

Policy Reforms Can Strengthen Community Supervision

A framework to improve probation and parole

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The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.

Overview

Since 1980, the nation's community supervision population has ballooned by almost 240 percent. As of 2016, 1 in 55 U.S. adults (nearly 4.5 million people) are on probation or parole, more than twice the number incarcerated in state and federal prisons and local jails. Historically, probation and parole were intended to provide a less punitive, more constructive alternative to incarceration, but a growing body of evidence suggests that a frequent emphasis on surveillance and monitoring of people under supervision rather than on promoting their success, along with the resource demands of ever-larger caseloads, has transformed community supervision into a primary driver of incarceration. This shift has produced an array of troubling consequences, not only for individuals on probation and parole but for taxpayers and communities as well.

In recent years, a growing body of evidence on what works in community supervision has revealed a set of key challenges that undermine the system's effectiveness and merit attention from policymakers:

- **Community supervision is a leading driver of incarceration.** Probation and parole are intended to be alternatives to incarceration. However, people who failed on supervision account for a significant percentage of prison and jail admissions. According to the Council of State Governments, nearly 25 percent of all state prison admissions in 2017 were associated with technical violations of supervision, such as breaking rules or failing drug tests, and an additional 20 percent were the result of new crimes committed while on probation or parole.
- **Excessive rules can present barriers to successful completion of supervision.** Requirements, such as frequent reporting, ongoing and random drug testing, curfews, electronic monitoring, and the payment of fines and fees, make it difficult for many people on probation and parole to keep a job, maintain stable housing, participate in drug or mental health treatment, or fulfill financial obligations, such as child support.
- **Agencies often inappropriately supervise low-risk individuals.** Research indicates that subjecting low-risk individuals to intensive supervision or treatment leads to worse outcomes than no intervention and that adhering instead to a lighter-touch approach for this population does not result in increased arrests or diminish public safety. Nevertheless, many people who pose a low risk of reoffending or have been convicted of minor crimes continue to undergo inappropriate supervision. This drives up costs and runs counter to what the evidence recommends.
- **Overextended supervision officers have less time to devote to high-risk, high-need individuals.** As caseloads grow, many agencies struggle to prioritize supervision and services for individuals at a high risk of reoffending as well as those with significant needs related to substance misuse, housing instability, or financial insecurity. As a result, probation and parole officers often lack sufficient resources to promote success for the people who are most likely to fail on supervision.
- **Many people with substance use or mental health disorders do not receive treatment.** Studies show that a large proportion of people on community supervision struggle with alcohol or other drug dependence, a problem compounded by co-occurring mental health conditions. Moreover, many states struggle to provide people on supervision with adequate treatment for these conditions, which contributes to unsuccessful outcomes. And though the availability of treatment has improved in some areas, many people on probation and parole cannot access needed services because of financial, transportation, and other resource limitations.

To address these problems, some supervision agencies have begun to embrace evidence-based practices that have been shown to improve outcomes and reduce recidivism. These include the use of research-based assessment tools to identify an individual's level of risk for reoffending, graduated sanctions, such as increased reporting or short-term incarceration, to respond to violations of supervision rules, and incentives to encourage

rule compliance. As a result of these and other policy changes, 37 states have experienced simultaneous reductions in crime and community supervision rates.

Although those results are encouraging, states and agencies need time to analyze their systems and enact reforms on a much larger scale to ensure that probation and parole function more effectively. To help states meet this challenge, The Pew Charitable Trusts, in partnership with Arnold Ventures, established the Advisory Council on Community Supervision to develop a policy framework for state lawmakers, court officers, and community corrections personnel. The council featured a diverse group of representatives from probation and parole agencies, the courts, law enforcement, affected communities, the behavioral health field, and academia. Drawing on its members' extensive experience and knowledge, the council agreed on three broad goals for the next generation of community supervision: better outcomes for people on supervision, their families, and communities; a smaller system with fewer people on supervision; and less use of incarceration as a sanction for supervision violations, particularly breaches of the rules.

With those goals in mind, the council developed a menu of policies that state decision-makers and supervision administrators can use to reshape community supervision. Arnold Ventures supported the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to examine the research underlying the policies and practices identified by the council, and where such an evidence base exists, it is summarized and cited in this framework. The recommendations are arranged according to seven broad objectives:

- **Enact alternatives to arrest, incarceration, and supervision.** Research has consistently shown that supervision is not an effective approach for individuals with a low risk of reoffending, and that it can even increase that risk. Additionally, for people who commit minor offenses, probation can be an overly punitive response. For this reason, the council recommends using alternative, community-based sanctions for people convicted of low-level offenses, such as traffic violations and minor drug crimes. Specifically, the framework features policies that divert low-risk individuals to services instead of arrest, defer prosecution, provide community service as an alternative to incarceration or supervision, reclassify moving vehicle and drug offenses, raise the value of property offenses that trigger felony charges, prioritize courts for higher-risk individuals, and require evidence-based standards for problem-solving courts.
- **Implement evidence-based policies centered on risks and needs.** Evidence-based decision-making is the foundation of effective supervision, and its essential components are the principles of risk, need, and responsivity (RNR)—an assessment methodology that enables parole and probation officers to develop case plans tailored to individuals' needs and level of risk of reoffending. When these principles guide supervision operations, outcomes improve. Research shows that supervision and treatment should be prioritized for people assessed as having a higher risk for recidivism and a greater need for services, and that those assessed as low risk experience better outcomes without being subjected to intensive supervision, stringent rules, or unnecessary treatment. Although supervision agencies have taken steps to emphasize risks and needs and deploy resources accordingly, problems remain. To improve practice, the council recommends that agencies assess risks and needs using a validated assessment tool; tailor case plans based on those assessments; differentiate supervision by risk level; develop specialized caseloads; and analyze workloads to identify effective caseload sizes.
- **Adopt shorter supervision sentences and focus on goals and incentives.** Two main factors have driven the growth in the community corrections population: the number of people sentenced to probation and parole, and the length of time they remain under supervision. Recent research has demonstrated that long supervision sentences do not deter crime and deliver diminishing benefits. In addition, practices that emphasize adherence to rules by people under supervision, rather than addressing their risks and needs, often lead to failure. Concluding that supervision terms are generally too long and counterproductive, the

council recommends that agencies establish goal-based supervision; adopt clear incentives for positive behavior; use earned compliance credits, which allow people to shorten their supervision terms by following the rules; award earned-time credit for program completion; shorten supervision terms; and require automatic administrative sentence reviews that provide early termination of supervision if the individual has met certain criteria.

- **Establish effective and appropriate supervision conditions.** People on supervision must comply with a long list of “standard” conditions, and in some cases, many additional, sometimes arbitrary “special” requirements. Individuals who fail to follow these rules can face sanctions, including revocation of their probation or parole, which in turn often leads to incarceration. The council recommends imposing only conditions that benefit public safety; tailoring conditions to each person’s specific needs; reserving drug testing for individuals with substance use disorders; using positive drug tests as an indicator of treatment needs, rather than of defiance; using technology to simplify the process of reporting to supervision agents; and implementing place-based supervision, which requires that officers and treatment services be located near where individuals on parole and probation live.
- **Develop individualized conditions for payment of legal financial obligations.** People receiving a criminal sentence are often ordered to pay fines, fees, and restitution as part of their sentences and may be required to be current on payments as a condition of supervision. In addition, community corrections agencies often fund their operations by charging people on supervision a range of fees for required programs and processes, such as drug testing, electronic monitoring, and treatment. Some of these legal financial obligations (LFOs) may be intended to help jurisdictions enforce accountability for criminal behavior and address crime victims’ financial losses, but they also create a significant barrier to supervision success by imposing economic burdens on those least able to afford them. The council recommends that jurisdictions establish affordable restitution payments; phase out fees for supervision, corrections services, and assessment; stabilize agency funding to eliminate reliance on LFOs; conduct a financial assessment of individuals’ payment ability; use a proportional system of fines based on an individual’s income; encourage compliance by providing payment plans, waivers, and forgiveness options; offer alternatives, such as community service and restorative justice—a practice of providing opportunities for people convicted of crime to repair the harms they caused—and eliminate revocations of supervision, extensions of supervision terms, and suspensions of driver’s licenses for inability to pay.
- **Reduce use of and pathways to incarceration.** Supervision revocations, especially for technical violations, are a major driver of costly jail and prison admissions, and even short jail stays can create serious hardships for individuals, including loss of employment, decreased wages, housing insecurity, and family instability.¹ Because of the human and fiscal costs, numerous states have adopted policies to limit incarceration for technical violations. The council recommends building on these efforts through reforms that standardize the definition of a technical violation; limit arrest and incarceration for technical violations of supervision; establish appropriate responses to absconding (see the glossary); restrict the use of incarceration before a revocation hearing; guarantee counsel in revocation hearings; and reduce health-related risk by establishing continuity of care and ensuring access to treatment.
- **Support community supervision agencies.** In addition to the principles of RNR, community corrections agencies can adopt a wide range of research-based supervision practices. To this end, the council recommends that states provide agencies with financial incentives to achieve successful outcomes; invest in staff development around evidence-based practices; establish hiring and promotion practices based on the effective use of key practices; measure agencies’ performance; monitor demographic data in relation to outcomes; and allocate funding to support evidence-based practices and research.

This report details the challenges facing community supervision systems around the country and outlines specific policy changes that states can make to achieve improved outcomes. Although legislative action represents the best vehicle for adopting sustainable reforms, this document also includes a range of administrative changes that officials can make to improve policy and practice at the agency level. These recommendations are supported with examples of policy changes already adopted in jurisdictions across the U.S. and summaries of the research on their impact. The council encourages policymakers to view its recommendations and the accompanying state examples as a starting point for discussion rather than the bounds of what is possible.

Glossary

Abscond: To intentionally conceal one's whereabouts from a supervision authority.

Administrative sanctions: Penalties that do not involve judicial action, such as new curfew restrictions and more frequent drug testing, that can be imposed for noncompliance with supervision rules.

Administrative supervision: A form of supervision that typically requires little or no contact with a probation or parole officer but permits a series of sanctions, including prison or jail, if the person violates the rules.

Community corrections (community supervision): Mandatory oversight outside a secure facility, most commonly in the form of probation or parole.

Conditions of supervision: Rules that people under supervision must follow, such as abstaining from alcohol, abiding by a curfew, or participating in treatment programs.

Correctional control: Any court-ordered supervision of an individual, whether in the community, as with probation or parole, or a facility, such as a jail or prison.

Earned compliance credits: Awards of time off probation or parole terms for adhering to supervision rules.

Evidence-based practices: Policies and programs shown through research to be effective at reducing recidivism.

Parole: Conditional release to community supervision after a term of incarceration.

Probation: Supervision imposed by the court generally in lieu of incarceration.

Revocation: A sanction for noncompliance with supervision rules that may result in a period of incarceration.

Revocation cap: A limit on the amount of time a person can be required to serve in jail or prison for noncompliance with supervision rules.

Risk and need assessment: A tool to determine a person's appropriate level of supervision based on the individual's likelihood of reoffending and on factors such as substance use disorders, in order to reduce that probability.

Technical violation: Noncompliance with one or more supervision rules that may result in a sanction or revocation.



Ethan Hoover

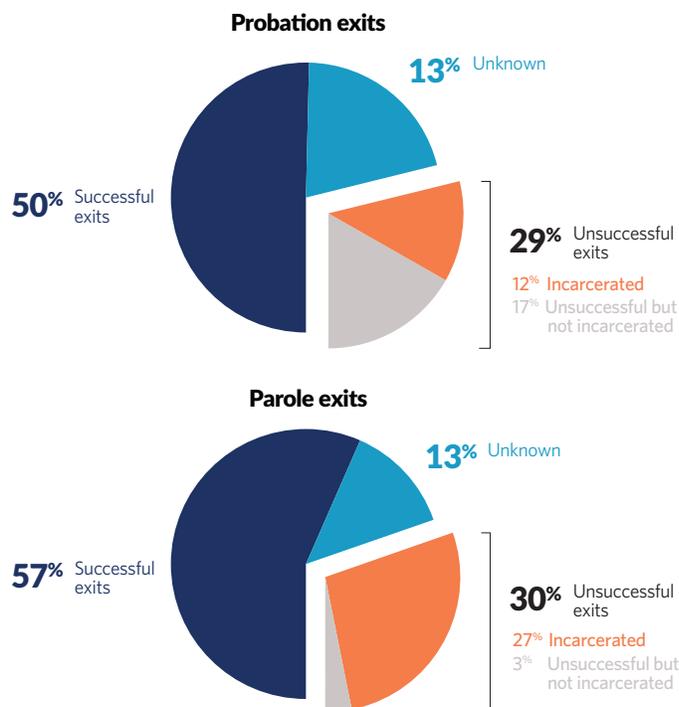
Enact alternatives to arrest, incarceration, and supervision

Over the past decade, the United States' heavy reliance on incarceration has been the subject of growing public, media, and policymaker scrutiny. And with nearly 2.3 million people in jails and federal and state prisons across the country, the attention is warranted.² Often overlooked, however, is the magnitude of the community supervision population and how significantly it has contributed to the growth of the U.S. correctional system. Many individuals get caught in a cycle of supervision and incarceration, with technical violations or new criminal offenses resulting in periods behind bars, often followed by additional supervision terms; this flow feeds jail and prison systems. (See Figure 1.) In 2016 alone, state courts and parole boards placed an estimated 2.5 million people on probation or parole; roughly the same number exited, sustaining the total of 4.5 million individuals on community supervision nationwide.³ Of that number, more than three-quarters were serving terms of supervision for nonviolent offenses and at least 4 in 10 were on probation or parole for relatively minor offenses,⁴ imposing significant costs on taxpayers and communities, and placing substantial long-term restrictions on individuals who pose little or no threat.

Figure 1

Supervision Failures Are a Major Driver of Incarceration

Probation and parole exits and outcomes, 2016



Notes: For probation exits, “Incarcerated” refers to those sent to jail or prison with a new sentence, completing an original sentence, to receive treatment, and other/unknown reasons. “Unsuccessful but not incarcerated” refers to those who abscond, are discharged to a warrant or detainer, or have any other unsatisfactory conclusions. “Unknown” includes death, other/unknown reasons, or not reported. For parole exits, “Incarcerated” refers to those sent to jail or prison with a new sentence, with a revocation, to receive treatment, or other/unknown reasons. “Unsuccessful but not incarcerated” refers to those who abscond and have other unsatisfactory outcomes. “Unknown” includes death, other/unknown reasons or not reported.

Source: Bureau of Justice Statistics, Annual Probation Survey and Annual Parole Survey, 2016

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Despite the community supervision system's size, its effectiveness has been decidedly mixed. Recidivism rates for those on probation and parole remain stubbornly high, and, in many states, supervision revocations are a primary driver of costly jail and prison admissions. In addition, although the collateral effects of probation and parole sentences have not been rigorously studied, excessive requirements often stifle progress by people on supervision. Rules mandating regular reporting, frequent drug testing, electronic monitoring, curfews, and the payment of fines and fees can make it challenging for people to fulfill obligations key to their success, such as maintaining employment, supporting their families, and addressing their health needs. Failure to abide by such rules can lead to severe consequences, undermining the stated goals of supervision while jeopardizing a person's ability to build a stable life.

With these recommendations, the council aims, in part, to shrink the number of people under community supervision because doing so can reduce officers' caseloads, making it easier for them to implement evidence-based practices. It also can enable agencies to reduce taxpayers' costs by concentrating limited resources on the people most likely to benefit from supervision and improving outcomes for people who pose little public safety risk and would probably fare better without supervision.

For these reasons, this policy framework recommends increasing diversion at the front end of the criminal justice system, reclassifying certain offenses, and ensuring that specialty courts adhere to evidence-based practices.

Use diversion at the front end of the criminal justice system

Diversion policies, such as those that require individuals to attend substance treatment in lieu of prosecution for low-level drug offenses, limit the number of people entering the courts and, in turn, reduce admissions to jails, prisons, and community supervision, especially probation, decreasing the size of the supervised population and the overall correctional footprint.

These policies allow individuals to avoid an arrest or conviction in exchange for meeting requirements aimed at addressing underlying needs that contribute to instability and criminal behavior and can begin during a person's initial interactions with law enforcement. Diversion options include directing individuals with mental health or substance misuse issues to treatment services or connecting people in need of housing, employment, education, or health care with community-led programs. By facilitating early interventions that address specific problems, diversion programs can encourage lawful conduct rather than intensifying an individual's involvement in the criminal justice system.

To increase the use of diversion, policymakers should establish intervention strategies for people with a variety of criminal histories, provide sufficient programming and treatment alternatives, and ensure that people are not required to pay for such programs, which could create financial obligations that place them at risk of incurring penalties for nonpayment. Diversion policies are discussed in detail below.

Policy: Use diversion as an alternative to arrest

Pre-arrest diversion occurs during an initial interaction with law enforcement, when police determine that an individual's needs and public safety objectives can be better served through programs available in the community. The purpose of pre-arrest programs is to identify underlying behaviors associated with offending and to connect individuals to treatment or other services rather than funneling them into the criminal justice system.

Jurisdictions across the country are developing pre-arrest—or, in some cases, post-arrest but pre-booking—diversion programs. The Law Enforcement Assisted Diversion (LEAD) program in Seattle, for example, allows police to refer individuals suspected of certain drug and prostitution crimes to housing, employment, and other social services rather than arresting them, and has been shown to deliver positive public safety, housing,

employment, and income outcomes.⁵ In Massachusetts, the Gloucester Police Department’s Angel Program enables individuals to contact law enforcement to access substance use treatment without the threat of being arrested.⁶ A study showed that 37 percent of participants reported abstaining from drugs after entering the program.⁷

Under another type of pre-arrest diversion known as “cite and release,” or “citation in lieu of arrest,” law enforcement officers issue a citation for low-level offenses rather than making an arrest. Many states allow this alternative for at least some misdemeanors or petty crimes—typically traffic violations—while some permit the use of citations for a broader range of offenses.⁸ Louisiana, for instance, allows a citation to be issued for felony theft, illegal possession of stolen items worth up to \$1,000, writing bad checks, and driving without a license.⁹ Another eight states allow citations for certain felonies, such as serious motor vehicle violations.¹⁰ Some local jurisdictions have also enacted cite and release ordinances for offenses such as marijuana possession.¹¹

The use of cite and release as an alternative to arrest and jail admission reduces the consumption of justice system resources and cuts the number of people entering the criminal justice system, including community supervision. In addition, the policy allows people who do not pose a flight or public safety risk to continue working, attending school, and taking care of their families and other obligations. This approach is an example of a proportional response that promotes harm reduction while still ensuring accountability.

Policy: Offer deferred prosecution

Diversion that occurs between arraignment and sentencing is known as deferred prosecution. Under this approach, authorities divert cases from the standard court process, often through a formal agreement between the prosecutor and the defendant. Deferred defendants commit to refrain from criminal behavior for a specified period of time and to engage in treatment, pay restitution, or fulfill other specified requirements.¹² If the defendant successfully meets those obligations, the case can be dismissed, and in some states, the person’s record can be expunged. Indiana, for example, permits prosecution to be withheld against a person charged with a misdemeanor or a Level 5 or Level 6 felony,¹³ and Oklahoma law provides for deferred prosecution for any offense.¹⁴ In Harris County, Texas, a special docket, called Responsive Interventions for Change, offers pretrial diversion to people charged with low-level felony drug offenses for the first time.¹⁵ The program reports an 89 percent completion rate, and after people finish the recommended treatment, their cases are dismissed.

Policy: Make community service available as an alternative

Community service is often imposed as a condition of supervision, but it also can be considered as an alternative to jail or probation. The use of community service as an alternative punishment diverts people from more intensive correctional control and may be a more proportional response to the offenses with which they are charged. Community service also can be designed to be less disruptive to an individual’s work, school, and family obligations than supervision. In some instances, community service may be part of a restorative justice approach, in which the person’s assigned service activity is a direct response to the offense committed and the harm caused.¹⁶

Community service represents a promising alternative to incarceration and supervision but can also replicate or even exacerbate the disparate harms associated with legal financial obligations. Jurisdictions should ensure that the number of hours imposed is proportionate to the offense and offer nonmanual work options to ensure accessibility. Further, community service imposed in lieu of supervision should be administered by an agency other than a probation department, potentially a community court or restorative justice program. And individuals carrying out mandated community service should not be charged fees to participate.

Community service is already a feature of sentencing in many jurisdictions; estimates suggest that more than

60 percent of lower courts in the U.S. use community service as a sentencing option, though it is most often imposed alongside fines and fees, probation, and even incarceration.¹⁷ Although the use of community service as an alternative to supervision and incarceration has not been widely embraced in the U.S., it has long been common practice in many European countries, where it often serves a restorative justice purpose.¹⁸

Reclassify certain offenses

This section focuses on steps state and local governments can take to change whether or how some offenses, such as lower-level drug and property crimes, are processed and penalized without sacrificing public safety. As contemplated here, reclassification is not a one-time undertaking but, rather, an ongoing periodic effort to ensure that the criminal code tailors sanctions to the seriousness of the offense, while also addressing the issues that contributed to the person's criminal behavior.

Certain felony offenses may be reclassified as misdemeanors, and select misdemeanors may be reclassified as civil infractions—noncriminal violations of rules, policies, or laws for which people cannot be jailed—or simply legalized. Because misdemeanor sentences often include less time on supervision than those for felonies, and civil infractions usually carry no supervision consequence, such changes can trim the time people spend on supervision and reduce the overall probation and parole population. Previous analyses have shown that after reclassifying selected offenses, some states and localities have experienced reductions in the number of arrests for low-level crimes and in the rate of property and violent crime.¹⁹

Policy: Make certain moving vehicle offenses citations

Reclassifying minor moving vehicle offenses, such as traffic violations that do not involve injury, from felonies or misdemeanors to citations (i.e., infractions that do not include the potential for incarceration) can reduce the number of people exposed to the harmful effects of detention and lower costs associated with processing cases and incarcerating people, which place heavy burdens on local resources. Individuals convicted of such reclassified offenses would face shorter supervision terms and would not be subject to incarceration. Removing jail or prison time as a penalty for moving vehicle offenses could also eliminate the use of supervision for these crimes, lowering the overall number of people placed on probation and allowing resources to be prioritized for individuals who can most benefit from them.

In 2015, Utah reclassified almost 300 moving vehicle misdemeanors to reduce the burden on local jails, trim court dockets, and limit people's court appearances and exposure to fines, fees, and other costs associated with a misdemeanor conviction.²⁰

Policy: Reclassify lower-level drug offenses

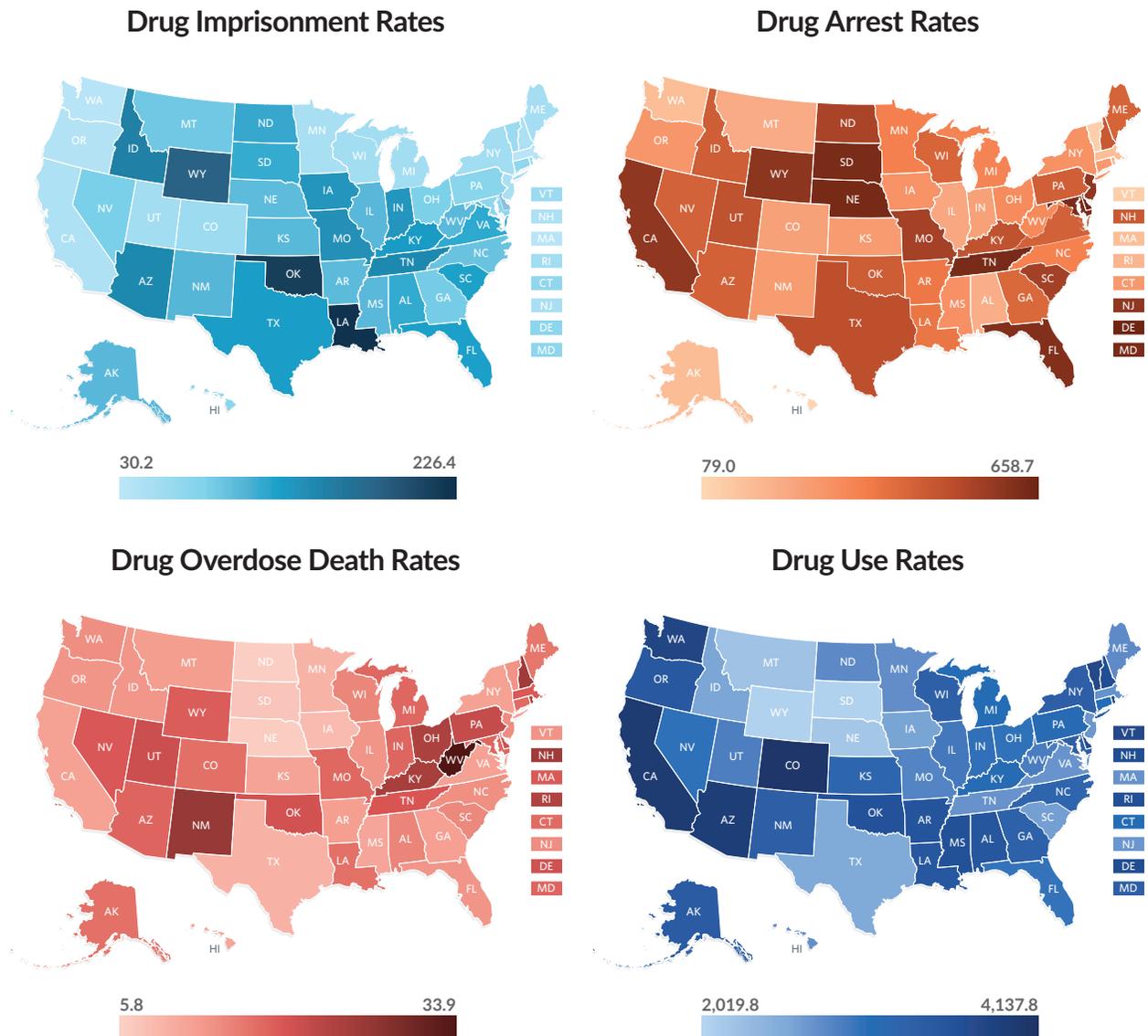
Many jurisdictions treat drug possession as a felony. In some cases, even trace amounts of a substance can result in a felony conviction, supervision, and even a prison sentence. In recent years, however, an increasing number of states have adopted reforms that reclassify and redefine certain drug crimes. Between 2009 and 2013, more than 30 states reformed their drug laws, often focusing on reducing the maximum allowable prison terms for certain felony drug offenses, downgrading felonies to misdemeanors, and sometimes eliminating a supervision term in its entirety.²¹

The changes reflect research showing that supervision and incarceration are less effective than community-based treatment in reducing substance misuse.²² A 2018 Pew analysis compared publicly available data from law enforcement, corrections, and health agencies and found no relationship between drug imprisonment rates and rates of drug use, overdose deaths, or arrests for drug law violations, indicating that incarceration does not discourage drug use.²³ (See Figure 2.) Rather, research has consistently shown that more severe criminal justice responses are ineffective at deterring drug use or mitigating the harm it can cause.²⁴

Figure 2

Drug Imprisonment Not Correlated With Drug Use, Arrests, or Overdose Deaths

4 measures of drug problems by state



Note: All rates are per 100,000 residents.

Source: Pew's analysis of 2014 data from 48 state corrections departments, the federal Bureau of Justice Statistics National Corrections Reporting Program (for California and Maine), the Federal Bureau of Prisons, the Centers for Disease Control and Prevention, the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program, and the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health

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How States Are Changing Drug Penalties to Reduce Harm

In recent years, a handful of states have reclassified drug possession offenses from felonies to misdemeanors to reduce the possible penalties for drug possession and relieve pressure on state prisons. For example:

- **California:** Voters approved Proposition 47 on Nov. 4, 2014, to lower the penalties associated with some property and drug offenses.²⁵ Since enactment of the ballot measure, individuals convicted of certain nonviolent drug and property offenses, including simple drug possession and theft of less than \$950, are charged with misdemeanors rather than felonies, and prior convictions for the same crimes were downgraded retroactively.²⁶
- **Oklahoma:** In 2016, voters approved ballot initiatives to reclassify simple possession of a Schedule I or II substance from a felony to a misdemeanor and remove enhancements for subsequent drug possession offenses.²⁷ Simple drug possession, which previously carried a possible prison sentence, is now punishable by a maximum sentence of up to one year in jail. The measures, which went into effect on July 1, 2017, also require reinvestment of resulting public savings into behavioral health programming.²⁸ In 2019, the state adopted legislation to apply the law retroactively.
- **Connecticut:** HB 7104, which passed in 2015, reclassified possession of a controlled substance as a Class A misdemeanor with a maximum penalty of one year for a first offense and possible enhancement of penalties for a subsequent offense.²⁹ Previously, possession of narcotics carried a sentence of up to seven years for a first conviction, with escalating penalties for repeat offenses.
- **Utah:** In 2015, the state enacted HB 348, which changed possession of a Schedule I or II controlled substance from a third-degree felony to a Class A misdemeanor for a first and second conviction. It also revised penalties for possession of other controlled substances, including marijuana.³⁰

These reforms passed with overwhelming bipartisan support and share three critical details with each other and with similar policies in other states.³¹ They classified convictions for simple drug possession up to at least the third offense as misdemeanors, removed state prison as a possible penalty for drug possession, and applied to virtually all controlled substances. The states experienced considerable benefits from these reforms, including reduced state prison and jail populations and greater investment in substance use and mental health treatment through averted costs of imprisonment.³²

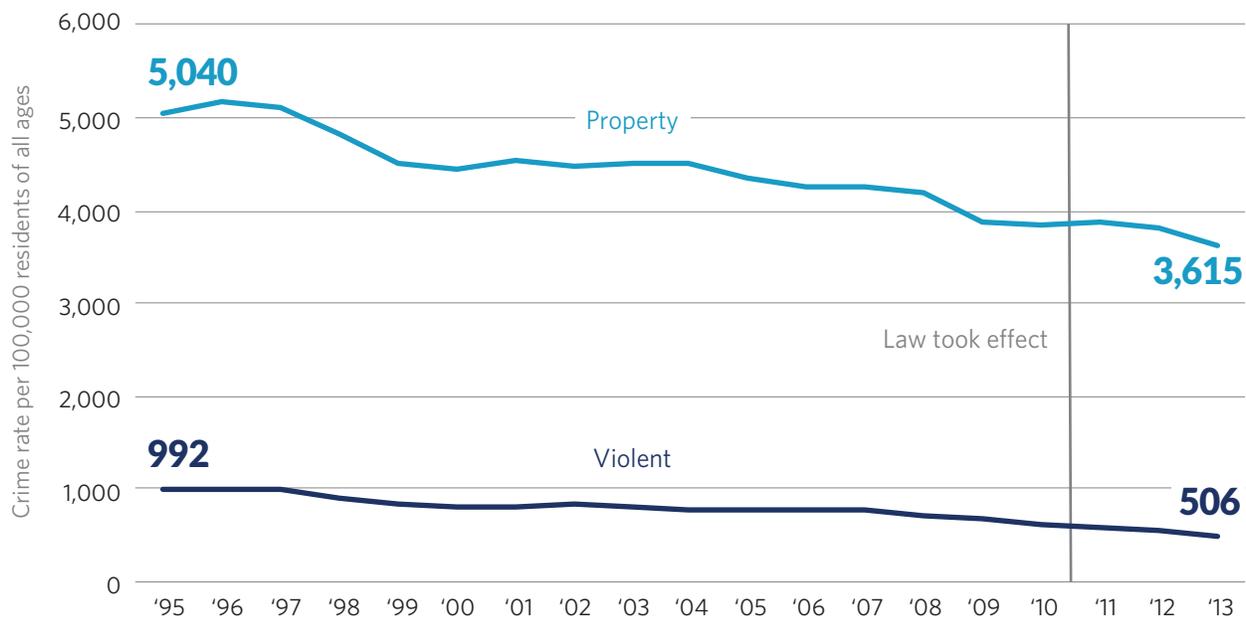
Policy: Revise felony thresholds for property offenses

Property offenses are typically categorized according to the monetary value of the item stolen or destroyed, but many of these thresholds have not kept pace with inflation. As a result, property crime penalties are often out of proportion to the specific offense committed. Based on these out-of-date thresholds, theft of even a small-value item can be a felony and can result in at least a year in state prison. Raising or reclassifying property offense thresholds can prevent the inadvertent escalation of penalties for the lowest-level crimes, ensure proportionality, and divert people from the criminal justice system when appropriate.

Felony theft thresholds vary widely across states. Stolen property valued at \$200 is classified as a felony in New Jersey, while in Wisconsin or Texas, losses must be at least \$2,500 for a crime to merit a felony charge.³³ Since 2001, at least 35 states have raised their thresholds. These include Mississippi, which raised its value from \$500 to \$1,000; Alabama, which increased its threshold from \$500 to \$1,500; and Texas, where the value was increased from \$1,500 to \$2,500.³⁴

In 2010, South Carolina doubled its felony threshold from \$1,000 to \$2,000, reduced the maximum penalty for midrange theft offenses from 10 years to five years, and established a higher-level crime for property valued at \$10,000 or more. Pew evaluated this policy in 2018 and found that the law had no negative effect on South Carolina’s already declining larceny rates; instead, arrests for larceny declined by 3.3 percent and the value of items stolen did not increase.³⁵ (See Figure 3.)

Figure 3
Property Crime Kept Falling After Increase in Felony Theft Threshold
 South Carolina property and violent crime rates, 1995-2013



Note: Annual crime data are available through 2016, but this analysis used monthly state-level data only through 2013.

Source: FBI Uniform Crime Reporting Program

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Similarly, an analysis of 28 states that raised their felony thresholds between 2001 and 2011 found that those changes did not affect overall property crime or larceny rates and that the studied states reported about the same average decrease in crime as states that did not change their laws.³⁶

Ensure that problem-solving courts adhere to evidence-based practices

Problem-solving courts provide an alternative to standard case processing and can reduce criminal justice system involvement. Problem-solving courts often target the underlying cause of certain offenses, using a combination of coordinated treatment, case management, and supervision in the community. Drug courts are the most widely adopted problem-solving model in the U.S., but jurisdictions now operate a variety of courts to address different populations and treatment needs.³⁷ Some courts address particular offenses, such as domestic violence or driving under the influence, while others focus on specific populations, such as veterans or people with mental illness, or target a particular stage in the criminal justice system, like re-entry.³⁸ Because of their prevalence, drug courts have the largest evidence base to support their effectiveness at reducing recidivism; more research is needed for other models.

A strong body of evidence indicates that drug courts reduce recidivism, are most effective when they target people who are at greater risk of reoffending, and help such higher-risk individuals avoid further contact with the criminal justice system through treatment and services.³⁹ Studies have shown that pre-adjudication drug courts, which intervene before conviction, yielded lower recidivism rates than post-adjudication models.⁴⁰ This may be because avoiding a conviction is a more powerful incentive for participation than avoiding a sanction. Drug courts that offer expungement of records or dismissal of the case after successful program completion are the most effective at reducing recidivism.⁴¹

Policy: Prioritize drug courts for higher-risk individuals

Research indicates that identifying people at a higher risk of reoffending and appropriately linking their needs and treatment are critical to reducing recidivism. And evidence demonstrates that the intensive supervision, monitoring, and treatment drug courts impose are most effective for a higher-risk population but can increase recidivism among people classified as low risk.⁴²

Further, because drug courts are resource-intensive, prioritizing them for higher-risk individuals ensures that states and agencies are investing programming and staff time in cases with the greatest potential for success. Validated risk and needs assessments should guide the prioritization process, identifying appropriate candidates. In Georgia, for example, an individual must be designated as moderate or high risk by a risk and needs assessment to qualify for drug court.⁴³

Policy: Set state-level standards for drug courts

When drug courts are operated with fidelity to the evidence-based principles of RNR, recidivism rates can be significantly decreased. But courts vary considerably in terms of their target population, commitment to evidence-based practices, use of interventions, and engagement with treatment providers. The National Association of Drug Court Professionals has identified several core components that distinguish effective drug courts from other courts or correctional interventions.⁴⁴ Additionally, a considerable body of research shows that drug courts that fail to adopt evidence-based practices often fall short of their intended purpose and can actually increase recidivism.⁴⁵ However, given the lack of evidence of effectiveness for other problem-solving court models, states must emphasize monitoring and evaluation to ensure that specialized courts use best practices for the populations being served and deliver desired results.

To improve outcomes, most states have implemented policies to ensure that drug courts follow established standards and employ evidence-based practices. In Indiana, courts must follow specific criteria set by the judiciary to receive certification as a drug court.⁴⁶ Similarly, the Mississippi Administrative Office of Courts administers a certification process for drug and other problem-solving courts to ensure that they meet minimum standards of operation, including using evidence-based practices and collecting data to monitor outcomes. Mississippi courts must apply for initial certification and obtain recertification every two years.⁴⁷ Georgia's drug court certification process includes a peer review requirement, and compliance is a prerequisite for funding.⁴⁸

In addition to such policies, states can monitor for effectiveness and use performance metrics to ensure that problem-solving courts adhere to standards. This would include creating a means of collecting and analyzing data, developing performance targets, training staff, and establishing a system to review the data and incorporate best practices.⁴⁹ With this process, state problem-solving courts can track progress and make changes as appropriate.



Dan Dimmock

Implement evidence-based policies centered on risk and needs

Evidence-based policies are the foundation of effective supervision focused on risk management and crime prevention. A large body of research, developed over the past four decades, indicates that the most effective supervision practices and interventions rely on the principles of risk, need, and responsivity (RNR):

- The risk principle says that people at high risk for recidivism do better when directed to more programs and services but that intensive supervision can harm those at lower risk of reoffending.⁵⁰ Therefore, tailoring the intensity of supervision contact to each individual's risk level is the most judicious use of resources and the best approach to reducing recidivism.
- The need principle states that supervision should target the specific factors that drive an individual's criminal behavior.⁵¹ (See Risk Factors.) Research shows that such customized programming reduces reoffending and improves public safety.⁵²
- The responsivity principle identifies the barriers to successful outcomes, such as mental health issues, transportation, developmental disabilities, or language barriers.⁵³ Each principle has its own evidence base, but research shows that using them together delivers the greatest benefits for public safety and individual rehabilitation.⁵⁴

Risk Factors

An extensive body of research identifies key risk factors for criminal behavior, including:⁵⁵

- Antisocial attitudes or thinking (beliefs—such as an unwillingness to follow social norms, recklessness, or a lack of guilt—that can rationalize criminal conduct).
- Antisocial peers and associates.
- Antisocial personality characteristics (for example, impulsivity).
- A history of antisocial behaviors.
- Substance use.
- Limited employment and education opportunities.
- Low family affection/poor communication/poor supervision.
- Idle time and lack of positive recreational opportunities.

Except for a history of antisocial behaviors, all these risk factors are dynamic and can be addressed through appropriate interventions.

The type of programs that supervision agencies use also matters. Research shows that individuals do best when interventions and treatment services include cognitive behavioral approaches—structured interventions and a development of new skills that target how a person thinks in order to change behavior—to address the factors that drive their criminal activity. More broadly, programs that adhere to RNR principles consistently yield lower recidivism.⁵⁶

Officers' everyday interactions with the people they supervise can have a profound impact on success rates as well.⁵⁷ Most agencies that are effective at reducing criminal activity, for example, encourage supervision officers to employ positive and negative reinforcement and help individuals build coping skills and develop

problem-solving strategies. Officers also should seek to maintain open and empathic relationships with people they supervise.⁵⁸ Officer training in these types of correctional practices is associated with lower recidivism rates among the supervision population.⁵⁹

Although many correctional agencies are adopting evidence-based practices like those described above, much work remains to be done. Agencies should consistently monitor their efforts, supervisors, and staff to ensure that these practices and policies are being implemented with fidelity to the chosen model and produce expected results.

Fortunately, jurisdictions can take steps to help supervision agencies in this work by reorienting practices and processes to address the risks and needs most associated with criminal behavior. Toward that end, this framework recommends that state and local governments enact policies to ensure that officers have the tools to understand people's risks and needs and sufficient resources to address them.

Ensure that risk and needs assessments drive supervision practices

Research shows that the use of validated risk and needs assessment tools and the development of case plans that reflect their findings are essential to promoting supervision success.⁶⁰ The risk level identified by assessments should guide each person's program assignments, intensity of intervention, and supervision conditions. Using assessments to tailor supervision improves its effectiveness and helps agencies use resources more efficiently.⁶¹ For example, not all treatment programs are suitable for every person with a substance use disorder. Assessments can identify the appropriate treatment intensity and dosage to improve outcomes. Generally, risk assessments should be limited in scope and used to identify the specific conditions and interventions that will best address individuals' behavioral needs.

Some jurisdictions require intensive supervision for certain offenses, but such policies run contrary to the evidence on best practices, which indicates that the results of risk and needs assessments should drive development of individualized case plans, including determining supervision intensity. Probation and parole case plans that use risk assessments and match reporting requirements to risk level and individual needs have been associated with lower recidivism rates.⁶²

Policy: Assess risk and needs using a validated tool

Supervision agencies should use validated risk and needs assessment tools as an operational standard. Such tools should be administered by trained personnel and completed either before a judge sets supervision conditions or in tandem with an individual's release to parole.⁶³ They should not be the basis for sentencing decisions but, rather, should guide supervision practices and programming.⁶⁴ In addition to gauging risk and needs, quality assessment tools can also identify "responsivity" factors that relate to a person's learning style, strengths, abilities, and other attributes, which can help officers select appropriate programs and interventions.

The type of assessment tool used also influences supervision success. Risk and needs assessments should be validated based on the population for which they are being used and monitored routinely to maintain reliability. To achieve these goals, agencies can conduct intermittent trainings or audits of their agents' assessment ratings.

Further, agencies should ensure that their assessment instruments do not reinforce biases and produce unfairly elevated risk scores for people of color.⁶⁵ Because of racial, class, and other inequities in the U.S., static criminal justice risk factors such as ZIP code and age of first arrest can produce skewed results that compound disparities in the criminal justice system.⁶⁶ To guard against such bias, agencies should ensure that the development of assessment tools is transparent and implemented with independent oversight and that the tools are evidence-based and culturally responsive. In addition, assessment findings should be regularly monitored to ensure that tools are not yielding racially disparate results.

To maximize risk and needs assessments' potential to improve supervision outcomes, many states have adopted best practices for their development and use. Mississippi law, for example, explicitly states that a person's risk and needs should be determined "using an actuarial assessment tool validated on Mississippi corrections populations."⁶⁷ South Dakota statutorily requires the use of a validated tool for people on probation and parole to guide supervision.⁶⁸

Policy: Base case plans on risk and needs assessment findings

Case planning involves developing a set of goals and benchmarks in collaboration with supervised individuals to address their needs as identified by a validated assessment. Successful case plans set specific, measurable objectives and encourage people to take ownership of their goals and the strategies for achieving them.⁶⁹ Identifying each person's strengths, as well as potential triggers that can lead to criminal behavior, can help shape an effective plan that lays out achievable goals and a path to meet them. For example, Idaho uses an assessment tool to advise on case planning and inform intervention services, while Oklahoma requires the Department of Corrections to complete an assessment-based case plan for each incarcerated person within 60 days after release to supervision.⁷⁰

The American Probation and Parole Association (APPA) has identified six key components of case planning:⁷¹

- **Assessment tools.** Employ an assessment tool to identify needs and risks and allocate resources appropriately.
- **Motivational interviewing.** When counseling people on supervision, use a technique that encourages them to cooperate and take responsibility for the case plan.
- **Asset planning.** Identify individual strengths and use them to inform the case plan.
- **Risk and need reduction.** Use current research on recidivism reduction to inform case planning.
- **Restorative and community justice.** Include victim and community perspectives in case planning to help repair harm.
- **Accountability system.** Create a process to hold individuals accountable for their conduct while also holding supervision staff and their superiors accountable for their responsibilities to people under supervision.

To develop and use effective case plans, jurisdictions must pivot from a surveillance model of supervision to a coaching model. As part of this change, the supervision agent's role evolves from a "referee" who monitors whether rules are followed and responds with sanctions as appropriate to a "coach" who is invested in people's growth and development.⁷² This shift, in turn, requires agencies to make significant investments in ongoing training and coaching, as well as a strong commitment at the leadership level to bring about culture change.

Structure caseloads to address risks and needs

Even when policy requires the use of evidence-based practices, implementation can suffer if supervision agents are overloaded. Agents in many states routinely supervise hundreds of people, a heavy caseload that leaves them stretched too thin to develop the tailored case plans and individualized interventions that are critical to recidivism reduction. Such excessive workloads not only lead to ineffective case management for individual clients but also can contribute to low morale and burnout among agents.

Manageable caseloads that promote meaningful engagement between agents and people on supervision can contribute to successful outcomes, and setting risk criteria to determine who receives the majority of

supervision attention is key to controlling caseload size. If low-risk individuals must be supervised and early termination is not an option, research suggests that supervision from a distance (e.g., via computer or at an automated kiosk) poses no more risk to public safety and is more cost-effective than traditional in-person visits with officers.⁷³ Human resources should be prioritized for the appropriate populations, and caseloads should be reasonable based on the agency's circumstances.

Policy: Supervise by risk level

One strategy to focus more supervision attention on high-risk individuals is to stratify caseloads by risk level, allowing agents to have either smaller caseloads of higher-risk individuals or larger low-risk caseloads. This approach enables agents to dedicate more time and resources to individuals who require the most monitoring and services. North Carolina, for example, assigns individuals to an appropriate supervision level by risk and statutorily limits caseloads to 60 high- or moderate-risk individuals per officer.⁷⁴

Policy: Implement specialized caseloads

Many states use a caseload structure that groups people by offense type or specific need and designates agents to supervise specific populations, such as those with behavioral health issues or those convicted of sex offenses. Officers assigned these specialized caseloads are trained to manage and respond to the unique needs of the target population. In Harris County, Texas, for example, the Community Supervision and Corrections Department developed a Domestic Violence Specialized Caseload; officers work in collaboration with community agencies and law enforcement to provide case management on family violence issues. The department also manages specialized caseloads focused on serious substance misuse, mental health, offenses involving high-risk driving while intoxicated, and sex crimes.⁷⁵

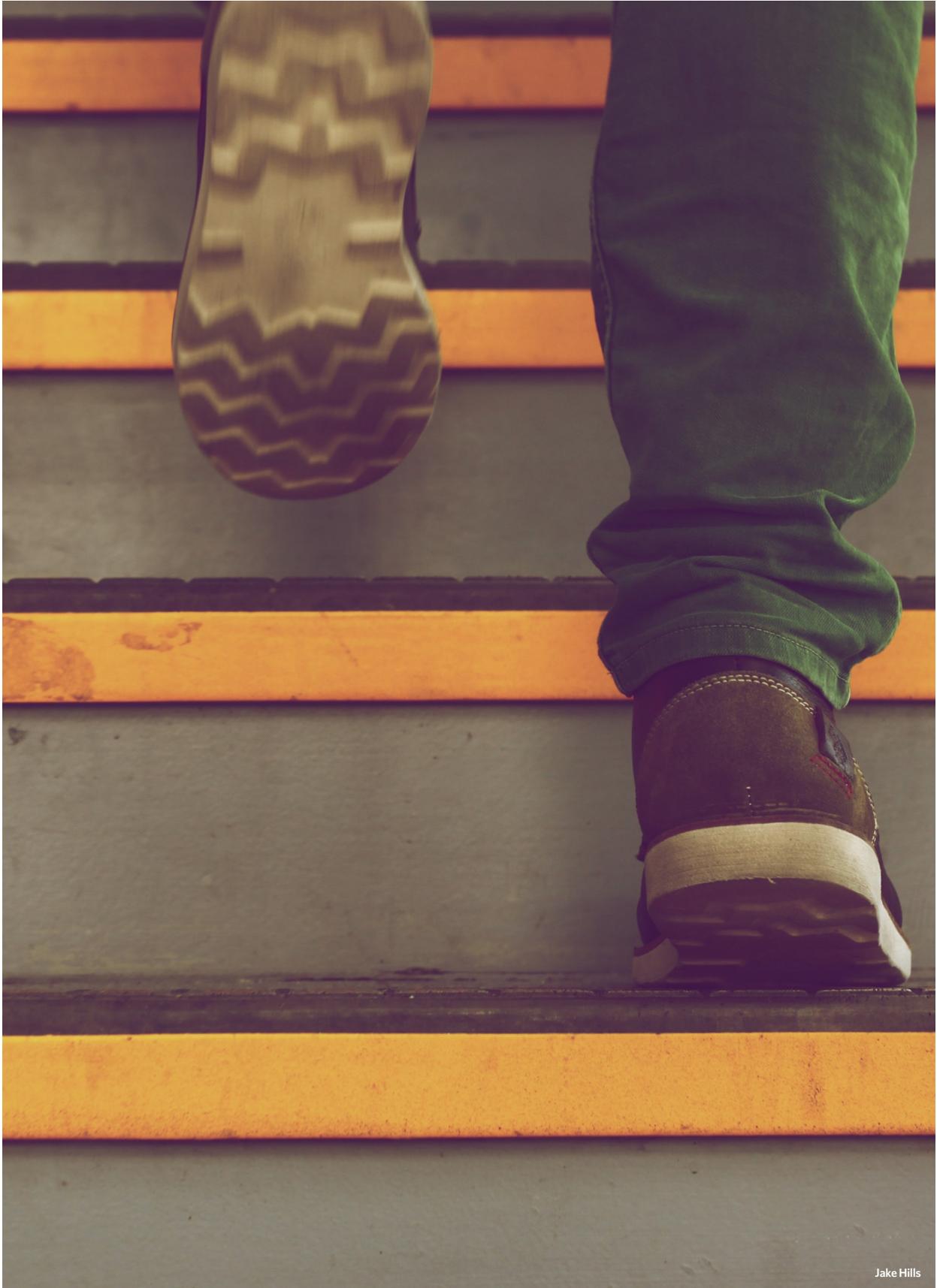
Some evidence is available to support the effectiveness of specialized caseloads for specific populations. For example, people with mental health issues and those charged with domestic violence offenses have been shown to have lower rates of re-arrest and technical violations when supervised on a specialized rather than a traditional caseload.⁷⁶ To deliver such results, however, specialized caseloads should be used as a tool for programming and treatment, not as a means of surveillance.

In Arizona, for instance, the state defines a specialized caseload as a group of individuals with similar problems or needs who are supervised by an officer focused on addressing those issues.⁷⁷ Under this broad banner, each county establishes programs relevant to its population. In Maricopa County, for example, the Adult Probation Department has a program for individuals with serious mental disorders, and probation officers receive training and work closely with treatment providers in the community.⁷⁸ Similarly, South Carolina established a Mental Health Division to manage people with mental illness and support participation in court-ordered treatment and compliance with medication protocols.⁷⁹

Policy: Use workload analyses to set caseload size

APPA has issued broad guidelines for appropriate caseload sizes based on risk level. It recommends case-to-staff ratios of 20 to 1 for people on intensive supervision, 50 to 1 for those with moderate to high risk levels, and 200 to 1 for individuals classified as low risk.⁸⁰ APPA acknowledges, however, that the optimal caseload will vary across jurisdictions, based on the diversity in the population, the coverage area, the case plan requirements, and available staff and resources.⁸¹ As a result, APPA recommends using workload analysis to identify an ideal caseload size within a particular agency or jurisdiction.⁸² A key consideration of workload analysis is determining the amount of time officers need to conduct meaningful contacts with people on supervision.⁸³ That information can then help agencies determine the caseload size that best enables effective implementation of RNR principles.

Overall, because of variation across supervision contexts, workload analysis is a tool to be used in conjunction with other evidence-based practices. The potential benefits of conducting an analysis are supported by research indicating that reduced caseload sizes, in conjunction with implementation of RNR practices, can lower recidivism by increasing the time officers have to provide meaningful interventions.⁸⁴ One study, for example, evaluated the introduction of reduced caseloads—approximately 54 medium- to high-risk individuals per agent—into an agency with officers who were fully trained in evidence-based practices. The results showed that recidivism fell by 30 percent.⁸⁵ Smaller caseloads do not always lead to reduced recidivism, and research shows that for such reforms to be effective, agents need to effectively implement evidence-based principles, avoid inappropriate levels of monitoring, and prioritize the quality rather than the quantity of interventions.⁸⁶



Jake Hills

Adopt shorter supervision sentences and focus on goals and incentives

The size of the community supervision population is largely attributable to two factors: the number of people placed on supervision and how long they stay there. The policies described in the preceding sections addressed the number of people on supervision; this section focuses on the other key driver of probation and parole population growth: the length of time people spend under supervision. Historically, supervision terms have been set by the court for a specified length of time that, depending upon the jurisdiction, can be shortened or extended according to a person's compliance with rules and other factors.

Based on research about effective supervision practices, the council recommends structuring probation and parole terms so that the attainment of specific goals can lead to early termination of supervision. This approach can reduce the length of time individuals spend on supervision and ensure that finite resources are used judiciously to promote individuals' long-term success, support crime prevention, and enhance public safety.

Research has consistently shown that people entering parole are most likely to reoffend in the first weeks and months after release into supervision and that recidivism rates drop precipitously after the first year.⁸⁷ Among those on probation, commission of a new offense is most common within the first 10 to 18 months.⁸⁸ Therefore, effective supervision agencies support behavior change, connect individuals to community services, and foster individual accountability during the initial weeks and months of probation and parole. These practices protect public safety by supporting people's positive engagement with their communities, emphasizing rehabilitation over monitoring and adherence to restrictive conditions, and maintaining supervision only for as long as necessary.

Supervision terms also should be tailored to encourage compliance with the core requirements of the case plan and to minimize barriers to long-term success. Accordingly, this framework recommends policies aimed at promoting program participation and supervision compliance, including goal-based supervision terms, earned compliance credits, and earned program completion credits.

Probation and parole terms that last for years often fail to deliver better outcomes than shorter periods of supervision, while driving up the supervised population and taxpayer costs and exposing individuals to revocation, incarceration, and other harms.⁸⁹ Maintaining supervision for millions of people, many for extended terms, hinders the system's ability to focus on individuals who demonstrate the greatest need and pose the highest risk to public safety. Lengthy supervision terms also delay people's full reintegration into the community and can result in excessive fees and other costs. For these reasons, this framework recommends using meaningful incentives to help people achieve supervision goals and restricting supervision terms to a length necessary to satisfy public safety objectives. To align with behavioral science principles on positive personal development, incentives for compliance, such as earned time credits, should not be withdrawn for noncompliant behavior, particularly technical violations.

Use meaningful incentives and goals to promote supervision success

The criminal justice system relies heavily on sanctions to influence behavior change, but, although people need to be held accountable for their actions, research suggests that reinforcing positive conduct is often a more effective approach.⁹⁰ Studies indicate not only that incentives should be used to encourage certain behavior but also that they should be used more frequently than punishments.⁹¹ Supervision agencies, therefore, should make incentives a core component of response practices and should rely on them more heavily than sanctions to effect changes in behavior.

Incentives reinforce positive conduct, support progress, and encourage improvement, even—or perhaps especially—when people struggle to meet goals or comply with rules. States and supervision agencies can use a variety of incentives to encourage positive outcomes and attitudes, including acknowledging pro-social actions with verbal or written recognition and offering tangible items, such as reduced reporting, for compliance over time.

Incentives also encourage positive behavior without requiring perfection. For example, individuals on supervision often test positive for substance use, and incentive programs can support continued progress and treatment, while also acknowledging that setbacks are part of recovery and providing strategies to address the cause of a relapse.

Council members concluded that it was unreasonable to expect an individual placed on supervision to immediately stop long-term behaviors and habits associated with potential criminal activity, such as drug use. Instead, pro-social behavior must be learned through practice and positive reinforcement. Additionally, no research exists to support the idea that someone can be punished out of a given behavior, so jurisdictions should consider whether a zero-tolerance expectation is practical or productive.

Policy: Provide goal-based supervision

At its best, community supervision is a process that helps individuals improve their lives and avoid future criminal behavior. Goal-based supervision advances those aims by establishing a clear set of objectives for each individual and encouraging success by allowing early termination of supervision upon fulfillment of those goals. Under goal-based systems, individuals can earn their way off supervision by achieving agreed-upon goals. And when violations do occur, goal-based supervision systems respond with certain, fair, and proportional sanctions based on the individual's specific action. Through this emphasis on rewards and incentives, paired with appropriate sanctions when warranted, goal-based supervision prioritizes outcomes, unlike solely time-based supervision terms that are unrelated to individual needs and performance.

Goal-based supervision begins with officers and individuals working together to identify customized objectives, such as full-time employment, often as part of a comprehensive case plan. The objectives are tied to specific benchmarks that individuals meet along the way and should be related to reducing recidivism and addressing needs that drive criminal behavior. For example, if substance misuse is a factor, goals could include attendance at a treatment program and fewer positive drug tests. (See “Implement evidence-based policies centered on risk and needs.”) This approach encourages positive development and supervision completion because supervision ends as soon as an individual fulfills the goals outlined in the case plan.

Goal-based supervision models should never extend the time a person spends under supervision but, rather, should allow successful individuals to serve a reduced term. Some conditions can keep people on supervision despite their best efforts to meet the core objectives of their case plans. This is especially true for individuals who cannot afford to pay their fines and fees, and who may continue to be supervised until payments are completed. For this reason, jurisdictions using goal-based probation and parole programs should consider policies that make accommodations for people who are generally compliant but struggle to meet certain conditions for reasons beyond their control.

Policy: Use incentives to influence behavior

Many states have implemented a system of incentives and graduated sanctions to increase fairness and promote success. Under this approach, officers choose from an array of proportionate punishments and rewards to respond to the behavior of people on supervision. Such a system creates transparency and predictability about potential rewards or punishments and promotes consistency of practice across the supervision agency, reducing

disparities and inequities. Research shows that using incentives more frequently than sanctions has a positive effect on supervision success.⁹²

Incentives can include a broad range of rewards, including curfew changes, gift cards, and reduced intensity or duration of supervision. To achieve the best outcomes, officers should emphasize incentives over punishments and tailor rewards to the case plan's goals. Research also shows that incentives must be meaningful to the individuals being supervised in order to support a shift in their attitudes and actions.⁹³ Involving the supervised person in developing the case plan can help ensure that this is the case.

Administrative Sanctions

Administrative sanctions are penalties for noncompliance with supervision rules that typically can be directed by an agent, without authority from a judge or parole board. These sanctions can include increased reporting, imposition of a curfew, or, in some jurisdictions, short jail stays. Across the country, more than 20 states have adopted an “administrative response grid” for technical violations.⁹⁴ These grids aim to outline proportionate sanctions, other than incarceration, for responding to noncompliant behavior and sometimes list incentives as well. Idaho, for instance, passed legislation in 2014 requiring the state Board of Correction to establish a matrix of “swift, certain, and graduated sanctions and rewards” that officers can impose without a hearing. The board developed a list of approved sanctions that included community service, increased reporting, and establishment of a curfew, while rewards can include decreased reporting and transfer to administrative supervision.⁹⁵ Oklahoma similarly required its Department of Corrections to develop a grid of sanctions to address probation violations.⁹⁶

In South Carolina, the 2010 Sentencing Reform Act (SB 1154) included enhancements to the use of administrative sanctions—such as verbal or written reprimands—for technical violations as an alternative to incarceration.⁹⁷ An evaluation of this change found several positive outcomes, including increased use of administrative sanctions, a 46 percent decline in the number of revocations, and a decrease in the proportion of people incarcerated during the first year of supervision, from 10 percent for the fiscal year 2010 cohort to less than 5 percent among the fiscal 2014 cohort.⁹⁸ Even after controlling for demographic and case-specific characteristics, people who began their supervision after implementation of SB 1154 were 33 percent less likely than previous cohorts to be incarcerated after one year.⁹⁹

Policy: Offer earned compliance credits

Research shows that people on supervision respond better to positive reinforcement than punishment. Earned compliance credits are an incentive that allows people to reduce their supervision terms by complying with the conditions of their case plans. Effective earned compliance programs clearly establish the process for earning credits at the outset and ensure that people on supervision are informed of the ground rules. A recent study found that earned compliance credits were the most highly valued incentive among individuals on supervision.¹⁰⁰

States should consider three key factors when designing an earned compliance credit policy: how to administer and award time reductions, how to determine the amount of credits offered, and how to define and assess compliance.

Structuring an effective system for awarding credits requires states to consider how frequently incentives should be given, how soon after being placed on supervision a person should become eligible for credits, and what

constitutes a meaningful reward.¹⁰¹ The goal of earned compliance credits is to promote behavior that aligns with supervision conditions, so officers should explain incentives from the start of supervision to reinforce good conduct and encourage continued engagement. One approach is to allow individuals to earn and accrue credits at a designated rate, incrementally reducing their supervision term through compliance. This requires supervising agents to manually input the credits before people can receive sentence reductions. Another approach is for agencies to award a certain allotment of upfront credits, which may then be withdrawn for noncompliant behavior. This automatic system reduces the burden on agents, but such a program design should be considered carefully given that research cautions against sanctions-based models.

States typically choose one of two approaches to calculate the amount of credits awarded. One model, known as the 30-for-30 program, reduces the supervision term by 30 days for each calendar month of compliance, while a day-for-day system awards one day off the supervision term for each day of compliance. Day-for-day incentives allow individuals to earn credits more quickly, fostering behavior change and providing a more immediate sense of achievement and hope to those on supervision.

Lawmakers also must choose how best to define and measure compliance. In some cases, it may simply mean adhering to a treatment plan or abiding by all supervision conditions. Given the challenges many people face in satisfying legal financial obligations, lawmakers should consider excluding these payments from compliance metrics for earned credit programs. An evaluation of the earned-time credit policy in Maricopa County, Arizona, which allows certain people on probation to earn 20 days of credit for every 30 days of compliance, found that the most significant barrier to success was the requirement to stay current with LFOs.¹⁰² This finding highlights the problems caused by linking financial requirements as a condition of compliance, given that LFOs have little to do with public safety or encouraging behavior change.¹⁰³

At the time of this writing, at least 19 states have adopted earned compliance credits.¹⁰⁴ Missouri adopted an earned compliance program as part of its 2012 Justice Reinvestment Act (HB 1525), awarding people 30 days off their supervision terms per 30 days of compliance.¹⁰⁵ (See Figure 4.) Pew evaluated the program by comparing recidivism rates for individuals who earned compliance credits under the new law with rates for demographically similar people discharged from supervision before reform and found no increase in reoffending after the policy took effect.¹⁰⁶ Further, the supervised population shrank by 18 percent, or nearly 13,000 people, and average caseloads decreased by 16 percent, from 70 to 59 cases per officer.¹⁰⁷ Overall, more than 36,000 people shortened their probation and parole sentences by an average of 14 months in the first three years of the law.

Policy: Provide earned-time credit for program completion

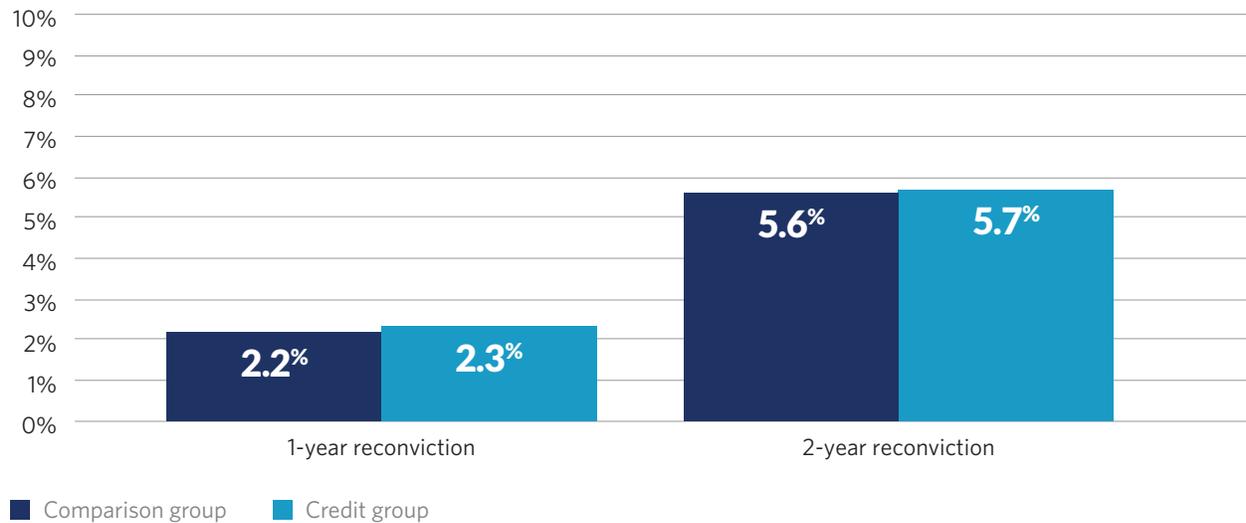
Earned-time policies can also be based on completion of treatment and other programs. Many individuals serving probation or parole terms have needs related to substance misuse and mental health conditions, and research indicates that successful community reintegration largely depends on addressing these issues.¹⁰⁸ Accordingly, enabling people to earn time off their supervision terms for completion of needs-based interventions encourages participation in programs and services. This approach to earned credits provides an opportunity to hold individuals on supervision accountable for their treatment plans and support their access to services that increase their chances of success.¹⁰⁹

Texas awards earned-time credits to people who, in addition to complying with standard supervision conditions, successfully complete any of a range of programs.¹¹⁰ People earn 30 days off their supervision for finishing a parenting, anger management, or life skills class; 60 days for vocational, technical, or other educational programs; 90 days for completing alcohol or substance misuse counseling or treatment, or for earning a high school diploma or GED certificate; and 120 days for obtaining an associate degree.

Figure 4

Earned Compliance Did Not Increase Recidivism Rates in Missouri

Reoffense rates for those released from supervision, before and after implementation of credits



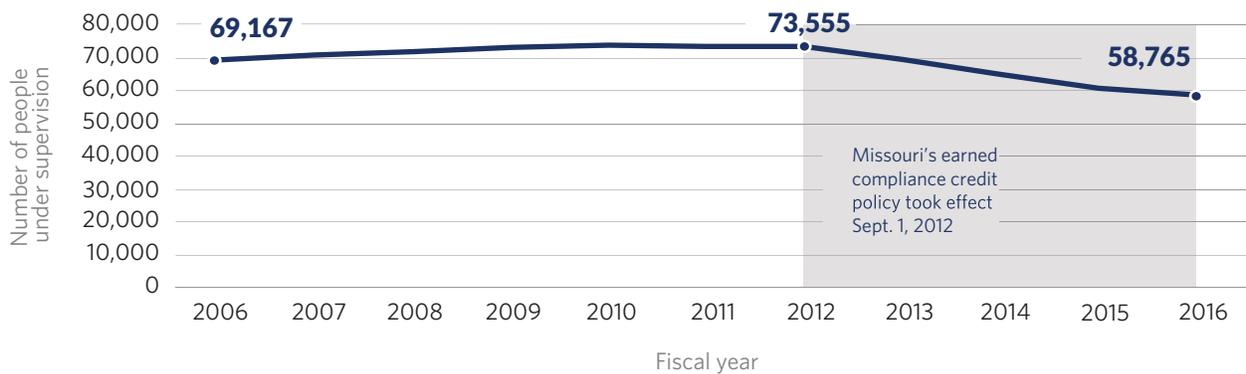
Note: The differences between the credit and comparison groups are not statistically significant at the $p < .05$ level.

Source: Pew analysis of Missouri Department of Corrections data

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Missouri's Supervised Population Fell 18% Under Earned Credit Policy

Law rewards people on probation and parole with shorter sentences for compliance



Note: Missouri's fiscal year begins July 1.

Source: Missouri Department of Corrections, "Profile of the Institutional and Supervised Offender Population" (June 2015), <https://doc.mo.gov/Documents/publications/Offender%20Profile%20FY15.pdf>

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Proportionate supervision sentences

Multiyear supervision sentences that extend beyond the point of serving rehabilitative or public safety objectives result in larger probation and parole populations and caseloads, compromising officers' ability to focus on those most at risk for reoffending.¹¹¹ Because people are most likely to reoffend during the early months of supervision, prioritizing resources for this highest-risk period will yield better public safety results than maintaining supervision for long periods of time.

Further, regardless of the intensity of supervision, many individuals must pay supervision fees, a cost that is often compounded by other legal financial obligations. Making the required payments can be difficult for people who have been incarcerated or are on probation, because they typically earn much less than those who have not been convicted of a crime.¹¹² Thus, the longer someone remains on probation or parole, the harder it may be to meet financial obligations and establish positive connections within the community, which in turn can undermine the goals of supervision.

Given these realities, researchers and stakeholders increasingly agree that most supervision sentences are longer than necessary and that public safety resources are more efficiently used when terms do not exceed 18 to 24 months.¹¹³

Policy: Limit supervision terms

Supervision terms vary widely across the country, but several jurisdictions have implemented policies to cap or reduce supervision lengths. Forty-three states have statutory maximums for felony probation terms.¹¹⁴ The maximum length of a felony probation term in Florida, for example, is two years.¹¹⁵ Louisiana eliminated its minimum of one year for all probation sentences and reduced the maximum term for nonviolent crimes from five years to three but allows extensions for people enrolled in specialty court programs.¹¹⁶

Supervision limits may apply to both probation and parole terms. The length of probation is determined by the court at sentencing, and the maximum term can be set in statute. By contrast, the amount of time that an individual serves on parole is typically tied to the remainder of the original prison sentence and can range from a few months to years or even decades. State legislatures can place limits on parole length by prescribing terms of post-release supervision.

Prosecutors wield significant discretion over supervision length because many probation sentences are based on plea agreements rather than on a sentence from a judge. Recognizing that power, a handful of prosecutors have begun advocating for shorter supervision terms. In Philadelphia, for example, the district attorney's office developed a policy to seek supervision terms of no more than 12 months for misdemeanors and no more than three years for felony offenses when mandatory probation periods do not apply, and for all probation periods to run concurrently rather than consecutively.¹¹⁷ The district attorney in Dallas County, Texas, also recently enacted a policy requiring county prosecutors to recommend shorter probation terms.¹¹⁸

Limiting the time a person can spend on supervision aligns with the goals of holding individuals accountable for their offenses, allowing sufficient time for rehabilitation and treatment, and protecting public safety. It also enables supervision agencies to concentrate supervision resources on individuals with the highest likelihood of reoffending. By capping probation and parole terms at two years and prioritizing people with the highest need, agencies can minimize the potential harm to low-risk individuals who do not require routine supervision. It also limits individuals' potential to commit minor rule violations that can result in incarceration or other consequences.

Policy: Permit presumptive discharge

Automatic case reviews can help agencies identify people whose conduct warrants presumptive discharge, or early supervision termination. Although many jurisdictions already have policies that allow for early termination or grant people the ability to seek it from the court, such measures are often underutilized because officers lack the time or guidance to identify suitable cases.

Automatic trigger policies that require periodic reviews of certain cases take this responsibility off agents and individuals on supervision and place it on the agency as a matter of routine procedure. At least 38 states allow supervision terms to be terminated earlier than the original sentence date,¹¹⁹ and a growing number allow probation departments to initiate the discharge. Short of full discharge, another policy option is an automatic review that results in moving individuals from probation or parole onto “low touch” correctional status, such as administrative supervision. Administrative supervision typically requires little or no contact with an officer but permits a series of sanctions, including prison or jail, if the person violates the rules of supervision.

Several states have adopted versions of presumptive discharge. Iowa, for example, allows the sentencing court to reduce or terminate probation terms if it finds that “the purposes of probation have been fulfilled.” Probation officers can also initiate early termination in Iowa, and if neither the prosecutor nor the sentencing court orders a hearing within 30 days after notification by the officer, the individual is automatically discharged.¹²⁰ In Georgia, people on probation with no prior felony convictions receive a “behavioral incentive date” three years from the date of sentencing, and within 60 days of that date, the Department of Community Supervision sends an order for termination of supervision to the court. State law presumes that the court will end the supervision on the prescribed date, assuming the individual has not been arrested for anything other than a nonserious traffic offense, has complied with all conditions, and has paid all restitution.¹²¹

Policy: Consolidate concurrent supervision

In some cases, a person can serve multiple, even simultaneous, probation and parole sentences across jurisdictions or within one system. This scenario can create complications for the individual and the responsible agencies. Some jurisdictions, for example, sentence people to probation after incarceration, meaning that an individual could be subject to both parole and court-ordered probation upon release from prison. In that instance, a person must report to two agents, follow two sets of conditions, and face two sanctions or revocations in the event of a violation, and the state or local criminal justice system must spend twice the resources it normally would on one person. To prevent such supervision experiences and the inefficient use of limited staff time and taxpayer dollars, jurisdictions should consider assigning one agency, perhaps the one with the longer overall term or with the more stringent requirements, as the sole supervising authority.

Another wasteful practice is when a court imposes a probation term to follow a period of parole or other post-incarceration supervision. This practice keeps individuals under correctional control long after they have served their prison sentences. Given that individuals on supervision are most likely to fail in the first weeks and months of their terms, probation tails are an overly punitive use of resources that is unlikely to promote public safety.¹²²



Establish effective and appropriate supervision conditions

Individuals on supervision must comply with a long list of standard conditions—17, on average—that are set by courts or releasing authorities, and failure to comply with these rules can lead to incarceration, depending upon the terms of the original sentence.¹²³ These typically include regular reporting to an officer, frequent drug testing, participation in treatment programs, obtaining approval before moving or making major purchases, remaining within the state unless granted permission to travel, and not being detained by law enforcement. In addition to these standard rules, a judge or parole board may impose “special conditions” that are often linked to a person’s specific offense—for instance, completion of a driving safety class tied to a conviction for driving under the influence.

Conditions can act as tripwires, creating occasions for noncompliance and complicating the path to supervision success, rather than serving a public safety goal. Failure to comply can result in a violation, potentially leading to an extension of the supervision term or to incarceration. For people struggling to maintain employment, stable housing, or medical treatment, the time and costs associated with supervision can make it difficult to fulfill the work, family, or community obligations that would otherwise foster their success. As a result, contrary to their intended purpose, excessive conditions can cause those on probation and parole to fail.

To minimize such impacts, supervision conditions should be limited and used only to address an individual’s needs, foster behavior change, and support positive outcomes. Conditions that do not prioritize progress toward case management goals rarely have a rehabilitative value and should be eliminated.

Exhaustive conditions also create an inefficient use of resources because they require officers to focus on enforcement rather than on planning to address risks and needs.¹²⁴ Special conditions, in particular, should be tailored to each person’s identified risks and needs, and should support behavior change.

To address problems and remove barriers to supervision success, this framework recommends policies that change the purpose of supervision conditions from catching and punishing failure to supporting progress and promoting success. As part of that shift, agencies should consider strategies to reduce the obstacles people face in fulfilling the reporting and other requirements essential to success on supervision.

Align supervision conditions with risks and needs

Supervision conditions should be restricted to those that directly promote public safety, such as requiring individuals to avoid activity that results in injury to a person or property or prohibiting possession of weapons. This approach supports a more efficient use of probation and parole resources. It allows agents to concentrate on rehabilitation and recidivism reduction and avoids the use of conditions that may hinder people’s rehabilitation, by requiring them to get agency permission before opening a bank account, for example. Further, standard conditions should address only behaviors associated with an individual’s assessed risks. People with no history of drug or alcohol abuse, for example, should not be subjected to routine drug testing.

Policy: Base conditions on supervision goals

Agencies should align supervision conditions with the goals identified by a risk and needs assessment. Several states have restricted the number of standard conditions they impose on people under supervision to encourage courts and agencies to focus more on risk when setting rules. Minnesota has limited standard conditions for felony probation to 10 that emphasize complying with federal and state laws, maintaining contact with the probation officer, cooperating with searches, and not possessing firearms or explosives.¹²⁵ Ohio’s parole board uses eight standard conditions: obey federal, state and local laws; do not have contact with the victim; follow orders given by the supervising officer or other authorized individuals, including submitting to drug testing

and getting permission before changing a residence; receive a travel permit before leaving the state; do not possess firearms or weapons; participate in and comply with special conditions; pay supervision fees; and grant warrantless searches.¹²⁶ Any conditions imposed in addition to these standard rules should specifically relate to the individual's identified risk and needs. For instance, if a person's assessment highlighted a mental health condition, a judge or parole board might require completion of a treatment program or adherence to a medication regimen.

Policy: Require drug testing only to determine treatment needs

States often include remaining drug free as a standard condition of supervision, and many agencies use drug screening to monitor compliance with that rule and to deter drug use. But routine testing is costly for governments and individuals, and no evidence suggests that routine testing reduces drug misuse. Supervision agencies must spend resources for officers to schedule, administer, and review drug tests, and people on supervision not only incur fees for testing but also may miss work to undergo testing, reducing their earnings.

Moreover, research indicates that widespread drug testing delivers few benefits and can undermine the usefulness of other supervision practices. Several evaluations of intensive supervision models conducted since the early 1990s found no significant difference in new arrests or convictions between supervised individuals who were subjected to increased monitoring, including more frequent drug testing, and those who were not.¹²⁷ And a 2014 analysis found that increased reporting and more frequent drug testing were associated with more technical violations and did not reduce reoffending.¹²⁸ Additionally, the studies found that failed drug screens contributed substantially to the high rate of technical revocations among people under supervision, negating any potential savings the models yielded in reduced arrests and incarceration. Ultimately, the researchers concluded that testing for substance use without providing services and treatment to address it does not lead to changes in behavior.¹²⁹

Consequently, drug testing should be reserved for individuals with identified substance use issues, rather than required as a standard condition of supervision, and positive tests should be used as an indicator of needed treatment and progress over time—rather than grounds for a sanction. Although failed drug tests can lead to revocation in many jurisdictions, some states provide an array of responses. In Connecticut, for example, state policy permits probation officers to respond to failed drug screens with options ranging from no action to requiring therapy. Connecticut's probation handbook clearly articulates that the purpose of the state's testing policy is to provide officers with the necessary information to identify individuals with an alcohol or drug problem and help them secure treatment.¹³⁰

Reduce obstacles to fulfilling reporting requirements

One supervision condition found in nearly all jurisdictions is the requirement for regular check-ins with a probation or parole officer, sometimes multiple times a week. In addition to providing accountability, such routine reporting creates an opportunity for people to engage in meaningful interaction with their supervisor. And when meeting locations offer other services, individuals also can obtain medical check-ups or access treatment, such as cognitive behavioral therapy.

But the time and scheduling needed for frequent in-person check-ins can be onerous, requiring people on supervision to arrange time off from work, secure reliable transportation, and find child care. These logistics may be especially difficult for individuals struggling with financial insecurity or mental health or substance use issues. Despite these potential barriers, most states allow revocation of supervision for people who fail to comply with reporting requirements, which in many cases leads to a period of incarceration in jail or prison, disrupting a person's progress toward supervision success.

Given the importance of reporting requirements, and the consequences for those who fail to fulfill them, states should embrace practices that reduce obstacles to routine check-ins. Removing such barriers also can conserve government resources and is consistent with the responsivity principle because it addresses individual or situational factors that interfere with supervision success. Possible approaches to reducing reporting obstacles include the use of technology instead of in-person check-ins, the adoption of place-based supervision, and the elimination of appointments that do not serve a public safety purpose.

Policy: Use technology to reduce barriers to reporting

States are increasingly using technology to enable people on probation or parole to meet their reporting requirements. The use of “mobile supervision,” for instance, leverages the text, voice, or video capabilities of mobile phones to connect individuals on supervision with their parole or probation officers. Similarly, automated kiosks located in the community provide a simple, convenient way for people, especially low-risk individuals, to check in with their supervising officers and more easily meet other personal obligations. At the same time, officers are able to direct more time to high-risk individuals, and research shows that overall reporting accuracy improves.¹³¹ After New York City instituted kiosk reporting, re-arrest rates fell from 52 percent to 47 percent for high-risk individuals and from 31 percent to 28 percent for low-risk people. The percentage of meetings missed by high-risk individuals also declined.¹³²

Technology-enabled check-ins are particularly popular for people on administrative supervision. Georgia allows such individuals to conduct their check-in by mail or telephone.¹³³ Under this approach, people provide updated information on their residence, employment, and more in writing or over the phone and have minimal interaction with supervision agents.

Allowing people on supervision to use technology to remotely check in with a probation or parole agent minimizes the amount of time and logistical planning needed to satisfy reporting requirements, decreases disruptions to individuals’ work and schedules, and reduces their need to secure child care and reliable transportation. Technological solutions can also cut administrative and institutional costs associated with in-person meetings.

In addition, technology can facilitate communication between agents and those they supervise during the periods between official check-ins. Mobile applications, in particular, enable agents to interact with people on probation or parole in real time, coach them through difficult situations, and provide feedback. Mississippi permits supervision officers to meet with individuals on supervision through social media portals or other technologies that support real-time communication.¹³⁴

Further, permission to substitute technology for in-person meetings can be an incentive for people to comply with the terms of their supervision. Individuals who satisfy their probation or parole conditions for a specific period can become eligible to complete check-ins remotely using a technological tool.

Technology can also promote more effective information gathering. In the same way that medical facilities have begun using data entry systems, such as computer tablets, to access and update patient information in real time, community supervision systems can use these tools to obtain people’s information, maintain interaction between individuals and officers, and make data entry more efficient by linking individuals’ responses to their computerized records.

Despite its benefits, technology can also fail because of service outages or other problems. Jurisdictions that adopt mobile supervision must put in place backup procedures to ensure that individuals are not penalized if the technology malfunctions.

Policy: Offer place-based supervision

Place-based supervision refers to the assignment of individuals to a probation or parole agent's caseload based on geographic area. In some instances, satellite offices may also be located in the communities where people on supervision live.

This approach can help people comply with their supervision conditions by reducing logistical barriers to regular check-ins. Assigning an individual an agent who is in close geographic proximity can make in-person interactions less onerous, requiring less travel, child care, and time off from work. The New York City Department of Probation was an early innovator of place-based supervision, developing co-located supervision and community services in its Neighborhood Opportunity Networks. In addition to increasing convenience for people on supervision, the effort promoted engagement with social service providers and community resources to support people's supervision success, rather than just compliance.¹³⁵

Place-based strategies can be especially effective in regions where people are widely dispersed and public transportation is limited. To address high recidivism rates in the south Phoenix area, for example, Arizona policymakers developed the Legacy/85041 Project, a partnership between the state's Corrections and Economic Security departments and the Maricopa County Adult Probation Department. Under the model, agents meet people on supervision in their homes instead of requiring them to meet in the office; engage social workers to connect individuals with behavioral health, unemployment support, disability support, and other services; and, to facilitate trust and buy-in, forgo enforcement of certain rules, such as not socializing with other formerly incarcerated people.¹³⁶

The effectiveness of programming provided by probation and parole agents also can benefit from place-based supervision. Through increased and more consistent involvement in specific communities, officers can grow more familiar with useful local resources and services, such as food pantries or employment support. In addition, increased proximity may facilitate better communication and stronger relationships with supervised individuals as agents become embedded in informal community networks.¹³⁷



Madison Kaminski

Develop individualized conditions for payment of legal financial obligations

Fines, fees, and restitution, ordered as part of a criminal sentence, can contribute to economic uncertainty and undermine the financial stability of people on supervision.¹³⁸ In addition to costs imposed as part of sentencing, community corrections agencies may impose fees—for supervision, electronic monitoring, drug testing, and treatment—to offset their operational costs. People who lack the means to meet these financial obligations can incur penalties, and interest is typically added on to accumulating debt, creating a significant economic burden that can destabilize individuals' ability to reintegrate into the community. In addition, lingering LFOs subject many people to extended periods of supervision, even after they have fulfilled all other conditions. That means they must continue to abide by multiple restrictions, including those limiting where they may live and travel, as well as their eligibility to vote. In 2019, 48 states and the District of Columbia allowed agencies to exclude people on supervision from voting for nonpayment of fines, fees, restitution, and other charges.¹³⁹

Legal financial obligations typically fall into five categories:

- **Fees.** Imposed to fund operations or pay costs of courts, supervision agencies, or other government functions.
- **Fines.** Assessed at sentencing and set by statute or municipal code to hold individuals accountable for an offense.
- **Surcharges.** Added automatically to an LFO total and often expressed as a percentage of a fine.
- **Restitution.** Ordered to help victims who suffered property damage, physical injury, or other losses.
- **Assessments.** Collected for criminal justice programming and services (e.g., chemical dependency evaluation).

Restitution is an essential component of the sentencing process, providing victims with a sense of accountability and helping them recover some of their losses. However, when restitution is applied in combination with other LFOs and without taking into consideration the ability of the person under supervision, who may already be experiencing poverty, to afford those payments, the result can be a debt that is impossible to pay.

Further, LFOs sometimes yield counterproductive results, directing supervision officers' attention toward debt collection and prioritizing certain fines and fees over restitution. This dynamic dilutes officers' focus on behavior change and forces people with few resources to choose between meeting basic needs, such as paying for food and rent, and LFOs,¹⁴⁰ a decision that becomes further complicated if the individual on supervision is also the primary provider for dependents or is required to pay child support. And people who are unable to meet financial obligations may accrue additional costs or debts—such as late payment penalties, added interest for using a payment plan, surcharges, and administrative fees—that leave them vulnerable to further sanctions and incarceration.

The council intended the policies outlined in this section to help agencies better manage the imposition and collection of LFOs for the benefit of taxpayers, individuals on supervision, and crime victims and to encourage jurisdictions to reduce their reliance on fee income to fund agency operations and instead provide sustainable support from general revenue. Overall, the council believes that limiting the harms associated with LFOs can help more people successfully complete supervision, reducing caseloads and conserving government resources.

In addition to this framework, policymakers may also wish to consider the American Bar Association's "Ten Guidelines on Court Fines and Fees," which includes information on appropriate limits on the use of LFOs, alternatives to incarceration for inability to pay, and system transparency.¹⁴¹ Another resource is *Principles on Fines, Fees, and Bail Practices*, which addresses fairness and the use of alternative sanctions for financial obligations.¹⁴²

Improve restitution policies to facilitate collection

The goal of restitution is to reimburse victims for out-of-pocket costs or financial losses incurred as a direct result of a crime. These expenses often include medical bills, property damages, and lost wages. Research shows that ensuring that people convicted of a crime, as well as victims, are made fully aware of the purpose, such as the repayment of medical costs, the amount, and the payment schedule of restitution, can increase total payments.¹⁴³ In addition, when individuals on supervision know how restitution amounts are determined, many consider it the fairest financial sanction.¹⁴⁴

Like transparency, affordability is critical to promoting payment of restitution. Studies have shown that, as with other LFOs, people with lower incomes are more likely than those with higher incomes to have difficulty paying restitution and to report that making consistent payments interferes with their ability to complete supervision.¹⁴⁵ Overall, research on restitution payments indicates that ability to pay—and not willingness—is the key predictor of successful payment.¹⁴⁶

Policy: Make restitution payments affordable

The assessment of restitution can be controversial because the defendant's ability to pay is often not part of the calculation. In many instances, restitution amounts are proposed as part of a plea agreement, but since rejection of a plea offer can mean a trial and the potential for a more severe penalty after conviction, the defendant often agrees to the plea—and with it, the restitution amount—simply to avoid jail or prison. When restitution is not agreed upon, most jurisdictions will conduct a hearing to determine an appropriate amount, but in most states, these hearings focus almost exclusively on the victim's losses, without consideration of ability to pay.

Several states and localities have begun to reconsider how best to use restitution to hold people accountable and repair the harm they have caused. North Dakota, for example, requires the court to hold a restitution hearing and consider the individual's ability to pay before determining the amount.¹⁴⁷ In keeping with those objectives, many jurisdictions are choosing to prioritize restitution over other LFOs. States can take several additional steps to improve collection:

- Conduct hearings to determine ability to pay and inform all parties of the total restitution ordered to increase transparency.
- Consider waiving or suspending restitution for people with no ability to pay, or implementing restorative alternatives, such as community service, or finding other ways for individuals to compensate victims for their losses.
- Prioritize restitution over other LFOs, except child support, which can be split with restitution as the highest-priority payments.
- Make payment amounts manageable to enable people to meet their obligations and avoid violating the conditions of their supervision.
- Help people make their payments more easily by sending them monthly billing statements, allowing them to make payments electronically or online, and eliminating collection and other fees assessed on payments.
- Create mechanisms, such as conversion of restitution to a civil judgment, that release people from supervision once they have met all conditions other than their restitution obligations, but also ensure the restitution order is fully satisfied.

Restructure funding to promote success on community supervision

Although fines and restitution may be reasonable ways to hold people accountable, unaffordable payments can undermine that goal by creating financial instability among people on probation and parole and by driving some individuals to commit crimes to pay their debts.¹⁴⁸ In addition, some research suggests that requiring supervision officers to act as “bill collectors” reduces the amount of time they can devote to their core mission of supporting rehabilitation.¹⁴⁹ To prevent such outcomes, agencies can reorient their policies to reflect the reality that nonpayment often results from economic disadvantage, rather than deliberate noncompliance.

Policy: Prohibit fees for supervision, corrections services, and assessment

LFOs that fund justice systems operations can create pernicious incentives for continued correctional control of an individual and are an unreliable source of income. The Model Penal Code on Sentencing, developed by the American Law Institute, provides guidance to help lawmakers update and standardize their criminal statutes, based on the latest legal and sociological research. One of its model laws is the elimination of fees, assessments, and charges for other corrections services.¹⁵⁰ Although the code recommends that jurisdictions abolish such fees, it acknowledges that such a policy could contribute to budget shortfalls at state and local government agencies. Specifically, the Model Penal Code provides the following guidance on the use of economic sanctions:

- LFOs should not be imposed if they are likely to interfere with people’s ability to support themselves and their families. Any amount of fees assessed should be based on the individual’s income and financial status.
- Economic sanctions are appropriate for individuals who have an ability to pay.
- Financial obligations should be used as an alternative to incarceration and allow in-kind labor or community service for those without sufficient means to make monetary payments.
- Economic sanctions that fund agency operations or generate revenue should be prohibited; only LFOs related to the offense charged should be permitted.

In 2018, San Francisco City and County examined its LFO policies and practices and decided to abolish all criminal justice fines and fees not required under California law.¹⁵¹ Alameda County, California, also eliminated many of its criminal justice fines and fees, effective January 2019, including those for probation, public defender assignment, and diversion program participation.¹⁵² The San Francisco and Alameda reforms both applied retroactively, relieving hundreds of thousands of people of onerous and often growing debts.

Reliance on Fines and Fees Does Not Improve Public Safety

Heavy reliance on legal financial obligations for city, county, or state revenue encourages jurisdictions to deploy economic sanctions against individuals convicted of crimes, often without regard to public safety or human cost. One of the most well-known illustrations of this problem occurred in Ferguson, Missouri, which projected that 18 percent (\$2.2 million) of its \$12.3 million budget would come from criminal justice fines and fees. A 2015 U.S. Department of Justice investigation found that, to meet this projection, city leadership directed police and court staff to prioritize revenue generation through strict enforcement of minor crimes, such as traffic violations and jaywalking.¹⁵³ The investigation concluded that the mandate had compromised the independence of Ferguson’s municipal court, which had used its judicial authority to compel payment of fines and fees for the purpose of advancing the city’s financial interests.¹⁵⁴

Continued on the next page

Research has found that a focus on “user funding” can also compromise public safety. One study showed that in cities that collect a greater share of their revenue from fees, police departments solve violent crimes at a significantly lower rate than in other cities, probably because they face greater pressure to generate resources and devote more time to it.¹⁵⁵ In addition, research on juveniles suggests that debt can lead to criminal behavior, encouraging individuals to commit an offense to meet their financial responsibilities or skip reporting obligations for fear of incarceration.¹⁵⁶

Available data also suggest that a fiscal reliance on fines and fees may ultimately not yield the needed revenue. Many jurisdictions experience only limited success in collecting criminal justice-related debts while accruing enforcement costs for pursuing them. Florida, for example, collects less than 14 percent of fines and fees related to felony convictions, and in Maryland, only 17 percent of supervision fees are collected by the end of parole, on average.¹⁵⁷ Even in states with higher collection rates, such as Washington—where county governments recouped 57 percent of fees, fines, and restitution orders in 2006—much of the fiscal benefit is probably offset by the direct or indirect costs associated with collection efforts, including expenses for mailing monthly statements and salaries for clerks whose sole responsibility was the recovery of fees.¹⁵⁸

Policy: Stabilize agency funding through public sector support

Many jurisdictions are positioned to lower agency costs by reducing probation and parole populations through caps on terms, earned compliance credits, and decreased supervision of low-risk individuals, which may in turn decrease agencies’ reliance on fines and fees. But in other states and localities, policymakers will need to reconfigure budgets to replace fee revenue. Such a fiscal realignment is difficult in any setting, but it is further complicated in states that require local probation agencies to raise some portion of their budgets from fee revenue. States and localities may spend years reforming supervision systems to eliminate problematic financial incentives. But resolving the harms associated with a justice system reliant on user fees—such as compromising supervision compliance and exacerbating conditions of poverty¹⁵⁹—is worth the investment.

Make payments affordable

Research shows that collection rates and amounts may increase if financial obligations are reasonable and affordable based on individual financial circumstances.¹⁶⁰ Accordingly, this framework recommends developing affordable payment plans and eliminating the use of sanctions against people who fail to pay because they lack the financial means to meet their obligations.

Policy: Assess individuals’ ability to pay

Before imposing fines and fees, jurisdictions should require a financial assessment to determine an individual’s ability to pay and identify an amount that can be imposed without disrupting reintegration or creating barriers to supervision success. These assessments should occur as part of regular court proceedings and should clearly define for both payer and recipient the amount and purpose of the restitution. Financial assessments are relatively simple and can be conducted by either a court clerk or a supervision agent.

Several states have started to evaluate individuals’ ability to pay certain fines and fees. For instance, since 2017, Texas law has required courts to consider people’s ability to pay before imposing fines and fees at sentencing, and has allowed waivers and alternatives for individuals who cannot pay.¹⁶¹

Policy: Make fines, fees, and court-ordered assessments proportional

Proportional fines, fees, and other non-restitution LFO payments should be calibrated to an individual's means—such as daily net income—as well as the seriousness of the crime. This form of proportional sanction, often referred to as a “day fine,” ensures a more equitable punishment and establishes clear and consistent payment plans tailored to an individual's financial status.

Several states have taken important steps in this direction. In Louisiana, monthly payments are equal to a person's average gross daily income for an eight-hour workday, and if restitution is ordered, half of each payment is distributed to that obligation. Further, the legislature authorized the court or a probation or parole officer to impose a payment alternative—including substance use treatment, education, job training, or community service—if monthly payments become unmanageable, such as during periods of unemployment or homelessness.¹⁶² Similarly, Washington state law prohibits the charging of court costs and fees to individuals found to be indigent or receiving public assistance.¹⁶³

Policy: Postpone the start of financial obligations

Delaying the required payment of fines and fees for a specified period at the beginning of probation or parole provides critical relief to people who have been out of the workforce for an extended period or whose employment has been disrupted by arrest, pretrial detention, incarceration, substance use, or other circumstances associated with their offense. By deferring payments, perhaps by six or 12 months, jurisdictions can allow these individuals to become more financially stable and acclimated to the supervision process, which can, in turn, better position them to make payments in the future.

In New Jersey, for example, state law exempts individuals released from a state correctional facility from paying any portion of an outstanding fine for 90 days.¹⁶⁴ And in Oklahoma, people on parole may delay paying fines or fees for the first 180 days after being released from prison.¹⁶⁵

Policy: Allow payment plans, waivers, and forgiveness options

As a complement to developing reasonable payment plans, states can create incentives to encourage people to make consistent, timely payments.¹⁶⁶ One approach is to waive or forgive remaining balances after a person has made regular payments for a predetermined period, such as two years. This approach can motivate people to remain current with their payments, make fulfillment of the obligation more attainable, and promote proportionality and fairness, because while individuals with means can satisfy their debts quickly, for others, LFO requirements can take years to pay off, effectively functioning as perpetual punishment for people in poverty. Oklahoma is one state that allows the court to waive outstanding fines and fees for any person who has made monthly payments for the previous 24 months.¹⁶⁷

In crafting such policies, jurisdictions should ensure that changes in a person's circumstances do not result in forfeiture of an incentive received for consistent payments. One option is for supervision agencies to institute allowances for “good faith” efforts, recognizing that people sometimes face financial challenges or struggle to find reliable employment.

Policy: Provide alternatives to fines and fees

In light of the considerable challenges people on supervision face in securing employment and earning a living wage, states and localities should offer alternatives to fines, fees, and other conditions that impose financial obligations. As previously discussed, community service can serve as a substitute for supervision, but it also can be an effective alternative to the levying of fines and fees. Community service can include a specified number of required hours, but officials should ensure that use of this alternative does not interfere with an individual's

achievement of supervision plan goals, is proportionate to the offense, provides a range of work options other than just manual labor, and, ideally, connects individuals to ongoing employment opportunities.

Several states already use community service in lieu of some LFOs. Washington law allows courts to convert fines and fees to community service.¹⁶⁸ In Oregon, judges can sentence an individual to community service as an alternative to incarceration, a fine, or probation.¹⁶⁹ Indiana also permits the court to reduce some or all costs owed after an individual performs either court-ordered community service or court-approved volunteer work.¹⁷⁰

Eliminate sanctions for inability to pay due to indigence

Revoking people's supervision when they unintentionally fail to pay fines and fees is problematic for several reasons. First and most importantly, incarcerating someone for inability to pay violates the constitutional guarantees of due process and equal protection. In *Bearden v. Georgia*, the U.S. Supreme Court held that an individual cannot be jailed or imprisoned for nonpayment of fines, restitution, or court costs unless the court finds that the person could have paid but chose not to.¹⁷¹ Further, revocations of supervision for involuntary nonpayment of LFOs punish individuals for having limited means, rather than for willfully violating the terms of supervision or engaging in behavior that compromises public safety.

Incarceration for nonpayment also can increase costs for taxpayers; the expense of holding someone in jail or prison typically exceeds the amount of fines and fees owed, resulting in a net loss for jurisdictions.¹⁷² In addition, incarcerating people for failure to pay prevents them from working, can cause them to lose their jobs, and may interrupt participation in substance use treatment or other programs they need to succeed on supervision.¹⁷³

Policy: Prohibit revocations for inability to pay

Eliminating revocations for nonpayment prevents the use of disproportionate punishment, allows people to remain gainfully employed, and promotes a more judicious use of jail or prison space. In Arizona, state law allows revocation for failure to pay only if the court finds that the defendant "intentionally refused to make a good faith effort" to pay.¹⁷⁴ Similarly, New Jersey prohibits the court from revoking probation for nonpayment of a fine or restitution unless the failure was willful.¹⁷⁵ Further, some states maintain the integrity of a restitution order without the threat of revocation by converting restitution to civil orders, which removes the possibility of incarceration but preserves legal accountability on the individual responsible for repayment.

Policy: Ensure that inability to pay does not prevent supervision discharge

Extending supervision terms because of outstanding LFO balances is costly and counterproductive, increasing public costs and subjecting people to unnecessary monitoring and other requirements that can hinder their reintegration and create opportunities for technical violations. Additionally, for individuals with outstanding debts who have otherwise satisfied the conditions of their probation or parole, continuing supervision serves no public safety interest. Terminating supervision even when people owe some portion of their LFOs is not only more efficient but also may lead to a stronger community supervision system by freeing up resources for efforts more likely to benefit public safety.

To support supervision termination for otherwise compliant individuals with outstanding LFO balances, state law and policy should define successful supervision completion as the satisfaction of nonfinancial conditions of supervision. Several states, including Ohio and Virginia, prohibit extending supervision for failure to pay fines, fees, or other financial assessments.¹⁷⁶

Policy: Prohibit suspension of a driver's license for inability to pay

Forty-four states and the District of Columbia permit supervision agencies to suspend a person's driver's license for nonpayment of LFOs, a policy that serves no apparent public safety purpose.¹⁷⁷ In fact, this sanction punishes and intensifies indigence by limiting a person's ability to maintain employment and earn a living. Further, many people with suspended licenses continue to drive to get to work, attend court-ordered appointments, and manage basic life responsibilities, such as child care, health care, or grocery shopping; if caught, they face arrest, misdemeanor charges that carry hefty fines of up to \$2,500 in many states,¹⁷⁸ and potential revocation of their supervision. The policy is costly for jurisdictions as well, requiring staff time for enforcement and processing of license suspensions.¹⁷⁹

In recognition of the hardship associated with license suspension, some states are changing their policies. In 2017, California enacted legislation repealing the automatic suspension of driver's licenses for unpaid court debts.¹⁸⁰ The Mississippi Department of Public Safety similarly changed its policies the same year, restoring driving privileges to hundreds of individuals and committing to no longer enforce the state code that allows license suspension for unpaid fines and fees.¹⁸¹ In addition, the District of Columbia's Driver's License Revocation Fairness Amendment Act, which took effect in March 2019, prohibits license suspension based on outstanding Superior Court debt and allows drivers whose licenses were previously suspended for outstanding court payments to apply for reinstatement.¹⁸²



Artur Aidyrkhanov

Reduce use of and pathways to incarceration

Although many people on probation and parole successfully complete their sentences, a large share do not. At least 350,000 people have their supervision revoked and are sent to jail or prison every year. Many of these instances are the result of technical violations, such as failing a drug test, missing a meeting with a supervising officer, not paying financial obligations, or breaking other rules without committing a new crime. Most states established their policies on technical violations to protect public safety, but research suggests that noncompliance is not a clear indicator of potential criminal behavior.¹⁸³

Nevertheless, revocations of probation and parole remain a significant contributor to prison admissions. Forty-five percent of all prison admissions nationally are for supervision violations, and almost a quarter are for technical violations. As a result, on any given day, nearly 1 in 4 people in prison—about 280,000 people nationwide—are incarcerated for a supervision violation.¹⁸⁴ In 20 states, more than half of prison admissions are the result of supervision violations, and in 10 of those states technical violations drive most prison admissions.¹⁸⁵ In 2015, probation revocations made up 55 percent of all prison admissions in Georgia, and parole revocations accounted for 54 percent of all prison admissions in Arkansas.¹⁸⁶ These numbers do not include confinement in jail, so the overall rate of revocation-related incarceration is probably much higher; nevertheless, the reported figures are sufficiently alarming that a panel of experts recently concluded that the “largest alternative to incarceration in the United States is simultaneously one of the most significant drivers of mass incarceration.”¹⁸⁷

Research shows that incarceration is no more effective than noncustodial sanctions at reducing recidivism and can deepen illegal involvement for some people, inducing the negative behaviors it is intended to punish. One meta-analysis found that, compared with community-based alternatives, incarceration either has no impact on reducing re-arrests or actually increases criminal behavior.¹⁸⁸ This finding was further supported by a study showing that using jail stays to punish supervision violations did not improve probation and parole outcomes and offered no benefits over community-based sanctions. Further evidence shows that incarceration is an inefficient method of preventing crime specifically among supervised populations.¹⁸⁹

States are already adopting policies that limit the use and duration of revocations and instead use graduated and proportional responses, such as curfews, increased reporting, and the removal of privileges to address technical violations of supervision. At least 22 states have passed laws requiring probation and parole agencies to use graduated responses, and another 16 states have enacted caps on revocation time for technical violations.¹⁹⁰ This framework advances the use of proportional, evidence-based responses to violations and the development of clear, standardized definitions of technical violations. Finally, it provides appropriate responses for agencies to use when people fail to report for supervision.

Reduce incarceration

Revocations from supervision that result in incarceration, even short jail stays, expose individuals to many well-documented harms, such as job loss, perceptions of instability by employers and others, decreased earnings, and family disruption.¹⁹¹ Longer terms of incarceration make these problems worse, weakening family bonds, imposing financial and emotional strain on loved ones, and decreasing well-being among the children of incarcerated individuals.

Evidence suggests that agencies can safely reduce such harms and improve outcomes by substantially decreasing the use of incarceration for supervision violations.¹⁹² Given the research, this policy framework recommends that jurisdictions limit arrest and incarceration for technical violations; limit the use of incarceration before revocation hearings; cap periods of incarceration for revocations; provide counsel at hearings for individuals facing revocation; and ensure the availability of critical services, including health care, substance use treatment, and transition support.

Together, these policies can significantly curtail revocations and ensure that incarceration is used justly and sparingly in response to violations.

Policy: Clearly define a technical violation

Jurisdictions define “technical violations” differently; the term can encompass everything from a minor breach of the rules to an arrest or even a nonviolent misdemeanor. However a state chooses to define technical violations, individuals on supervision, probation and parole officers, agency personnel, and the courts need a clear definition to provide transparency and a sense of fairness and to formulate appropriate and measured responses. Clear definitions also help establish consistency and increase perceptions of equity among people being supervised, which may encourage compliance.¹⁹³

In South Carolina, the Department of Probation, Parole, and Pardon Services established rules delineating types of violations:¹⁹⁴

- Compliance violation: Conduct that reflects a resistance to follow basic supervision guidelines such as maintaining contact, meeting financial requirements, maintaining a stable residence and employment, and addressing substance use problems.
- Community safety violation: Actions that place the community, individually or collectively, in danger, such as failure to comply with restrictions on one’s movement in the community, any violation by a person convicted of a sex offense that is not purely financial, and weapons violations.
- New criminal conviction: Guilty verdict for an offense committed during the supervision period.

Policy: Develop supervision responses to absconding

One common technical violation that vexes parole and probation officials is absconding. Supervision agencies define “absconding” in myriad ways (e.g., missing a single appointment, failing to inform an agent of one’s whereabouts, or lack of contact with the officer for a specified period). Given that individuals on supervision often face a range of personal, financial, and other challenges, jurisdictions should evaluate their policies related to absconding and identify ways to reconnect people to supervision.

In determining what constitutes absconding, some jurisdictions look to intent, rather than narrowly defining the violation as a certain number of missed appointments or a period without contact.¹⁹⁵ This approach provides some leeway for agencies to take an individual’s circumstances and motivations into consideration and respond appropriately. In Kansas and Oregon, for example, the courts evaluate the reasons for a person’s failure to report; to be deemed absconding in those states, an individual must be found to be engaged in a calculated effort to hide from supervision and the legal process.¹⁹⁶ Similarly, Montana defines absconding as a situation in which an individual “deliberately makes [his/her] whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision and reasonable efforts by the probation and parole officer to locate the [individual] have been unsuccessful.”¹⁹⁷

Another policy for jurisdictions to consider regarding absconding is “safe surrender,” or amnesty, for individuals who have failed to report but have not committed new crimes or been arrested. “Safe surrender” allows individuals to take responsibility for their actions by turning themselves in and facing sanctions without being incarcerated. In New Mexico, absconders who do not commit a new crime, are not considered a public safety risk, and surrender themselves can continue community supervision with permission from a judge or parole board.¹⁹⁸ Maricopa County, Arizona, allowed some individuals to clear arrest warrants for absconding through a project called Operation Fugitive Safe Surrender. Over a four-day period, 1,300 people turned themselves in, and of those who were on probation, all but one was returned to supervision.¹⁹⁹

Policy: Limit arrest for revocations based on technical violations

When seeking a revocation, supervising agents typically make the decision to request either an arrest warrant or a summons to appear in court for a revocation hearing. For those accused of technical violations, an arrest warrant may provide little benefit to the supervising agency or public safety but can disrupt an individual's employment, housing, child care, and other activities.

To encourage the use of summonses rather than arrest warrants, some states have adopted policies that specify when warrants are appropriate. In Minnesota, when a revocation proceeding is initiated, the court may issue a warrant only if the judge deems it necessary to secure the individual's appearance or if a specific public safety issue exists.²⁰⁰ In Illinois, the court may order an arrest warrant in response to an alleged probation violation "where there is danger of his fleeing the jurisdiction or causing serious harm to others or when the offender fails to answer a summons."²⁰¹

Policy: Limit incarceration for technical violations

Research indicates that incarcerating people for technical violations of supervision does not enhance public safety. Instead, it destabilizes individuals while contributing to higher corrections costs.²⁰² Incarceration for technical violations also is disproportionate to the seriousness of the behavior. For these reasons, states should consider restricting the use of incarceration as a response to supervision violations to occasions when an individual has committed a new crime and poses a direct threat to public safety. In addition, because time spent in jail or prison creates costs for the corrections system, taxpayers, and incarcerated individuals and their families, if incarceration is used as a violation response, it should be for only a short time. By limiting the use of incarceration and reducing the length of time served when it is used, states can promote success on supervision, prevent the harms associated with even short periods behind bars, and relieve pressure on jails and prisons.

Revocation Caps Can Safely Reduce Incarcerated Populations

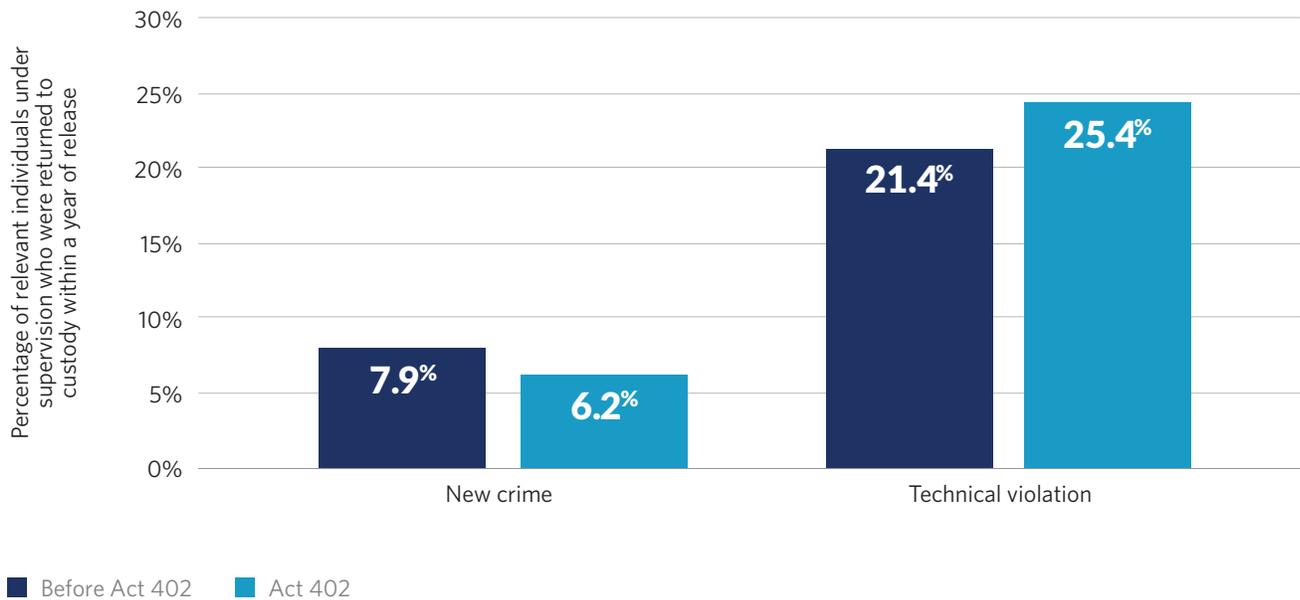
Several states have stopped short of eliminating incarceration for technical violations and instead have implemented revocation caps for probation and parole terms. These policies ensure that people who are sent to prison for failing to follow certain supervision rules serve only a set number of days—rather than a lengthy sentence—before being released back to supervision. In Missouri, supervision agents may order short stays of incarceration as an alternative to revocation proceedings for people on probation or parole who violate their supervision conditions. The length of detention under this sanction is statutorily capped at 48 hours in jail for first-time technical violations. Longer stays are permissible for subsequent violations, and the state limits total incarceration for all violations to 360 hours per calendar year.²⁰³

States are realizing savings from such policy changes. In 2007, as part of Act 402, Louisiana adopted a revocation cap of 90 days for a first-time technical violation.²⁰⁴ According to an evaluation of the act's impact after five years, the average length of incarceration for first-time technical revocations declined by 281 days, from 355 days to 74. The new policy also maintained public safety by decreasing the share of individuals who returned to custody for new crimes by 22 percent. Overall, the policy change meant that more than 2,000 people did not have to spend time in jail or prison for technical violations in a given year, and it yielded net savings of \$17.6 million in corrections costs annually.²⁰⁵ As a result of these findings, Louisiana expanded its use of revocation caps and set the limits at 15 days for the first violation, 30 days for the second, 45 days for a third, and for people on probation, up to the remainder of the sentence thereafter. Those on parole are subject to the same limits for the first through third violations as well as a 90-day cap for additional violations.²⁰⁶ (See Figure 5.)

Figure 5

Louisiana's Cap on Supervision Revocations Maintained Public Safety

Percentage of individuals reincarcerated within a year of release from a jail or prison term for a revocation, before and after Act 402, by offense type



Note: Data reflect similar individuals whose supervision was revoked between 2000 and 2004 (before implementation of Act 402) and from September 2007 to April 2012 (after Act 402).

Source: The Pew Charitable Trusts, "Reducing Incarceration for Technical Violations in Louisiana" (2014), <https://www.pewtrusts.org/-/media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf>

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Policy: Limit incarceration pending a revocation hearing

Revocation hearings must be docketed and scheduled on a court or parole board calendar, which can take days or weeks. As a result, individuals charged with violating probation or parole are often held pending a hearing, and even if they are ultimately released, the time they spend in detention disrupts their work, family, and community obligations while jeopardizing the progress they may have made under supervision. Some states have attempted to limit incarceration pending a revocation hearing by capping the time within which a hearing must occur. Minnesota allows for the release of people on probation pending a revocation hearing, even if the individual was arrested, and requires that if a person is in custody for a violation, the revocation hearing occur within seven days.²⁰⁷ Mississippi requires the Department of Corrections to hold a preliminary hearing on an alleged probation violation within 72 hours of arrest, followed by a revocation hearing within 21 days after the date an individual is placed into custody. If those deadlines are not met, the individual must be released and returned to regular probation.²⁰⁸

Policy: Provide counsel at revocation hearings

The U.S. Constitution requires states to provide indigent defendants with counsel in criminal proceedings, but a Supreme Court decision in the 1970s held that counsel is not automatically required for indigent defendants facing revocation hearings.²⁰⁹ Despite those decisions, the consequences of a parole or probation revocation hearing

can be at least as severe as those of a criminal proceeding. Further, the burden of proof required for revocation is significantly lower than for a criminal conviction in many states, making legal counsel even more important.

States differ significantly in their regulations regarding defense counsel for individuals facing supervision violations and revocation hearings. Most states provide a statutory right to request that counsel be appointed for revocation proceedings that occur in court, but others have gone further, guaranteeing counsel for any revocation hearing.²¹⁰ In New Hampshire, indigent individuals are entitled to appointed counsel at all stages of their criminal proceedings, including for probation violations.²¹¹ Similarly, North Carolina's Office of Indigent Defense Services adopted rules entitling people on probation to be represented by counsel at a revocation hearing.²¹² To promote fairness and reduce criminal justice costs, this framework recommends that counsel be provided to all individuals facing revocation hearings.²¹³

Develop re-entry strategies to support success

Many correctional facilities start planning for an individual's re-entry into the community when that person first arrives. Despite such efforts, the transition from custody is often difficult. Individuals typically must report to their agent within 24 hours of release, yet the development of a case plan and enrollment in required programs can take months once someone starts supervision. This lag in planning and services is at odds with evidence-based recidivism reduction principles that prioritize provision of services in the first months following release. Therefore, starting case planning before a person is released from jail or prison is critical to identifying needed programs and services and can even allow for interventions before release.

Formerly incarcerated people face many challenges during re-entry, especially in the first weeks and months after release. These include finding a stable residence, obtaining employment, rebuilding family relationships, and accessing needed health care. Medical care, mental health care, and substance use treatment are all potential responsivity factors that contribute to an individual's outcomes on supervision. But with proper planning, many of these issues can be addressed before release. Supervising officers are particularly well positioned to engage with incarcerated individuals while they are still behind bars to begin building a rapport and preparing for re-entry. Such an engagement process should be an integral part of supervision agencies' prerelease activity²¹⁴ and should include the collaborative development of a risk-informed case plan.

At a minimum, jail and prison officials should address a handful of key issues when planning for release: transportation to a community-based location; clothing appropriate for the climate; providing the remainder of all account funds with an additional base amount that the Department of Corrections can supply; and the issuance of legal identification other than a corrections-based ID.²¹⁵ Beyond that, a gray area exists between the worlds of confinement and freedom or supervision. Although many jurisdictions require re-entry planning, that process often fails to fully and expeditiously address the range of likely challenges individuals face upon and shortly after release.

To support successful re-entry, this framework recommends that states create a role of transition specialist to help released individuals obtain reliable access to medical and mental health care, as well as substance use treatment, and protect the continuity of health care by formalizing a process of suspension, rather than termination, of Medicaid benefits when people enter custody.

Policy: Deploy transition specialists

To increase people's chance of successful re-entry, states should consider creating "transition specialists" within supervision or corrections agencies. These specifically trained agents assist people in preparing for release from prison, often initiate a case plan, coordinate the case handoff to supervision agents and other community providers, and connect individuals with needed services. The value of transition specialists is backed by research

showing that early engagement with individuals while incarcerated and facilitating their transition to the community is key to setting expectations and facilitating successful reintegration.²¹⁶ These early connections also provide opportunities to help individuals meet their basic needs once released.²¹⁷ To be effective, transition specialists should coordinate among supervision agencies and service providers to develop a continuum of care informed by a risk assessment.²¹⁸ Utah created transition specialists and a re-entry process that begins while the individual is incarcerated and includes addressing potential barriers to success, such as a lack of housing, food, identification, and transportation.²¹⁹ Specialists also help connect individuals with supervision agents and Medicaid.

A 2018 meta-analysis of nine re-entry programs found that those associated with better recidivism outcomes shared certain attributes. These included strong communication between personnel in the correctional facility and the supervision agency, coordination with community services, engagement between supervision agents and the individuals to be supervised while those people were still incarcerated, and collaborative relationships between agents and treatment providers before release.²²⁰

Additionally, to enhance the effectiveness of their work, probation and parole agencies can and should do more to collaborate with community groups that deliver the formal and informal supports people on supervision need.²²¹ Agencies can act as hubs, connecting supervised individuals with local organizations that offer housing, education, employment, and other help. The Neighborhood Opportunity Network in New York, for example, establishes connections between providers and individuals under supervision to facilitate people's access to treatment programs, health care, education, and other services in the areas where they live.²²² Although these efforts can be challenging, they are critical for creating positive environments where people can participate and contribute meaningfully to their communities.

Policy: Provide a continuum of health treatment

Individuals who have been incarcerated or placed on supervision tend to have a variety of unmet needs, such as housing, employment, education, and physical and behavioral health issues. Sixty-three percent of people sentenced to jail and 58 percent of those sent to state prison suffer from drug dependence or misuse, compared with just 5 percent of the general population.²²³ Similarly, 1 in 4 people in jail and 1 in 7 in prison have self-reported serious psychological distress, compared with 1 in 19 people among the general population.²²⁴ Because substance use and mental health disorders are linked to reoffending, supervision agencies should ensure continuity of care. (See Figure 6.)

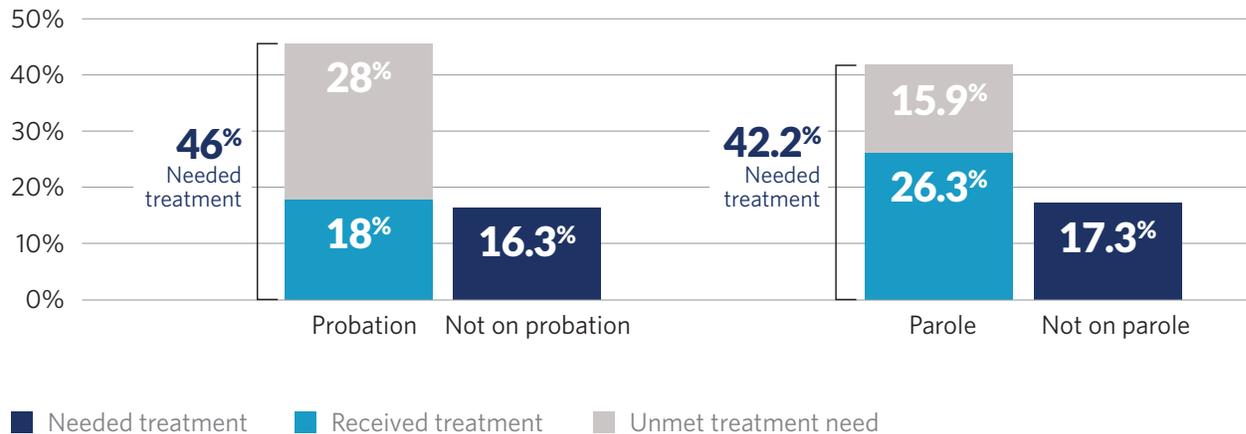
Providing a seamless handoff from incarceration to the community can help make sure people have access to necessary treatment once released. Transition support should include processes to initiate mental health and substance use assessments; links to evidence-based programming, ranging from low to high intensity; and wraparound support services, such as case and medication management. When supervision agencies establish a network of services, supervising officers, especially those trained to understand issues and challenges surrounding behavioral health, can proactively support people's success and effectively respond to their behavior.

Connecticut, for instance, has taken steps to ensure that individuals leaving incarceration continue to receive necessary care after release and that their Medicaid status is reinstated. Before a person is released from jail or prison, corrections staff notify the state's Department of Social Services (DSS), which activates the individual's medical benefits. For those released directly from court to supervision, court staff send an application to DSS requesting activation of those benefits.²²⁵ The state also created a Medicaid Prescription Voucher Program to help people with ongoing medication needs. These programs are based on recommendations from an interagency commission charged with establishing more reliable behavioral health support for individuals being released from prison or jail and composed of members from DSS; the departments of Correction, Parole, and Mental Health and Addiction Services; and the judiciary.²²⁶

Figure 6

People on Probation or Parole Have Elevated Rates of Substance Use Disorders and Significant Unmet Treatment Needs

Dependence and need for treatment, by supervision status, 2009



Notes: “Not on probation” and “not on parole” refer to all people in the United States who were not under the stated form of supervision at the time of data collection. Although these data apply to 19- to 49-year-old adult males on probation or parole, researchers generally agree on the overall disproportionate substance use issues and treatment needs among individuals on community supervision. For more information, see Jonathan P. Caulkins and Peter Reuter, “Dealing More Effectively and Humanely With Illegal Drugs,” in *Reinventing American Criminal Justice*, eds. Michael Tonry and Daniel S. Nagin (Chicago: University of Chicago Press, 2017), 46, <https://www.journals.uchicago.edu/doi/10.1086/688458>.

Source: Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2009

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Policy: Maintain treatment for substance use and behavioral health

Substance use disorders and mental illness commonly co-occur, especially among people on probation and parole.²²⁷ Drug and alcohol use disorder rates are four to nine times as high among people on supervision as in the general population, depending on the substance involved, and for maximum effectiveness, treatment should address co-occurring problems.²²⁸

States can adopt a range of practices to support successful re-entry for individuals with substance use disorders, starting in detention. Specifically, agencies can:²²⁹

- Screen and assess for substance use and mental health at intake. If the screen is positive, officials should conduct a full assessment that determines the scope of the individual’s behavioral health needs and use the screen and assessment as the basis of the case plan. In addition, the facility should have a plan for withdrawal management or detoxification.
- Develop a comprehensive case plan for re-entry. A transition specialist, housed within a correctional facility, should help create an individual’s case plan based on assessed risks and behavioral health needs and should facilitate connections to treatment providers before release.

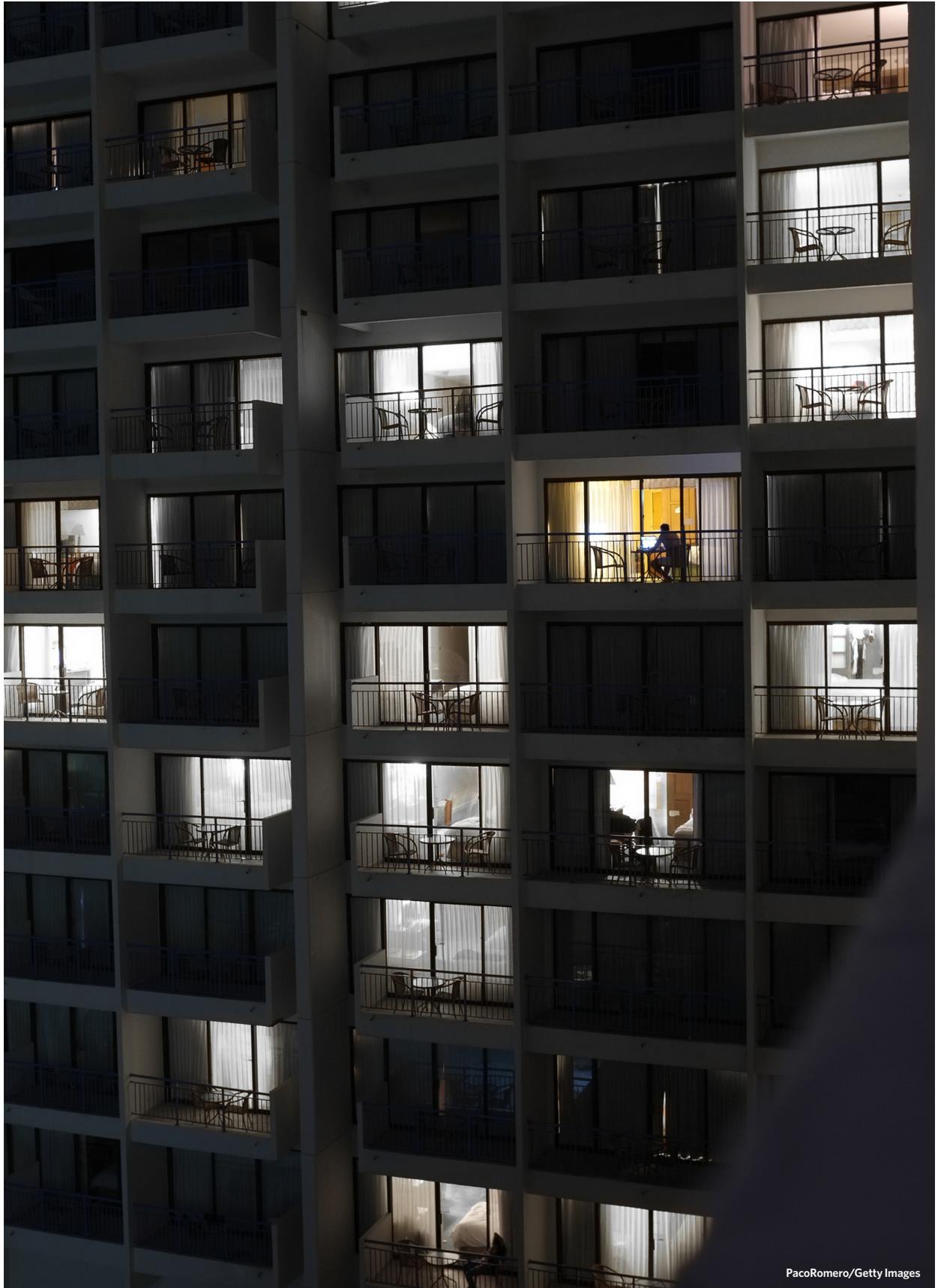
- Use medications approved for substance use disorder treatment and counseling. Because people respond differently to medications, treatment programs should offer all options approved by the U.S. Food and Drug Administration for alcohol and opioid treatment. Medication should be offered in conjunction with counseling and therapy.
- Establish specialized caseloads for people with co-occurring disorders. Agencies can promote effective intervention by assigning individuals with mental health and substance use issues to supervising officers who have received training on, and are familiar with, treatment and programming options, including assistance with Medicaid, knowledge of community programs, and access to medications and counseling. Caseloads should be limited in size.

Rhode Island has taken steps to offer medications to individuals in custody and on supervision. People who have a doctor's prescription may continue to receive medications while in prison, and those entering prison and withdrawing from opioids are given buprenorphine or methadone until the symptoms subside. Further, individuals with a history of opioid misuse can get methadone, buprenorphine, or naltrexone before release in Rhode Island, even if they have not used opioids in years. This policy is based on research showing that people who have recently been released from incarceration are especially vulnerable to an overdose.²³⁰ The state also funds programs that allow people to continue to receive medication and counseling while under supervision. Together, these reforms yielded a 61 percent drop in overdose fatalities from 2016 to 2017.²³¹

Policy: Assist with continuity of health care benefits

In some jurisdictions, people lose their Medicaid eligibility while incarcerated, leaving them without access to health care after release. In response to this problem, 41 states and the District of Columbia have enacted reforms to suspend rather than terminate Medicaid eligibility for people in jail, and 42 states and the District of Columbia have done the same for those in prison. Suspension allows individuals to re-enroll in Medicaid after release. Most of those states also provide assistance with enrollment before release to ensure continuity of care.²³² This policy presents a relatively easy strategy for maintaining people's access to needed behavioral and other medical treatment, which can prevent reoffending and promote supervision success.

Alabama law requires the suspension rather than the termination of Medicaid benefits for people in county jails, provided they are otherwise eligible for Medicaid.²³³ In New Mexico, correctional facilities must inform the Human Services Department when a Medicaid-eligible individual is incarcerated, help with eligibility determinations while an individual is incarcerated or upon release, and assist with an assessment for health risks and creation of a plan for post-release care.²³⁴



PacoRomero/Getty Images

Support community supervision agencies

Given limited correctional resources, states should prioritize investment in practices that have been shown to enhance public safety and produce better outcomes for individuals and communities. But aligning supervision with the evidence-based practices outlined in this framework is no small undertaking, and it will require many agencies to make significant operational shifts. Although many of the policies in this framework can and should be codified in statute, much of the work will need to take place at the agency level. Successful policy change and implementation will require an agencywide commitment and consistent support from leadership.

Meaningful and lasting reform also will entail upfront investments. States must ensure that agencies are equipped with the right tools to implement evidence-based practices and that probation and parole officers understand the rationale for the shift in practice and how it will improve their work. This process takes time and often calls for multiple training sessions, funding support, and new hires.

Further, evidence-based decision-making requires ongoing feedback through performance metrics, outcome monitoring, and impact evaluations, yet few agencies are set up to measure success. Instead, they have historically focused on catching mistakes and counting failures. And agency data systems have been designed not to monitor systemwide effectiveness but to track individual outcomes in isolation. Reducing recidivism will demand that agencies and policymakers understand the impact of their decisions so they can adjust course or augment efforts over time.

Therefore, the advisory council recommends policies aimed at encouraging successful implementation of evidence-based practices through agency funding incentives; staff training; hiring and promotion practices; continuous performance tracking; outcome monitoring; and ongoing support for research on what works to encourage success.

Promote evidence-based practices to obtain successful outcomes

Adopting practices with an evidence base is one of the most important steps supervision agencies can take to promote public safety. These practices include assessing an individual's level of risk for criminal behavior, substance misuse, and other needs, as well as potential challenges such as language barriers or inadequate transportation; providing programs and services that address those issues; concentrating interventions at the beginning of the supervision period; reinforcing success through incentives; and gathering data to support quality assurance and fidelity to the evidence-based model. Many of these practices represent a departure from business as usual for some supervision agencies, so to ensure a smooth transition to evidence-based practices, policymakers need to equip staff and leadership with the tools to successfully implement new approaches to supervision.

Policy: Use financial incentives to promote success

Community supervision is far less costly than incarceration, and the smaller the population under supervision, the greater the benefits for public safety expenditures. But funding incentives are poorly aligned to encourage successful discharge from supervision, often assigning dollars based on the number of people kept on community supervision in a jurisdiction. This represents a disconnect between the goals of evidence-based community supervision and the incentives that fund its operations.

Providing financial awards encourages agencies to meet specific goals, such as recidivism reduction or job placement for people on supervision. Through performance incentive funding, states can reward agencies and localities that decrease jail and prison admissions by reducing revocations or implement evidence-based practices that will deliver recidivism reductions down the road.

To be effective, however, financial incentives must be built upon a foundation of adequate and reliable funding for community supervision agencies. Underfunded agencies are poorly positioned to deliver desired outcomes, regardless of the incentives in place to encourage them. One alternative to performance incentive funding is simply to allow agencies to keep the savings realized through reductions in the supervised population, rather than reducing funding in response to a smaller caseload.

In 2009, the California Legislature passed SB 678, a probation incentive program enabling counties to retain 40 to 45 percent of the fiscal savings realized by reducing revocations to prison. Results were immediate: 47 of the state's 58 counties reduced felony revocations to prison.²³⁵ Kentucky, Ohio, and South Carolina, among other states, have also adopted outcome-based incentive funding programs.²³⁶ Oregon took a different route, offering grants, managed by the Department of Corrections, to help counties develop recidivism reduction programming.²³⁷ Grant amounts are based on the size of the county and an assessment of its expenses for providing management, support services, supervision, and sanctions.²³⁸

Policy: Train staff in evidence-based practices

To ensure adherence to evidence-based practices, agency leadership must commit to training, developing, and evaluating staff, and to the ongoing collection and analysis of performance measures. From administering intake and assessments and structuring a case plan to interacting with individuals and using incentives and sanctions, fidelity to best practices is contingent on staff understanding and sharing the goal of promoting success. Toward that end, some states have begun to require supervision agency employees to undergo supplemental training in evidence-based practices. Such is the case in Rhode Island, where required training for probation and parole officers includes sessions on cognitive behavioral interventions, targeting criminal risk factors to reduce recidivism, and the use of incentives for compliance.²³⁹

Several training models and curricula are available to teach officers how to apply core correctional practices (CCP), which include being fair; using positive and negative reinforcement; teaching problem-solving techniques; providing appropriate treatment services; and establishing open lines of communication with people on supervision.²⁴⁰ A meta-analysis of training programs found that individuals supervised by probation officers trained in CCP were 13 percent less likely to reoffend compared with those supervised by officers who had not undergone the training.²⁴¹ Agencies should also select training programs that are transparent and have evaluations of effectiveness.

Policy: Link hiring and promotion with evidence-based practices

The use and application of evidence-based practices must be reinforced at every level of a community corrections system. Accordingly, agencies should prioritize hiring applicants with knowledge of and fidelity to evidence-based practices—or an expressed willingness to learn and implement them. To reinforce the importance of evidence-based practices, agencies can also base promotions partly on agents' engagement with training and use of recommended practices. Adoption of these human resource measures signals an agency's commitment to best practices, communicates the organization's values and mission, and encourages officers to use preferred tools and methods.

Monitor outcomes

States and agencies that adopt changes to their supervision practices should put in place ongoing oversight measures to ensure success. States vary in how they organize supervision. Some have centralized management at the state level, while other systems are administered at the county or city level, and still others outsource supervision functions through private providers. Regardless of the type of supervision agency used, each involved organization should track the same performance measures. Tracking data and monitoring outcomes can help

states and agencies achieve goals, identify shortcomings, and determine if further reforms or adjustments are needed.

Policy: Adopt performance measures

To assess the ongoing impacts of criminal justice reform efforts on public safety, the size of supervised populations, and recidivism, supervision agencies, agents, and private supervision providers should adopt performance measurement standards. These metrics should be consistent across state agencies, and needed data should be accessible for probation and parole departments as well as the courts and parole boards.

To evaluate the effectiveness of their policies, programs, and staff performance, supervision agencies should identify and track performance metrics that measure staff interaction with supervised individuals and outcomes. These metrics could include:

- Type, frequency, and quality of engagement between staff and clients.
- Extent of compliance with conditions.
- Use of incentives.
- Technical violations and the applied sanction.
- Revocation petitions and contributing factors, including the violation(s).
- Positive, goal-based behaviors, including employment, stable housing, and completion of programming and treatment.

Policy: Track demographic data related to outcomes

African Americans are 3.5 times as likely to be on supervision as whites.²⁴² Further, although black adults represent approximately 13 percent of the U.S. population, they account for 30 percent of the number of people on probation or parole.²⁴³ In addition, men are supervised at a rate 3.5 times that of women, but the share of women under supervision nearly doubled between 1990 and 2016, rising from 520,000 to more than 1 million.²⁴⁴

Given the ever-changing composition of correctional populations, community supervision agencies should collect and report on the race, ethnicity, and sex of people under supervision to identify disparities and analyze the potential impact of policies and practices on different groups. Additionally, performance measures should be disaggregated by race, ethnicity, and sex, as well as by supervision region, to pinpoint variations. This information can help agencies identify problems, devise solutions, and reduce inconsistent outcomes. State and local governments should also promote collection and monitoring of this data through statutory requirement or financial incentives.

Policy: Reduce and prevent racial and ethnic disparities in supervision

State and local governments, as well as supervision agencies, should monitor for and implement policies to combat racial and ethnic disparities in the supervision system. Such policies may include requiring that supervision staff undergo regular racial and cultural competency training, establishing committees dedicated to eliminating racial disparities, and using racial impact statements that detail how a regulatory or legislative proposal might disproportionately affect communities of color to inform policy discussions.²⁴⁵

Iowa and New Jersey both require racial impact statements for all correctional bills, and New Jersey also includes them for all rules.²⁴⁶ Oregon and Connecticut, on the other hand, include such statements only when requested by a member of the assembly.²⁴⁷ Minnesota's Sentencing Guidelines Commission also voluntarily prepares demographic impact statements on pending criminal justice bills as part of its authority to serve as an information and research center on the improvement of the criminal justice system.²⁴⁸

Additionally, as previously noted, agencies should regularly review and re-examine their risk assessment tools to ensure they do not create or exacerbate disparities in services or treatment. State and local governments should also ensure that the services provided by supervision agencies, including the rules and requirements of supervision, are responsive to the needs of minority populations, such as offering services in native languages for non-English speakers.

Policy: Evaluate reforms for effectiveness

One strategy to institutionalize evidence-based practices and measure the impact and effectiveness of policy change is to commit a specific share of the criminal justice budget to creating an infrastructure for and conducting evaluations into the use of evidence-based practices. To support this work, jurisdictions would need to:

- **Take an inventory.** Assess which evidence-based practices local and state agencies are using.
- **Identify priorities.** Evaluate the specific areas an agency wants to develop or enhance.
- **Track progress.** Use data to measure the effectiveness of adopted practices and identify actions that are leading to negative outcomes or do not maintain fidelity to the model.

Kentucky established a statute to maintain the use of evidence-based standards in treatment and intervention programs. The law created a process for reviewing the effectiveness of each program and included a mechanism to defund programs that fail to meet specified criteria.²⁴⁹

Conclusion

The number of adults on community supervision in the U.S. has increased dramatically over the past four decades. Today, 4.5 million people—1 in 55 adults—are on probation or parole. That number is twice the population of the nation’s prisons and jails, yet community supervision has received far less attention and support.

Over time, the sprawling size of the community supervision system has begun to undermine its effectiveness as an alternative to incarceration and a tool to help people convicted of crimes stabilize their lives and avoid further involvement in the criminal justice system. Recidivism rates for people on supervision are high, and probation and parole revocation has become a leading driver of jail and prison admissions in many states.

This framework provides state lawmakers, supervision administrators, and local government officials with a roadmap to improve current probation and parole practice by applying research, evidence, and lessons learned from other states. The policies detailed here will help jurisdictions prioritize supervision for individuals who demonstrate the highest risk of future criminal behavior and safely reduce oversight of others. By enacting reforms anchored in evidence, policymakers can shift probation and parole away from merely punishing failure and toward cultivating the long-term success that promises individuals, families, and communities a safer, more productive future.

Appendix: Methodology

In establishing a research base for this analysis, the Robina Institute of Criminal Law and Criminal Justice restricted its literature search to studies that involved adults supervised by community corrections agencies in English-speaking developed countries. It prioritized research from peer-reviewed journal articles and from 2003 through 2018, but it also included law review articles, white papers, and agency reports and older seminal articles. Additionally, the literature search focused on studies examining recidivism and reducing the correctional population as the primary outcomes, as well as other topics, such as drug use, employment, housing, and factors contributing to criminal behavior.

The researchers developed a set of standards for the review, adapted from Anthony Petrosino's 1995 criteria, including studies in which individuals were the unit of analysis, random assignment was incorporated when experimental methods were used, the sample size was large enough to generalize results, and at least one official outcome measure related to crime in the community, such as recidivism, victimization, or calls to the police.²⁵⁰

Pew convened an advisory group of 18 community supervision experts and practitioners to review the research, identify evidence-based policies, and provide essential context to the policies and practices identified. The advisory group included diverse stakeholders from the courts, probation and parole, law enforcement, behavioral health, academia, and affected communities.

During two in-person convenings, advisory group members shared their experiences implementing evidence-based practices, highlighted successes and challenges, and provided crucial experiential evidence to supplement the empirical evidence identified in the literature review. Members of the advisory group also had the opportunity to provide written feedback on three drafts of the framework.

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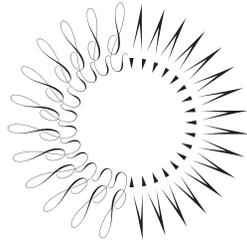
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