probation’s dubious workload claims have political implications, too, giving legislators justification to dole out more money to the department at a time when crime rates are stagnant. The Legislature has overridden gubernatorial vetoes of probation budgets nine times since 2000, often portraying the department as overworked and understaffed.

“I spoke with the chief probation officer in Wrentham,” declared State Senator James E. Timilty, a Walpole Democrat, according to a transcript of a 2008 override debate. “They are at 1970s levels of staffing. In the city of Attleboro, we have people in the hallway. That’s a microcosm of the entire state.”

In fact, the district courts in both communities have below average workloads compared with national standards, based on their monthly reports.

With such enthusiastic legislative backing, the Probation Department’s state funding rose by 163 percent from 1998 to 2008, according to a study in December by the Crime and Justice Institute, a period in which budgets for prisons, sheriff’s offices, and other public safety agencies grew by no more than 20 percent.

O'Brien disputes that report, and says his agency got an 11 percent budget cut during the fiscal crisis of 2010, a reduction similar to other public safety agencies’.

The Probation Department conducts business like an agency with ample funding, however: O'Brien has not applied for any federal funding in five years — such as the \$29 million the Obama administration recently handed out to hire more probation officers nationally.

Program expands, without proving its worth

The Community Corrections Center in Lynn didn’t help Michael P. Conway get clean the first time, or the third time for that matter. And the probation-run agency certainly didn’t help the union carpenter the fifth time, by his count, he went through the regimen of drug abuse education and random testing.

The teachers, he says, demanded nothing more than attendance. They played dated just-say-no-style videos, he recalls, handed out perfunctory worksheets listing the 12 steps of Alcoholics Anonymous, and left plenty of unstructured time for the men to swap burglary tips.

After each stint, Conway went back to drinking, using cocaine, and committing petty crimes. The 35-year-old knows it's his own fault above all, but he did yearn to stop abusing his body and letting down his young daughter.

Conway finally landed back in jail, where a more-inspiring drug treatment approach clicked. He is now in a halfway house and hopeful he can stay sober.

"It's sad you have to come to jail" to get help, Conway said.

That's exactly what probation's sprawling network of Community Corrections Centers — which O'Brien ran before being promoted to probation commissioner — is supposed to prevent, by offering an alternative to prison for more than 4,000 offenders every year who could become law-abiding members of society with some extra help and oversight.

"It is a better way of managing our citizens that have gone astray," said Stephen V. Price, executive director. The state saves money "by not incarcerating people and keeping them connected to the community."

But, for many years, the Probation Department has not studied whether the centers accomplish their mission by diverting those wayward citizens from the path of lawbreaking that leads back to prison. Officials say a new review is ongoing. The only data available on how offenders do after they leave the centers are from an eight-year-old study by the Massachusetts Sentencing Commission showing offenders were slightly *more* likely to get in trouble within a year of entering the program than were people released from jail.

"That's a stunning number," said Engel, the Crime and Justice Institute analyst, of the 52 percent in the study who reoffended. "There's a huge problem going on. You're not targeting their needs."

Many of the corrections officials, defense attorneys, and probation officers who can recommend offenders for the program agree. Even as the Probation Department continued to open new centers, the total number of participants across the state fell. And referrals per center dropped from an average of 205 in 2006 to only 166 in 2009. Referrals to each center from sheriffs, who can send inmates to prepare them for release, fell by nearly half between 2006 and 2009.

The Probation Department's leadership has voiced dissatisfaction about low participation for years, heavily lobbying probation officers and judges to refer more people to the centers.

Dianne Boland, the probation officer in charge at the Northampton center, believes pressure to fill seats drives the program to accept many people who are poorly served there, including those who need detox before they can function in the classroom and others whose mental illness is far

beyond what the staff is trained to handle. She said the numerous people who cycle through three or four times are more likely to disrupt class out of boredom than to learn anything new.

“We’re forgetting that we’re working with people and not just numbers,” said Boland, who has been in the job for 11 years and emphasized that she believes in the mission.

At their best, Community Corrections Centers offer hope to some of society’s most fragile people. When the Spotlight Team visited a GED preparation class in Lawrence — the sole hour of observation the Probation Department allowed — an earnest teacher admonished a handful of attentive young men about the importance of reading daily, telling them, “If you read one page it’s better than nothing.”

But the program’s critics say the long hours the centers can require — up to 36 a week — can prevent participants from holding a job. Strict attendance is difficult for a population of people who often have suspended licenses and no car. Missing classes can land a participant in jail.

“If you have a job, you have to compromise your job to get to the program, and nobody over there will adapt to helping you get stable,” said James A. Dauphine, director of programs at the Ella J. Baker House in Dorchester.

Price and his deputy, Pat Horne, said critics don’t understand the centers are designed only for serious cases where a person may not be able to handle a job until they’ve confronted their addiction. They say that someone like Conway may need repetition to get the message and that they don’t accept participants too ill to benefit.

Perhaps the part of Community Corrections most familiar to the public is the sight of orange-vested litter patrols by the side of highways. The Probation Department sends out more than 300 van loads of offenders each week for four-hour stints of trash pickup, shoveling, raking, and other court-ordered community service.

But several staff members say the program accomplishes a fraction of what it could, because many managers have a languid attitude about finding enough worksites to keep busy and crew supervisors struggle to compel sullen probationers to apply themselves. So they find ways to pass the hours — driving slowly on back roads and taking their time handing out equipment, three of them told the Spotlight Team. Because most of the crews are scheduled for mornings, on many days the four-hour shift, a short drive to and from the pickup location, and a couple pages of paperwork can leave the staff members with hours of empty time. They earn between \$44,000 and \$55,000 a year.

“They care about how many people come out per day,” said Anthony Giampa, who oversaw work crews until he retired earlier this year. “They don’t care what they do.”

Funding allows O’Brien to expand his reach, staff

It was the shocking case of Michael Bizanowicz that convinced almost everyone on Beacon Hill that sex offenders should be forced to wear electronic monitoring bracelets after their release from prison. The convicted child rapist, who had not properly registered with the state’s sex

offender registry, raped and murdered a young mother in her Woburn home in 2004. Bizanowicz then killed her 12-year-old daughter, too.

Out of that tragedy came the new legislative resolve — and also an opportunity for O'Brien to expand the reach of his department. Originally, the state Parole Board, which oversees convicts when they are released early from prison, had been tapped to run the monitoring program. A budget amendment in late April 2004 said parole would be in charge of the \$1 million pilot.

Days later, the money was earmarked instead for probation, where O'Brien, a former legislative liaison, has cultivated close ties with top legislators. The legislative record leaves murky who orchestrated the funding switch, but the end result was clear: a hiring bonanza for O'Brien's department.

O'Brien created three monitoring centers, even though much larger states such as Michigan get by with only one. Probation officials explained that having computer centers in Springfield, Boston, and Clinton allowed them to divide the state into regions, but because people at the monitoring center generally don't work outside the office, they have little need to be near the people they're watching.

"Whether the computer is in the next room or in Hawaii, it doesn't make a difference," said Peggy Conway, editor of the New Jersey-based *Journal of Offender Monitoring*.

But three monitoring centers meant more jobs, a total of 54 people at the centers and five probation officers who strap on and remove the bracelets — more than any other state. Most of the jobs were handed out on an "acting" basis without a formal candidate search, and at least 18 went to people with political connections such as Eugene Irwin, the nephew of the judge who appointed O'Brien commissioner, and Mindy Burke, daughter of O'Brien's recently retired deputy, who rose from secretary to program manager in Springfield, making \$69,534. The wife of Representative Petrolati, Kathleen, is her boss. She makes \$93,021.

Conway said Massachusetts' staff seemed much larger than necessary, contending that six staff members can adequately monitor 1,000 offenders. By that standard, Massachusetts, with 1,750 bracelets, would need nine or 10 staff members, not 59. Most states don't have any staff at all, hiring private companies to provide monitoring services at lower cost, a *Globe* review found.

But Paul Lucci, the deputy probation commissioner who runs the program, said it works well precisely because the department's own employees do the work and act promptly when a violation occurs.

"The teeth of the program is we do our own monitoring," said Lucci. "The response is immediate. When a private vendor does it, I know of some situations where the probation officers are notified via fax, and if it's on a weekend, it's not until Monday morning."

The French case, however, casts doubt on Lucci's claim: Though six people were on duty at probation monitoring centers in Boston and Clinton on the night that he tore off his bracelet, no one talked directly to the Framingham police about the dangerous fugitive. Instead, they

followed probation policy and faxed an arrest warrant that did not tell police French's last known location. As a result, police had no inkling where French was until a neighbor called police.

Probation officials declined to discuss details of the French case, but confirmed they have changed policy to require future arrest warrants to include the last known location of the probationer.

Middlesex District Attorney Gerard T. Leone Jr., whose office is prosecuting French, said that once he failed the drug test, French should have been sent back to jail. Probation did not consult with him on the case.

"Anytime a known sex offender is shown to be engaging in activity that lowers their inhibitions, against the probation terms set by the court, incarceration should be the remedy," Leone said in a written statement.

Probation officials only recently began evaluating the effectiveness of electronic monitoring, finding in March that sex offenders seemed somewhat less likely to commit new crimes when wearing an ankle bracelet. However, agency officials agree that they need to conduct a more thorough study before drawing conclusions.

But even monitoring supporters acknowledge that surveillance doesn't prevent crime: Probation issued 963 arrest warrants for people wearing bracelets last year for violations ranging from removing the bracelet to drug and alcohol abuse to crimes such as the ones French allegedly committed. That doesn't count arrests made by police without a warrant from probation.

Surveillance doesn't prevent escape either. Currently, eight electronic monitoring subjects are missing, including Eder DaCruz of Framingham, who is accused of trying to strangle his girlfriend and throwing a TV at her head.

But such shortcomings in the program rarely surface during debate in the Legislature, where support for electronic monitoring is so strong that lawmakers have consistently overridden vetoes by Governor Deval Patrick to keep money flowing to the program even during last year's fiscal crisis. The program's budget has soared 500 percent — to \$6 million — since 2005.

"Somehow probation is the be all and end all," said State Representative John Rogers, a Norwood Democrat who challenged DeLeo for the speakership and who was among the few legislators to vote against a 2009 override that restored probation funding. "It's a sacred cow."

But one senior probation official who asked not to be identified said there's no mystery why the Legislature has lined up so consistently behind O'Brien.

"It's patronage," he said. "I'll bet an arm or a leg that everyone in the Legislature has someone in there . . . This program that they put out there was all about jobs."

*The Globe Spotlight Team would like to hear from readers with tips about the state's Probation Department. The telephone number is 617-929-3208. Confidential messages can also be left at*

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