THE PEW CENTER ON THE STATES | Public Safety Performance Project

Policy Framework to Strengthen Community Corrections

Pew Center on the States
Public Safety Performance Project

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POLICY FRAMEWORK TO STRENGTHEN COMMUNITY CORRECTIONS

Challenge

States have added 1 million prison cells over the past 20 years, pushing the U.S. prison population to 2.3 million and the incarceration rate past 1 in 100 adults, by far the highest in the world. Still, more than 95 percent of inmates are eventually released back to the community. Add in offenders on probation, parole or other post-prison supervision and there are now 7.3 million American adults under correctional control on any given day. The corrections system costs states nearly $50 billion a year, and federal and local governments billions more.

That kind of money might be justified if it were dramatically cutting crime. But it's not. More than 40 percent of probationers do not complete their probation period successfully and more than half of parolees end up back behind bars within three years. While repeat offenders are major drivers of prison growth and costs, so are people who have broken the rules of their probation or parole release but who have not committed a new crime. Offenders who violate their supervision conditions account for a significant portion of prison admissions, reducing space available for violent and chronic criminals.

These high failure rates stem in large part from overwhelmed community supervision agencies. While national attention has focused on the dramatic rise of incarceration, the probation and parole populations have risen just as fast. The agencies responsible for supervising these 5 million offenders, however, haven't received nearly enough resources or authority to keep up.

Solution

More than 25 years of research has identified a series of policies and practices that can make substantial cuts in recidivism rates. Policy makers in several states have enacted reforms that help corrections agencies adopt these "evidence-based practices" by providing fiscal incentives, clearing obstacles, enhancing their authority, and tracking their results.

During 2008, the Public Safety Performance Project of The Pew Charitable Trusts' Center on the States brought together leading policy makers, practitioners and researchers to review a wide range of these reforms. From the review and discussions with dozens of additional experts emerged a package of policy-level actions for state legislators and executives. The measures below were selected as part of the initial framework; others may be added as state and local leaders continue to innovate. And though individual sections would have impact if adopted alone, taken together they offer policy makers a powerful opportunity to help reduce victimization and control corrections costs.

A Word About Implementation

State criminal laws and justice systems vary widely, as do the capacities of community corrections agencies to implement the proposed policy changes. To account for this, many of the provisions contain bracketed terms or timeframes that may need to be adjusted to fit the circumstances in individual states. The recommendations in brackets should be viewed as starting points for deliberations. In addition, some of the provisions could be adopted by executive order or court rule as well as by legislative action.

Menu of Policy Options

Full provisions—including suggested language for legislation, executive order or court rules, research rationale and state examples—are available by clicking on the links provided below.

1. **Evidence-Based Practices**
   - Requires 75 percent of offenders be supervised in accordance with evidence-based practices within four years.
   - Requires that 75 percent of state funds spent on programs and treatment be spent on programs that are evidence-based within four years.
   - Requires use of objective risk assessment tools to assign supervision levels and development of individual case plans.
   - Requires agencies to provide employees training on evidence-based practices.
   - Sets aside a portion of agency funds for research on program effectiveness.

2. **Earned Compliance Credits**
   - Creates an "earned compliance credit" that would reduce the time that offenders are on active supervision by 15 days for each month that they are in full compliance with their conditions of supervision, including payment of restitution to crime victims. After an offender has paid all outstanding restitution, fines and fees, the court or releasing authority may reduce the period of supervision by the amount of credit earned.

3. **Administrative Sanctions**
   - Requires community corrections agencies to adopt a set of swift, certain and graduated sanctions and rewards to respond to violations and compliance with the conditions of supervision.
   - Establishes authority for agencies to impose graduated sanctions and rewards through an administrative process.

4. **Performance Incentive Funding**
   - Establishes performance-based funding for local jurisdictions or state regions/districts so that community corrections agencies will receive a portion of the imprisonment costs averted when they reduce the rate of new felony convictions and the rate of revocations for technical violations.
   - Additional savings will be appropriated to agencies if they show improvement in each of three other key outcome measures: employment, drug test failures, and victim restitution collection.
   - Eliminates incentive funding if there is an increase in the agency's new felony conviction rate for probationers and parolees.
   - Permits incentive funding to be used to implement evidence-based practices, expand effective offender programming, and provide grants to victim service organizations.

5. **Performance Measurement**
   - Requires community corrections agencies to set up a system to track and report regularly on key performance measures as defined by the American Correctional Association and the American Probation and Parole Association.
   - The measures are: recidivism, employment, substance use, payment of victim restitution, compliance with "no contact" orders, and the overall performance of offenders as measured by the type of discharge from supervision.

Policy Framework Reviewers

The following experts reviewed drafts of the provisions in the framework. Neither they nor their current or former organizations necessarily endorse the findings or recommended provisions.

- Steve Aos, Wash. State Institute for Public Policy
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- Jeffrey Beard, PA Dept. of Corrections
- Peggy Burke, Center for Effective Public Policy
- Bill Burrell, Temple University
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- Elyse Clawson, Crime and Justice Institute
- Marshall Clement, Council of State Governments Justice Center
- Ernest Eley, MD Division of Parole and Probation
- Judith Greene, Justice Strategies
- Gary Hinzman, IA Dept. of Correctional Services
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- George Keiser, National Institute of Corrections
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- Pat Nolan, Prison Fellowship
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1 Evidence-Based Practices

Problem

On any given day in this country, over 7 million offenders are under some form of correctional supervision. About 2.3 million adults are in state and federal prisons and jails; more than 5 million are on probation, parole or some form of government supervision after release from prison. About 4 in 10 probationers don't successfully complete their period of supervision, and half of those released from prison wind up back behind bars within three years. This revolving door of offenders contributes to crime in our communities and the exploding cost of corrections.

Solution

Back in the 1970s, it was thought that "nothing works" to set offenders on the straight and narrow. But research and practice over the past 25 years have identified new strategies and policies that can make a significant dent in recidivism rates. Implementing these research-backed programs and procedures is called "evidence-based practice."

Probation and parole agencies across the country are working to adopt these practices, which include using risk assessment tools to determine appropriate levels and types of supervision and ensuring that programs focus on behaviors and attitudes that drive criminal activity. With the active support of policy makers, probation and parole agencies will be able to accelerate their adoption of these and other evidence-based practices, helping offenders stay crime- and drug-free and avoiding the social and financial costs of building more prisons.

This provision:

- Requires that 75 percent of offenders be supervised in accordance with evidence-based practices within four years.
- Requires that 75 percent of state funds for offender programming be spent on programs that are evidence-based within four years.
- Requires community corrections agencies to improve policies and practices for crime victims.
- Requires agencies to provide employees training on evidence-based practices.
- Sets aside a portion of agency funds for research on program effectiveness.

Suggested Language

Section 101. Short Title.

This Act may be cited as the "Recidivism Reduction Act."

Section 102. Definitions.

In this title, the following words have the meanings indicated.

(1) "Agency" means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) "Evidence-based practices" means supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-release supervision.

(3) "Community supervision" means:

(A) The placement of a defendant under supervision, with conditions imposed by a court for a specified period during which:

(i) criminal proceedings are deferred without an adjudication of guilt;

(ii) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

(B) The placement of an individual under supervision after release from prison or jail, with conditions imposed by the releasing authority for a specified period.

(4) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(5) "Supervision officer" means a person appointed or employed by the Agency to supervise individuals placed on community supervision.

(6) "Criminal risk factors" means characteristics and behaviors that when addressed or changed affect a person's risk for committing crimes. Scientific research identifies these characteristics and behaviors as including: antisocial attitudes, values, and beliefs; poor impulse control; criminal personality; substance abuse; criminal peers; dysfunctional family; and lack of employment or education.

(7) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender;

(B) Matches programs to the offender's individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;
(C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations;
(D) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors.

(8) (A) "Program" means an intervention that:
(i) is intended to reduce recidivism by supervised individuals; and
(ii) is funded in whole or in part by the state or administered by any agency of state government;
(B) "Program" does not include medical services.

Section 103. Implementation of Evidence-Based Practices to Reduce Recidivism.

(1) The Agency shall adopt policies, rules and regulations that within [four] years of the effective date of this Act result in at least [75 percent] of supervised individuals being supervised in accordance with evidence-based practices.

(2) The policies, rules and regulations shall include:
(A) Adoption, validation and utilization of an objective risk and needs assessment tool;
(B) Use of assessment scores and other objective criteria to determine the risk level and program needs of each supervised individual, prioritizing supervision and program resources for offenders who are at higher risk to re-offend;
(C) Definitions of low, moderate and high risk levels during the period of supervision;
(D) Development of a case plan, based on the assessment, for each individual who is assessed to be moderate to high risk;
(E) Swift, certain, proportionate and graduated responses that an Agency employee will apply in response to a supervised individual's compliant and non-compliant behaviors;
(F) Caseload size guidelines that are based on offender risk levels and take into account Agency resources and employee workload; and
(G) Establishment of protocols and standards that assess the degree to which Agency policies, procedures, programs and practices relating to offender recidivism reduction are evidence based.

(3) Within [four] years of the effective date of this Act, [75 percent] of state monies expended on programs shall be for programs that are in accordance with evidence-based practices.

(4) Within [four] years of the effective date of this Act, the Agency shall eliminate supervision policies, procedures, programs and practices intended to reduce recidivism that scientific research demonstrates do not reduce recidivism.

Section 104. Improvement of Policies and Practices for Crime Victims.

(1) The Agency shall adopt policies, rules and regulations that improve crime victim satisfaction with the criminal justice system, including:

(A) Payment by supervised individuals of victim restitution and child support;
(B) The opportunity for victims to complete victim impact statements or provide input into pre-sentence investigation reports;
(C) Providing victims information about their rights and services, and referrals to access those rights and services;
(D) Offering victims the opportunity to complete a "victim satisfaction survey," with data used to measure Agency performance; and
(E) Facilitate victim-offender dialogue when the victim is willing.

Section 105. Professional Development.

(1) The Agency shall provide its employees with intensive initial and on-going training and professional development services to support the implementation of evidence-based practices.

(2) The training and professional development services shall include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, substance abuse and other topics identified by the Agency or its employees.

Section 106. Data Collection, Analysis and Research.

(1) The state [Department of Corrections] shall allocate a minimum of [X] percent of its operating budget to support data collection, analysis and research on supervision and programmatic effectiveness.

(2) The state [Department of Corrections] may form partnerships or enter into contracts with institutions of higher education or other qualified organizations for assistance with data collection, analysis and research.

Section 107. Agency Report.

(1) By [March 1] of each year, beginning in 2010, the Agency shall submit to the Governor, the Legislature and the judicial branch a comprehensive report on its efforts to implement this Act. The report shall include:

(A) The percentage of supervised individuals being supervised in accordance with evidence-based practices;
(B) The percentage of state monies expended for programs that are evidence based, and a list of all programs with identification of which are evidence based;

(C) Specification of supervision policies, procedures, programs and practices that were eliminated;
(D) The results of victim satisfaction surveys administered under Section 104 of this title;
(E) The Agency's recommendations for resource allocation, and any additional collaboration with other state, regional or local public agencies, private entities, or faith-based and community organizations.

(2) The Agency shall make the full report and an executive summary available to the general public on its website.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant corrections agency or agencies. Local government agencies (such as probation or other community corrections agencies) are included in this definition, so long as the local agencies receive state funds.

- Section 102 (program definition): Probation and parole agencies use a wide variety of programs that are intended to reduce recidivism. Those programs are funded by numerous sources, including the agency itself, other state government agencies (such as the health department), private organizations, and offender self-pay. Because this provision measures the percentage of state monies expended on programs that are evidence based, the definition of program is limited to programs administered by the agency or those that receive state money. However, states should make efforts to ensure that all recidivism reduction programs used by community corrections agencies are subject to the standards of evidence-based practice, whether or not the agencies administer or pay for the programs themselves. For clarity, the definition does not extend to programs aimed at collecting victim restitution, administering community service, or overall victim satisfaction with the justice system. Those goals are addressed in other sections of this policy framework.

- Section 103(1) (75 percent requirement): Community corrections agencies vary in their capacity to implement evidence-based practices. States may want to vary the timetable for implementation to be longer or shorter than the recommended four years. States also may want to establish a progressive schedule for implementation, as Oregon did by requiring that in the first two years, 25 percent of state monies be spent on programs that are evidence based, 50 percent in the second two years and reaching the 75 percent goal by the third biennium. The recommended requirement is for 75 percent rather than the full 100

percent to permit agencies to innovate with programs and practices that have a sound basis in theory but have not yet been validated by rigorous research. Also, for agency supervision policies and practices, the provision uses the percentage of "supervised individuals who are supervised in accordance to evidence based practices," rather than assessing the percentage of supervision procedures that are evidence based. Procedures and practices will still need to be evaluated, but the language seeks to ensure that most of the individuals supervised are being covered by evidence based practices. An agency where 75 percent of practices are evidence based, but the majority of offenders are being supervised using the remaining 25 percent of procedures and practices would undermine the purposes of the provision.

- Section 103 (elimination of ineffective programs): While research identifies policies, procedures, programs and practices that work to reduce recidivism, it also has identified those that do not.[1] This provision is intended to ensure that these ineffective approaches are eliminated quickly, while recognizing that it may take agencies some time to establish new policies, procedures, programs and practices that will meet the evidence-based standard. This provision is not intended to apply to policies, procedures, programs or practices that are aimed at goals other than recidivism, such as victim reparation, community service, or the payment of fines and fees.

- Section 103 (graduated responses): See the "Administrative Sanctions" section of this policy framework for additional guidance on probation/parole revocations and procedures for making responses to compliant and non-compliant behavior more swift, certain, proportionate and graduated.

- Sections 103 and 106 (verification and reporting): States that want to provide additional motivation for agencies to implement evidence-based practices can enhance these sections in two ways. First, states might specify that assessment of fidelity to evidence-based practices be conducted by outside experts, or that the tool used by the Agency to assess fidelity be developed by an external entity. One commonly used commercially available tool is the Correctional Program Assessment Inventory (CPAI-2000). Second, states may want to consider designating an external agency (such as the State Auditor) to monitor compliance with this Act.

Rationale

Agency Policies, Procedures, Programs and Practices Should Be Evidence Based. The implementation of evidence-based practices results in an average decrease in future crime of between 10 percent and 20 percent, whereas programs that are not evidence-based tend to see no decrease and even a slight increase in future crime.[2] Interventions that follow all evidence-based practices can achieve recidivism reductions of 30 percent.[3] Many state statutes and administrative regulations specify that certain correctional services and programs must be evidence-based. Oregon has taken a comprehensive approach by passing legislation in 2003

requiring that by the 2009-2011 biennium, at least 75 percent of all state monies for programming be spent on programs that are evidence-based.[4]

Risk and Need Assessment. Supervision and programs are most effective at reducing future crime when they (i) accurately assess offender risk and need, and (ii) use assessment results to assign supervision levels (more intensive monitoring for offenders with greater risk) and target programs to criminogenic needs.[5] Assignment of offenders to the correct supervision levels is crucial, since research shows that putting low-risk offenders in intensive programming actually increases their recidivism rates.[6] Using risk and needs assessments to determine how to supervise offenders allows community corrections agencies to better allocate their resources and focus their supervision on high-risk offenders.

Individualized Case Plans. The value of a risk and needs assessment is that it provides a framework from which quality case planning can occur. Intervention programs are most effective when targeted at higher risk offenders and when targeting their crime-related needs. The individualized case plan is the ideal mechanism with which to ensure that offenders and their supervising officers focus their time, energy, and resources on those activities – such as attending treatment – that are most needed to reduce the likelihood of future criminal behavior. When adopted in conjunction with other effective supervision practices, use of individualized case plans has been shown to reduce new arrests and technical violations of offenders on community supervision[7] Maryland and some other jurisdictions incorporate the case plan into a signed agreement between supervised individuals and their supervision officers called a "behavioral contract." The contract approach can boost the effectiveness of the case plan by requiring that the offender discuss and buy in to the expectations set forth in the contract/plan. [8]

Graduated Responses. Research has shown that using "graduated sanctions"—employing structured, swift, and incremental responses to violations—can increase offender compliance. The practice has been used in many jurisdictions to reduce crime and drug use by probationers and drug court participants.[9] In one study, drug court offenders in a Graduated Sanctions Program, which emphasized administering sanctions for positive drug urine tests swiftly, with certainty, and with increasing severity, had substantially lower rearrest rates (19 percent compared to 27 percent in the control group) two years after sentencing than offenders who were not in the program.[10] In addition, positive responses to offender compliance have been shown to reinforce and motivate offenders to stay on the straight and narrow. [See the Administrative Sanctions section of this policy framework for recommendations on graduated sanctions.]

Caseloads and Workloads. The size of caseloads for parole and probation officers should reflect the level of risk and needs of the offenders being supervised. They also should reflect an analysis of the workload and resources of the agency. By varying caseloads based on the risk of the offenders being supervised, parole and probation officers can focus their resources on higher risk offenders, and use less intense supervision methods for low risk offenders.

Although a number of studies have attempted to identify the "ideal" caseload size for maximum effectiveness, the quality and nature of the contacts between a supervision officer and an offender have been shown to be more important than the quantity of contacts.[11] Many states also are adopting geographically-based caseloads ("place-based supervision"). By supervising offenders where they live, fostering relationships with those who know them best, and becoming familiar with local resources and high-risk areas, parole and probation officers are much better positioned to manage their caseloads.

Data Collection, Analysis and Research. A fundamental principle of effective correctional management is the measurement of outcomes.[12] The provision allocating a proportion of the correctional agency's operation budget to research is intended to promote the implementation and long-term sustainability of data collection, analysis, and research as the collection and analysis of criminal justice data is a critical component to evidence-based practice in community supervision.[13] These funds can be used to track program outcomes and fidelity to evidence based requirements. [See the Performance Measurement section of this policy framework for recommendations on performance measures of community supervision programs.]

Professional Development. Generally, successful implementation of EBP in community corrections must include adoption of fundamental organizational development principles, such as establishing clear goals and expectations for staff, measuring progress and providing feedback on performance.[14] Research also shows that those correctional interventions that are most effective are those that ensure that staff are appropriately skilled and trained in specific offender management techniques.[15] Several states and counties, including Maryland, Iowa, Oregon, Illinois, Maine, Maricopa County (AZ), and Travis County (TX), have made a substantial commitment to enhancing professional development by training staff on effective supervision techniques, accurate completion of risk assessments, development and use of productive case plans, and use of motivational interviewing in case management.

State Examples

Evidence Based Supervision Practices and Programs

- **Maine:** HB 1327 (requiring that local jurisdictions establish criminal justice planning committees to update and increase the use of evidence-based correctional practices);
- **North Carolina:** General Statutes 143B, article 6a, section 17.15(d) (part of the North Carolina State-County Criminal Justice Partnership Act)(the "Research and Planning Division of the Department of Correction shall review national best practice programs for community corrections and recommend whether the types of programs currently being funded should continue to be funded, and whether alternative programs should be funded if a county wants to expand sanction options.") See also, Juvenile Justice Reform Act of 1998 (§ 147-33.55) (requires that the state juvenile justice office fund programs "that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.")

(http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=1997&BillID=S1260)

- **Oklahoma:** HB 2101 (establishing task force to identify evidence-based programs in reentry support);
- **Oregon**: SB 267, Sections 3-9 of Oregon Laws 2003. This law requires the Oregon Department of Corrections, the Youth Commission and the Criminal Justice Commission to ensure that a specified portion of their programs or interventions are experimentally tested, cost-effective approaches to reducing a person's propensity to commit crimes. For the biennium beginning 2005, 25 percent of programs and interventions are expected to meet these criteria. For the 2007 biennium, this increases to 50 percent and in 2009 and future biennium this increases to 75 percent. The agencies addressed by this legislation must audit and report on their spending on programs and are warned that "the Legislative Assembly shall consider the agency's failure to meet the requirement… of this section in making appropriations to the agency for the following biennium." (http://www.leg.state.or.us/03orlaws/sess0600.dir/0669ses.htm)
- **Tennessee**: Public Chapter 585, SB 1790. "The Department of Children's Services, and any other state agency that administers funds related to the prevention, treatment or care of delinquent juveniles, shall not expend state funds on any juvenile justice program or program related to the prevention, treatment or care of delinquent juveniles, including any service model or delivery system in any form or by any name, unless the program is evidence-based." The legislation goes on to protect innovation by stating, "The department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs with the goal of identifying and expanding the number and type of available evidence-based programs, and to that end the department may engage in and fund pilot programs as defined in this section." Like the Oregon law, this legislation includes a "phase in" period, with the percentage of funds spent on evidence based programs rising from 25, to 50, to 75 and then to 100 percent over an eight year period.
- **Texas:** SB 166 (requiring that county grant applications for prison diversion program include an evidence-based assessment process);
- **Washington:** SB 6157 (requiring that analysis be conducted to identify evidence-based reentry practices). See also, SHB 1128, Laws of 2007 (partial veto)(language regarding juvenile programs includes: "Within amounts appropriated in this section, priority shall be given to proven intervention models, including evidence-based prevention and early intervention programs identified by the Washington state institute for public policy and the department.")

In addition, the Iowa DOC requires all Community Based Corrections programs (CBCs) to undergo an annual evaluation on adherence to evidence-based principles, develop Quality Improvement Action Plans, and collect and track specific performance measures.

Risk and Needs Assessment

- **Kansas:** Community Corrections Act, KSA §75-5291(a)(2)(E) (listing as one of its possible eligibility criteria that an offender be classified high risk, high need or both);
- **Virginia**: Sentencing Commission enabling statute, VCA § 17.1-803(5)-(6) (requiring the establishment of a risk and needs assessment to be used for all felony offenders);
- **Washington**: Offender Accountability Act, RCW 9.94A.501 (community supervision limited to offenders with higher risk scores or with certain current or past offenses. Of the remaining offenders eligible for community supervision, those that are lower risk are placed on administrative probation (or "case banking")).

States focusing their resources on high risk offenders and place low risk offenders in an administrative category, or "case banking," include Washington State (see WA Rev. Code § 9.94A.501, available online at http://apps.leg.wa.gov/RCW/default.aspx?cite=9.94A.501), Delaware, Iowa, Oregon and Vermont.

Individualized Case Plans

- **Maryland:** The Maryland Proactive Community Supervision (PCS) model has demonstrated that how an agency provides community supervision case management matters. Maryland has realized a 28 percent reduction in the rate of arrests for new criminal charges by offenders on supervision by implementing (1) valid assessment tools; (2) case plans that are responsive to the criminal risk factors of high and moderate-risk offenders; (3) appropriate services and controls that use social learning or cognitive-behavioral interventions; and (4) an environment where the offender can learn pro-social behaviors and successfully complete supervision.[16]

Caseloads

- **Vermont:** Department of Corrections to establish levels of supervision for each offender based on risk assessment, and specific caseload limits are set for different levels of supervision (H.859, 2008).

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[1] Aos, Steve, Marna Miller and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates,* Washington State Institute for Public Policy (Olympia, WA: 2006).

[2] See, for example, Andrews, D.A. and Craig Dowden, "The Risk-Need-Resposivity Model of Assessment in Human Service and Prevention and Corrections Crime Prevention Jurisprudence*," Canadian Journal of Criminology and*

Criminal Justice, 49 (4), pp. 439-464 (2007); Aos, Steve, Marna Miller and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates,* Washington State Institute for Public Policy (Olympia, WA: 2006); Lipsey, Mark W. and Francis T. Cullen, "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews," *Annual Review of Law and Social Science*, Vol. 3 (2007).

[3] Andrews, D.A. et al, "Does correctional treatment work: A clinically-relevant and psychologically informed meta-analysis," *Criminology*, Vol. 28, pp. 269-404 (1990).

[4] See Oregon State Law, ORS 185.515-525.

[5] Gendreau, P., T. Little and C. Goggin, "A meta-analysis of the predictors of adult offender recidivism: What works!" *Criminology,* 34 (4), pp. 575-607 (1996); Bonta, James, "Offender Risk Assessment: Guidelines for Selection and Use," *Criminal Justice and Behavior*, 29 (4), pp. 355-379 (2002).

[6] Andrews, D.A., "Recidivism Is Predictable and Can Be Influenced: Using Risk Assessments to Reduce Recidivism," *Forum on Corrections Research*, Special Edition, pp. 5-11 (1999). See also, Lowenkamp, C. and E.J. Latessa, "The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Corrections Programs?", *Crime and Delinquency*, No. 51 (2006).

[7] Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy*, 7 (2), pp. 275-302 (2008).

[8] Petersilia, Joan, "Employ Behavioral Contracting for 'Earned Discharge' Parole, *Criminology and Public Policy*, 6 (4), pp. 807-814 (2007).

[9] Taxman, Faye, David Soule and Adam Gelb, "Graduated Sanctions: Stepping Into Accountable Systems and Offenders," *Prison Journal*, 79 (2), pp. 182-204 (1999). See also information on Hawaii's Opportunity Probation with Enforcement (HOPE), an innovative and successful program in Oahu, available online at http://www.pewcenteronthestates.org/news_room_detail.aspx?id=41950.

[10] Harrell, Adele and John Roman, "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions," *Journal of Drug Issues*, 31 (1), pp. 207-232 (2001).

[11] See Taxman, Faye, "Supervision – Exploring the Dimensions of Effectiveness," *Federal Probation*, 66 (2), pp. 14-27 (September 2002); Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy*, 7 (2), pp. 275-302 (2008).

[12] Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston: 2004).

[13] For resources on criminal justice information systems and reform, see National Conference of State Legislatures, *Integrated Criminal Justice Information Systems*, available online at https://www.ncsl.org/programs/lis/intjust/report01.htm#Introduction; Carter, Madeline, *The Importance of Data and Information in Achieving Criminal Justice Outcomes* (Silver Springs, MD: January 2006), available online at http://nicic.gov/Library/021198.

[14] Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: Leading Organizational Change and Development* (Boston: 2004).

[15] Latessa, Edward, Francis Cullen and Paul Gendreau, "Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment*," Federal Probation*, 66 (2), pp. 43-49 (2002); Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: Leading Organizational Change and Development* (Boston: 2004).

[16] Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy,* 7 (2), 275-302 (2008).

2 Earned Compliance Credits

Problem

More than 5 million individuals are on probation, parole or some form of community supervision after release from prison. Community corrections agencies need better tools to supervise and better manage these individuals and motivate them to reintegrate into society. These agencies must allocate scarce supervision resources across large populations of offenders. If these resources are distributed evenly over a population of offenders that presents an uneven risk profile, some offenders will be "over-supervised," resulting in a waste of taxpayer dollars, while others will be "under-supervised," resulting in decreased public safety. Compliant probationers and parolees are often kept on active caseloads with the effect of diluting the intensity of supervision for higher-risk offenders and removing the incentive to behave.

Solution

For corrections agencies to efficiently allocate supervision, they must have the authority to focus their staff, services and sanctions on higher-risk offenders. To do so without additional funding, agencies need to be able to move lower-risk probationers and parolees to less-intensive levels of supervision—or off of supervision altogether—if they are fulfilling their obligations and conditions, including paying restitution. Providing this flexibility allows agencies to devote time and effort to moderate- and high-risk offenders, those who present a greater threat to community safety and who research indicates are more likely to benefit from supervision and programs. It also promises to enhance motivation and promote behavior change by providing offenders with incentives to meet the goals and conditions of supervision.

This provision:

- Creates an "earned compliance credit" that would reduce the time that offenders are on active supervision by 15 days for each month that they are in full compliance with their conditions of supervision, including payment of restitution to crime victims. After an offender has paid all outstanding restitution, fines and fees, the court or releasing authority may reduce the period of supervision by the amount of credit earned.

Suggested Language

Section 101. Short Title.

This title may be cited as the "Earned Compliance Credit Act."

Section 102. Definitions.

In this title, the following words have the meanings indicated.

(1) "Agency" means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender;

(B) Matches programs to the offender's individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;

(C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and

(D) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors.

(3) "Compliance credit" means [15] days for every month that a supervised individual does all of the following:

(A) Fulfills the terms of the supervised individual's case plan;

(B) Has no new arrests; and

(C) Makes scheduled monthly payments for restitution, fines and fees.

(4) "Supervised individual" means an individual placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail.

Section 103. Earned Compliance Credits.

(1) The Agency shall:

(A) Award earned compliance credits to a supervised individual who satisfies the requirements specified in the individual's case plan; and

(B) Place a supervised individual in a non-active supervision status for the number of days earned as compliance credits.

(2) For supervised individuals in non-active supervision, the Agency shall submit a petition to the court or releasing authority to request that the period of supervision be reduced by the number of days of compliance credits earned by the individual, when the supervised individual has no outstanding restitution, fines or fees.

(3) The court or releasing authority may adjust the period of a supervised individual's supervision on the recommendation of the Agency for earned compliance credits.

(4) The Agency shall adopt rules and regulations for the forfeiture of earned compliance credits for supervised individuals who violate conditions of supervision. Such regulations shall provide that:

(A) Forfeiture is part of the Agency's system of graduated sanctions;
(B) The extent of earned compliance credits forfeited is related to the level of severity of the violation;
(C) Forfeiture of earned compliance credits is limited to credits already earned, and may not prospectively deny future earned compliance credits; and
(D) A procedure is established for the restoration of forfeited earned compliance credits based on the supervised individual's compliance with supervision conditions and progress in achieving the goals of the supervised individual's case plan.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant correctional agency or agencies.

- Section 103 (non-active supervision): The suggested language uses the term "active supervision" and "non-active supervision" to reflect the difference between when a supervised individual must comply with significant conditions (reporting to the parole/probation officer, attending programs and submitting to drug tests), and when the conditions are more limited, such as providing monthly pay stubs and proof of residency. Many states use the term "administrative supervision" or "case-banking" for non-active supervision.

- Section 103 (petition of termination of supervision): If the agency supervising an individual under post-release supervision is also the releasing authority, subsection 103(b) can be modified to allow the agency to implement the earned compliance credit and reduce the period of supervision without a petition.

- Section 103 (victim notification): States may want to incorporate specific language regarding the procedural rights of victims in court proceedings that may result in adjustments to the period of supervision. States can provide victims an opportunity to tell

the agency if they wish to be notified of a change in the period of supervision. Although victim notification may be covered elsewhere in the state's statutes or constitution, possible language for inclusion in this statute might read: "The court or supervision authority with jurisdiction to adjust the period of supervision shall establish within its policy and procedures a requirement that any victim be notified whenever a person's sentence of probation or period of supervision may be terminated pursuant to this subsection. The court or supervision authority shall permit such victim to appear before them for the purpose of making a statement for the record concerning whether such person's sentence of probation or supervision period should be terminated. In lieu of such appearance, the victim may submit a written statement to the court or supervision authority and they shall make such statement a part of the record. Prior to ordering that such person's sentence of probation or supervision period be continued or terminated, the court or supervision authority shall consider the statement made or submitted by such victim."

- Section 103 (other exemptions): A state may wish to include a provision allowing prosecutors to object to the eligibility of specific offenders for earned compliance credits. To do so, the language could require the prosecutor to file a motion at the time of sentencing requesting the court exempt the defendant from the earned credit. States may also wish to consider exempting certain classes of offenders—those convicted of certain sex crimes and other serious violent felonies or those on lifetime probation, for example—in addition to or in lieu of this case-by-case approach.

Rationale

Research has shown that moderate- to high-risk offenders benefit most from supervision and services and that lower-risk offenders often do worse under these conditions.[1] By moving lower-risk offenders who comply with their supervision conditions to an administrative supervision category (or shortening their supervision period) if they are fulfilling their obligations and conditions, agencies can manage their caseloads and devote time and effort to those who warrant it most. This flexibility enhances motivation and promotes behavioral change by providing incentives for meeting the goals and conditions of supervision.

Providing incentives for meeting case-specific goals of supervision is a powerful tool to enhance individual motivation and promote positive behavior change.[2] Research on human behavior indicates that offenders attempting to change behavior are better motivated by positive reinforcement than negative.[3] The application of this principle to the criminal justice system is illustrated by the use of positive reinforcement tools such as compliance credits.[4] Allowing lower risk offenders to earn their way off supervision by adhering to specific goals and strict guidelines is a particularly powerful incentive.[5] In this way, supervised individuals can be more motivated to participate in appropriate programs, stay sober, and retain a job.

Several experts suggest that after one year of complying with their supervision conditions and adhering to specific behavioral goals many supervised individuals could appropriately be moved

to an "administrative" caseload (non-active supervision), or that their supervision period be terminated.[6] This complements research that has shown that the first weeks and months after release from prison is when parolees are at the highest risk of recidivism, and that recidivism rates stabilize in the second and third year.[7] The possibility of reducing the supervision term through earned compliance credits not only enhances offender motivation to reform their behavior, but it also helps agencies better allocate scarce resources, by "frontloading" those resources in the first year when violations are more likely to occur and reducing supervision thereafter.[8]

Many states also have enacted legislation that enables certain prison inmates to earn "earned time credits" and be released earlier from prison, if they demonstrate good behavior and participate in treatment, education, work or other "risk reduction" programs while incarcerated. A recent evaluation of the earned release time statute in Washington State found that the law has been effective: taxpayer costs were lower and criminal recidivism did not increase. The study, by the Washington State Institute for Public Policy (WSIPP), found that recidivism actually decreased for inmates who had been imprisoned for non-violent crimes. Offenders who earned release time under the statute had fewer convictions, including fewer felony convictions, than offenders with comparable criminal histories and risk profiles who were released before the statute was enacted. For those convicted of violent felonies, there was no statistically significant difference between inmates who earned release time under the new law and a comparable group released before the statute was enacted. The WSIPP study estimated an average cost savings of $10,743 per offender, from both the reduction in the length of stay in prison and the reduction in recidivism.[9]

State Examples

- **Arizona.** On June 28, 2008, Governor Janet Napolitano signed legislation (effective 12/31/08) authorizing the court to reduce the term of an offender's probation by up to 20 days per month, provided the offender has met certain specific measures of probation compliance ("earned time credit"). See Arizona Senate Bill 1476, at http://www.azleg.gov/legtext/48leg/2r/bills/sb1476s.pdf.

- **Nevada.** In 2007, Nevada adopted a sentencing reform act that enhances reduction-of-sentence credits for parolees and probationers, as well as state prison inmates who participate in programs shown to reduce recidivism. See Nevada Assembly Bill 510, effective July 1, 2007, at http://www.leg.state.nv.us/74th/Bills/AB/AB510_EN.pdf.

- **Delaware.** In a pilot program that led to a provision in SB 50, the Probation Reform Act, approximately 65 percent of probationers who entered the program were discharged early from their probation. By completing certain goals established by the court, these offenders completed probation sentences of many years in a year to 18 months.[10]

[1] Gendreau, P., T. Little and C. Goggin, "A meta-analysis of the predictors of adult offender recidivism: What works!," *Criminology,* 34 (4), pp. 575-607 (1996); Bonta, James, "Offender Risk Assessment: Guidelines for Selection and Use," *Criminal Justice and Behavior*, 29 (4), pp. 355-379 (2002); Andrews, D.A., "Recidivism Is Predictable and Can Be Influenced: Using Risk Assessments to Reduce Recidivism," *Forum on Corrections Research*, Special Edition, pp. 5-11 (1999); Lowenkamp, C. and E.J. Latessa, "The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Corrections Programs?" *Crime and Delinquency*, No. 51 (2006).

[2] National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, D.C.: The National Academies Press, 2007); Andrews, Don, "Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy," *Criminology and Public Policy*, No. 5, pp. 595-602 (2006); Burke, Peggy, *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Offender Transition,* (Washington, D.C.: National Institute of Corrections, 2004); Petersilia, Joan, "What Works in Prisoner Reentry?: Reviewing and Questioning the Evidence," *Federal Probation*, 68 (2), pp. 3-9 (2004); Cullen, Francis and Paul Gendreau, "Assessing Correctional Rehabilitation: Policy, Practice, and Prospects," *Criminal Justice 2000*, Vol. 3, (2000); Taxman, Faye, David Soule and Adam Gelb, "Graduated Sanctions: Stepping Into Accountable Systems and Offenders," *Prison Journal*, 79 (2), pp. 182-205 (1999).; Andrews, Don and James Bonta, *The Psychology of Criminal Conduct (*Cincinnati: Anderson Publishing, 2004).

[3] Bandura, Albert, and Richard H. Walters, *Social Learning and Personality Development*, (New York: Holt, Rinehart and Winston, 1963); Latessa, Edward, Francis Cullen and Paul Gendreau, "Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment," *Federal Probation*, 66 (2), pp. 43-49 (2002); Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston: 2004).

[4] Burdon, William M., et al, "Drug Courts and Contingency Management," *Journal of Drug Issues*, 31 (1), pp. 73-90 (2001).

[5] Petersilia, Joan, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003); Petersilia, Joan, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology and Public Policy*, 6 (4), pp. 807-814 (2007); Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005); California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender Reentry and Recidivism Reduction Programs, *Report to the California State Legislature: A Roadmap for Effective Offender Programming in California* (Sacramento, CA: California Department of Corrections and Rehabilitation, 2007); Travis, Jeremy, "Reflections on the Reentry Movement," *Federal Sentencing Reporter*, 20 (2) (December 2007).

[6] See, for example, Pew Center on the States' Public Safety Performance Project, *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (Washington, D.C.: The Pew Charitable Trusts, December 2008); Austin, James, Todd Clear, Troy Duster, David F. Greenberg, John Irwin, Candace McCoy, Alan Mobley, Barbara Owen and Joshua Page, *Unlocking America: Why and How to Reduce America's Prison Population* (Washington, D.C.: The JFA Institute, 2007); Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005); and Petersilia, Joan, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press 2003).

[7] National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, D.C.: The National Academies Press 2007).

[8] Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005).

[9] Drake, E.K. and R. Barnoski, *Increasing Earned Release from Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs* (Olympia, WA: Washington State Institute for Public Policy, 2008).

[10] Gebelein, Richard S., *Goal Oriented Probation: Let's Catch Them Doing Something Good*, presentation to American Probation and Parole Association conference in Las Vegas, NV (August 4, 2008).

3 Administrative Sanctions

Problem

In many states, probationers and parolees who violate the conditions of their community supervision are a major driver of prison populations and corrections spending. In some states, violators account for as many as two-thirds of prison admissions. About half the time, these violators are revoked to prison not for new crimes, but for breaking the rules of their supervision, such as not reporting to a probation officer or failing a drug test. In 2006, 35 percent of all state prison admissions were offenders returned to prison as a result of parole violations, not for new convictions.

Research indicates that swift, certain and proportionate sanctions for these "technical violations" can improve compliance with the rules and reduce the number of violators sent to costly prison cells. Yet probation and parole officers face high caseloads, a lack of community-based sanctions and a cumbersome court process for holding violators accountable. This frequently means that probation and parole officers will not go back to the court or parole board until an offender has committed a number of violations, at which point revocation to prison becomes the likely penalty. Delayed responses to violations can give offenders the sense that they don't really have to play by the rules, in effect encouraging more violations, while holding supervision violators in jail and prison cells takes up space that should be used for more dangerous inmates.

Solution

For states to deliver swift, certain and proportionate responses to violations of probation and parole, they need an array of institutional and community-based sanctions as well as the authority to assign—and reassign—offenders to those sanctions. Many states are developing a continuum of sanctions, from community service programs to day reporting centers, to more restrictive responses such as secure residential facilities. To maximize the certainty and swiftness of sanctions, several states provide parole and probation agencies the authority to place violators in these sanction programs, including imposing short stays in jail, without having to go back to court. As part of a system of administrative sanctions for violations, states also should incorporate positive reinforcements that supervised individuals can receive when they comply with their conditions.

This provision:

- Requires community corrections agencies to adopt a set of graduated sanctions and rewards to respond to violations and compliance with the conditions of supervision.
- Establishes authority for agencies to impose graduated sanctions and rewards through an administrative process.

Suggested Language

Section 101. Short Title.

This Act may be cited as the "Swift and Certain Sanctions Act."

Section 102. Definitions.

In this title:

(1) "Agency" means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by a court or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) "Chief supervision officer" means [the highest ranking field probation or parole administrator in each judicial circuit].

(3) "Court" means a court of record having original criminal jurisdiction.

(4) "Community supervision" means

(A) The placement of a defendant under a continuum of programs and sanctions, with conditions imposed by a court for a specified period during which:

(i) criminal proceedings are deferred without an adjudication of guilt;

(ii) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

(B) The placement of an individual under a continuum of programs and sanctions after release from prison or jail, with conditions imposed by the releasing authority for a specified period.

(5) "Supervision officer" means a person appointed or employed by the Agency to supervise individuals placed on community supervision.

(6) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(7) "Graduated sanction" means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; forfeiture

of earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to supervision officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration.

(8) "Positive reinforcement" means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, awarding earned compliance credits, removing supervision conditions such as home detention or curfew, or asking the offender to be a mentor to others.

Section 103. Policy on Community Supervision.

It is the policy of this state that supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

Section 104. System of Graduated Sanctions.

(1) The Agency shall, by [January 1, 2010], adopt a single system of graduated sanctions for violations of conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations, the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system also shall define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision.

(2) The Agency shall establish by rules and regulations an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.

(3) The Agency shall establish by rules and regulations an administrative process to review graduated sanctions contested by supervised individuals under Section 106 of this Act. The review shall be conducted by an impartial Agency employee or representative who has been selected, appointed and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

Section 105. Conditions of Community Supervision.

For individuals placed on probation, the judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may impose as a condition of community supervision that the Agency supervising the individual may, in accordance with Section 106 of this Act, impose graduated sanctions adopted by the Agency for violations of the conditions of community supervision.

Section 106. Authority to Impose Graduated Sanctions.

(1) Notwithstanding any rule or law to the contrary, the Agency may:

(A) Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and

(B) Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than [five] days consecutively, and not more than [30] days in any one calendar year.

(2) A supervision officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(3) The imposition of a graduated sanction or sanctions by a community supervision officer must comport with the system of graduated sanctions adopted by the Agency under Section 104 of this title. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole or post release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, the individual is entitled to an administrative review to be conducted by the Agency within five days of the issuance of the notice. If the Agency affirms the recommendation contained in the notice, then the sanction or sanctions shall become effective immediately.

(4) If the graduated sanction involves confinement in a correctional or detention facility, confinement must be approved by the chief supervision officer, but the supervised individual may be taken into custody for up to [four] hours while such approval is obtained. If the

supervised individual is employed, the supervision officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.

(5) A sanction that confines a supervised individual in a correctional or detention facility for a period of more than [five] consecutive days, or extends the term of community supervision, may not be imposed as a graduated sanction, except pursuant to an order of the court or the releasing authority.

(6) A notice of a graduated sanction may not be issued for any violation of probation, parole or post-release supervision which could warrant an additional, separate felony charge. Notwithstanding this, a notice of a graduated sanction may be issued for a positive drug test.

(7) Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.

(8) If a supervision officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:

(A) Deliver a copy of the modified conditions to the supervised individual;
(B) File a copy of the modified conditions with the sentencing court or releasing authority; and
(C) Note the date of delivery of the copy in the supervised individual's file.

Section 107. Monitoring Graduated Sanctions.

The chief supervision officer shall review confinement sanctions recommended by supervision officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the Agency's number and type of revocations for violations of the conditions of supervision.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant correctional agency or agencies.

- Section 102 (graduated sanctions definition): This section lists the most common community-based sanctions for offenders. Policy makers may want to customize this list with specific sanctions available or anticipated in their states.

- Section 104 (system of graduated sanctions): This section recommends that community supervision agencies in either the executive or judicial branches adopt a single set of guidelines for responding to violations. The guidelines can be written to accommodate the fact that different areas of states will have access to different sanctions. Ranges of responses to various violations should be sufficiently narrow that it is clear to offenders what the sanctions will be. This certainty and transparency lets offenders know that they are in control of what happens to them, that the penalties are not the random and arbitrary whims of a supervision officer or judge.

- Section 104 (administrative process): This provision leaves to the Agency decisions regarding what level of administrative process is necessary for imposing sanctions for violations. Some states allow parole and probation officers to impose low level sanctions directly, while requiring a supervisor's approval for more serious sanctions. The administrative process that would apply if a supervised individual contests the sanction may also differ depending on the severity of the sanction.

- Section 105 (selection of offender for graduated sanctions): This provision allows the court to select certain offenders to be subject to the graduated sanctions system, in which sanctions would be imposed administratively by the community corrections agency rather than the court itself. Courts may wish to place a check-box on their sentencing order forms to indicate that particular offenders have been sentenced in this fashion. Alternatively, states may wish to apply graduated sanctions to all supervised individuals or to all supervised individuals except those exempted by the court. In those cases, this section may be eliminated or altered to indicate the state's preference.

- Section 106 (administrative authority to incarcerate): Granting corrections agencies the authority to incarcerate violators without a judicial proceeding raises issues of due process. While sanctions that restrict an offender's liberty may require a due process hearing several states have legislated administrative authority to confine violators for limited periods of time (see State Examples below). Based on the model used in some of these states, this section recommends an administrative review process involving a neutral Agency employee when the sanction involves confinement. The time limits on individual and cumulative periods of incarceration are intended to prevent the Agency from abusing this authority.

- Section 106 (jail reimbursement): Other statutes govern the relationship between the state and local jurisdictions regarding reimbursement for state inmates in local facilities. This provision does not address these pre-existing arrangements. However, graduated

sanctions are designed to reduce the length of time violators spend in jail awaiting hearings. This should reduce local jail crowding and state reimbursement expenditures.

Rationale

Research shows that swift, certain and incremental (or graduated) responses to rule-breaking are key components of an effective strategy to change behavior.[1] Graduated sanctions are being used in more jurisdictions across the country, and implementation is the focus of a significant national effort by the National Institute of Corrections.

Allowing corrections agencies to hold offenders accountable for breaking the rules of supervision, rather than having to take them back to court, can substantially boost the immediacy and certainty of responses. Supervising officers often are in the best position to impose meaningful and proportionate consequences to offender noncompliance, while the court violation process is often too cumbersome to accommodate the need for swift and certain consequences. Whether imposed by courts or by supervision agencies, swift and certain sanctions clearly outperform business-as-usual.[2] In one case – Hawaii's Opportunity Probation with Enforcement – swift and certain but graduated judicial sanctioning has proven in a randomized controlled trial to reduce positive drug screens by 91 percent and cut both revocations and new arrests by two-thirds.[3]

Several states allow supervising officers to respond to noncompliance within a certain range of sanctions, including limited jail terms, without initiating a revocation process (see below). This administrative structure enhances the likelihood and timeliness, and thus the effectiveness, of the sanction. It also should increase uniformity in offender sanctions.

There are important other benefits to the criminal justice system, including reduced use of local jail space by state probation and parole violators, and greater time for probation officers to focus on high-risk offenders. Evaluation of the administrative sanctions program in Georgia[4] found:

- Reductions of 70 percent or more in the average number of days that violators spent in local jails awaiting disposition of their violation cases. One county reported the average fell from 34 days to 6 days.
- Significant reductions in the amount of time probation officers spent waiting in courthouses for violation cases to be heard. Timesheets kept by the officers indicated that 77 percent of their time in courthouses was spent waiting, compared to just 23 percent actually engaged in hearings. The administrative process saves this time, allowing officers to spend it supervising their caseloads.

These provisions do not limit sanctions or supervision to a detention or correctional facility or to the use of electronic monitoring, but simply provides the legislative authority for such measures. Other graduated sanctions and supervision measures can and should be used depending on the supervision circumstances.

Research also indicates that positive reinforcement, incentives and rewards are powerful tools in the supervision process.[5] By employing them for progress, along with sanctions for violations, parole and probation officers can enhance offender motivation, support positive behavior change and reduce recidivism. Focusing on the gains that offenders have made can promote adherence to supervision conditions and encourage positive responses. Examples of incentives and rewards include awarding certificates of achievement, reducing reporting requirements, deferring a monthly payment, removing conditions (such as home detention or curfew), or asking the offender to be a "mentor" to others. Just as with sanctions, incentives and rewards should be provided with certainty and in a timely fashion to have the greatest impact on behavior change.

State Examples

States that have adopted administrative sanction as an alternative to revocation include:

- **Delaware**: 11§4334 (Probation Reform Act, SB 50) authorizes the Department of Corrections to move offenders between levels of supervision, including a financial/restitution-only status, and to impose administrative sanctions for minor or technical probation violations, including up to 5 days in jail, not to exceed 10 days annually.
- **Florida:** §948 allows the Parole Commission to return the parolee to prison or place the parolee in a community control program. This program can include intensive supervision and surveillance, confinement to a residence outside of employment and public service hours, mandatory public service, electronic monitoring, and standard conditions of probation.
- **Georgia:** §42-8-34.1 (HB 1161) authorizes a sentencing judge to set a cap below which chief probation officers or Department of Corrections hearing officers may impose administrative sanctions, including placement in secure state residential facilities.
- **Illinois:** 730 ILCS 5/5-6-4 authorizes intermediate sanctions, including a term of home confinement.
- **Maine:** §17-A MRSA §1208 authorizes the probation officer to impose administrative sanctions up to 90 days in a residential prerelease center.
- **Montana:** §46-23-1015 authorizes a hearing officer to impose up to a 30 day sanction in local jail for probation violations.
- **Oregon:** §137.595 and §144.106 authorize supervising agency personnel to administratively sanction according to a statutory sanctions guideline, including imposition of limited jail sanctions.
- **Oklahoma:** §57-502 establishes an Intermediate Sanctions Matrix that addresses technical violations. A hearing judge can determine whether a technical violation occurred and, if so, consult the matrix for the appropriate intermediate sanction.
- **Wisconsin:** §302.113 establishes a short term sanction program for offenders under Extended Supervision through the Wisconsin Truth-in-Sentencing statute. This program

allows the Department of Corrections to impose as a sanction for a condition violation confinement in a regional detention facility or local jail for up to 90 days, as opposed to revocation. In addition, the Department of Corrections has adopted regulations for "functional responses" to conditions violations that establish an administrative system for graduated sanctions.

- **Wyoming:** §7-13-1107 authorized the DOC to develop administrative sanctions as an alternative to probation or parole violations, not to exceed 30 days in jail or 60 days in community corrections center.

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[1] The relative effectiveness of swiftness, certainty and severity of sanctions is explored in Nagin, Daniel and Greg Pogarsky, "Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence," *Criminology,* 39 (4) (2001). See also Taxman, Faye, David Soule and Adam Gelb, "Graduated Sanctions: Stepping Into Accountable Systems and Offenders," *Prison Journal*, 79 (2), pp. 182-204 (1999); Kleiman, Mark, and Angela Hawken, "Fixing the Parole System," *Issues in Science and Technology* (June, 2007) (available online at http://www.issues.org/24.4/kleiman.html#).

[2] See Harrell, Adele, Ojmarrh Mitchell, Jeffrey Merrill and Douglas Marlowe, "Evaluation of Breaking the Cycle" (Washington, D.C.: The Urban Institute, April 2004); Reedy, Darin C., Faye S. Taxman, Theodore Klem and Rebecca Silverman, *Does BTC Deter Drug Use? Lessons Learned from Three Years of Implementation* (University of Maryland Center for Applied Policy Studies, Bureau of Governmental Research, July 2002); Harrell, Adele, Shannon Cavanagh and John Roman, "Evaluation of the DC Superior Court Drug Intervention Programs," *NIJ: Research in Brief* (April 2000) (available online at http://www.ncjrs.gov/pdffiles1/nij/178941.pdf).

[3] For related materials, see http://www.pewcenteronthestates.org/news_room_detail.aspx?id=41950.

[4] Speir, John and Tammy Meredith, *An Evaluation of Georgia's Probation Options Management Act* (Atlanta: Applied Research Services, October 2007) (available online at http://ars-corp.com/_view/PDF_Files/AnEvaluationofGeorgiasProbationOptionsManagementAct_FinalReport2007.pdf).

[5] Petersilia, Joan, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology and Public Policy*, 6 (4), 807-814 (2007).

4 Performance Incentive Funding

Problem

Strong community corrections agencies can cut recidivism, but adequate funding for them is a perennial challenge in the criminal justice system. The nation's economic downturn is certain to steer funding priorities in other directions. People on probation and parole who violate their conditions of supervision are a major driver of prison populations and costs. Yet if community corrections agencies keep minor violators on community supervision, rather than revoke them to prison, the agencies get more cases but not more money to manage them. Higher caseloads result in lower levels of supervision and services, which undermines the confidence of the courts in community options. The net result often is still greater use of incarceration for low-risk offenders.

Solution

States and localities can realign their fiscal relationships in ways that reward performance. If corrections agencies are successful in cutting the rate of offenders sent back to prison for new crimes or rule violations, the state reaps savings by avoiding prison costs. By sharing some of those savings with the successful agencies, states can help build stronger community corrections systems without appropriating new funds. The incentive funding can be used to implement evidence based practices, provide effective substance abuse treatment and other risk reduction programs, and victim services. The same type of incentive can be applied to state probation and post-release supervision agencies as well. If state agencies save costs by reducing prison admissions while protecting public safety, some of those savings can be channeled back to those agencies so they can continue to cut crime and recidivism.

This provision:

- Appropriates to community corrections agencies up to 45 percent of the imprisonment costs averted when they reduce the rate of new felony convictions and the rate of revocations for technical violations.
- Appropriates 30 percent of the savings for reductions in the new conviction and revocation rates. Appropriates an additional five percent of the savings if the agency shows improvement in each of three other key outcome measures: employment, drug test failures, and victim restitution collection.
- Eliminates incentive funding if there is an increase in the agency's new felony conviction rate for probationers and parolees.
- Permits incentive funding to be used to implement evidence-based practices, expand effective offender programming, and provide grants to victim service organizations.

Suggested Language

Section 101. Short Title.

This title may be cited as the "Community Corrections Performance Incentive Act."

Section 102. Definitions.

(1) "Evidence-based practices" means supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among people on probation, parole, or post-release supervision.

(2) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(3) "Conditions of supervision" means conditions of probation, parole or other form of post-prison supervision.

Section 103. Calculation of State Prison Savings.

(1) The [state oversight agency] shall annually calculate:

(A) The percentage of supervised individuals who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment in the state [Department of Corrections]. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 106 of this title. The baseline revocation rate shall be the revocation rate in fiscal year 2008.

(B) The percentage of supervised individuals who are convicted of a new felony offense and sentenced to a term of imprisonment in the state [Department of Corrections]. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 106 of this title. The baseline new offense conviction rate shall be the conviction rate in fiscal year 2008.

(C) Any state expenditures that have been avoided by reductions in the revocation rate as calculated in paragraph (A) of this section.

(D) Any state expenditures that have been avoided by reductions in the new felony offense conviction rate as calculated in paragraph (B) of this section.

(2) The calculations in paragraph (1) of this section shall be made separately for supervised individuals under the supervision of probation agencies and under the supervision of parole or other post-prison supervision agencies, and shall be made separately by individual state and local agency.

Section 104. Performance Incentive Funding.

(1) Beginning in fiscal year 2010, the legislature shall annually appropriate up to [45] percent of any state expenditures that are avoided as calculated in Section 103 of this title. Such averted expenditures shall be appropriated to the [state or local agency or agencies] responsible for those savings.

(2) The appropriations in paragraph (1) of this section are subject to the following provisions:

(A) None of the calculated savings shall be appropriated annually to the [state or local agency or agencies] if there is an increase in the percentage of individuals supervised by [that agency or agencies] who are convicted of a new felony offense as calculated in Section 103 paragraph (1)(B) of this title.

(B) Of the state expenditures that have been avoided by a reduction in the revocation rate, as calculated in Section 103 paragraph (1)(C) of this title:

(i) [Thirty] percent of the total savings shall be appropriated to the [state or local agency or agencies];

(ii) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by [that agency] and who are employed in a full-time job or employed part time for at least 25 hours per week, provided that the [agency] has submitted data to the [state oversight agency] showing such increases, and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iii) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by [that agency or agencies] who are current in their payments of victim restitution, provided that the [agency] has submitted data to the [state oversight agency] showing such increases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iv) An additional [five] percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is a decrease in the percentage of people who are supervised by that [agency or agencies] and who test positive for controlled substances, provided that the [agency] has submitted data to the [state oversight agency] showing such decreases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title.

(C) Of the state expenditures that have been avoided by a reduction in the new felony offense conviction rate as calculated in Section 103 paragraph (1)(D) of this section:

(i) Thirty percent of the total savings shall be appropriated to the state or local agency or agencies;

(ii) An additional five percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of

people who are supervised by [that agency or agencies] and who are employed in a full-time job or employed part time for at least 25 hours per week, provided that the agency has submitted data to the [state oversight agency] showing such increases, and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iii) An additional five per cent of the total savings shall be appropriated to the [state or local agency or agencies] if there is an increase in the percentage of people who are supervised by that [agency or agencies] who are current in their payments of victim restitution, provided that the [agency] has submitted data to the [state oversight agency] showing such increases and the [state oversight agency] includes this information in the report required pursuant to Section 106 of this title;

(iv) An additional five percent of the total savings shall be appropriated to the [state or local agency or agencies] if there is a decrease in the percentage of people who are supervised by [that agency or agencies] and who test positive for controlled substances.

(3) The monies appropriated pursuant to this title shall be used to supplement, not supplant, any other state or county appropriations for probation, parole or other post-prison supervision services.

Section 105. Use of Funds.

(1) Monies received through appropriations pursuant to this title shall be used for the following purposes:

(A) Implementation of evidence-based practices;

(B) Increasing the availability of risk reduction programs and interventions, including substance abuse treatment programs, for supervised individuals;

(C) Grants to nonprofit victim services organizations to partner with the community corrections agencies and courts to assist victims and increase the amount of restitution collected from probationers.

Section 106. Reports.

(1) On or before [October 1] of each year, beginning in 2010, the judicial branch, [units of local government] and the state [Department of Corrections] shall jointly report to the [state oversight agency] the data necessary for the [state oversight agency] to perform the calculations required by Section 103 of this title. The report shall provide separate figures for probation and parole or other form of post-prison supervision and include for the prior fiscal year:

(A) The number of supervised individuals, by agency;

(B) The number and percentage of supervised individuals, by agency, who were revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment in the state [Department of Corrections]; and
(C) The number and percentage of supervised individuals, by agency, who were convicted of a new felony offense and sentenced to a term of imprisonment in the state [Department of Corrections].

(2) On or before [December 1] of each year, beginning in 2010, the [state oversight agency] shall report each year on the implementation of this title to the president of the senate, the speaker of the house of representatives, the chief justice, and the governor. The report shall include the calculations made pursuant to this Section 103 of this title and the resulting performance incentive funding, if any, to be appropriated.

(3) The [state oversight agency] shall make its full report and an executive summary available to the general public on its website.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 103 (state oversight agency): These provisions require the state to calculate each year the percentage of probationers, parolees and individuals on post release supervision who are revoked to state prison in the previous year, and the amount of state costs avoided because those individuals are not in prison. Each state should determine which entity is best positioned to make those calculations. Arizona designates the Joint Legislative Budget Committee to make the calculations, but other states may wish to designate the governor's budget office or another entity.

- Section 103 (revocations vs. new felony convictions): Probationers and parolees often are revoked for "new criminal activity" even though they have not been convicted of a new criminal offense. This is possible because supervision conditions typically prohibit being arrested for a criminal offense, and because it is economical for courts to handle these incidents in shorter revocation hearings than in the full-blown proceedings required for new criminal cases. Under this provision, revocations for new arrests would be counted as revocations under Section 103 (1)(A) and Section 106 (1)(B).

- Section 103 (cost savings calculations): States may wish to add a provision that specifies how savings would be calculated in their states, or charge the state oversight agency with developing rules or regulations that detail the calculation procedures. Calculations should at least account for variable costs averted, such as food and medical expenses, and also

consider some of the fixed and capital expenditures that are avoided when larger numbers of potential inmates are avoided.

- Section 104(state or local agency or agencies): Probation can be administered at the state or local level, and in the executive or judicial branches of government. These provisions are drafted generally, so that they apply in each of those conditions. States may need to tailor the designations to fit their particular probation structures, especially when probation is a function of local government.

- Section 104 (funding incentives for state agencies): This title recommends that states incentivize state agencies, as well as local jurisdictions, to improve their performance. In order to ensure that incentive funding is received by state agencies and does not supplant other funds, states may want to establish Performance Trust Funds or other special accounts.

- Section 104 (additional performance incentives): The provisions reward performance in other critical areas of community corrections—employment, reduced drug use and victim restitution. But since there are no direct or easily tracked savings to state government when these outcomes are achieved, the incentive payments are dependent on the costs averted by reductions in prison admissions for revocations and new felony offenses. As drafted, supervision agencies would receive greater portions of the savings they generate from reducing prison admissions for revocations and new felony offenses if they also have increased employment rates, reduced drug test positive rates, and increased victim restitution collection rates. The incentive funding, five percent for each of the three outcomes, is made available if these rates are moving in the desired directions. A specific minimum amount of change in the rates is not recommended.

- Section 104 (funding cut-off): Since crime prevention is the ultimate goal of community corrections, this provision prohibits incentive funding to agencies that see an increase in the rate of new felony convictions of individuals under their supervision.

- Section 106 (reports): Report dates were selected in order to provide agencies sufficient time to report on performance in the prior fiscal year, and the state oversight agency sufficient time to calculate savings, so that funding can be incorporated in the following year's budgets. This timetable may need to be adjusted to fit agency's reporting capacities and state's individual budget calendars.

Rationale

A number of states and localities are realigning their fiscal relationships in ways that encourage local authorities to develop cost-effective, community-based sanctions for carefully selected offenders who otherwise would be sent to prison.[1] Not only does this help states and counties

save money, but also there is a growing body of research showing that a balanced approach to sanctions can reduce crime and victimization as well.[2]

State and local governments have been working on better ways to finance community corrections programs since at least the 1960s, when California passed the Probation Subsidy Act.[3] Since then, some 36 states have created some form of state-local partnership, often called a Community Corrections Act, which defines the corrections relationship between the two levels of government and establishes a state funding stream to counties for community corrections

Beyond the traditional arrangement offered by CCAs, some states are redesigning their fiscal relationships with their local counterparts in the juvenile justice arena. Both Ohio and California are providing additional funding incentives to local counties if they retain juveniles in local programs rather than sending them to the state juvenile system (see below).

Few of the adult justice system partnerships, however, contain the performance incentive funding feature. And though state-local partnerships have explored the potential of incentive funding to help manage correctional populations, state agencies to date have not been rewarded fiscally for their efforts to control crime and prison costs. This title includes state-run probation and parole/post-prison supervision agencies since their labors also can have a dramatic impact.

State Examples

- **Arizona:** SB 1476 (2008) creates a performance funding mechanism for probation departments to employ best practices to reduce crime and violations committed by people under probation supervision. Under the new legislation, the state will award counties that successfully reduce crime and probation revocations a percentage of the cost savings generated by these reductions at the state level. The county will then be required to reinvest this supplemental funding in victim services, substance abuse treatment, and strategies to improve community supervision and reduce recidivism.

- **Kansas:** SB 14 (2007) provides $4 million annually in state grants to county community corrections programs that submit plans to reduce revocations by 20 percent.

- **Ohio:** OHIO REV. CODE ANN. sec. 5139.41-.44 (Supp. 2000). The Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) system, started in 1993, provides subsidy grants to the state's counties to serve up to 100,000 youth annually through about 700 programs. About $30 million in RECLAIM funds and $20 million in "base" youth services funding combine to pay for programs. RECLAIM Ohio gives each county a fund for local programs based on a formula, and encourages courts to keep low-

risk delinquents in county programs by deducting amounts from the fund for each low-risk delinquent sent to state facilities.[4]

- **California:** SB 81 (2007) provides counties with block grant funds—an average of $130,000 per youth—to pay for alternatives to a state commitment for juvenile offenders. To receive a grant, counties must submit a Juvenile Justice Development Plan outlining their intended use of the funds. SB 81 also authorized up to $100 million statewide in bond funds for the design and construction of new or renovated county facilities for youthful offenders. Oversight will be provided by the state's Juvenile Justice Commission. The reform bill is expected to cut the population in state juvenile facilities from 2,500 to about 1,500 within two years.

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[1] For an overview of this topic, see Pew Center on the States' Public Safety Performance Project, *Getting in Sync: State-Local Fiscal Partnerships for Public Safety* (Washington, D.C.: The Pew Charitable Trusts, July 2008).

[2] See, for example, Sherman, L.W., "Thinking About Crime Prevention" in Sherman, L.W., D. Gottfredson, D. MacKenzie, J. Eck, P. Reuter and S. Bushway, *Preventing Crime; What Works, What Doesn't, What's Promising* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1997).

[3] The Probation Subsidy Act, enacted by California in 1965, provided counties up to $4,000 for each prison-eligible adult or juvenile offender who was supervised, sanctioned and serviced in the community. In combination with other reforms, the Act led to several successes achieved under Governor Ronald Reagan. Between 1969 and 1972, the state placed nearly all non-violent property offenders under local supervision, cut its inmate population by 30 percent, closed eight prison facilities, and drove recidivism (within two years of release) down from 40 percent to 25 percent.

[4] Since initiating RECLAIM, Ohio has seen a drop of approximately 45 percent in admissions to the state's residential facilities. A trio of University of Cincinnati evaluations has shown that RECLAIM saves Ohio taxpayers between $11 and $45 for every dollar spent. Please see Lowenkamp, Christopher T. and Edward J. Latessa, *Evaluation of Ohio's RECLAIM Funded Programs, Community Correctional Facilities, and DYS Facilities: Cost-benefit Analysis—Final Report* (Cincinnati: University of Cincinnati, Division of Criminal Justice, 2005). Available online at www.dys.ohio.gov/dysweb/Reclaim/DYSCostBenefit121205.pdf.

5 Performance Measurement

Problem

Many community corrections agencies lack a systematic approach to performance measurement that would enable them and their key stakeholders and constituents to effectively judge how well the agencies are accomplishing their goals. Where performance measures exist, most are primarily case flow measures (new cases received, cases discharged, cases remaining), activity counts (number of office or field contacts completed, number of drug tests administered), point-in-time snapshots (average caseload size, types of cases supervised), and other process measures. Such measures provide information about the agency workload, but fail to address the results achieved by the agency. The absence of outcome measures handicaps policy makers and others who wish to assess the overall performance of the agency, and also limits the ability of corrections executives to effectively manage their staff and resources. It is difficult for agency leaders to make optimal use of staff if they don't know which staff and programs are and are not meeting their goals.

Solution

Community corrections agencies should implement a systematic performance measurement model, which includes measures of outcomes in key performance areas. Such a model would provide regular, objective and quantitative feedback on how well agencies are achieving their goals. Such information would help agency managers and staff as well as the public judge how well the agency is performing, and would provide managers with accurate and reliable information on which to base their management decisions.

A comprehensive performance measurement system would address the many tasks that community corrections agencies are responsible for: tracking performance at multiple levels (individual cases, staff, units, programs and the entire agency) and examining both process and outcome measures. It is useful to begin with a more modest approach that identifies a small group of outcome measures for key performance areas. These can be implemented more readily and can form the basis for a larger system.

This provision:

- Requires offender supervision agencies to set up a system to track and report regularly on key performance measures as defined by the American Correctional Association.
- The measures are: recidivism, employment, substance use, payment of victim restitution, compliance with "no contact" orders, and the overall performance of supervised individuals as measured by the type of discharge from supervision.

Suggested Language

Section 101. Short Title.

This Act may be cited as the "Community Corrections Performance Measurement Act."

Section 102. Definitions.

In this title:

(1) "Agency" means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-incarceration supervision after jail or prison; and

(B) Any regional county or local government agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-incarceration supervision after jail or prison, provided such agencies receive state funding.

(2) "Community Supervision" means:

(A) The placement of an individual under supervision in the community by a court for a specified period with conditions imposed, as a result of either a conviction and sentence to probation, or the suspension of criminal proceedings without an adjudication of guilt; or

(B) The placement of an individual released from jail or prison under supervision in the community for a specified period with conditions imposed by the releasing authority.

(3) "Supervised Individual" means an individual placed on supervision or probation by a court or serving a period of parole or post-incarceration supervision following jail or prison.

(4) "Performance Measurement System" means a systematic method of identifying, recording, compiling, analyzing, reporting and applying information about an agency's activities and accomplishments, for both internal management purposes and for accounting to supervising and oversight agencies, legislative and executive bodies, constituents and stakeholders and the public.

(5) "Key Performance Indicator" means a measure that captures agency performance on critical variables that are central to the accomplishment of the agency mission and goals.

(6) "Recidivism" means:

(A) The arrest of a supervised individual for a new offense while under community supervision;

(B) The conviction of a supervised individual for a new offense while under community supervision; or

(C) The adjudication of a supervised individual for violation of the conditions of supervision while under community supervision.

(7) "Employment" means that the supervised individual is employed

(A) Full time (more than X hours per week) at legitimate employment; or

(B) Part time (less than X hours per week) at legitimate employment.

(8) "Controlled Substances" means drugs and other illicit substances whose possession and use is controlled or regulated by the state.

(9) "Substance Abuse Testing" means the administration of quantitative tests using urine, saliva or other approved methods to detect the use of controlled substances by supervised individuals.

(10) "Victim Restitution" means court-ordered financial payments to the victim of a crime by the supervised individual for compensation of damage or loss.

(11) "Victim Protection" means compliance with "no contact" orders by the supervised individual.

(12) "Status of Discharge from Supervision" means the status of supervised individuals when they were removed from supervision. A successful discharge is one in which the supervised individual is removed from supervision at the end of the term or prior to the end of the term, having fully or substantially completed the requirements of supervision. An unsuccessful discharge is when the supervised individual is removed from supervision through revocation for violation of the conditions of supervision or for a new offense.

Section 103. Implementation of Performance Measures.

(1) The agency shall develop and implement a performance measurement system within [18 months] of the effective date of this Act.

(2) The performance measurement system shall include, at a minimum, information on the following key performance indicators:

(A) Recidivism of supervised individuals;

(B) Employment of supervised individuals;

(C) Substance use by supervised individuals;

(D) Victim restitution paid by supervised individuals;
(E) Compliance with "no contact" orders by supervised individuals; and
(F) Status of discharge from supervision.

(3) The performance measures should be formatted and reported consistent with the following outcome measures prescribed in the *Performance Based Standards for Adult Probation and Parole Field Services* (4th edition) published by the American Correctional Association:

(A) Recidivism – Performance Standard 1A, Outcome Measures 1 and 2, Performance Standards 2B, Outcome Measures 1, 2, and 3;
(B) Employment – Performance Standard 2D, Outcome Measures 1 and 2;
(C) Substance Use – Performance Standard 2D, Outcome Measure 3;
(D) Victim Restitution – Performance Standard 2E, Outcome Measures 2, 3 and 4;
(E) Victim Protection – Performance Standard 2E, Outcome Measure 1;
(F) Status of Discharge from Supervision – Performance Standard 2A, Outcome Measure 1.

(4) The agency shall ensure that accurate, reliable and complete records are maintained on the key performance indicators.

(5) The agency shall report on agency performance on the key performance indicators at least annually to supervising and oversight agencies, legislative and executive bodies, constituents and stakeholders and the public.

(6) The agency shall utilize information on the key performance indicators for agency management purposes, reporting and reviewing performance on no less than a monthly basis.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

Section 102 (1): This definition of agency is a placeholder designed to reflect the broad range of governing structures for community corrections in the states. States may wish to add the names of the relevant state agencies. Regional, county or local agencies may be included if they receive state funding.

Section 102 (2) (A): This definition reflects the fact that in addition to a formal conviction and sentence to probation, many individuals are placed under supervision without a conviction and sentence. These cases are typically called deferred prosecution, diversion or similar terms. The

individuals still are placed under supervision with conditions. Individuals who fail to comply with the conditions of supervision may be discharged from the program and their case returned to normal criminal case processing.

Section 102 (3): This includes the diverted or deferred cases as noted above.

Section 103 (1): Community corrections agencies have widely varying data capacities which can impact how quickly they are able to implement performance measures. This section recommends an 18-month period for development and implementation. Depending on data systems and other issues, states may wish to allot more or less time for the system to begin functioning.

Section 103 (2): A comprehensive performance measurement system would include many more measures than these six. This listing should not limit an agency in developing its performance measurement system. Other measures could include community service work, housing, and offenders' social networks.

Section 103 (3): These standards, attached as an appendix, were in final draft form as of December 2008. Regarding restitution, some probation and parole agencies do not collect the restitution payments; that function may be handled by the court clerk or some other agency. The supervision agencies should nonetheless be monitoring payments and taking action to enforce compliance with the payment schedule. Moreover, the ACA Performance Based Standards referenced above also include a measure for victim protection – the number of offenders who have "stay away from" or "no contact with" or "no violence toward" orders in the past 12 months, divided by the number of offenders who violated these orders in the past 12 months (2E(1)). These measures may be more difficult for agencies to institute than some of the other measures, and states may wish to provide a longer lead time than 18 months for agencies to implement them.

Section 103 (4): The agency should take proactive steps to ensure that data is complete and accurate.

Section 103 (5): This is a minimum recommendation for reporting. More frequent reporting is desirable.

Section 103 (6): Agencies should consider adopting "PerformanceStat" type management models to enhance the use and impact of the performance data within the agency.[1] Based on the "Compstat" model developed by the New York City Police Department, the model has been adapted by a number of probation and parole agencies.[2]

Rationale

Recidivism. Research shows that well-designed and well-implemented correctional strategies and programs can reduce offending by probationers and parolees.[3] Since promoting public safety and reducing crime by offenders under supervision is a core mission of community corrections, measuring recidivism, or new criminal activity, often is regarded as the chief performance indicator. If community corrections agencies implement effective programs well, they should see a reduction in recidivism. To determine if recidivism is being reduced and by how much, it should be measured and reported on a regular basis. States may also wish to measure and report recidivism by offender risk levels.

Employment. Individuals under probation or parole supervision are routinely required to obtain and maintain gainful, legitimate employment. This requirement is frequently a "standard condition" of supervision imposed by the sentencing court or paroling authority. There are many reasons that support such a requirement. Individuals who are unemployed pose a higher risk of reoffending.[4] Obtaining a job reduces the individual's risk of committing new crime.[5] Having a job provides the individual with income, enabling them to support themselves and their dependents, pay taxes, pay restitution and child support, and generally be a productive member of the community.[6] Lastly, the public expects individuals under supervision to be working and paying their way, not living off others or the state. Community corrections agencies should ensure that all able individuals under supervision are working, and should assist those who do not have a job in obtaining one. In a survey of state parole agencies in 2004, 78 percent of the agencies reporting required employment as a condition of parole, but only 21 percent tracked the employment status of the parolees.[7] Employment rates of supervised individuals should be measured and reported on a regular basis. Some states may also wish to measure, and perhaps include with employment figures, individuals who are full-time students, whether in a community college or university setting, or in a trade or business school.

Substance Abuse. The correlation between crime and the use of illegal substances and abuse of alcohol is well documented. Estimates range between half to three- quarters of offenders have some connection to illegal drugs and/or alcohol.[8] This connection may be the commission of a drug offense or an offense to obtain drugs, an active addiction or a history of abuse and/or addiction. Use of illegal drugs is prohibited generally for individuals under supervision by the requirement that they obey all laws, and specifically by a common supervision condition to refrain from use of illegal substances. Much of the work of probation and parole officers involves monitoring offenders for drug use and providing addiction counseling and referrals to treatment for those offenders who persist in using drugs. Most community corrections agencies conduct regular testing for drug use to determine whether offenders are using drugs.[9] As a key indicator of criminal behavior, the results of drug testing should be compiled and

reported on a regular basis. The number of offenders who complete substance abuse treatment programs is another measure that could be used.

Victim Restitution. Payment of financial restitution by an offender to the victim of the crime to compensate for damage or loss is a fundamental principle of American common law. Every state has a set of legal rights for crime victims in its code of laws, often called a victims' bill of rights. These generally include the rights to restitution from a convicted offender. In addition to statutory rights of victims, 32 states have adopted state victims' rights constitutional amendments.[10] Restitution is ordered by the court and incorporated into the conviction order. As a result, it is incumbent on community corrections agencies to monitor payment of restitution and take enforcement actions as needed to compel offenders to pay the restitution ordered. Timely and effective enforcement of restitution orders is essential to meeting the constitutional obligation to the victim and to maintaining the integrity of the court's order. The degree of compliance with restitution orders and the amount of restitution collected should be compiled and reported on a regular basis.

Victim Protection. Court or parole orders often includes a "no contact" condition designed to prohibit offenders from having any contact with the victim of the offense. Such conditions are critical to victim safety and peace of mind. Community corrections agencies should monitor compliance with such orders, and compile and report the results on a regular basis.

Status of Discharge from Supervision. The status of discharge from supervision provides another, broader measure of overall effectiveness of community supervision. "Successful" discharges are those supervised individuals who have completed their term without being revoked, or who have been granted discharge prior to the expiration of the full term of supervision for exemplary behavior and compliance with the conditions of supervision. Supervised individuals who are revoked from supervision for new criminal activity of for substantial violations of the conditions of supervision are categorized as "unsuccessful" discharges.

State Examples

Corrections agencies in several states have established performance measurement systems. The following are a few examples:

Arizona Department of Corrections

http://www.azcorrections.gov/adc/reports/5YearPlan05.pdf
http://www.azcorrections.gov/adc/reports/CAG/CAGAug08.pdf

Georgia Board of Pardons and Paroles
http://www.pap.state.ga.us/opencms/export/sites/default/resources/07Annual_Report.pdf

Iowa Department of Corrections
http://www.doc.state.ia.us/Documents/2006AnnualPerformanceReport.pdf

Maryland Department of Public safety and Correctional Services
http://www.gov.state.md.us/statestat/reports/DPPvol2no15.pdf

New Jersey Probation Services
http://www.judiciary.state.nj.us/quant/cman0809.pdf

Oregon Progress Board
http://www.oregon.gov/DAS/OPB/GOVresults.shtml#top

Texas Legislative Budget Board
http://www.lbb.state.tx.us/PubSafety_CrimJustice/2_Current_Corr_Pop_Indicators/Recidivism_tables.pdf

APPENDIX

Outcome measures prescribed in the *Performance Based Standards for Adult Probation and Parole Field Services* (4th edition) published by the American Correctional Association.

Recidivism

1A. Members of the community are protected from crime.
- (1) Number of offenders who were arrested for any offense in the past 12 months divided by the total agency caseload in the past 12 months
- (2) Number of offenders who were convicted of any offense in the past 12 months divided by the total agency caseload in the past 12 months

2B. Offenders comply with conditions ordered by the sentencing court or releasing authority.
- (1) Number of offenders found in violation of a new offense during the past 12 months, divided by the total agency caseload during the past 12 months
- (2) Number of offenders found in violation of a technical violation only during the past 12 months, divided by the total agency caseload during the past 12 months
- (3) Number of offenders who absconded during the past 12 months, divided by the number of offenders who were under supervision in the past 12 months

Employment

2D. Offenders are successful in the community during their sentences and after discharge.
- (1) Number of offenders who were employed on a specified day in the past 12 months (single day count), divided by the total agency active caseload on that day
- (2) Number of offenders who were employed upon discharge in the past 12 months divided by the number of offenders discharged in the past 12 months

Substance Use

2D. Offenders are successful in the community during their sentences and after discharge.
- (3) Number of offender substance abuse tests for which the results were negative in the past 12 months divided by the number of tests administered in the past 12 months

Victim Restitution

2E. Offenders comply with all conditions of the court or releasing authority.
- (2) Amount of restitution collected in the past 12 months
- (3) Amount of restitution ordered in the past 12 months
- (4) Number of offenders whose cases were closed with total restitution paid in the past 12 months divided by the number of offenders whose cases were closed with restitution ordered in the past 12 months

Victim Protection

2E. Offenders comply with all conditions of the court or releasing authority.

(1) Number of offenders who had "stay away from" or "no contact with" or "no violence toward" orders in the past 12 months, divided by the number of offenders who violated these orders in the past 12 months

Status of Discharge from Supervision

2E. Offenders behave lawfully while under the supervision of the agency.

(1) Number of offenders who successfully completed supervision in the past 12 months divided by the number of offenders removed from supervision in the past 12 months (discharged and revoked). (Comment: "discharged and revoked" includes offenders successfully and unsuccessfully terminated from supervision)

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[9] Bonczar, Thomas P., *Characteristics of State Parole Supervising Agencies,* (Washington, D.C.: Bureau of Justice Statistics, 2008). All 50 state parole supervising agencies report testing parolees for drug use, p. 5.

[10] Please see http://www.ncvc.org/