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# Federal PROBATION

*a journal of correctional  
philosophy and practice*

A Corrections Workforce for the 21st Century

*By Heather Toronjo*

A Viable Alternative? Alternatives to Incarceration Across Several Federal Districts

*By Laura Baber, Kevin Wolff, Christine Dozier, Roberto Cordeiro*

Federal Supervised Release Revocation for Drug Use: The Rest of the Story

*By Janette Sheil, Medha Patel, David Cook*

Ten Years Gone: Leveraging Second Chance Act 2.0 to Improve Outcomes

*By Jay Whetzel, Aaron F. McGrath, Jr.*

What Do Criminal Justice Professionals Think About Risk Assessment at Pretrial?

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Residential Drug Treatment for High-Risk Probationers: Evaluating the Link Between Program Integrity and Recidivism

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*By Todd Jermstad*

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## **EDITORIAL STAFF**

**Charles Robinson**, *Executive Editor*  
**Ellen Wilson Fielding**, *Editor*

**Federal Probation**  
*Administrative Office of the U.S. Courts*  
Washington, DC 20544  
telephone: 202-502-1651  
fax: 202-502-1677  
email: [Ellen\\_Fielding@ao.uscourts.gov](mailto:Ellen_Fielding@ao.uscourts.gov)

**Postmaster:** Please send address changes to the editor at the address above.

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# THIS ISSUE IN BRIEF

## **A Corrections Workforce for the 21st Century**

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Developing a community supervision workforce for the 21st century requires a marriage of empirical science (what we can do and how we can do it) with guiding values (what we should do). Drawing from the Risk-Need-Responsivity model, the author proposes that building a culture of effective practice will call for bridging the gap between the lived experience of probation officers and the what, how, and why of what they ought to be doing.

*Heather Toronjo*

## **A Viable Alternative? Alternatives to Incarceration Across Several Federal Districts**

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Though federal alternative to incarceration (ATI) programs have proliferated at the grass-roots level, to date there have been no empirical studies of the effectiveness of these programs in the federal system. This article describes results of a study that sought to quantify the pretrial services' measures of new criminal arrests, failures to appear, and other violations of court-ordered conditions of release, i.e., technical violations. The study also sought to quantify defendants' improvements in illicit drug use and employment and, among defendants whose cases have been disposed by the court, the sentences the court imposed.

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## **Federal Supervised Release Revocation for Drug Use: The Rest of the Story**

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One perspective currently popular in the media and elsewhere suggests that technical violations of community supervision are a major contributor to the ballooning prison population. However, is that what is really happening in the federal probation system? To seek an answer to this question, the authors conducted an exploratory review of case data related to persons on a term of supervised release who were revoked for drug use, which is a technical violation.

*Janette Sheil, Medha Patel, David Cook*

## **Ten Years Gone: Leveraging Second Chance Act 2.0 to Improve Outcomes**

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Ten years have passed since U.S. Probation and Pretrial Services began implementing the Second Chance Act (SCA) and the Judicial Administration and Technical Amendments Act (JATAA), which provided funds and guidance to assist state, local, and tribal authorities in improving reentry to the community from prison and to better protect the community. The authors review early implementation, discuss SCA interventions in the context of criminogenic needs and responsivity factors identified in the Post Conviction Risk Assessment (PCRA 2.0), highlight examples of districts' use of funds, and provide suggestions for the future.

*Jay Whetzel, Aaron F. McGrath, Jr.*

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The authors describe findings from surveys with judges, prosecutors, defenders, and pretrial staff in 30 jurisdictions about their perceptions and use of risk assessments in making pretrial release decisions. Findings suggest that there is both consistency and variability in how criminal justice professionals perceive and value risk assessments. This has important policy implications, as a shared understanding of the utility of the tool may impact its value and the fidelity of its implementation.

*Matthew DeMichele, Peter Baumgartner, Kelle Barrick, Megan Comfort, Samuel Scaggs, Shilpi Misra*

## **Residential Drug Treatment for High-Risk Probationers: Evaluating the Link Between Program Integrity and Recidivism**

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Prior research demonstrates the importance of ensuring that correctional programs are administered to high-risk clients, using a cognitive-behavioral approach, which is responsive to the personal characteristics of the clients. The present study, which focused on a residential drug treatment program that served high-risk adult probationers, examined the link between program integrity and recidivism outcomes. Using a quasi-evaluation research design, this study matched probationers who completed a residential drug treatment program rated as "highly effective" by the Correctional Program Checklist to a comparison group who did not receive this treatment.

*W. Carsten Andresen*

## **A History of Court-Imposed Probation Fees in Texas**

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Like many other states, the State of Texas relies heavily on offender payments to fund adult probation services. The author examines how this came about, the effects, and future prospects, including the impact of new technologies on wages and employment of those under supervision. He concludes with recommended reforms to relieve overreliance on court-imposed fines, fees, and costs.

*Todd Jermstad*

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The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and reviews is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts, or the Federal Probation and Pretrial Services System.

# A Corrections Workforce for the 21<sup>st</sup> Century

Heather Toronjo  
George Mason University

“America’s community corrections systems must reflect and embody the normative values of the wider democracy in which they reside.”

“We will not achieve these ideals through piecemeal tweaks to the current system, no matter how rigorous the science or how well intentioned the reformers.”

—Executive Session on Community Corrections

**HUMAN SERVICE FIELDS** including social work, psychology, nursing, and teaching increasingly embrace (at least nominally) a continuous and experiential approach called coaching to improving staff use of evidence-based practices (Archer, 2010; Barbee, Christensen, Antle, Wandersman, & Cahn, 2011; Ervin, 2005; Falender & Shafranske, 2014; Joyce & Showers, 2002; Kadushin & Harkness, 2014). And implementation scholars recognize coaching as a core driver of effective change efforts in human service organizations (Fixsen, Naoom, Blase, & Friedman, 2005). Coaching is an intentional, ongoing, on-the-job process that differs from traditional one-shot or classroom-based training. Organizations that effectively use coaching support the effort with structures such as observations and feedback processes and a coaching service delivery plan (Kampa-Kokesch & Anderson, 2001; Kretlow & Bartholomew, 2010; Milne & Reiser, 2017). They may use peer coaches (Joyce & Showers, 2002), a supervisor coaching model (Kadushin & Harkness, 2014), or outside clinical supervisors (Falender & Shafranske, 2014), but variations in approaches aside, the focus of coaching remains on building specific skills and improving competency. Despite the proven efficacy of coaching to improve

skill use (Jones, Woods, & Guillaume, 2016; Theeboom, Beersma, & Vianen, 2014), many human service fields struggle with the same barriers to implementing best practices. These include poor support from the organization, too few resources, non-supportive organizational culture, and poor staff perceptions of the practices (Aarons & Palinkas, 2007; Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Mota da Silva, da Cunha Menezes Costa, Garcia, & Costa, 2015; Mullen, Bledsoe, & Bellamy, 2008). Decades of research on implementing evidence-based practices in these human service fields makes it clear that effectively integrating EBPs must combine staff training with organizational development efforts including shifting climate and culture (Aarons, Ehrhart, Farahnak, & Sklar, 2014; Glisson & Schoenwald, 2005; Mullen et al., 2008). One method of shifting culture is to develop the deontological argument for *why* an organization does what it does. In other words, practices cannot be simply a means to an end, but should be guided by values that help determine their essential rightness. This article argues that the evidence-based movement in community corrections must be accompanied by such a shift and that coaching, so widely heralded in other human service fields as a method for improving

competency, is one vehicle to help fulfill this larger ideal of organizational development.

In the field of community corrections, the Risk-Need-Responsivity (RNR) model has introduced human service into the justice context, and change efforts in the field have centered on implementing the RNR model’s various components (Chadwick, Dewolf, & Serin, 2015; Taxman & Belenko, 2012; Taxman, Cropsey, Young, & Wexler, 2007). The RNR model is considered the standard for “what” officers should work on with individuals on their caseloads (e.g., criminogenic needs) and “how” they should do it (e.g., core correctional practices). Table 1 details the 15 principles comprising the RNR model. The 15th principle notes the importance of coaching (referred to as clinical supervision). RNR architects James Bonta and Don Andrews, influenced by a background in clinical psychology, recognized the importance of coaching in developing practitioner competence in these types of human service skills. Thus, all current RNR-based supervision models (e.g., STICS, STARR, EPICS, SUSTAIN) and their various offshoots aim to improve officer adherence to the RNR principles through a coaching mechanism (Bonta et al., 2011; Chadwick et al., 2015; Labrecque & Smith, 2017; Robinson et al., 2012).

**TABLE 1.**  
**Principles of the RNR Model**

The Overarching Principles
<ol style="list-style-type: none"> <li>1. Respect for the Person and the Normative Context: Services are delivered with respect for the person, including respect for personal autonomy, being humane, ethical, just, legal, and being otherwise normative. Some norms may vary with the agencies or the particular setting within which services are delivered. For example, agencies working with young offenders may be expected to show exceptional attention to education issues and to child protection. Mental health agencies may attend to issues of personal well-being. Some agencies working with female offenders may place a premium on attending to trauma and/or to parenting concerns.</li> <li>2. Psychological Theory: Base programs on an empirically solid psychological theory (e.g., general Personality and Cognitive Social Learning).</li> <li>3. General Enhancement of Crime Prevention Services: The reduction of criminal victimization may be viewed as a legitimate objective of service agencies, including agencies within and outside of justice and corrections.</li> </ol>
The Core RNR Principles and Key Clinical Issues
<ol style="list-style-type: none"> <li>4. Introduce Human Service: Introduce human service into the justice context. Do not rely on the sanction to bring about reduced offending. Do not rely on deterrence, restoration, or other principles of justice.</li> <li>5. Risk: Match intensity of service with risk level of cases. Work with moderate and higher risk cases. Generally, avoid creating interactions of low-risk cases with higher-risk cases.</li> <li>6. Need: Target predominately criminogenic needs. Move criminogenic needs in the direction of becoming strengths.</li> <li>7. General Responsivity: Employ behavioral, social learning, and cognitive behavioral influence and skill building strategies.</li> <li>8. Specific Responsivity: Adapt the style and mode of service according to the setting of service and to relevant characteristics of individual offenders, such as their strengths, motivations, preferences, personality, age, gender, ethnicity, cultural identifications, and other factors.</li> <li>9. Breadth: Target a number of criminogenic needs relative to noncriminogenic needs.</li> <li>10. Strength: Assess strengths to enhance prediction and specific responsivity factors.</li> <li>11. Structured Assessment:             <ol style="list-style-type: none"> <li>a. Assessment of Strengths and Risk-Need-Specific Responsivity: Employ structured and validated assessment instruments.</li> <li>b. Integrated Assessment and Intervention: Every intervention and contact should be informed by the assessment.</li> </ol> </li> <li>12. Professional Discretion: Deviate from recommendations only for very specific reasons.</li> </ol>
Organizational Principles: Setting, Staffing, and Management
<ol style="list-style-type: none"> <li>13. Community-based: Community-based services are preferred but the principles of RNR also apply with residential and institutional settings.</li> <li>14. GPCSL-based Staff Practices: Effectiveness of interventions is enhanced when delivered by therapists and staff with <i>high-quality relationship skills</i> in combination with <i>high-quality structuring skills</i>. Quality relationships are characterized as respectful, caring, enthusiastic, collaborative, valuing personal autonomy, and using motivational interviewing to engage the client in treatment. Structuring practices include prosocial modeling, effective reinforcement and disapproval, skill building, cognitive restructuring, problem solving, effective use of authority and advocacy/brokerage.</li> <li>15. Management: Promote the selection, training, and clinical supervision of staff according to RNR and introduce monitoring, feedback, and adjustment systems. Build systems and cultures supportive of effective practice and continuity of care. Some additional specific indicators of integrity include having program manuals available, monitoring of service process and intermediate changes, adequate dosage, and involving researchers in the design and delivery of service.</li> </ol>

In existing coaching models, coaches assess officers' use of certain practices, then employ a variety of coaching methods (e.g., feedback, training, role-playing, modeling) to raise officers' use of those skills to a defined level of proficiency. While these training models look to diffuse evidence-based practices within the field of corrections, community supervision would be wise to learn from our human service counterparts and combine implementation of EBP supervision models

with other organizational development efforts. Studies on the effectiveness of these models in changing officer behavior and client outcomes show promising results (Bonta et al., 2011; Chadwick et al., 2015; Labrecque & Smith, 2017; Robinson et al., 2012). And the few studies that parse out the effect of coaching find a positive relationship with improved officer adherence to the RNR principles (Bonta & Andrews, 2016; Labrecque & Smith, 2017). However, research on the use of EBPs

within community supervision continues to find misalignment between training and use of skills (Viglione, 2017; Viglione, Rudes, & Taxman, 2015). In current models, coaching and training happen at the front-line level. Coaches do not necessarily hold a position of authority within the organization and are usually peer coaches or specialty trainers. Current models could do more to "Build systems and cultures supportive of effective practice and continuity of care" (Bonta et al., 2016, p. 177).

## A New Coaching Model

Building a culture supportive of effective practice requires that agencies move beyond just the what and how of effective practice to focus on the why. Traditionally, the reason (or "why") for training officers in the RNR model lies in its crime prevention benefits (Andrews & Dowden, 2008). New training initiatives are invariably sold as a method to reduce recidivism. Officers are tasked with applying this model because "it works" to change behavior. But "reducing recidivism" is a deceptively complex goal that is "deeply and irrevocably flawed" as a measure of success (McNeill, Farrall, Lightowler, & Maruna, 2012, p. 40). As McNeill et al. (2012) so elegantly note, recidivism "is not a straightforward measure of behaviour change...it is a measure of a series of interlocking social reactions to perceptions of behaviour (witnessing, reporting, detecting, prosecuting, sentencing, conviction)" (p. 6). Furthermore, "reducing recidivism" does not address the myriad other goals community supervision must embody. And selling a model based on its purported outcomes does not comport with decades of research on the diffusion of innovations and implementation science, which hold that leadership must align practices with the overall mission, values, and philosophy of the organization (Dean L. Fixsen, Blase, Naoom, & Wallace, 2009; Rogers, 2003; Taxman & Belenko, 2012). For community supervision agencies, a field so exposed to the exigencies of changing political winds, clarifying mission and values is a crucial first step to any change effort. The day-to-day practices of supervision agencies cannot be defended based solely on their effects on changing behavior. This is true for many reasons (not the least of which is an incomplete understanding of human behavior). Rehabilitation efforts such as the RNR model have in fact been criticized as being too risk-focused and minimizing the importance of human agency (Polaschek, 2012; Ward, Yates, & Willis, 2012).

The Executive Session on Community Correction's 2017 Consensus Document *Toward an Approach to Community Corrections for the 21st Century* provides much-needed guidance on the "why" underlying community supervision practices. In the Consensus Document a wide array of community corrections stakeholders seeks to reorient the field to the values of a democratic institution. This document calls on community supervision to reorient from being an institution charged with keeping prison populations low, maintaining order, or preventing crime, to take up the mantles of community well-being, parsimonious use of authority, individual agency and dignity, legitimacy and community trust, and justice and fairness. Importantly, the Consensus Document reconceptualizes individuals under supervision, their relationship with the community, and the relationship between the community and supervision agencies. By recognizing the worth of justice-involved individuals and treating them as citizens in a democratic society, the documents calls on agencies to ensure that individuals are "free from arbitrary treatment, disrespect and abuses of power" (p. 2). The first fundamental mission of community supervision is community well-being, which is described as "stability in everyday life, rooted in social bonds of neighborhoods and families that allow individuals to flourish" (p. 2). And the document situates community supervision squarely within the communities it serves, calling upon agencies to make community residents co-producers of justice, and concerning itself with the effect of justice system intrusion on communities (which includes those under supervision and their families) over time and across generations. To support the guiding values the Consensus Document implores the field to move beyond "piecemeal tweaks" and embrace thirteen *paradigm shifts* that range from the goals of community supervision, to whom it targets, and even how it is funded (Executive Session, 2017). While a detailed analysis of each paradigm shift is outside the scope of this essay, there are several (e.g., shifting from deficit-based to strengths-based, or from punishing failure to promoting success) that coaches can use to help marry the guiding values to the day-to-day practice of agencies.

Leveraging coaches in this way calls for an expansion of coaching within community supervision beyond the focus on improving specific staff practices to become a mechanism by which agencies may begin to embody the values detailed in the Consensus Document.

While current coaching efforts target front-line workers and focus on improving specific practices, this new model of coaching calls upon agencies to train supervisors in the values and paradigm shifts laid out in the Consensus Document, as well as a management style that aims to improve officer use of skills and improve officer decision-making by helping officers explore their own assumptions, biases, and values.

To this end, the proposed coaching model includes the following five core coaching competencies: 1) knowledge of effective practices and guiding values, 2) establishing quality working relationships, 3) facilitating individual learning, 4) effective communication, and 5) managing group learning sessions. Derek Milne (2017) offers a theory-based, empirically supported conceptualization of clinical supervision used in psychology which can be adapted for corrections. Milne's model relies on experiential learning theory, which holds that a person must explore a mix of countervailing learning styles—experiencing, reflecting, conceptualizing, and experimenting—to transform experience into knowledge. In other words, a coach's job is to help an officer think more deeply about his or her experiences to sharpen the officer's understanding and improve decision-making. Coaching sessions should be guided by observations from actual practice and specific goals developed in tandem with officers. Just as with current models, coaches provide feedback to officers on their observations and may engage in either teaching, demonstrating, or experimenting with the officer to improve professional practice depending on the scaffolding needs of the particular officer. However, most importantly, coaches use questions to facilitate reflection. Through a process of Socratic questioning, coaches can help officers unearth hidden assumptions and explore biases in decision-making processes, and in doing so, reorient the officer to the guiding values of community corrections. This reflective coaching is necessary to ensure that officers can adapt epistemic knowledge, or what we know about changing behavior, to particular individuals and situations without carrying "imprints of beliefs and values that may bear little relationship with research into effective practice" (Spouse, 2001, p. 1). In other words, as practitioners attempt to use practices such as those espoused by the RNR model, they will inevitably encounter messy and unpredictable situations, in which case they will likely fall back on informal or tacit

understandings to guide their behavior. A coach is there to prevent this by engaging the officer in a discussion of not only what works to change behavior but also what an officer should do in light of the values detailed above.

## Evaluating Coaching Impacts

This coaching model seeks to achieve the larger aim of staff professionalization via the following sub-goals: 1) support the paradigm shifts in the Consensus Document, 2) improve supervisors' coaching skills, 3) improve front-line officers' supervision and decision-making, and 4) improve the lives of individuals under supervision. To that end, studying a coaching model would involve capturing changes related to each sub-goal.

*Paradigm shifts.* Each paradigm shift would have its own set of measurement criteria. While an exploration of each paradigm shift is outside the scope of this essay, the following are examples of measurements of the first paradigm shift—from punishing failure to promoting success. Measurements might include a change in the ratio of rewards versus sanctions given out, changes in fees charged over time, changes in violations (including count and severity of infraction), and changes in opportunities provided for progress. *Supervisor skills.* Milne, Reiser, Cliffe, & Raine (2011) developed the *Supervision: Adherence and Guidance Evaluation*, which allows researchers to code the use of coaching skills in practice. Coaching skills may also be captured through self-report or case vignettes (Minoudis et al., 2013). *Officer skills and decision making.* Changes in officer professional development may also be measured in a variety of ways, including behaviorally-anchored scoring, officer self-reported use of skills, vignette scoring, and survey items measuring changes in wisdom or ethical decision-making (Ardelt, 2003; Rest, 1975). Observation scoring rates the officer's use of skills such as working relationship skills, client engagement and motivation skills, risk management skills, and core correctional practices using a rating scale (e.g., 0-3). *Client changes.* Client outcomes should expand beyond rearrest, conviction, or reincarceration to include changes in risk factors, strengths, and goals achieved—such as days sober, improvements in family dynamics, increased prosocial connections, or new ways of thinking, just to name a few. Client outcomes should be measured by reassessments of the risk/need instrument as well as specialized forms to capture important short-term goals or stability factors.

## Conclusion

Developing a community supervision workforce for the 21<sup>st</sup> century requires a marriage of empirical science (what we can do and how we can do it) with guiding values (what we should do). A coach's role is to improve both what and how community supervision works by first cultivating the why. A coach helps officers learn skills and improve professional practice by facilitating officer reflection on values exemplified in particular situations and bridging the gap between the lived experience of probation officers and the *what, how, and why* of what they ought to be doing.

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# A Viable Alternative?

## Alternatives to Incarceration across Seven Federal Districts

Laura Baber

Consultant

Kevin Wolff

John Jay College, CUNY

Christine Dozier

Chief, U.S. Pretrial Services Office, District of New Jersey

Roberto Cordeiro

Chief, U.S. Pretrial Services Office, Eastern District of New York

**THOUGH ALTERNATIVES TO** incarceration courts have existed in the state system for nearly 30 years, such courts are a relatively new phenomenon in the federal system. Alternatives to incarceration (ATI) courts, or “front-end” courts as they are sometimes known, are generally based on the “drug court” model first used in the state court in Miami-Dade County in 1989 (Scott-Hayward, 2017). While alternatives to incarceration court programs proliferated in the state courts in the 1990s and 2000s, they were nearly nonexistent in the federal system. A confluence of factors has contributed to the recent emergence of ATI courts in the federal system.

- The popularity of “problem solving” courts in state systems has led to experimentation in the federal system, especially for reentry courts, which focus on defendants who have returned to the community following incarceration.
- A growing body of empirical evidence has emerged that the “drug court” model—practiced with fidelity in other jurisdictions—is effective at reducing recidivism and provides financial return on investment by reducing recidivism.
- A change in the legal environment that resulted from the 2005 Supreme Court decision *Booker v. United States* that

rendered advisory the federal sentencing guidelines, and subsequently the Supreme Court’s decisions in *Gall v. United States* and *Pepper v. United States*, which generally approved downward variances based on defendants’ successful efforts at rehabilitation—allowed courts additional flexibility in sentencing.

- The crisis of over-incarceration has led to widespread recognition among criminal justice professionals and policy-makers that the policies and practices that have led to mass incarceration are not only extremely costly but ineffective at promoting public safety. Several publications by government entities called for swift action at the federal level and encouraged stakeholders to strongly consider alternatives to incarceration.
- There has been increasing awareness of empirically-demonstrated evidence of the importance of defendants’ success on pretrial services supervision as a harbinger of improved outcomes in subsequent stages of the criminal justice system, including more favorable sentences and reduced failures during post-conviction supervision.

### Research Objectives

Though federal ATI programs have proliferated

at the grass roots level, and now number 38 as of January 2019,<sup>1</sup> to date there have been no empirical studies of the effectiveness of these programs in the federal system. Several districts at the forefront of implementing ATI programs have sought to contribute to the knowledge base concerning these programs. As a result, the pretrial offices of the districts of New Jersey (NJ), Southern District of New York (NY-S), Eastern District of New York (NY-E), Central District of California (CA-C), Northern District of California (CA-N), Eastern District of Missouri (MO-E), and the probation and pretrial services office of Illinois Central (IL-C) collaborated on a research effort that quantifies the association of ATI program participation with short-term outcomes. These districts contracted with a researcher from the John Jay College of Criminal Justice of the City University of New York to perform the analysis and publish an article with its results. Specifically, the study sought to quantify the pretrial services measures of new criminal arrests, failures-to-appear (FTAs), and other violations of court-ordered conditions of release, i.e., technical violations. In addition, the study sought

<sup>1</sup> The Federal Judicial Center (FJC) maintains a list of judge-involved programs. A list of ATI programs is on file with the FJC.

to quantify defendants' improvements in two supervision domains that are well-known correlates of criminal behavior: illicit drug use and employment. Finally, among the defendants whose cases have been disposed by the court, the study examined the sentences imposed by the court. This article describes the study methodology and results of the analyses.

## Data

The study team assembled data from the probation and pretrial services national case management system, Probation and Pretrial Services Case Tracking System (PACTS). The sample consisted of 13,924 defendants with an average time under supervision of 14.7 months. Of the full sample of defendants drawn from the seven districts, 534 participated in an ATI program during their time under supervision. Of these defendants, 268 participated in a program designed for defendants with substance abuse disorders, while 75 participated in programs designed for youthful defendants. The remainder participated in programs that did not target a specific population. Seventy-two percent of the ATI participants in the study cohort successfully completed their ATI program.

Importantly, the study did not intend to establish the effectiveness of any one program. The relative newness of ATI programs and the small number of defendants who participate in ATI programs within a single district precluded analyses of *individual* programs. Instead, the study assesses the impact of ATI programs taken together (across all programs for the study districts).

The following programs were included in the study:

- **Sentencing Alternatives Improving Lives (SAIL) operated by the U.S. Pretrial Services Office of the Eastern District of Missouri.** This 12- to 24-month program, which began in March 2015, targets defendants who have contributors to their criminality that, if addressed, can help defendants lead a law-abiding lifestyle. Data for defendants in SAIL were tabulated in the statistics for all program types combined.
- **Conviction Alternatives Program (CAP) operated by the U.S. Pretrial Services Office of the Northern District of California** (with venues in San Francisco, Oakland, and San Jose). Each separate venue began between November 2015 and July 2016. CAP targets certain individuals who have been charged with one or more

federal crimes and who voluntarily agree to participate in the program. It focuses on individuals whose criminal conduct appears motivated by substance abuse issues or other underlying causes that may be amenable to treatment through available programs. Program length is 12 months but can be extended to 18 months. Data for the CAP program were included in the statistics in the Substance Abuse program category.

- **Conviction and Sentencing Alternatives (CASA) operated by the U.S. Pretrial Services Office of the Central District of California.** The program duration is 12 to 24 months. While there are no set criteria for selecting participants, the intent is for defendants to fit into one of two distinct "tracks." The track most suitable for the defendant is dependent upon the defendant's criminal history, seriousness and nature of pending charges, and defendant's criminogenic risk and needs. Participants in either track of CASA were included in the statistics for other programs.
- **Alternatives to Detention Initiative (PADI) operated by U.S. Probation Office of the Central District of Illinois.** One of the earliest federal ATI programs, PADI began operation in 2002. The selection criteria for this 12-month program include minimal participation in the offense charged, limited criminal history with no serious violent offenses, and evidence of a current substance dependence or addiction. In 2016, PADI paused its operations. Data for defendants in PADI were tabulated in the Substance Abuse program category.
- **Young Adult Opportunity Program (YAOP) operated by the U.S. Pretrial Services Office of the Southern District of New York.** In 2015, YAOP began as a pilot program for non-violent young adults and became permanent in January 2017. The program, the duration of which is at least 12 months, is intended to benefit young adults between the ages of 18 and 25, with consideration given to defendants over 25 years of age on a case-by-case basis. Data for defendants in this program were tabulated in the Youthful Defendant category.
- **Pretrial Opportunity Program (POP) operated by the U.S. Pretrial Services Office of the Eastern District of New York.** POP, established in January 2012, targets defendants with substance abuse

disorders that are the major drivers of their criminal behavior. Its program length is a minimum of 15 months.<sup>2</sup> Data for defendants in POP were tabulated in the Substance Abuse program category.

- **Special Options Services (SOS) operated by the U.S. Pretrial Services Office of the Eastern District of New York.** SOS began operations in 2013 and targets high-risk defendants ages 18 to 25 who may benefit from the structure of intensive supervision.<sup>3</sup> Data for defendants in this program were tabulated in the Youthful Defendant category.
- **Pretrial Opportunity Program (POP) operated by the U.S. Pretrial Services Office of the District of New Jersey.** POP, which began in May 2015, targets defendants who have documented histories of severe substance abuse disorders that have contributed to their involvement in the criminal justice system. The program length is 15 months.<sup>4</sup> Data for defendants in POP were tabulated in the Substance Abuse program category.

ATI and non-ATI cases were drawn from PACTS using the approximate date in which the ATI program commenced in the district. For all districts, the supervision ending cut-off date was September 30, 2017. For IL-C, we selected all cases that began pretrial supervision from November 1, 2002. For NY-E, we selected all cases that began supervision on or after January 1, 2011. For all other districts, we selected cases that began pretrial supervision beginning January 1, 2012.

### *Independent (i.e., "Treatment") Variable*

The key explanatory variable is a dichotomous measure (yes/no) indicating whether an individual was selected for participation in an ATI program during his or her time on pretrial supervision. Participation in an ATI program was determined using data on non-contract referrals drawn from the PACTS system. Districts recorded the start date, end date, and outcome of the defendants' ATI program participation in the non-contract referral screen of PACTS. The program types (substance abuse and youthful defendants)

<sup>2</sup> Program requires a minimum of 12 months of continuous sobriety. Many defendants require more time in the program to achieve the sobriety goal.

<sup>3</sup> SOS has no established program length. Program duration is individualized to participants' needs.

<sup>4</sup> Program requires a minimum of 12 months of continuous sobriety. Many defendants require more time in the program to achieve the sobriety goal.

were determined using a description of each district's specific ATI program drawn from program descriptions maintained by the districts.

### Outcome Variables

The goal was to examine the relationship of ATI program participation and program completion on several court-related outcomes. In line with existing research on pretrial services, three traditional pretrial outcomes were examined; specifically, whether defendants failed to appear for their assigned court dates (coded 0/1), were arrested for new criminal activity (0/1), or received a technical violation pending case disposition (a count of technical violations during supervision period). Further, we examined the prevalence of several specific types of technical violations related to substance abuse testing and treatment, as well as three broad categories of technical violations. Categories of technical violations were used due to the relatively low frequency of certain technical violations, making assessment of individual violations inappropriate and statistically challenging.

In addition to the pretrial outcomes discussed above, we examined intermediate supervision outcomes related to employment and sobriety. Specifically, we used two measures of employment, the number and percentage of days worked at least part-time while on supervision ((total # of days working/# of days on supervision) \*100). Additionally, we created a measure that represents the percentage of drug tests where there was a positive result. This measure accounts for the fact that defendants participating in an ATI program were often required to undergo additional screenings and are under supervision for a longer amount of time.

See Figure 1 for descriptive statistics of the ATI defendants in the study.

## Methodology

The study employs propensity score matching (PSM) techniques to estimate "treatment" effects of ATI participation on the elements described above. This quasi-experimental approach estimates average treatment effects on the treated with the intervention of interest, in this case, ATI program participation (see Guo & Fraser, 2010). This technique is useful for simulating independent assignment of a designated treatment and estimating more directly the treatment's effects. For purposes of this study, "treated" defendants are those who participated in an ATI program.

**FIGURE 1**  
**Descriptive Statistics for the Evaluation of ATI Programs from 7 Districts**

	N	Percent
<b>ATI Indicator</b>		
Regular Supervision	13390	96.16
ATI Participant	534	3.84
<b>Sex</b>		
Female	3190	22.91
Male	10734	77.09
<b>Race</b>		
White	5468	39.27
Black	3752	26.95
Hispanic	3408	24.48
Other	1296	9.31
<b>Citizenship</b>		
Non-Citizen	3618	25.98
U.S. Citizen	10306	74.02
<b>Current Offense Type</b>		
Drug Offense	4434	31.84
Financial Offense	5832	41.88
Violent Offense	798	5.73
Weapons Offense	898	6.45
Other Offense	1962	14.09
	<b>Mean</b>	<b>SD</b>
Age	40.05	12.97
Time Under Supervision Months	14.93	12.27
Total Prior Convictions	1.56	3.15
PTRA Score	5.63	2.69
<b>PTRA Category</b>		
Category 1	51	9.55%
Category 2	114	21.35%
Category 3	200	37.45%
Category 4	123	23.03%
Category 5	46	8.61%
<b>Conditions of Supervision</b>		
	<b>Proportion</b>	
Alcohol Restrictions	.255	
Substance Abuse Testing	.464	
Drug Treatment	.425	
Mental Health Treatment	.238	
Passport Restrictions	.791	
Travel Restrictions	.860	
Weapons Restrictions	.393	

We used PSM techniques to match the ATI group to a group of defendants who had not participated in an ATI program, yet were comparable in terms of their other characteristics. Based on this approach, two defendants with similar estimated treatment likelihood

scores (probability that they would participate in an ATI program) would be comparable. Using this method, differences between those individuals on a given outcome can be more confidently attributed to participation in an ATI program.

**FIGURE 2**  
**Equivalent Groups Generated by Propensity Score Matching**

	Matched ATI Participants (n=507/534)	Matched Defendants (n=507)	% Bias	% Bias Reduction	T-Statistic	p-value
Sex (Male=1)	0.57	0.59	-4.80	91.90	-0.64	0.53
Age at Intake	33.32	32.64	1.90	97.30	1.03	0.30
White	0.50	0.48	-5.90	56.20	0.57	0.57
Black	0.17	0.19	8.60	54.10	-0.90	0.37
Hispanic	0.28	0.30	3.30	80.10	-0.48	0.63
Other Race	0.06	0.05	-3.80	80.50	0.57	0.57
U.S. Citizen	0.90	0.92	3.90	91.50	-0.76	0.45
Drug Offense	0.66	0.67	-4.70	94.10	-0.33	0.74
Financial Offense	0.27	0.26	2.60	93.10	0.43	0.67
Violent Offense	0.02	0.03	2.40	81.60	-0.59	0.56
Weapon Offense	0.04	0.04	2.20	84.80	0.00	1.00
Other Offense	0.01	0.01	-0.90	97.20	0.64	0.53
Length of Supervision	20.48	20.54	1.70	99.10	-0.07	0.94
PTRA Total Score	7.31	7.45	-0.10	92.60	-1.02	0.31
Total Prior Convictions	2.16	2.08	-2.40	81.20	0.38	0.70
Alcohol Restrictions	0.47	0.48	0.80	98.10	-0.13	0.90
Substance Abuse Testing	0.81	0.83	4.90	94.40	-0.89	0.37
Drug Treatment	0.80	0.80	-0.90	99.00	0.16	0.88
Mental Health Treatment	0.33	0.37	8.60	76.70	-1.32	0.19
Passport Restrictions	0.71	0.69	9.30	89.50	1.02	0.09
Travel Restrictions	0.77	0.76	-1.50	93.50	0.22	0.83
Weapons Restrictions	0.46	0.47	0.40	96.60	-0.06	0.95

Note: Nearest Neighbor Matching with Caliper of .05 used. Matching was done using a two-step process to assure that ATI defendants were matched to defendants within their own districts. The matching procedures are described in more detail in the methods section.

Comparing the results against their matched counterparts who did not participate in an ATI program, the study team analyzed the outcome measures described above and sentences imposed for:

- All defendants who *participated* in an ATI program, and separately for those who *completed* a program.
- All defendants who *participated* in an ATI program for substance abusing defendants, and separately for those who *completed* this type of program.
- All defendants who *participated* in an ATI program for youthful defendants, and separately for those who *completed* this type of program.<sup>5</sup>

<sup>5</sup> Because the programs that do not target a specific population had insufficient numbers of participants and comprise a heterogeneous population, those

Additionally, to better understand the impact of ATI programs on reduced sentences or case dismissals, the study team analyzed the sentences imposed on matched defendants who did not participate in an ATI program with those who received a dismissal as a result of their participation in a program. This analysis was repeated for ATI defendants who successfully completed the ATI program.

#### *Pre-matching Differences Between ATI and non-ATI Defendants*

We examined the differences between defendants who had participated in an ATI program compared to those who had not participated. This comparison revealed that the ATI group

programs were not analyzed separately. Instead only programs that targeted substance abusing and youthful defendants were analyzed separately.

was significantly different on each of the 21 measures we examined and ultimately used in our matching specification. For example:

- Men comprise a lower percentage of ATI participants (50% vs. 78 %);
- ATI participants are younger than general population (mean age 32 vs. 40);
- Whites comprise a higher percentage of ATI participants (45% vs. 39%);
- Hispanics comprise a higher percentage of ATI participants (31% vs. 24%);
- ATI defendants charged with drug offenses comprise a higher percentage (67% vs. 30%);
- ATI defendants are higher risk as measured by the Pretrial Risk Assessment (PTRA) (mean 7.5 vs. 5.5 PTRA score); and
- ATI defendants are subject to a broader range of court-ordered conditions when on pretrial release.

#### *Matching ATI Defendants to Non-ATI Defendants*

The matching process contains two steps. We first estimated propensity scores using a logistic regression analysis in which we predicted the likelihood of a defendant participating in an ATI program during his or her period under pretrial supervision (n=534). This model included all the measures shown in previous tables as matching dimensions. We then used the estimated likelihood scores from this analysis to match the ATI group (the treated group) to the comparison group, applying one-to-one nearest neighbor matching without replacement, and a .05 caliper setting. Using these specifications, matches were found for all but 27 (5 percent) of the defendants in the treatment group. The remaining 27 cases fell “off support” during the matching procedure because no suitable matches in the pool of eligible “controls” (i.e., those defendants who did not participate in an ATI program) could be found. In other words, for these unmatched cases there is no satisfactory counterfactual in the sample of pretrial defendants in our dataset.

The results shown in Figure 2 demonstrate that the matching procedure yielded treatment and comparison groups that show strong balance on the covariates considered.<sup>6</sup> For all variables, the standardized bias statistic (SBS) values in the matched samples fall below the conventional cutoffs (Rosenbaum & Rubin, 1985). We observed no significant

<sup>6</sup> Matching results for the successful group of ATI defendants are available upon request.

differences across the samples on any of the characteristics considered once the groups had been matched. It is also important to note that matched cases come from the same district as the focal treatment case to ensure that jurisdictional differences did not confound the results. The resulting matched groups, comprising 507 defendants who participated in an ATI program and 507 who did not, made it possible to more accurately assess the relationship between ATI participation and the outcomes of interest.

*Matching Repeated for Sub-Group Comparisons*

We repeat this analytical procedure to estimate the effect of ATI participation on each outcome for three groups: 1) all ATI participants from across the participating districts, 2) defendants who participated in programs that targeted those who suffer from substance dependence or addiction, and 3) defendants who participated in programs targeted to youthful defendants (typically between 18 and 25 years old).<sup>7</sup> For all three, to identify the best possible matches, we re-estimate the propensity score. (In the interest of brevity, we limit our discussion here to ATI participants without regard to program type. However, the results for the substance abuse and youthful defendant groups did not differ materially from those for the group.) Finally, to understand the differences in sentences imposed, we re-estimate the propensity scores for each group among the sample of defendants who have had their sentences executed, i.e., who have begun their term of prison or probation (for both the treatment and matched comparison groups). We go on to assess the differences in sentences imposed between the group who participated in ATI programming and the matched control group. We then repeat the matching procedure for these groups to ensure balance of covariates for ATI defendants who *completed* their ATI program.<sup>8</sup>

<sup>7</sup> Youthful defendants are relatively rare within the federal system. Given this, matching the youthful defendants to like defendants within their same district did not prove feasible. Therefore, for this group only, ATI participants were matched to like defendants regardless of what district they were located in.

<sup>8</sup> Because recent research has highlighted potential shortcomings of using PSM to estimate treatment effects when random assignment is not possible (King & Nielsen, 2018), we assessed the robustness of our results using Kernel matching. Kernel matching uses the estimated propensity scores to match individual cases in the treatment group to a

**Results**

**Supervision Outcomes for Matched Groups**

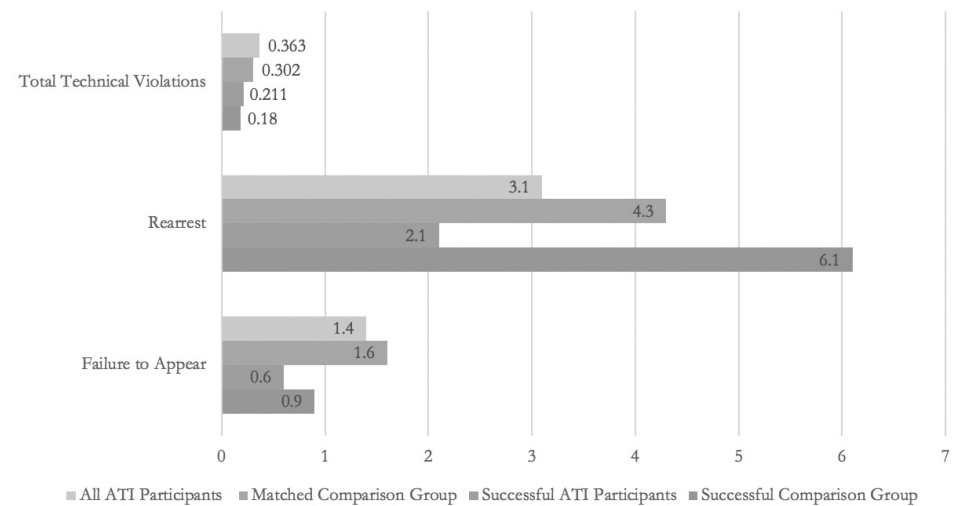
*Rearrest, Failures to Appear, and Technical Violations*

Seventy-two percent of the ATI participants in the study cohort successfully completed their

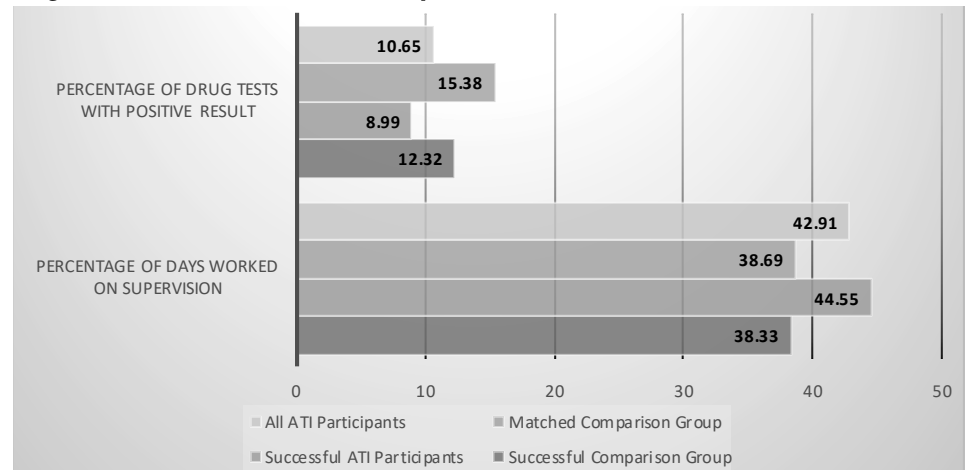
weighted mean of control cases. Control cases are weighted based on the distance between their estimated propensity score and the propensity score of the treatment case to which they are being matched. All control cases can potentially contribute to the final estimation of treatment effects, which improves statistical power and efficiency (Becker & Ichino, 2002), while also reducing the potential for bias which can be introduced when using PSM. In each case, the results of the Kernel matching specification were substantively similar to that from the PSM analysis. As one-to-one matching offers a more logical interpretation, we chose to present those results in the text. Ancillary results are available upon request.

ATI program (n=365). The same matching procedures described above were repeated for this subsample, resulting in successful matches for 327 of the 365 defendants within this group. Figure 3 depicts the supervision outcomes of rearrest, failures to appear, and technical violations for (1) all ATI participants regardless of completion and for (2) successful completers compared to their non-ATI counterparts. Notably, we observe that defendants who successfully completed their ATI program were significantly less likely to be rearrested on supervision. Fewer successful ATI participants have rearrests compared to matched comparison group (2.1 vs. 6.1). However, we observed little difference in FTA and technical violations among the four groups, and both events are relatively rare among the groups.

**FIGURE 3**  
**Program Outcomes for Matched Groups**



**FIGURE 4**  
**Program Outcomes for Matched Groups**



*Sobriety and Employment Defendant Outcomes*

In addition to rearrests, FTAs, and technical violations, for all ATI participants as well as those who successfully completed their ATI, we observed the differences in two commonly-used indicators of prosocial adjustment to pretrial supervision. These measures were chosen because these domains are known correlates to criminal behavior and are also readily available in PACTS.

Results reveal (shown in Figure 4) that defendants who successfully completed their program worked a greater proportion of days while on supervision (44.5 percent vs. 38.3 percent) and had significantly fewer positive drug tests measured as a percentage of all drug

tests taken (9 percent vs. 12.3 percent).

Taken together, the results presented in Figures 3 and 4 suggest that ATI program completion is associated with improved outcomes, such as increases in employment and fewer positive drug tests, and a lower probability of rearrest.

*ATI Case Dispositions*

After examining the association of ATI programs on improved outcomes during supervision, we assessed the impact of ATI programs on case dispositions and sentences imposed. Panel A of Figure 5 presents the resultant case dispositions for the 416 defendants who participated in an ATI program and whose cases have been closed (regardless of whether they successfully completed the program). Of the 416 ATI participants, a sizeable proportion (43 percent) had their cases dismissed outright, or received pretrial diversion leading to dismissal upon satisfaction of the terms of the pretrial diversion agreement. Of the whole group, 32 percent of the ATI defendants received prison time while 22 percent received a probation term. Finally, 3 percent of ATI participants were placed on supervised release following time served.

Importantly, there are substantial differences in the sentences imposed on those who successfully completed their ATI program and those who did not. For example, nearly half (49 percent) of successful defendants ultimately had their cases dismissed, while 22 percent received a probation term and 26 percent were sentenced to prison. Compare this to the unsuccessful group, of which 77 percent were sentenced to prison and 23 percent were given a probation term. These differences are shown in Panels B and C of Figure 5.

**ATI Participant Success and Sentences Imposed**

*Successful ATI Participants*

Successful ATI participants *who were sentenced* (N = 184 of 237 sentenced defendants) were significantly less likely to receive a prison term than their matched counterparts (49.7 percent vs. 76 percent). Conversely, successful

completers were significantly more likely than their matched counterparts to receive a non-custodial sentence of probation (44.9 percent vs. 12.6 percent). Finally, a handful of sentenced ATI participants received a term of supervised release after time served in pre-trial detention, while none of the matched defendants did. Each of these differences was statistically significant (not shown in tabular form).

Also important are the sizeable differences in the length of terms received. Successful ATI participants received an average prison sentence of 4.97 months (ranging from one day to five years), while their matched counterparts were sentenced to an average of 42 months (ranging from one day to twenty years). Probation terms, on the other hand, were more similar (38.5 months vs. 32.6 months), with successful participants receiving a slightly longer probation term.

*Unsuccessful ATI Participants*

As expected, among unsuccessful participants the differences were far less pronounced. Unsuccessful participants who were sentenced (N = 53 of 225 sentenced defendants) were no more-or-less likely to receive a prison or probation sentence than the defendants in the comparison group. Further, although the prison sentences received by the unsuccessful ATI participants were shorter on average (22.6 months vs. 33.7 months), this difference was not statistically significant. This was also true of the terms of probation and supervised release.

*Comparison of Non-ATI cases to Dismissed ATI Cases.*

Given the striking differences between the two groups in case dispositions and sentences imposed, we took a closer look at dismissed ATI cases (including those who were granted pretrial diversion and ultimately dismissed) who were matched to non-ATI cases on the matching dimensions described above. A total of 167 of the 179 defendants who had their cases dismissed after participating in an ATI program were successfully matched to a group who did not. Of the 167 comparison cases, the

**FIGURE 5**  
**ATI Case Dispositions for ATI Defendants Across Districts**

Panel A : ATI Participants		
	Cases	Percent
Were Dismissed / Deferred Resulting in Dismissal	179	43%
Received TSR Time Only	12	3%
Received a Probation Term	90	22%
Received a Prison Sentence	135	32%
<b>Total</b>	<b>416</b>	<b>100</b>
Panel B : Successful ATI Participants		
	Cases	Percent
Were Dismissed / Deferred Resulting in Dismissal	179	49%
Received TSR Time Only	12	3%
Received a Probation Term	78	22%
Received a Prison Sentence	94	26%
<b>Total</b>	<b>363</b>	<b>100</b>
Panel C : Unsuccessful ATI Participants		
	Cases	Percent
Were Dismissed / Deferred Resulting in Dismissal	0	0%
Received TSR Time Only	0	0%
Received a Probation Term	12	23%
Received a Prison Sentence	41	77%
<b>Total</b>	<b>53</b>	<b>100</b>

Note: There were a total of 96 open ATI cases and 22 for which sentencing data was not available at the time of the analysis.

**FIGURE 6**  
**Sentences Received by Defendants Matched to Dismissed/Diverted ATI Cases (n=167)**

	Cases	Mean	Median	Std. Dev.	Min	Max
Prison Time in Months	130	26.717	13.6	33.258	0.033	180
Probation Time in Months	37	38.919	36	16.101	12	84
TSR Time in Months	128	55.125	36	24.131	12	120

vast majority (77.8 percent) received a prison sentence, while the remainder (22.1 percent) received probation (not shown). These results are even more striking when considering the length of the terms imposed on the comparison group presented in Figure 6. The average prison sentence was 26.7 months, although sentences ranged from 1 day to 180 months. The median prison term imposed was 13.6 months. The average supervised release term imposed was 55.1 months. The average probation term given was 38.9 months, with a range of 12 to 84 months. These results underscore the potential for ATI programs to provide significant cost savings in avoided prison time and are discussed below.

## Summary

Though this study focused on short-term outcomes only, results in the aggregate are encouraging. Findings suggest that defendants who successfully complete an ATI program are significantly less likely to be arrested during the period of pretrial supervision. Additionally, regardless of whether participants successfully completed the program, they were employed a greater percentage of the days they were under supervision when compared to a group of statistically matched defendants. ATI participants also tested positive for illicit substances less frequently than the comparison group. This was true for both the ATI participants in the aggregate and for defendants that participated in a program designed for substance abusers. It was also true for youthful defendants who successfully completed the program. Study results suggest that participation in an ATI program, successfully completed or not, does not impact the likelihood of the defendant failing to appear in court or violating conditions of pretrial release. Importantly, only defendants who successfully completed the ATI program were significantly less likely to be rearrested while under pretrial supervision than their matched counterparts. Though defendants who participated in a program (without regard to program completion) demonstrated improved outcomes compared to matched defendants who did not participate in a program, defendants who *completed* a program demonstrated outcomes superior to those who *participated but did not successfully complete*. Taken together, the results suggest that ATI program participation is associated with improved outcomes, such as increases in employment and fewer positive drug tests, and among successful participants, a lower probability of rearrest. This

suggests that completion of an ATI program has—albeit relatively short-term—a protective effect on participants.

Analysis showed that successful completion of an ATI program is associated with more favorable case dispositions and less severe sentences. Consider that:

- Nearly half (49%) of successful completers ultimately had their cases dismissed.
- Twenty-six percent were sentenced to prison time with a median sentence of half a month (4.5 months average).
- Twenty-two percent were placed on probation, with an average term of 40 months.
- Successful completers are:
- Significantly less likely to receive a prison term than their matched counterparts (23.0 percent vs. 81 percent). Of those who were sentenced, 49.7% received a prison term vs. 76% of their matched sentenced counterparts.
- Were slightly more likely than their matched counterparts to receive a non-custodial sentence of probation (24.0 percent vs. 19%). Of those who were sentenced, 44.9% received probation vs. 12.6% of their matched sentenced counterparts).
- Received an average prison sentence of 4.97 months (ranging of one day to five years), while their matched counterparts were sentenced to an average of 42 months (ranging from one day to 20 years).

Unsuccessful participants were no more or less likely to receive a prison or probation sentence than the defendants in the comparison group. Further, although the prison sentences received by the unsuccessful participants were shorter on average (22.6 months vs 33.7 months), this difference was not statistically significant. This was also true of the terms of probation and supervised release.

## Going Forward

Because to date the Judicial Conference has taken no formal position on reentry courts or ATI courts in the federal system (Vance 2018), the federal system has no common definition of or standards for Alternatives to Incarceration courts. As noted in a report by the United States Sentencing Commission titled *Federal Alternative-to-Incarceration Court Programs*, these programs have developed at the grass roots and independently of both the Sentencing Commission and the Judicial Conference policy. Evaluation of the programs is hindered by the lack of standardization due to their decentralized and individualistic nature. (In fact, though each

program included in this study shares important commonalities, each program has some unique operating protocols.) Recognizing the importance of such evaluations in its Five-Year Strategic Plan (developed 2016), the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts (AO) encourages research and evaluation of such programs.<sup>9</sup> Though this study did not evaluate individual programs, its aggregated results represent an advancement in the knowledge base about federal ATIs.

Related to the lack of a national model of ATIs, there is no standardized way to track ATI program participation in the case management system PACTS. For purposes of this study, the districts agreed upon procedures to record ATI program entry and exit, program outcome, and session attendance. This required that the study districts adjust data entries to comport with the study standards, a burden that would have been avoided if standards were already in existence. Districts not participating in the study or who have yet to begin an ATI could benefit from standardized data entry procedures, which would greatly facilitate future studies and help ensure accurate data collection. Going forward, we hope that the knowledge gained from studies on ATIs informs practices throughout the federal system and will be used to develop models for various program types. In the meantime, we lean heavily on National Association of Drug Court Professionals' (NADCP) best practices as they relate to drug courts, but recognize the need to confirm the efficacy of those practices in the federal system and for target populations other than those suitable for drug courts (NADCP, 2013).

More research is needed on the impact of ATI programs and their longer term effect on recidivism, especially recidivism by those whose cases were dismissed or who served a term of incarceration, with or without supervised release. More elusive but important to understand are the more qualitative indications of long-term positive changes in defendants' lives, such as relationships, employment, education, access to healthcare, and financial independence. Finally, more research is needed to understand what factors influence the likelihood that an individual will complete an ATI program successfully, thus providing the greatest cost-benefit.

Another area of study in the context of

<sup>9</sup> On file at the Administrative Office of the U.S. Courts.



ATIs is the impact of procedural justice on outcomes and a more thorough understanding of how that translates to specific practices in federal courts. Procedural justice has four core components: voice, neutrality, respectful treatment, and trustworthy authorities (MacKenzie, 2016). Extant research on state and local drug courts indicates that procedural fairness is the driver of the judge's influence upon drug court participants. This finding holds true regardless of a participant's gender, race, age, or economic status (MacKenzie, 2016). Given that judicial time is a valuable yet expensive commodity, how specifically can the role of the judge in federal ATIs be leveraged for maximum efficacy? How can others on the ATI team demonstrate procedural justice for maximum effectiveness, and what is the influence of outcomes?

Equally important to study is the selection criteria for ATI participation in the federal system. A substantial body of research now indicates which drug-involved defendants are most in need of the full array of services embodied in the "10 Key Components" of drug courts (NADCP, 1997). These are the defendants who are (1) substance dependent and (2) at risk of failing in less intensive rehabilitation programs. Drug courts that focus their efforts on these individuals—referred to as high-risk/high-need defendants—reduce crime approximately twice as much as those serving less serious defendants (Lowenkamp et al., 2005; Fielding et al., 2002). What criteria are most appropriate for non-drug ATI programs, such as those for youthful defendants and veterans? Finally, should defendants with violent offenses in the background be automatically excluded from these programs?

Last, but perhaps the most important avenue for future study, is to quantify the short- and long-term financial implications of federal ATI programs. These programs are resource intensive. Intensive supervision and treatment modalities for participants—coupled with considerable staff involvement from pretrial services staff, judges, defense attorneys, and prosecutors—are costly. What is the financial payoff of avoiding prison versus the costs of these programs? Further, what are the savings attributable to reduced recidivism and improved lives by successful participants? Importantly, future cost-benefit analyses must include in the *cost* side of the equation the costs of failed program participation, and on the benefit side, the *marginal* cost of prison (versus the *average* cost) (United States Sentencing Commission, 2017). An analysis

of drug court cost-effectiveness conducted by The Urban Institute (2016) found that drug courts provided \$2.21 in benefits to the criminal justice system for every \$1 invested. When expanding the program to all at-risk arrestees, the average return on investment increased even more, resulting in a benefit of \$3.36 for every \$1 spent. Can the federal system expect similar return-on-investment for its ATI programs? Can federal ATI programs scale to maximum capacity, yet retain effectiveness?

## Conclusion

The financial implications of avoiding or minimizing custody—both at the pretrial and post-conviction stages—are clear. And the human implications cannot be overstated. Practitioners have long observed defendants struggling upon reentry to the community. After long prison sentences, the majority are estranged from family and prosocial support systems and are generally ill-equipped to resume law-abiding lives. Further, those defendants who struggled with substance abuse and mental health disorders upon arrest are likely to confront reentry with little improvement in those problems.

A "wake-up call" in the criminal justice system at large precipitated by the crisis of over-incarceration has led leaders in the pretrial profession to understand the unique opportunity they have to improve our criminal justice system, so that public safety is ultimately enhanced; that is, pretrial professionals see an opportunity to be part of the solution as opposed to part of the problem. Pretrial services is uniquely situated to assess defendants, advocate for suitable alternatives to detention pending disposition for all but the highest risk defendants, and use the pretrial period to begin rehabilitation. Alternative to incarceration programs are one way that federal pretrial services can make a meaningful difference in stemming the tide of mass incarceration, while making a positive difference in defendants' lives, which ultimately leads to safer communities and healthier future generations.

In the words of Jeremy Travis, Executive Vice President of Criminal Justice at the Laura and John Arnold Foundation:

We are emerging from a 'tough on crime' era with the sobering realization that our resources have been misspent. Over decades, we built a response to crime that relied blindly on incarceration and punishment, and provided too

little safety, justice, or healing. Now is the time for a new vision—the time to dig deep, challenge our imaginations, and build a new response to crime that comes closer to justice (LJAF, 2018).

We in the federal system can rise to this challenge. The timing is right. In December 2018, the First Step Act was enacted. This legislation, which among other provisions included additional "safety valves" for certain mandatory minimum sentences and provided for "good time" incentives for inmates to participate in recidivism-reducing programs, is primarily aimed at the Bureau of Prisons. Though far from whole-sale sweeping reform, the legislation represents a bipartisan effort that recognizes the value of rehabilitative measures and takes concrete steps to stem the tide of mass incarceration and its harmful effects.

Though more research on federal ATI programs is clearly needed, the results of this study are encouraging. These results indicate that participants are more likely to avoid new arrests for criminal behavior, remain employed, and refrain from illegal drug use while their case is pending in court. As noted by Judge Carr (2017), to allow a defendant to "show a court, often for the first time in his or her life, that he or she can be law-abiding offers the court the best of all possible records and reasons to consider leniency," allowing defendants a better foot forward. Success on pretrial supervision begets success at life beyond criminal justice involvement.

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**Appendix A: Equivalent Groups Generated by Propensity Score Matching (Successful ATI Participants Only)**

	Matched Successful ATI Participants (n=327/365)	Matched Defendants (n=327)	% Bias	%Bias Reduction	T-Statistic	p-value
Sex (Male=1)	0.55	0.53	-3.30	94.90	0.55	0.585
Age at Intake	35.25	33.88	-10.50	81.40	1.63	0.104
White	0.52	0.49	-6.70	75.60	0.78	0.437
Black	0.12	0.18	11.90	46.80	-1.95	0.052
Hispanic	0.32	0.31	-4.80	47.20	0.42	0.675
Other Race	0.04	0.05	7.20	64.40	-0.77	0.441
U.S. Citizen	0.92	0.92	0.00	100.00	0.14	0.888
Drug Offense	0.69	0.70	3.60	79.20	0.24	0.814
Financial Offense	0.30	0.24	-14.00	69.20	1.84	0.066
Violent Offense	0.03	0.02	-6.20	66.70	0.25	0.806
Weapon Offense	0.03	0.03	-4.40	77.90	0.23	0.816
Other Offense	0.02	0.01	-1.20	97.80	1.01	0.315
Length of Supervision	21.92	21.85	-4.00	93.70	0.08	0.940
PTRA Total Score	7.12	7.15	3.00	95.60	-0.15	0.877
Total Prior Convictions	2.50	2.07	-9.00	35.90	1.51	0.133
Alcohol Restrictions	0.43	0.45	0.60	98.70	-0.31	0.754
Substance Abuse Testing	0.73	0.79	11.10	82.10	-1.82	0.069
Drug Treatment	0.69	0.76	12.30	84.60	-1.92	0.055
Mental Health Treatment	0.30	0.32	3.60	37.00	0.45	0.658
Passport Restrictions	0.67	0.67	-0.70	93.40	0.17	0.869
Travel Restrictions	0.72	0.75	-3.00	93.00	-0.70	0.482
Weapons Restrictions	0.44	0.45	-1.20	92.20	-0.16	0.876

Note: Nearest Neighbor Matching with Caliper of .05 used. Matching was done using a two-step process to assure that ATI defendants were matched to defendants within their own districts. The matching procedure is described in more detail in the methods section.

# Federal Supervised Release Revocation for Drug Use: The Rest of the Story

*Janette Sheil*

*Administrative Office of the U.S. Courts*

*Medha Patel*

*University of Colorado, Boulder*

*David Cook*

*Administrative Office of the U.S. Courts*

**IN THE AGE** of evidence-based practices and correctional reform, the importance of accurate community corrections data is paramount. Data informs decision makers creating laws, criminal justice policies, and budgets. If the data is incorrect or taken out of context, law or policy makers could be missing valuable information. This is especially true when trying to understand the data related to technical violations (which are violations of court-imposed conditions of supervision), rather than behavior resulting in an arrest or new criminal charge while on supervision.

One perspective suggests that technical violations are a major contributor to the ballooning prison population (Hagar, 2017; The New York Times, 2018; Steen, Opsal, Lovegrove & McKinzey, 2012). The U.S. experienced a significant rise in incarceration rates from just under 200,000 people in prison in 1972 to 1.56 million in 2014 (Pfaff, 2017). The prison population crisis and the resulting financial burden on the state and federal correctional systems drove researchers to closely examine the causes behind the increase, including taking a closer look at parole (Schwartzapell, B. 2019; Harding, Morenoff, Nguyen & Bushway, 2017). One article stated that technical violations, such as drug use, made up almost 30 percent of all prison admissions nationwide (Harding, Morenoff, Nguyen & Bushway, 2017). In fact, some argued that putting persons released from incarceration on post-release supervision

is a criminogenic factor contributing to the “revolving door” of incarceration, especially when former inmates are returned to prison based on a failed drug test (Harding, Morenoff, Nguyen & Bushway, 2017; Schuman, 2018). In line with this thinking, the media would have the public believe that the correctional system is geared toward monitoring for failure and recommending revocation at the first sign of noncompliance (Schuman, 2018; Bala, 2018). But is that what is really happening in the federal probation system?

During the 12-month period ending September 30, 2018, a total of 12,128 cases closed on federal probation were revoked for technical violations (Table E-7A – AOUSC, 2018). This was 22 percent of the 55,138 cases closed on federal supervision during that period. Putting this in perspective, as of September 30, 2018, there were 129,706 people under post-conviction supervision (Table E-2 – AOUSC, 2018). Whether probation officers are recommending revocation for technical violations at the first sign of non-compliance is harder to quantify.

To uncover the federal version of what happens before somebody is revoked for technical violations, the Administrative Office of the U.S. Courts (AO), Probation and Pretrial Services Office (PPSO), conducted an exploratory review of case data related to persons

on a term of supervised release<sup>1</sup> who were revoked for drug use, which is a technical violation. Modest results suggest that while the numbers may ostensibly support the assumption that some releasees are revoked for one or two technical violations, such as drug use, a closer look at the data tells a different story.

## **Other Perspectives About Technical Violations**

The numbers related to technical violations are elusive. Fordham University law professor John Pfaff (2017) argues that technical parole violations are largely overstated as an explanation for mass incarceration. He points out that the data related to parole violations is difficult to quantify because it is hard to know how the person violated the terms and conditions. In many cases, the violator may have also committed a new offense, but the prosecutor pursued a parole violation over the new crime because the parole violation was easier to prove. It is a challenge to determine the basis for the data that may give the impression that officers are recommending revocation for potentially minor technical violations (Sieh, 2003).

The Bureau of Justice Statistics periodically conducts a survey of state and federal prison inmates that asks questions about information

<sup>1</sup> Federal Supervised Release came into effect as a means to impose post-prison supervision after federal parole was abolished in 1987.

not readily available from court records (Bureau of Justice Statistics, 2004). The survey revealed that of those who were returned to prison for a parole violation, over two-thirds admitted it was for a new crime and less than 10 percent due to a failed drug test.

The difficulty is that the data that would paint an accurate picture of how a person was supervised is not available to the public, especially data at the federal level. The only information available is the court records and aggregate data (Table E-7A – AO, 2018) that only show the final judicial decision. What is omitted are officers' efforts to help the person on supervision find employment, reconnect with family, abate their substance use disorders, understand their actions and cognitive processes contributing to negative behavior, and other efforts to help offenders succeed (AO, 2019; Robinson et al., 2012). Moreover, a simple technical violation may mean more is happening. For example, failure to report may mean the individual absconded from supervision and cannot be found. This may also mean the person was meeting with fellow gang members or this is the third time he or she left the district without permission and is under law enforcement investigation for drug trafficking. A revocation for drug use may result after a supervisee left a residential treatment center and overdosed on heroin. These are just a few examples, but there are almost always more factors that contribute to a revocation for a technical violation. One study conducted on a state jurisdiction probation population showed that there are dynamics involved with technical revocations not frequently addressed in literature (Stevens-Martin, Oyewole, & Hipolito, 2014).

## U.S. Probation's Story

The U.S. probation system has never relied just on monitoring to supervise persons on supervision, and since 2009 has embraced evidence-based practices as its driving force toward helping persons on supervision achieve success. The development of actuarial risk assessments and teaching officers skills that have greater effect on reducing recidivism support the agency's mantra of incorporating monitoring, restrictions, and interventions as a holistic approach toward supervision. Federal probation's response to noncompliance is also woven into this framework. U.S. probation's national procedures guide officers to implement community-based responses unless the noncompliance is part of a pattern indicating a threat to community safety, or

revocation is required by law. From an officer's perspective, a lot of effort goes into working with an individual on supervision.

In the federal system, somebody with a history of prior illegal substance use will usually receive a condition for substance abuse treatment and testing as a condition of supervision. Of the nearly 130,000 persons on federal supervision in fiscal year 2017, over 73,000 had treatment conditions and over 26,000 were enrolled in judiciary-funded substance abuse treatment (Table S-13 – AOUSC, 2018). Additional individuals participated in treatment funded by their own insurance and/or received free services. The officer then works with the treatment provider to help ensure that the person's treatment needs are met and the person is actively engaging in the program. At the same time, the officer monitors the individual for potential drug use, criminal associations, or new crime.

Officers generally work with persons on supervision for three to five years, so they have time to effect change. During that time frame, officers expect that supervisees will make mistakes, considering some of the challenges they face. The goal of supervision is to encourage the individual to recognize, accept responsibility for, and correct any noncompliant behavior, including technical violations, before they thwart the person's successful completion of supervision. The officer can help the person do this by imposing intermediate sanctions before getting to the point of recommending revocation of supervision and return to incarceration. Incarceration is the last resort, not the first one.

Some instances of noncompliance require immediate notification and revocation. The statute mandates revocation if the person under supervision refuses to comply with illegal controlled substance use testing or if he or she tests positive for use of illegal controlled substances more than three times over the course of one year (18 U.S.C. § 3565(b) and 3583(g)). If the violation is not a safety threat or statutory mandate, a more appropriate community-based response to drug use may include more frequent drug testing to determine the extent of use, enrolling in treatment, referrals to self-help groups, and/or modifications of court-ordered conditions to include more restrictive monitoring. The idea is to help individuals abate their drug use before they harm themselves or others.

## The Review and Analysis

To review the data and learn about potential

factors that may affect the officer's decision to recommend revocation, PPSO conducted an exploratory review of case data related to persons on a term of supervised release who were revoked for drug use. PPSO specifically examined cases that had only one positive urinalysis recorded in the Probation and Pretrial Services Case Tracking System (PACTS). PPSO staff wanted to determine if 1) this data is accurate, and 2) there were other factors contributing to the officer's decision to file a petition to the court recommending revocation, such as new arrests that were not adjudicated or a history of noncompliance.

For this review, three PPSO staff and 16 U.S. probation or pretrial services officers from multiple districts were asked to complete a questionnaire for 205 federal supervised release cases that denoted the case as revoked for drug use and showed either zero or one positive urinalysis in PACTS. It is not surprising that a case could be revoked with zero positive urinalyses, because positive urinalyses might be based on the person's admission of drug use, tests collected at the treatment provider's location, or based on an arrest associated with illegal substance use, such as a Driving Under the Influence charge.

The answers to many of the questions for this review were not easily extracted from PACTS and, therefore, required reviewing each electronic case file. The reviewers looked at the judicial revocation orders, the officer's chronological case activity record, and other case documents and compared that information to the revocation code in PACTS to determine if the revocation code was accurate.

Reviewers looked at each case to determine if the code of "Technical Violation" matched the actual revocation-adjudicated charge on the revocation judgement order. The other choices available to the staff entering the revocation code include New Arrest/Charge and Criminal Conduct-No New Arrest/Charge. If the choice of "Technical Violation" was correct, the reviewers then had to determine if the type of technical violation of "Drug Use" was correct. The possible sub-choices, or reasons, for a technical violation presented in order from most severe to less severe, are:

- 1) Absconding
- 2) Drug Use
- 3) Non-payment of Financial Condition
- 4) General Violation

Then, all cases that were listed as revoked for a new charge or arrest were removed from the sample, regardless of whether there was a coding error or not, so we could take a closer

look at those revoked for technical violations. Whether the case was coded correctly or not did not matter for this exercise, because once we backed out the new charge/arrests, the only cases left would be those with technical violations, whether they were for drug use, absconding, or general violations. Since there were 48 cases with at least one new charge or arrest, this left 157 cases that were revoked for some type of technical violation.

Seven factors were identified that may have contributed to why the person on supervision was revoked for drug use. The factors were selected based on the previous experience from the probation officers involved in the review. Other factors may exist, but this was a starting point. The reviewers were asked to review the case file and answer the following questions:

- Was the revocation code entered correctly?
- Was the person in substance use disorder treatment during the current term of supervision?
- Were other technical violations charged?
- Were there positive urinalyses for more than one illegal drug type (e.g., opiates and amphetamines, or cannabinoids and amphetamines)?
- Did the person test positive on three or more drug tests?
- Was the person likely not amenable to supervision (failure to report, lying to the officer, absconding, unsuccessful termination from the reentry center, failure to participate in treatment)?
- Did the officer report previous acts of noncompliance to the court on any federal supervised release term (Noncompliance report with no action requested or condition modification request)?
- Did the person have a new arrest(s) while on another term of federal supervision?
- Was the person previously revoked while on federal supervision?

The last three questions encompass previous terms of federal supervision because they show a history of failure on federal supervision, indicating that the current drug use is not the first time the person demonstrated noncompliance.

To understand if many factors may affect the decision to petition for revocation, the review team looked at the cases that showed revocation for technical violations and calculated how many cases had 1 factor present, 2 factors present, 3 factors present, and so on. When looking at the results, readers need to understand that these elements are not

necessarily mutually exclusive; instead, they likely build upon each other to show the intensity of the response needed.

The resulting responses were collected, collated on one spreadsheet, cleaned, and analyzed using Stata.

### Results

Related to the accuracy of the data, the reviewers found that although all the cases were accurately coded as a revocation, 63, or 31 percent of the 205 cases, had the incorrect revocation reason. Of those entries, 21 should have been coded as “New Arrest/Charge,”<sup>2</sup> because the person was arrested, and the court found the defendant guilty of violation of the mandatory condition to not commit another federal, state, or local crime; 31 cases should have been coded as Absconding (Table 1), because the person was unavailable for supervision.

#### Removing New Arrests

After backing out 21 cases that should have been coded as new arrests and 27 cases that listed a new arrest or charge on the petition for a warrant that was not adjudicated, that leaves 157 cases that were truly revoked for technical violations (Table 2).

#### Treatment

Nearly 75 percent of the persons in this sample received treatment services at some time during the current supervision term, and 134 or 66 percent of them were in treatment on or about the time the violations were reported to the court.

<sup>2</sup> U.S. probation recidivism rates are measured using data directly from the Federal Bureau of Investigations, rather than PACTS.

**TABLE 1**

Reasons for Code Errors n = 63		
	Frequency	Percent
New Charges/Arrests	21	33.3
Absconding	31	49.2
General (general, e.g., failure to participant in treatment, failing to report, location monitoring violations, etc.)	11	17.5

**TABLE 2**

New Arrest(s) Charged on Petition n=205		
New Arrests?	Frequency	Percent
Yes (closing code incorrect. Should have been coded as new charge/arrest)	27	13.2
Yes (new criminal conduct not ruled on)	21	10.2
No (no new charge/arrest)	157	76.6

### Additional Factors Influencing Drug Use Revocation

Table 3 (next page) shows seven factors that potentially influence the officer’s decision to recommend revocation. The table shows the frequency and percentage of occurrence for the factor on all 157 cases.

A quick look at the results shows several factors that were present in at least 75 percent of the cases: Other technical violations were charged, and the officer reported previous noncompliance to the court. Another high-scoring factor was that the person was likely not amenable to supervision.

#### Combination of Factors

Table 4 (next page) shows the frequency of cases with multiple factors present on the 157 cases that showed revocation for technical violations. For example, 3 cases had 1 factor present and 6 cases had 2 factors present and so on.

The results showed that nearly a third of the cases (28.66) reviewed had 5 factors present. Additionally, 125 cases or 80 percent had at least 4 combinations of factors. Moreover, there are very few cases (9) with only one or two of the factors.

### Discussion

The decision to submit a petition and revoke a person on supervision is based on many factors that have implications for the prison population. However, despite suggestions by the media and other agencies that the number of technical violators significantly contributes to the prison population, this information should be examined in context from a systemic perspective. This exploratory review sought to determine if the media and other agencies’ views were accurate or if there

were factors or a combination of factors that contributed to the decision to recommend revocation. We caution against generalizing our results too broadly, as they are based on an admittedly small and limited sample, and examine just a few factors.

The results show that a third of the cases reviewed had some type of data error; of those errors, 21 should have been coded as “New Arrest/Charge” because the person was arrested, and 31 cases should have been coded as Absconding. This number may be high because the staff entering data into the case management system are making errors or the reviewers who coded the question in this review entered it incorrectly. Regardless, it shows that some cases are being revoked for violations that are more serious than just one or two technical violations.

These results should prompt agency leads to consider incorporating periodic data reviews of their outputs, including the data elements captured. What made sense ten years ago may no longer apply today. Perhaps there is a better process to track individuals who abscond. Watching for operational drift is also critical. Safety expert James Reason (2000) points out that error is an inevitable part of the human condition, and “We cannot change the human condition, but we can change the conditions humans operate in.” Continually examining data outcomes helps identify any conditions that may be contributing to errors, such as how the data are collected or how the person entering the data is trained. With new personnel rotating in and out of positions, it is likely that diversions from procedures, sometimes called practical drift (Snook, 2002), will occur, and in normal operations, drift may go unnoticed. Hence, agencies should review data integrity related

to critical operational outcomes, especially those that are used for budgetary, legislative, and evidence-based outcome purposes. Once trends producing errors are identified, the organization should keep asking why those errors are being made, potentially using a root cause analysis process (Okes, 2009), and address them accordingly. Regardless, further evaluation will be conducted to determine if this level of error is truly occurring and, if so, how it should be rectified.

This review found that other factors examined existed for cases getting revoked for technical violations. In at least 75 percent of the cases reviewed, other technical violations were charged, and the officer reported previous noncompliance to the court. Another factor present was that the person was likely not amenable to supervision. For example, if the individual lies to the officer and does not try to change his or her behavior, it would be difficult to keep giving the person more chances to change. Also, if the officer cannot monitor the person’s behavior because he or she is not available for supervision or is disregarding the officer’s requests, the officer would have difficulty ensuring that the public is not at risk.

Finally, the results showed that the cases revoked were likely to have multiple factors present in addition to a single incident of drug use, as there were very few cases (9, or 6 percent) reviewed with only one or two of the factors, 80 percent with at least 4, and almost 20 percent having all 7 factors. This demonstrates that there are likely multiple factors present at the time of the decision to recommend revocation. What we don’t know, however, is whether the presence of multiple factors directly correlates with the decision to recommend revocation, as we did not include

a comparison group of those who successfully completed supervision. Another interesting study could be to examine groupings of factors to determine if some go hand in hand. At the very least, this exercise opened the door for a deeper, controlled examination of the factors influencing officers’ (and potentially the court’s) decision-making related to revocations on a larger population that includes all technical violations.

It is important for analysts and journalists to look beyond the data when researching the numbers supporting their ideas. Although the data may suggest one thing, supervision is more complicated than simply revoking someone for one or two instances of illegal substance use. The federal probation system spends an enormous amount of time and resources tailoring supervision to meet the needs of those released from incarceration. Nearly 75 percent of the persons in this sample received treatment services at some time during the current supervision term, and 66 percent of them were in treatment on or about the time the violations were reported to the court. This shows the extent of the effort U.S. probation officers expend to assist individuals with their substance abuse challenges.

This approach encourages graduated community-based sanctions in response to minor violations of supervision, giving the person a chance to correct negative behavior. This review showed that despite the assumptions of some, federal probation officers likely consider many different factors when recommending revocation; revocation, especially for technical violations, surfaces as a final alternative available to them after other means of bringing about success have been tried.

**TABLE 3**

Additional Factors* on Case with No New Charge/Arrest n= 157		
Factor	Frequency	Percentage
Other technical violations were charged	125	79.6
Positive urinalysis for more than one illegal drug type (e.g., opiates and amphetamines, or cannabinoids and amphetamines)	58	36.9
Tested positive on three or more drug tests	78	49.6
The person was likely not amendable to supervision (failure to report, lying to the officer, absconding, unsuccessful termination from the reentry center, failure to participate in treatment)	117	74.5
The officer reported previous noncompliance to the court (all supervision terms) (Noncompliance report with no action requested or condition modification request)	122	77.7
New arrest(s) while on another term of federal supervision	65	41.4
The person was previously revoked while on federal supervision	101	64.3

\*Factors not mutually exclusive

**TABLE 4**

How Many Factors Present	Frequency (# of cases with that # of factors)	Percent
1	3	1.91
2	6	3.82
3	23	14.65
4	31	19.75
5	45	28.66
6	18	11.46
7	31	19.75

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# Ten Years Gone: Leveraging Second Chance Act 2.0 to Improve Outcomes

Jay Whetzel

Aaron F. McGrath, Jr.

*Probation and Pretrial Services Office  
Administrative Office of the U.S. Courts*

**THE SECOND CHANCE ACT** was comprehensive bipartisan legislation enacted on April 9, 2008. The stated objectives of the Act were to reduce recidivism, to rebuild ties between offenders and their families, to support evidence-based practices, to protect the public, and to assist offenders in establishing a self-sustaining life.<sup>1</sup> The primary focus of the SCA was to provide funds and guidance to assist state, local, and tribal authorities in improving reentry and protecting the community. Included in the legislation, however, was an important expansion of the contracting authority of the Director of the Administrative Office of the U.S. Courts (AO) under 18 U.S.C. 3672. Prior to the expansion, the only services for which the federal probation and pretrial services system could contract were substance abuse and mental health treatment. The new authority allowed them to

Contract with any appropriate public or private agency to monitor and provide services to any offender in the community, including treatment, equipment, emergency housing, corrective and preventative guidance and training, and other rehabilitative services.<sup>2</sup>

The challenge this presented, however, was that the sheer breadth of the new authority raised questions about what would be the

constraints or limits on the services and goods that U.S. Probation and Pretrial Services might seek. To help establish some general parameters, the Probation and Pretrial Services Office (PPSO) of the AO, at the direction of the Judicial Conference's Committee on Criminal Law, called for the creation of a working group of probation officers to draft guidance before the authority was re-delegated to the courts. While this was underway, additional legislation was enacted. The Judicial Amendments and Technical Assistance Act (JATAA), enacted in October 2008, impacted federal probation and pretrial services in two ways. First, to help address defendants' risks of nonappearance and danger, JATAA expanded the services available to pretrial defendants by modifying the AO Director's authority under 18 U.S.C. 3154. Second, while SCA had enabled probation to contract for services, it had not allowed for the direct purchase of goods and services.<sup>3</sup> Collectively, SCA and JATAA significantly increased the courts' ability to provide interventions to all those under federal supervision.

The Re-Entry and Transitional Services Working Group was established by the Director of the AO and first met in November 2008. The Working Group drafted policy guidance that was ultimately endorsed by the Committee on Criminal Law in June 2009. The policy established three guiding principles for SCA: (1) all expenditures must be a necessary

expense, (2) accountability must be maintained, and (3) funded interventions must be evidence-based. To qualify as a "necessary expense," an intervention could not supplant free services, not be perceived as bestowing a benefit upon the defendant or offender, and must be narrowly tailored to meet the purposes set forth in the statute. The call for "accountability" simply required that probation and pretrial services abide by any and all internal control and contracting provisions established by the AO. Last, funded interventions had to be evidence-based and minimize the risks posed by pretrial defendants and offenders reentering the community.<sup>4</sup>

The SCA policy identified two categories of service: Emergency services and transitional services. Emergency services are those that meet the pressing immediate needs of individuals being supervised, ensure the fair administration of justice by meeting basic humanitarian needs of those under the courts' authority, and address needs that *may* decrease recidivism. These services may include, but are not limited to, transportation, health care, housing, food, hygiene, clothing, and utilities. Transitional services, however, mitigate a broad spectrum of longer-term needs and deficits that increase the likelihood of recidivism, other than substance abuse dependency and mental health treatment.<sup>5</sup> Additionally,

<sup>4</sup> *Guide to Judiciary Policy*, Vol. 8, Part L, Chapter 2 section 210.40.

<sup>5</sup> See below. Authority to contract for substance abuse treatment and mental health treatment had been delegated to the courts decades earlier.

<sup>1</sup> *Guide to Judiciary Policy* Vol. 8, part L, Chapter 2, Section 210.

<sup>2</sup> 18 U.S.C. 3672.

<sup>3</sup> *Guide to Judiciary Policy* Vol 8, Part L, Chapter 2 section 210.10.

transitional services may require significant intervention and expense, and the justification of the expense is derived specifically from the nexus between need and likelihood of re-offending. Finally, authorization of fee-based services depends upon the defendant/offender's lack of resources and the officer's inability to secure free resources in the community. Transitional services may include, but are not limited to, housing, vocational counseling/services, cognitive behavioral treatment, transportation, mentoring, and job training.<sup>6</sup> The two categories of services are distinguishable by identifying those which require immediate action and those which require a more systematic, better-informed approach to reduce recidivism.

Once the SCA guidance was developed and approved, the Director of the AO delegated the expanded contracting authority to the chief judge of each district, who in turn delegated the authority to the chief U.S. probation officer and, in districts with separate probation and pretrial services offices,

the chief pretrial services officer.<sup>7</sup> The SCA working group had also worked with the AO's Procurement Management Division in developing a Statement of Work (SOW) to be used in contracting for services. This SOW was then provided to the courts, consistent with the accountability principle mentioned above. Additionally, the judiciary allocated \$30 million to be used over three years to jump-start the SCA initiative. PPSO staff provided several national trainings to explain the new authority and to assist courts in taking advantage of its provisions.

### Implementation

To jump-start the use of the expanded authority, the Judicial Conference allocated funds to the courts, which were distributed proportionally based upon the number of defendants and persons under supervision. The intention was to provide \$6 million to the courts in the first fiscal year (fiscal year 2010), and \$12 million during both fiscal years 2011 and 2012.

<sup>7</sup>Memorandum from James C. Duff, Director of the AO, to all Chiefs, Judges, Chief Probation Officers, and Chief Pretrial Services Officers October 16, 2009.

<sup>6</sup>*Guide to Judiciary Policy*, Vol. 8, Part L, Chapter 2 section 230.

There were implementation challenges from the outset. The potentially available funds during the first year, while seemingly a large infusion of resources, came out to less than \$40 per defendant and person under supervision. Additionally, courts were not required to use the funds for SCA interventions. In many cases, courts reallocated the funds to other spending areas. Other courts returned the funds to the AO unspent. Perhaps some courts found the spending guidance complex or were concerned that they could inadvertently create an audit finding in the future if they were to make a mistake. Others may have questioned the appropriateness of providing the new types of assistance authorized. Additionally, the AO determined that the new authority was part of a general delegation of authority, as opposed to a special delegation of authority such as treatment services. As such, court staff most familiar with procurement and spending rules of the general delegation were often unfamiliar with the reentry needs confronting those leaving prison and coming under the courts' supervision. Conversely, probation and pretrial services officers, who were familiar with those needs, were not knowledgeable about general delegation rules, nor typically certified at the appropriate contracting level.

At the end of the first fiscal year, courts had spent less than half of the initial \$6 million they had been allocated. Halfway through fiscal year 2010, spending still had not increased. During the same time frame, sequestration seriously impacted the judiciary. Funds intended to support SCA implementation had to be used to maintain basic court operations. Sequestration seriously impacted any further SCA expenditures, as courts had no incentive to redirect funds to support these programs.

Some time later, however, the Judiciary's Committee on the Budget directed that all SCA expenditures (referred to as BOC 2580 Offender and Defendant Support Services) be treated similarly to other law enforcement spending, meaning that any such spending for SCA interventions become historical, i.e., any funds spent during one fiscal year would be replaced the following fiscal year. Prior to this change, if courts had reallocated law enforcement or other funds into BOC 2580, they would have "zeroed out" their funding stream. Once SCA was designated as a historical funding stream, several districts began reallocating funds to support a variety of initiatives.

During the next few years, the AO worked to develop improved procurement

### Eastern District of Missouri—Employment, Housing, and Transportation

The Eastern District of Missouri has invested resources in emergency and transitional services. Skill-training sessions have been held for Commercial Drivers Licenses (CDL), construction pre-apprenticeship, drywall installation, certified nursing assistances (CAN), auto mechanics, solar panel installation, and forklift certification. Graduates of the CDL driver training program are hired before completion of the training. CNA, construction, and auto mechanics have had similar job placement success. Professional certifications obtained through this training provide applicants with portable certifications and skills which make them more marketable for the positions. The funds can also be used to pay for boots, tools, or other employment needs. The district and success stories were highlighted in the front page of the New York Times Business Section in 2016. <https://www.nytimes.com/2016/06/26/business/in-search-of-the-felon-friendly-workplace.html>

These resources have also been very beneficial in addressing housing needs. Two Residential Reentry Center contracts were closed by the Bureau of Prisons in our district. In addition, the former governor cancelled housing resources for non-profit agencies, and the largest homeless shelter was also closed in the City of St. Louis. The district has partnered with landlords and non-profit agencies to increase availability of emergency and transitional housing. Emergency funds can also be used to avoid eviction if the person has the ability to maintain the payments in the future.

Transportation is a third area of focus for these resources. Bus passes are purchased to assist people under supervision until they receive their first paycheck. In rural areas, where public transportation is unavailable, it has been used to purchase fuel. When community resources are unavailable, we have used emergency funds to pay for delinquent utility bills to avoid disconnection of services. This is especially important during periods of extreme temperatures.

*For more information, please contact Chief U.S. Probation Officer Scott Anders at [Scott\\_Anders@moep.uscourts.gov](mailto:Scott_Anders@moep.uscourts.gov).*

mechanisms that would be easier for probation and pretrial officers to manage. This took several years and required close coordination between the Office of General Counsel, the Procurement Management Division (PMD), and PPSO. There was also an effort to formalize the policy guidance into the *Guide to Judiciary Policy* and to develop a formal procurement manual to be hosted by PMD. During this same period, directives from the Internal Revenue Service required the AO to distinguish housing expenditures from all other SCA services. This led to the creation of BOC 2380, Emergency and Transitional Housing.

Several years of effort culminated in November 2017 when the Director of the AO re-delegated SCA as a specially delegated authority. The new authority brought with it some major improvements: (1) courts can use non-competitive purchase orders for services up to \$25,000, an increase from the previous limit of \$10,000; (2) courts can cross fiscal years with SCA agreements; (3) courts can establish blanket purchase agreements for SCA, which can last for up to five years; (4) courts can pay for some services as “commercial services,” which allows them to pay in advance; (5) court unit executives (that is, chief probation officers and chief pretrial services officers), have greater discretion in the length of time services could be provided, not to exceed 12 months; and (6) new project codes for Domestic Violence Intervention were introduced. Additionally, there were many smaller refinements, such as allowing for contingency management programs within the context of contracted CBT interventions, and authorizing group, as well as one-on-one, mentoring programs. These and other developments were introduced in a series of national trainings in March 2018.

## PCRA 2.0 and SCA

While SCA policy guidance and procurement processes were evolving, so was the federal probation and pretrial systems’ use of actuarial risk tools. In post-conviction supervision, fiscal year 2017 marked the roll-out of the Post-Conviction Risk Assessment 2.0 (PCRA 2.0). Most noteworthy was PCRA 2.0’s inclusion of a violence trailer, which provides officers with both the probability of a given person under supervision’s general re-offending and the probability of that person’s *violent* re-offending. PCRA 2.0 attaches a violence risk category with a range of 1-3 to the original PCRA categories that aim to assess

risk of general recidivism (low, low/moderate, moderate, and high). The originally identified responsivity factors remained.

When one considers the criminogenic needs (domains) and responsivity factors that PCRA 2.0 includes, they very closely parallel the interventions available under SCA. SCA has responses for three of the four dynamic risk factors, as well as options for six of thirteen responsivity factors. For SCA-supported interventions to be evidence-based, officers may use the PCRA output as a foundation for considering whether SCA funds may enhance supervision in line with the principles of risk, need, and responsivity.<sup>8</sup> The risk principle guides officers to devote more time and resources to those at higher risk to reoffend,<sup>9</sup> and decisions to use SCA funding should likewise be guided by this approach.

Higher risk persons present with more criminogenic needs (or dynamic risk factors) identified by the PCRA. By targeting these as areas for monitoring and change, officers are most likely to impact the person’s risk of reoffending.<sup>10</sup> However, for SCA interventions to be successful, officers must seek to identify the specific drivers of the presenting risk factors and to implement reasonable interventions tailored to the specific risks of the individual being supervised.<sup>11</sup> In doing so, officers may recognize that the drivers of the risk factors may be interrelated. For example, if a person presents with an education/employment risk factor, the driver of that risk factor may be that the person has never valued the importance of working and earning a stable wage from a legitimate place of employment. This type of antisocial thinking may or may not be identified by the PCRA (that is, cognitions may not present as the top risk factor), but even if not present, the officer can understand how to spur change in the education/employment domain. Rather than sending the person immediately to vocational training, targeting the person’s antisocial thoughts about work (cognitions) may be best not only to help the person change but also to protect the public. Therefore, in considering the

domains and creative interventions that SCA makes possible, officers should rely on their in-depth knowledge of the person’s history and circumstances to understand what drives risk factors in that person’s life. To help make those connections, below we consider three of the four risk domains and six of the responsivity factors in conjunction with corresponding SCA interventions.

## Criminogenic Needs

### *Cognitions*

The cognitions domain, as identified by the PCRA, is present among 37 percent of those under post-conviction supervision and is considered the most influential dynamic risk factor. Antisocial or procriminal attitudes are not easy to change. However, research suggests that if officers target change in this area, they are more likely to help the person under supervision change his or her behavior and reduce recidivism.<sup>12</sup> To do so, officers can seek to build a positive and professional rapport and use empathy and a wide range of interpersonal skills, such as those outlined in the Core Correctional Practices or Staff Training Aimed at Reducing Rearrest (STARR). Even in high-risk cases where officers spend most of their time and effort targeting thinking and behavioral change, SCA funds may represent an opportunity to bolster such efforts to address criminal thinking through use of available CBT programming. Other potentially effective interventions aimed at addressing cognitions such as mentoring are addressed in the section regarding the social networks domain.

The goal of CBT (Project Code 3122) is to change the way offenders think, and hence change the way they behave. More specifically, CBT restructures an offender/defendant’s thought patterns while simultaneously teaching prosocial skills. This type of intervention is effective in addressing criminogenic needs such as antisocial values and low self-control. The district may specify which manualized CBT curriculum is implemented. Programs such as Moral Reconnection Therapy (MRT), Thinking for a Change, and journaling programs have, when implemented effectively, shown measurable effects on the reduction of risk of recidivism.<sup>13</sup>

<sup>8</sup> Bonta, James, and D.A. Andrews, *The Psychology of Criminal Conduct*, 2017. pp. 175-184.

<sup>9</sup> See *Guide*, Volume 8, Part L, Chapter 2, section 230.20 (g).

<sup>10</sup> Bonta, James, and D.A. Andrews, *The Psychology of Criminal Conduct*, 2017. p. 180.

<sup>11</sup> Alexander, Melissa, et. al. “Driving Evidence-Based Supervision to the Next Level: Utilizing PCRA, Drivers, and Effective Supervision Techniques,” *Federal Probation*, Volume 78:3. December 2014.

<sup>12</sup> Bonta, James, and D.A. Andrews, *The Psychology of Criminal Conduct*, p. 130.

<sup>13</sup> SCA Procurement Manual, Section 4.11, page 56.

## District of New Jersey—U.S. Pretrial Services

According to the federal *Guide to Judiciary Policy*, Pretrial Services is the front door to the federal criminal justice system and has the unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial supervision, but beyond. The notion that reentry starts at arrest is not a new one. In their 2011 article "Preentry: The Key to Long Term Criminal Justice Success?" (*Federal Probation*, vol. 75, no. 2) Lowenkamp and Cadigan asked whether the front end (what happens pretrial) has long-term positive impact. The evidence is mounting that it does! Research as well as federal statute, policies, and procedures support this concept, which is consistent with the presumption of innocence.

It is in this vein that Pretrial Services in the District of New Jersey looks to the Second Chance Act funding to support our practices. Greater numbers of higher risk cases are being released and the need to mitigate those risks is more critical than ever before. Following the risk principle, pretrial services looks to incorporate Second Chance Act funding into our office's initiatives to provide services that not only minimize risk but improve a defendant's chances of success upon release. "Preentry," or the concept that reentry begins at arrest, means identifying the risks and needs of defendants in order to provide services that help transform lives into productive ones.

When it comes to Second Chance Act assistance for pretrial defendants, many think "why bother? They're likely going to prison anyway!" Employers don't want to invest, defendants aren't motivated to strive, attorneys don't recognize the benefits. But as incentives become more common, this will change.

For example, New Jersey Pretrial Services has the support of its federal public defender to send presumed innocent defendants to "Thinking for Change," because it helps decrease antisocial thinking, increase prosocial behavior, and thus decrease risk. Additional contracted services via Second Chance Act funding include counseling, life skills training, and daily intensive employment groups. (Project codes for the employment side of services encompass code 3011, which includes testing and work skills evaluation and reports; code 3010, which includes vocational, occupational, and career planning and assessment; and code 3020, for job readiness training. On the cognitive behavioral therapy (CBT) end, project code 3122 is used for cognitive behavioral treatment, along with code 3202, should a transportation barrier be identified with the defendant's ability to attend treatment sessions.)

In addition to the CBT and intensive employment groups, we have a focus on early intervention with defendants released within their first 30 days in the community. With the creation of a workforce development unit, which includes a network of community resource programs for employment, education, and vocational training, New Jersey has been able to identify the needs of the client population and match them with an equal response that addresses risk factors related to both nonappearance and danger to the community. Referrals are made by the primary case officer, who identifies a lack of employment history, issues with job retention, and/or personal motivation by the defendant to obtain new skills and engage in vocational training or complete a GED. Once a referral has been made to our specialty unit, the case is assigned to an officer from the unit for a one-on-one case staffing with the defendant. The goal of the early intervention is to link the defendant with community resources that foster not only a job but a career, not only continuing with education but possibly obtaining a degree, and not only receiving a certificate but developing lifelong skills to serve them in the future.

Finally, while Pretrial Services' use of Second Chance Act funding is focused on risk reduction, it also has the potential to impact outcomes at sentencing. In many cases, judges recognizing positive pretrial adjustment have granted significant downward variances. Thus, defendants who seize the opportunity can make that positive impact, not only during pretrial, but beyond.

For more information, please contact Chief U.S. Pretrial Services Officer Chris Dozier at [Chris\\_Dozier@njpt.uscourts.gov](mailto:Chris_Dozier@njpt.uscourts.gov).

## Social Networks

The social networks domain, as identified by the PCRA, is the most prevalent domain, and present among 80 percent of those under post-conviction supervision. It is considered the second most influential dynamic risk factor. Officers seek to encourage persons under supervision to avoid negative peers and to seek out more positive influences. To that end, they should monitor associations<sup>14</sup> and try to gain insight into how the person under supervision spends leisure time. Officers can seek court approval for restrictions such as curfews and location monitoring, or geographical restrictions if the case warrants. They also seek to intervene by having meaningful discussions about why change in this area is so important and engaging the person under supervision's thoughts on how they may do so. Depending upon the availability of community resources, SCA again may represent an opportunity as a "force multiplier" to support the officer's effort to create change in the area of the person's life by providing a connection to a mentor who can work more extensively with the person. Further, because antisocial thinking patterns are linked to a person's decisions to associate with or avoid others, CBT programming also is appropriate in many cases where this risk factor presents.

Mentoring (Project Code 3017) refers to a developmental relationship in which a more experienced person helps a less experienced person develop an enhanced sense of self-worth and specific knowledge and skills to increase the chance of successful reentry. Mentoring is a process for the informal transmission of knowledge, social capital, and the psychosocial support perceived by the recipient as relevant to work, career, or professional and personal development; its primary goal is preparing an offender for reentry and supporting him or her during the reentry process to enhance success. Mentoring involves communication and consists primarily of one-on-one relationships, although team and group approaches may also be helpful. Mentors should be carefully selected, keeping the success of the person being supervised in mind. Those with criminal history are not precluded from being mentors, as those directly impacted by former criminal justice involvement may be particularly effective. The recency of a prior conviction should be a factor to consider when choosing mentors. Mentors may not currently be under any form

<sup>14</sup>Post-Conviction Procedures Manual 3.60.60.10(b).

of community supervision, and mentoring may not exceed one year.<sup>15</sup>

### *Alcohol/Drugs*

Alcohol/Drugs is present as a risk factor among 29 percent of persons under federal post-conviction supervision. However, the standard array of treatment interventions are not delivered through the SCA but rather through the Treatment Services Special delegation and the Treatment Services Procedures. Possible drivers of this factor are antisocial attitudes, poor coping skills, social networks, mental health, and physical addiction (Alexander et al., 2014). Given that the two contracting mechanisms are part of distinct special delegations—although established in the same statutory authority, 18 U.S.C. 3672—when dealing with any presenting substance abuse or mental health issues in those they supervise, officers need to turn to substance abuse and mental health treatment.

### *Employment/Education*

The employment/education domain, as

<sup>15</sup> SCA Procurement Manual, Section 4.9, page 48.

identified by the PCRA, is present as a risk factor among 64 percent of those under post-conviction supervision. It is considered the third most influential dynamic risk factor. Possible drivers of this factor are lack of education, vocational skill deficits, interpersonal skills deficits, distorted/antisocial attitudes toward employment, substance abuse, medical/mental health issues, and logistical barriers such as childcare and transportation barriers (Alexander et al., 2014). Based on the officer's knowledge of the person under supervision's history, officers may implement one of the interventions discussed below in an attempt to target the risk factor in a way that is likely to bring about meaningful change for the person being supervised.

SCA Employment/Education interventions available include: Job Training; Subsidized on the Job Training; Employee Tools, Equipment and Licensure; Vocational Assessment and Report; Testing and Work Skills Evaluation; Job Readiness Training; Individual Career Counseling; Job Placement and Retention; Employment Retention Group; and general Education. Below are detailed descriptions of four of the programs:

## **Southern District of Ohio—Mentoring**

Antisocial networks is the most prevalent criminogenic need in the population under federal supervision. The use of mentors to provide prosocial engagement is a promising strategy that few districts have pursued. Research shows that participation in prosocial activities is a significant piece of the recidivism reduction puzzle, as is the probation officer's praise of the client's involvement in prosocial behavior. In the Southern District of Ohio, our mentoring services and client participation have evolved over the last few years. We reallocate resources to fund initiatives by accessing the current Second Chance Act funds. The project code that we use to provide mentoring services is 3071 Volunteer Coordination—Mentoring.

There are a few implementation challenges when it comes to providing mentoring services. Though there are mentoring programs established in both the juvenile criminal justice and substance abuse arena, there is lack of established mentoring programs focusing on the adult criminal justice population. Due to the lack of specific research and available programming, referrals from probation officers are limited. Though it is diminishing, there is a stigma associated with peer mentoring and recruiting mentors who have a criminal record. At least one study that showed has regular visitation from community members had a positive correlation on reduced recidivism. At this time, current measurable outcomes have been limited to accounting for the number of participants. With that being said, our plans going forward include evaluating our current mentoring programs and establishing measurable outcomes, such as surveys, questionnaires, and feedback from the offenders. Mentors will have defined and clear roles and responsibilities, with specific targets in mind. There are general areas that all mentors should be trained in, including trauma, collateral consequences, behavioral health issues, etc. After the mentoring model is established, a district-wide mentoring training program will be established.

*For more information, please contact Vanessa Fletcher at [Vanessa\\_Fletcher@ohsp.uscourts.gov](mailto:Vanessa_Fletcher@ohsp.uscourts.gov).*

## **District of Oregon—Vocational Training**

The U.S. Probation Office in the District of Oregon developed a program to assist people under supervision with the training needed to obtain a Commercial Driver's License (CDL). The CDL Program assists persons under supervision in preparing to operate a commercial vehicle through training at a school licensed under the Oregon Higher Education Coordinating Commission. Western Pacific Truck School of Oregon (WPTS) was selected as the contracting agency to provide the required education and training for offenders to obtain their CDL. WPTS offers a 4-week training program with field and classroom time totaling over 160 hours. To date, 15 people under supervision in the District of Oregon have entered the CDL Program and 80 percent have graduated from WPTS. Within two weeks of graduation, 91 percent of the offenders found employment in the truck driving industry. Within six months of graduation, participants' average hourly wage had climbed from \$10.88 before they took the class to \$19.57.

*For more information, please contact Chief John Bodden at [John\\_Bodden@orp.uscourts.gov](mailto:John_Bodden@orp.uscourts.gov).*

*Job Readiness* (Project Code 2020) is training that prepares defendants and persons under supervision for employment. Training may include resume preparation, interview techniques, appropriate dress, problem solving, effective communication, assertiveness training, plans to address barriers, workplace literacy and on the job conduct. It may also include a manualized cognitive-behavioral treatment component.<sup>16</sup>

*Job Training* (Project Code 3040) provides instruction in a classroom or worksite setting designed for specific occupations to help the participant gain the technical skills and/or information required to successfully perform a specific job or group of jobs. The job training program may qualify as a commercial service (i.e., programs available to the general public). Defendants and offenders should be screened carefully. Consider prerequisites such as the

<sup>16</sup> SCA Procurement Manual, Section 4.3, page 22.

completion of a cognitive behavioral treatment program. Programs should be considered that make defendants/offenders employable in their respective communities. Participants should be in compliance with conditions of supervision at the time of referral.<sup>17</sup>

*Subsidized On-the-job Training* (Project Code 3030) is training by an employer that is intended to result in permanent employment by providing knowledge or skills essential to the full and adequate performance of the job. If the job is in a field that requires a special certification such as plumbing, the employer should have appropriate licenses and certifications so that staff qualifications may apply. This service is intended to help “open the door” for a defendant or offender who might otherwise not receive consideration by an employer. Defendants and offenders should be screened carefully and be appropriate for this service (for example, a medium-to-high-risk defendant or offender who has demonstrated a commitment to successful reentry, or a defendant or offender who has completed a cognitive behavioral program or job readiness curriculum). Defendants or offenders should be in compliance with conditions of supervision at the time of referral. Employers should be screened carefully to ensure success with this service so that it is not abused (by, for example, the employer retaining the person only during the period of time when the employer receives a subsidy for employing the person).<sup>18</sup>

*Employee Tools Equipment and Licensure* (Project Code 3601) involves the acquisition of required tools, equipment, or vocational licenses that the defendant or offender cannot afford. These items are actual cost items. This includes goods (e.g., work boots, hammer, tool belt) and services such as work permits, bonding, certifications, or liability insurance. The officer should ensure that services cannot be provided by any other community resource. Consider this type of assistance when the absence of the item is a direct obstacle to employability. Officers should also screen defendants and offenders carefully for progress, and consider adding prerequisites such as CBT, vocational training certification while in BOP custody, or other programming to encourage success.<sup>19</sup>

<sup>17</sup> SCA Procurement Manual, Section 4.6, page 39.

<sup>18</sup> SCA Procurement Manual, Section 4.5, page 34.

<sup>19</sup> SCA Procurement Manual, Section 4.17, page 65.

## District of South Dakota—Domestic Violence Intervention

In the District of South Dakota, the number one re-offense classification is “violence,” and the number one violent offense category is “domestic violence.” In 2017, a district judge in the Southern Division established a collaboration with a magistrate judge, the U.S. attorney, the federal public defender, and the Probation Office to address this concern. The collaboration agreed to:

- Apply the Ontario Domestic Assault Risk Assessment (ODARA) in the presentence phase when there is a criminal history of domestic violence;
- Add a special condition of cognitive-behavioral domestic violence training, based on the defendant’s history and the score on the ODARA;
- Apply a “Behavioral Agreement for Relations with Intimate Partner,” where the convicted person agrees not to engage in behaviors that are physically, sexually, or psychologically abusive and/or controlling.

The recent expansion of the use of Second Chance Act funds for domestic violence interventions has allowed the district to purchase cognitive-behavioral training (CBT) for perpetrators of domestic violence. Using “local needs” language in its solicitation for CBT for domestic violence, the district has established contracts for vendors to provide either Moral Reconciliation Therapy for Domestic Violence (MRT/DV) or Achieving Change Through Values-based Behavior (ACTV). Currently, the district has five separate contracts to serve the four divisions within the district. All four vendors (one vendor has two contracts) have chosen the MRT/DV curriculum.

*For more information, please contact Chief U.S. Probation Officer John Bentley at [John\\_Bentley@sdp.uscourts.gov](mailto:John_Bentley@sdp.uscourts.gov).*

### Violence

The addition of the violence assessment with PCRA 2.0 assists officers in determining the appropriate level of supervision and how to allocate resources. While domestic violence is not a dynamic risk factor per se, officers may learn through the assessment phase that person has engaged in domestic violence in the past. The Domestic Violence intervention (Project Code 3710) goals include stopping the violence and preventing the reoccurrence of future violence, while ensuring victim safety; identifying abusive behavior; teaching alternatives to violence; exploring the impact of violent and abusive behavior on intimate partners, children, and others; and assisting individuals in examining beliefs they hold about violence.<sup>20</sup>

### Responsivity Factors

SCA services include an array of interventions to address many of the presenting responsivity factors that officers identify when conducting the PCRA. Responsivity factors are individual characteristics or circumstances that may serve as obstacles to the person’s progress or affect his or her ability to comply with the demands of supervision. Some factors may be eliminated (such as homelessness or lack of transportation), and some factors may not

(such as a permanent medical condition). When possible, officers work to address emergency circumstances and eliminate barriers to provide the person under supervision with the best chances of success. If a responsivity factor cannot be mitigated, the responsivity principle indicates that officers should tailor supervision to the person under supervision’s characteristics and learning style.<sup>21</sup> Below are a few examples of how SCA can provide opportunities to overcome responsivity factors.

### Homelessness

Emergency and/or Transitional Housing (Project Code 3101) is for defendants and offenders who require housing to assist in their reentry. Housing should not exceed 90 days, unless an extension is determined appropriate and approved by the chief. On-site inspections should be conducted to ensure that the environment is conducive to the defendant or offender’s rehabilitation without conferring luxuries or privileges. There is no separate provision for the payment of utilities, food allowances, etc., unless these services are included in the rent. The search for permanent residential options should continue during this transitional period. Officers must reevaluate the need for this service at least

<sup>20</sup> SCA Procurement Manual Section 4.22, page 70.

<sup>21</sup> Bonta, James, and D.A. Andrews, *The Psychology of Criminal Conduct*, p. 192.

every 30 days. Officers should consider a community service condition and/or adding job readiness, vocational training, and other suitable programming to compel defendants and offenders to work actively toward obtaining employment to help achieve self-sufficiency.<sup>22</sup>

### Transportation

Transportation can be the first hurdle for defendants and persons under supervision to access employment and education opportunities, various treatment interventions, and other prosocial activities. It can be particularly challenging in rural environments, which often lack public transportation systems. Transportation Project Code 3202 can be provided to those under supervision that the probation or pretrial services officer determines are unemployed or unable to

pay for transportation. Funding for client transportation under this code should not exceed 90 days, unless an extension is deemed appropriate by the unit executive. Services may not exceed one year. This service is for transportation to and from reentry services or to facilitate new employment opportunities. To assist populations in rural areas, a vendor could provide group transportation for multiple defendants or offenders to and from evidence-based interventions, excluding mental health and substance abuse.<sup>23</sup> While bus passes are quite popular, some courts are establishing Uber accounts for a host of situations when public systems are not sufficient. Some rural districts have purchased bicycles for persons to use in order to get to work.

<sup>22</sup> SCA Procurement Manual Section 4.10, page 54.

<sup>23</sup> SCA Procurement Manual, Section 4.12, page 63.

## The District of Puerto Rico—Transitional Housing

The District of Puerto Rico was an early adopter since the inception of the Second Chance. Our level of engagement in the delivery of these services has placed us among the top three districts nationwide in SCA expenditures. We have framed our focus and delivery of services within the Risk-Needs-Responsivity (R-N-R) model, especially regarding Transitional Housing Services. We have proposed that addressing housing barriers not only impacts the “forgotten R” of responsivity, but also serves as strategic treatment dosage to help address criminogenic needs such as social networks and employment. For example, a person who is surrounded by negative peers and family members but otherwise desires change may benefit from the complete change of scenery that transitional housing provides. By selecting this intervention, we may increase the effectiveness and availability of interventions to target dynamic risk factors that would otherwise have been difficult to pursue while the person remained in the negative environment. Such efforts to assist persons under supervision also tap into the key ingredient of the officer-client relationship: motivation to change (a responsivity element that correlates to success in supervision).

From 2015 to 2017, out of 37 clients who received contracted temporary shelter services, only 5 were revoked; and out of 42 receiving rent assistance (security deposit plus first three months rent), none had been revoked as of last year—a total of 79 clients within that time frame with only a 6.3 percent revocation. Transitional housing is usually complemented (if it is determined that this is needed) with basic-item services such as basic appliances and/or modest furniture, as needed. One of the major milestones of our Reentry Team has been being able to break the local housing authority’s automatic exclusion policy from subsidized housing applications of persons under supervision and/or with a criminal record. This effort required us to play our advocacy role in line with the book *Working with Involuntary Clients* by Chris Trotter, and as comprehensively described in the report *When Discretion Means Denial* by the Shriver National Center on Poverty Law. In line with this, we have also been proponents of within-district relocation facilitated not only with housing, but also with relocations or transfers of supervision to other districts within the RNR framework. If we look at the new post-conviction *Guide to Judiciary Policy* policy guidance for relocation or supervision transfer, it validates what has been our position for the past five years.

For more information, please contact Assistant Deputy Chief Humberto Marchand at [Humberto\\_Marchand@prp.uscourts.gov](mailto:Humberto_Marchand@prp.uscourts.gov).

### Reading/Writing Limitations

General education (Project Code 3061) is for those being supervised whose educational deficits impede their successful reentry by impacting their employability or progress toward other objectives. This service provides basic education, instruction, course materials, and exams such as GED, literacy courses, and English as a Second Language (ESL).<sup>24</sup>

### Child Care

Child care (Project Code 3603) is for the care of eligible dependents of defendants and offenders who share a common household, when lack of child care poses a direct barrier to full-time employment and/or vocational training. Child care must be provided by a state-licensed facility/provider. The USPO/USPSO should evaluate the need for this service every 30 days. This service cannot exceed 90 days, unless an extension is authorized by the unit executive. Services may not exceed one year.<sup>25</sup>

### Physical handicap

Non-Emergency Medical (Project code 3604). This authorizes medical services for defendants and offenders whose physical issues impede their successful reentry by impacting employability or other responsivity issues. Some examples of this service are pre-employment physicals, prescription eye-wear and exam when vision poses a direct barrier to full-time employment, and tattoo removal when tattoos are clearly visible on the face, neck, and/or hands. This service excludes cosmetic services, including cosmetic dentistry, hair cut/styling, etc.<sup>26</sup>

### Other

Identification (Project Code 3606). This facilitates the purchase of federal/state-issued documents, such as birth certificates, state identification cards, or driver’s licenses, to help a defendant or offender reintegrate into the community and become employable.<sup>27</sup>

## Putting It All in Motion

Over ten years have passed since SCA expanded the courts’ authority to assist those under supervision. However, given the scale of the criminogenic needs and responsivity factors in that population, the limited, disparate

<sup>24</sup> SCA Procurement Manual, Section 4.8, page 47.

<sup>25</sup> SCA Procurement Manual, Section 4.18, page 66.

<sup>26</sup> SCA Procurement Manual, Section 4.19, page 68.

<sup>27</sup> SCA Procurement Manual, Section 4.20, page 69.

use of SCA to date is curious. According to the AO's Budget Division, during fiscal year 2018, the courts spent \$3.4 million in SCA.<sup>28</sup> Clearly there were implementation challenges early, and the loss of dedicated SCA funding during sequestration had a chilling effect on its use. Nevertheless, some courts chose to move aggressively to reallocate resources from other areas to fund SCA interventions. Those expenditures in turn become historical and build capacity for subsequent years.<sup>29</sup> The majority of courts, however, remain largely

<sup>28</sup> As noted earlier, U.S. Probation and Pretrial Services address the criminogenic need of substance abuse and the responsivity factor of mental health through a separate delegation of authority, not SCA. During fiscal year 2018, courts spent nearly \$60 million in substance abuse treatment alone.

<sup>29</sup> See DSS Report #1063 Second Chance Act Expenditures by District.

reactive in their spending and limit SCA use to addressing emergency situations. Below we present a few suggestions for courts, based upon respective staff roles, that can perhaps help them to better leverage SCA services to improve outcomes:

#### *Officers*

Officers possess thorough knowledge of the circumstances of those under their supervision. For post-conviction officers, the PCRA 2.0 output, including risk level, criminogenic needs and responsivity factors, provides the foundation for case planning.<sup>30</sup> Officers must also be knowledgeable of free community-based resources as well as what SCA services are offered in their district. They must also

<sup>30</sup> DSS data, which pull from ERS PCRA data, suggest that officers are not particularly thorough in identifying responsivity factors when completing the PCRA.

understand the underlying SCA principles that define a necessary expense and their role in documenting expenditures for accountability purposes. Most important, their level of knowledge of the RNR model is essential in guiding to select interventions that are evidence-based. Providing needed resources to those under supervision when no other means are available can be very helpful in building trust between the officer and the recipient. Perhaps most importantly, when officers are not sure if SCA may offer a solution, they must not be afraid to ask. Current SCA policy guidance, while thorough, does not cover all of the circumstances in which it might be applicable. The guidance is meant to be illustrative, but not exhaustive. New situations will continue to present themselves and SCA may offer appropriate solutions to address risk and responsivity factors. Last, officers should remember that while emergency services can be used to assist any risk level, greater investments through transitional services should be limited to those who are higher risk, consistent with the risk principle.<sup>31</sup>

#### *Supervisors*

Supervisors of caseload-carrying officers should be SCA experts. First, they play important roles as development coaches for officers at all levels of experience. Examples of good uses of SCA interventions should be shared both within the supervisor's unit as well as with other units to educate officers about what SCA makes possible. While an officer is addressing the needs of his or her caseload, the supervisor must be attentive to the needs of multiple caseloads. Supervisors are in a unique position to see in-depth patterns of need across caseloads. They can also ensure that all officers are made aware of identified community resources and district SCA programming options. As experts, supervisors can work with officers to establish priorities, focus on those who are higher risk, and help broker needed interventions during case staffing. Checking on service delivery in subsequent case reviews is also essential. Supervisors should also make sure that senior managers are kept informed of trends in needs and newly discovered resources, and, as they evaluate situations, recommend whether or not SCA interventions are warranted. Supervisors are essential to assessing office and district-level SCA needs and communicating those assessments to

### **Middle District of Florida—An Officer's Perspective on Reentry**

Community supervision has moved well beyond knocking on doors, collecting a urine specimen, and just "checking in." If we are truly committed to helping persons under supervision become successful, law-abiding citizens, we must be aware of their risk factors and the barriers confronting them. When officers think proactively, they can greatly reduce the anxiety of those we supervise as they prepare to reenter the community, allowing them to make informed decisions as they try to put their best foot forward.

Before the onset of supervision, officers should be equipped with information about a case through collateral resources, including Bureau of Prisons (BOP) records, Residential Reentry Center (RRC) records, Presentence Reports (PSR), criminal history, etc. BOP staff have daily contact with inmates and have a great grasp of the inmates' attitude, behavior, and readiness for reentry. Supervising officers should access disciplinary reports, mental health records, education records, substance abuse records, and other pertinent information about the inmate through the Offender Release Report or through SENTRY. Some probation offices also send needs and vocational interest questionnaires to inmates months before they even arrive at the RRCs. The more officers know about those coming under their supervision, the sooner they can identify needed resources.

Building good relationships with RRC staff is paramount. They can provide critical insight regarding how the inmate is behaving, their attitude and adjustment, and any specific challenges or emergency needs upon release. Officers should attend three-way staffing with the RRC case managers and the inmate whenever possible. That is a great opportunity to encourage the inmate to take advantage of whatever programming or community-based resources the RRC makes available. Officers may also learn about any disciplinary issues, the inmate's motivations to find employment, treatment and housing needs, and whether the inmate appears to have prosocial family relationships.

Making use of all collateral resources, combined with administering the PCRA to determine risks, needs, and responsivity, can help to tailor individualized supervision plans. The proactive approach at the onset of supervision guides our decision on how to best use Second Chance Act interventions and resources. Officers should be effective stewards of the judiciary's resources and leverage free community-based resources whenever possible. If Second Chance Act funds are used proactively, with the RNR model as a guide, there is potential to reduce violations and start the process to help persons under supervision to develop prosocial habits on supervision and beyond.

*For more information, contact Latoya Myles at LaToya\_Myles@flmp.uscourts.gov.*

<sup>31</sup> Guide to Judiciary Policies, Volume 8, Part L, Chapter 2, Section 230.20 (g).



senior management.<sup>32</sup> Supervisors can also help educate judicial officers and other stakeholders on how SCA can be used to assist the population under supervision.

#### *Procurement Staff*

Policy guidance requires that courts adhere to all contracting and finance requirements, but SCA policy guidance is now quite comprehensive. The AO's Procurement Management Division (PMD) is the authority on contracting mechanisms and can provide guidance on procurement questions, including its on-line inquiry process. A court's procurement staff should be expert in the contracting methods described in the SCA procurement manual. They should also take the lead in conducting market research.<sup>33</sup> However, very often questions are policy-focused and essentially judgment calls as to whether a purchase

or service is allowable. The AO's Probation and Pretrial Services Office (PPSO) can staff unique situations with courts and provide recommendations regarding suitability.

#### *Chiefs and other Senior Managers*

Leadership within U.S. Probation and Pretrial Services offices create the vision and mission for their office. In support of that mission, and depending upon available resources, the chief should be fully informed by district data when identifying areas where SCA interventions are warranted. Without deliberate, focused effort, courts often restrict SCA interventions to responding reactively to emergency services and do not leverage transitional services in a way that improves outcomes. If leadership identifies areas where SCA programming is needed, priorities will need to be established, and funds will have to

be re-allocated from other resources if SCA had previously only been used on a limited basis. While the U.S. probation and pretrial services system has made great strides in adopting the RNR model, very often the accompanying principles of fidelity and measurement are neglected. Chiefs and other senior managers should ensure that interventions are delivered as designed and that results are measured. The use of the court's resources requires that we assess if programs are having a demonstrable beneficial impact. If not, programming should be adjusted before further resources are expended. Last, chiefs should ensure that their staff are fully educated on SCA's potential to improve community safety and to make a difference in the lives of those whom they supervise.

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<sup>32</sup> SCA Procurement Manual, Section 2.1 page 4.

<sup>33</sup> SCA procurement Manual, Section 2,2, page 5.

# What Do Criminal Justice Professionals Think About Risk Assessment at Pretrial?

*Matthew DeMichele*

*Center for Courts and Corrections Research, RTI International*

*Peter Baumgartner*

*Center for Data Science, RTI International*

*Kelle Barrick*

*Center for Policing Research and Investigative Science, RTI International*

*Megan Comfort*

*Center for Community Safety and Crime Prevention, RTI International*

*Samuel Scaggs*

*Center for Courts and Corrections Research, RTI International*

*Shilpi Misra*

*Center for Community Safety and Crime Prevention, RTI International*

**CRIMINAL JUSTICE PROFESSIONALS** make pretrial decisions about which individuals to release or detain on a regular basis. Essentially, these legal actors are required to quickly assess the likelihood that uncertain events, such as appearing at court and remaining law-abiding, will occur if an individual remains free in the community while his or her case is processed. Because criminal justice professionals need to make these decisions quickly, and often using limited information, they use some combination of intuition and structured thinking when making these decisions. One of the downsides of this discretion is the possibility of unconscious racial and ethnic bias in decision-making. People of color are disproportionately represented in the criminal justice system (Travis, Western, & Redburn, 2014). Blacks and Latinos are treated more punitively than similar Whites by legal actors at various stages in the criminal justice process from arrest to sentencing after controlling for legally relevant factors (Tasca, Rodriguez, Spohn, & Kross, 2013; Kulateladze et al., 2014; Travis, Spohn, & Western, 2014).

Studies that rely on administrative data suggest that judges' implicit biases may impact their decision-making processes and reproduce racial/ethnic disparities (Albonetti, 1991; Bridges, Crutchfield, & Simpson, 1987). Legal scholars have questioned the use of risk assessments at sentencing (Harcourt, 2010; Starr, 2014), but there is little research about bias in pretrial risk assessments.

Actuarial risk assessments are not new to criminal justice professionals. At least since the 1920s, criminal justice professionals have used actuarial tools to inform their decision making at various stages of the criminal justice system (Burgess, 1928; Harcourt, 2010). Risk assessments are widespread throughout criminal justice systems and are being used at more phases of the criminalizing process. Recently, there has been a push to use risk assessment instruments to structure pretrial release decisions (Bechtel, Lowenkamp, & Holsinger, 2011; Mamalian, 2011). Although several studies demonstrated the predictive validity of specific risk assessment tools (Austin, Coleman, Peyton, & Johnson, 2003;

Farabee, Zhang, Roberts, & Yang, 2010; Johnson, Wagner, & Matthews, 2002; LeCroy, Krysik, & Palumbo, 1998; Schwalbe, 2007), criminal justice professionals' view of risk assessments is less understood.

It is important to understand what professionals think about risk assessments because this could influence implementation and use of a risk assessment. Although judges usually make the ultimate decision about the nature of pretrial release, other courtroom actors are involved in these decisions. Take, for example, a case in which the recommendation from a risk assessment tool is to release an individual on his or her own recognizance, but the prosecutor, defense counsel, or judge do not have confidence in the tool; in such a case, it is unlikely that this recommendation will be followed. It could be that a prosecutor believes the tool is too lenient and he or she may argue for a higher bail amount, for other conditions to be imposed, or even for detention. Therefore, when considering the use of risk assessment tools, it is important to consider the perceptions of the larger courtroom

workgroup. In this article we suggest that it is important to learn about the shared understanding of a risk assessment so that its value and use may not be compromised.

The burgeoning risk assessment literature, research, and industry, for the most part overlooks the experiences and application of frontline criminal justice actors. Their perceptions are particularly important given that a central feature of the U.S. legal system is discretion—so these “street level bureaucrats” have the ability to decide how any risk assessment instrument is used. This discretion can result in a difference between stated policies and procedures that influence the use of risk assessments and could undermine the purpose of implementing a risk assessment tool (Mamalian, 2011).

To better understand the use of pretrial risk assessment tools among courtroom staff, we report findings from a survey of judges, prosecutors, defenders, and pretrial officers currently using the Laura and John Arnold Foundation’s Public Safety Assessment (PSA). In this article we first provide a discussion of discretion within the criminal justice system to better understand how bias enters decision making processes. Next, we discuss the use of risk assessment instruments within the criminal justice system, including arguments for how introducing structured decision making tools—such as the PSA—have the potential to reduce systematic errors made by humans (Kahneman, 2011). We then frame local jurisdictions as courtroom communities in which criminal justice actors work together (Dixon, 1995). After this discussion, we describe our methods and procedures, followed by a presentation of the findings and implications. These findings contribute to literature on pretrial risk assessment tools within a courtroom workgroup framework.

## Background

### *Discretion in the Criminal Justice System*

Criminal justice has been framed as a market system in which uncontrolled discretion in charging, plea bargaining, and sentencing may lead to less efficiency and biased processes (Schulhofer, 1988). Schulhofer (1988) contends that discretion produces a bargaining environment in which highly attractive offers can induce factually inaccurate admissions of guilt. Moreover, this social arrangement can lead to pretrial compromises that are based on incomplete information and that are less accurate than results reached at trial. A host

of factors have been shown to influence the probability of a prosecutor’s recommended sanction and a judge’s decision to sentence. Several prior studies find that prosecutorial and judicial discretion is affected by case, defendant, victim, social, and criminal justice process characteristics (Albonetti, 1986, 1987, 1991; Holleran, Beichner, & Spohn, 2010; Miller & Sloan, 1994). However, both court room actors have key objectives for case outcomes. On the one hand, the prosecutor’s main concern is increasing the likelihood of conviction (Spohn, Beichner, & Davis-Frenzel, 2001) or obtaining a larger ratio of convictions to acquittals (Albonetti, 1986, 1987). Consequently, prosecutors make decisions about case outcomes based on a combination of the defendant’s current offense and prior record and the victim’s credibility and cooperation (Pinchevsky, 2017). On the other hand, judges are primarily driven by reducing crime, predicting future criminal behavior based on available information, and managing the flow of cases in an efficient manner (Albonetti, 1991). Judicial decision making is based on perceptions of the defendant’s blameworthiness, public safety, and consequential practical constraints associated with their decision.

Some argue that discretion enables criminal justice professionals to nullify legitimately adopted sentencing policies and impose inequitable sentences based on irrelevant characteristics of defendants and crimes (Glaeser, Kessler, & Piehl, 2000). When making decisions about prosecuting or sanctioning an individual, criminal justice actors may rely on hunches in the absence of more information about the background or character of a defendant (Guthrie, Rachlinski, and Wistrick, 2001; Papillon, 2013). Judges or other legal actors will use case or defendant attributions to resolve their uncertainty and optimize courtroom efficiency. Empirically, studies show that the victim’s and offender’s race may interact to influence sanctioning decisions (Black, 1989; LaFree, 1998). Specifically, prosecutors have been found more likely to prosecute a case when the victim is white and the offender is black (Black, 1989). Additionally, studies have shown that racial and ethnic minorities are more likely than whites to be sentenced to prison (Spohn, 1990, 2000)—and disparities have been confirmed to exist at the pretrial stage as well (Schlesinger, 2005; Demuth, 2003; Kutateladze et al., 2014).

Although pretrial decisions receive less empirical scrutiny relative to sentencing, discretion at this stage can have an important

impact for a few reasons. First, financial considerations for release can weigh heavier on poor and minority defendants, resulting in *de facto* racial and ethnic discrimination. Second, the discretion that enters at earlier stages in the criminal case process, such as a pretrial decision, is less visible and restrictive than decision-making at the sentencing stage but has a greater impact on disparity (Hagan, 1974). Third, pretrial detention is found to have several negative consequences for those detained. The decision to deny bail and incarcerate an individual pending trial can potentially disrupt ties to family, employment, and community and stigmatize the defendant (Irwin 1985; LaFree 1985). Moreover, pretrial detention may also impede the defendant’s ability to prepare an adequate defense (Foote 1954).

### *Risk Assessment in the Criminal Justice System*

Risk assessment has been offered as a tool to reduce racial and ethnic disparities in prosecutorial and judicial decisions to impose sanctions. In general, risk assessment tools are used by various criminal justice practitioners to predict the likelihood of a variety of outcomes, including failure to appear (Summers & Willis, 2010; Siddiqi, 2005; VanNostrand & Keebler, 2009; Podkopacz, 2006; Pretrial Justice Institute, 2007; Lowenkamp, Lemke & Latesasa, 2008), recidivism (Gendreau, Little, & Goggin, 1996; Andrews & Bonta, 2000; Bonta, Law, & Hanson, 1998) and prison misconduct (Austin, 2003; Cunningham & Sorenson, 2007; Cunningham, Sorenson, & Reidy, 2005; Harer & Langan, 2001). Risk assessment is one of the most common ways of statistically predicting the likelihood of recidivating given the past and current characteristics of the offender and situation (Bonta, 2002). Past research has shown that actuarial risk assessment more accurately predicts risk than sole reliance on professional judgment (Andrews, Bonta, & Wormith, 2006; Grove, Zald, Lebow, Snitz, & Nelson, 2000; Latesa & Lovins, 2010).

Although clinical diagnoses were most frequently implemented to classify offenders, recent research suggests that objective actuarial tools may be the more reliable and efficient option relative to clinical assessments if administered by trained staff (Bonta et al., 1998). The risk-need-responsivity (RNR) model represents the foundation for several instruments that assess and match offenders with corresponding intervention, treatment,

or programmatic needs. The “risk” principle dictates that an individual be placed within a category associated with his or her propensity to engage in violent or criminal behavior. For instance, an individual may be assigned to a low-, medium-, or high-risk classification. According to the “needs” principle, a criminal justice agent will assess and report the existence and magnitude of an offender’s problem behaviors. Due to important considerations pertaining to the offender’s amenability to treatment, the “responsivity” principle examines individual characteristics that may hinder or augment his or her success from treatment (Van Voorhis, Braswell, & Lester, 2007). RNR techniques have garnered some support as an effective approach to reducing recidivism in the community (Grove & Meehl, 1996; Grove, Zald, Lebow, Snitz, and Nelson, 2000; Hanson, Bourgon, Helmus, & Hodgson, 2009; Lowenkamp & Latessa, 2002).

Actuarial risk instruments predict the statistical likelihood of reoffending given information about the offender. The most effective of these instruments examine both static and dynamic factors. While static factors are those characteristics of the individual that cannot be altered (such as age at first offense, prior convictions), dynamic factors or criminogenic needs are variables that can change over time (such as drug and alcohol abuse, family and peer relationships, anger management). The latter risk factors are better able to target both positive and negative individual factors that are apt to change over time. Moreover, dynamic risk factors are referred to as criminogenic needs because they represent variables that can be targeted with treatment (Bonta, 2002). A reduction in these needs has been shown to result in lower levels of recidivism (Andrews & Bonta, 1998; Andrews, et al., 1990). As a result of this new risk management approach, a host of risk assessment tools have emerged. One of the most common risk-needs assessment tools is the Level of Service Inventory-Revised (LSI-R), which examines information on criminal history, education, employment, alcohol and drug use, companions, and emotional and personal state (see Andrews & Bonta, 1995). Based on the risk score produced by this 54-item scale through an officer-led interview process, an offender is assessed based on his or her likelihood of recidivating (Lowenkamp & Bechtel, 2007). Currently, this tool is one of the most theoretically guided assessment instruments used on an offender population (Bonta, 2002) with empirically established predictive validity

(Andrews & Bonta, 1995, 1998; Gendreau, Goggin, & Smith, 2002).

Aside from their purpose of allocating treatment resources, risk/needs assessments are also used to classify prisoners and guide decision making. With few exceptions (see Gebo, Stracuzzi, & Hurst, 2006), previous research has not directly measured criminal justice professionals’ views about risk assessment tools. Research has shown that community corrections officers’ *compliance* with a risk/needs assessment tool can be shaped by an agency’s belief in risk/needs tools, monitoring and training, perceptions of procedural justice, and projected confidence in the risk/needs tool (Miller & Maloney, 2013). While these findings are important for understanding adoption of risk/needs assessment tools, they do not describe general views about specific risk assessment tools, and especially among separate criminal justice actors who have different roles but who must work harmoniously with one another.

### *The Courtroom Workgroup*

Guided by an organizational sociological framework (see DiMaggio & Powell, 1984), some scholars hold that the courtroom establishes its own subcultures, mini-societies, or communities in which various agents are “coupled” (Hagan, 1989). The courtroom workgroup perspective acknowledges that key courtroom actors (e.g., defense attorney, prosecutor, and judge) share decision making responsibility on a regular basis (Maloney & Miller, 2015; Eisenstein & Jacob, 1977; Eisenstein, Fleming, & Nardulli, 1988). The goals of this collaborative structure are to optimize efficiency and reduce uncertainty in case outcomes (Gebo, Stracuzzi, & Hurst, 2006). Differential patterns of sentencing may occur because courtroom workgroups perceive offenders and cases differently: In such cases the structure and interdependence of the workgroup can help explain variance in sentencing outcomes across jurisdictions (see Kim, Spohn, & Hedberg, 2015). For instance, the courtroom workgroups in larger jurisdictions routinize sentences for certain offenders and offenses to avoid guesswork in decision making (Gebo, Stracuzzi, & Hurst, 2006). This routinization is not possible in smaller jurisdictions due to the small number of cases seen in those courts.

Although pretrial officers are often overlooked in the courtroom workgroup literature, probation officers, who may serve the role of a pretrial officer, do have their place

in the literature. In fact, some scholars contend that they hold substantial informational power to influence sentencing outcomes (McNiell et al., 2009; Rudes & Portillo, 2013; Walsh, 1985). Since probation officers hold the power to revoke a probationer’s status, recommend sentences to judges, and record and submit information about an offender to other officers of the court, they arguably exercise considerable power and legitimacy in the workgroup (Rudes & Portillo, 2013). Although its focus is on the courtroom workgroup in juvenile proceeding, one study has explored how probation officers perceive actuarial risk assessment tools that guide sentencing decisions to detain youths (Gebo, Stracuzzi, & Hurst, 2006). The authors found that in jurisdictions where courtroom actors were less confident in each other, they were also less confident in the risk assessment tools for guiding decisions. In those jurisdictions with more discord, for instance, probation officers expressed concerns that the tool was vague and did not consider important individual factors in the decision to sentence a juvenile to detention. Problems with the courtroom culture may translate into less favorable views about the use of actuarial risk assessment tools used to guide pretrial decisions to release or detain.

### *The Current Study*

Building on a theoretical understanding of the courtroom workgroup (see Castellano, 2009; Feeley, 1992; Eisenstein & Jacob, 1977; Gertz, 1977; Kim, Spohn, and Hedberg, 2015), we seek to answer four research questions about whether criminal justice professionals have a shared understanding of the use and value of risk assessment during pretrial:

1. What factors are important when making a release/bail decision?
2. What are the perceived strengths and weaknesses of the tool?
3. What are the perceived impact on communities of color from a pretrial risk assessment?
4. How does the tool influence judicial decision-making and prosecutorial/defense requests?

This research contributes to the literature in several ways. First, this study will elaborate on items that key courtroom actors consider important and legitimate in the criminal case process. More generally, scholarly work on courtroom actors’ views about pretrial risk assessment tools is nonexistent. Except for studies that examined the factors that

promote compliance with risk assessment tools among community corrections staff (Miller & Maloney, 2013), the empirical research on courtroom actors' views of a pretrial risk assessment tool is scant. Relatedly, this study introduces an important albeit less studied courtroom actor (the pretrial officer), who plays an important role in submitting the PSA information to the judge. Second, this research will describe the relative importance of factors that judges (and other actors) believe are important in the decision to release or detain at the pretrial stage. Third, this study will contribute to an understanding about courtroom actors' perceptions of racial and ethnic disparities at the pretrial stage and the extent to which the PSA exacerbates this disparity.

## Methods

### *Risk Assessment Instrument*

#### *Design and Use*

The PSA was developed<sup>1</sup> using nine datasets from seven states (Colorado, Connecticut, Florida, Kentucky, Ohio, Maine, and Virginia) and two datasets from the federal court system to calculate probabilities of FTA, new criminal activity, and new violent criminal activity (the definition of which is developed to fit each specific jurisdiction).<sup>2</sup> Jurisdictions implementing the PSA received technical assistance (TA) and training to explain the research used to develop the instrument,

<sup>1</sup>The authors of the current paper were not involved in the development and validation research used to develop the risk assessment instrument. We are conducting a broader research and validation project of the risk assessment instrument in which we are collecting available datasets used for development and validation by the risk assessment instrument development team. The current analyses do not assess the validity of the risk assessment tool or the procedures used to develop the instrument. Instead, we seek to understand judicial views about the use of the instrument.

<sup>2</sup>The instrument development team processed these datasets to identify the predictors of each of the three outcome variables. They used a series of statistical techniques (e.g., logistic regression, contingency tables) that produced hundreds of effect sizes. The effect sizes were averaged, and were restricted to variables that were at least one standard deviation above the mean effect size. Further analyses were conducted to identify the best effect sizes and operationalization in which each predictor variable had at least a 5 percent increase in likelihood of failure to appear or new criminal activity. The new violence criminal activity flag used a variable selection criteria of doubling the probability of failure when the item was included in a model (this paragraph is adapted from unpublished materials by Luminosity).

provide detailed instructions for completing the instrument, and offer ongoing support during implementation. The TA team focused on providing jurisdictionally tailored training and technical assistance to ensure that the instrument could be successfully implemented in each jurisdiction.

Prior to first appearance, pretrial officers use administrative data and conduct a thorough review of criminal history records to complete the assessment. The specific way the PSA is completed varies to fit each jurisdiction's standard operating practices and courtroom culture. The instrument includes a total of nine factors to develop three prediction models (one for each outcome)<sup>3</sup>:

- **Failure to appear:** pending charge at time of arrest, prior conviction, prior failure to appear within two years from date of arrest, and prior failure to appear prior to two years from date of arrest.
- **New criminal activity:** pending charge at time of arrest, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear within two years from date of arrest, prior sentence to incarceration, young age (under 23) at current arrest.
- **New violent criminal activity:** pending charge at the time of arrest, prior conviction, prior violent conviction, current offense violent, and current offense violent\* young age (under 21) at current arrest.

The FTA and new criminal activity scale scores are placed within a jurisdiction-specific decision-making framework (DMF) and converted into clear recommendations for each defendant, which can range from release on own recognizance, release on various levels of supervision (e.g., with electronic monitoring), and detention. The new violent criminal activity score produces a binary indicator as a violent "flag" to signal to judges that the defendant has a higher or elevated potential for violence, and the recommendation is typically to detain.

#### *Survey Design and Administration*

Our team developed and administered web surveys to 171 legal actors in 30 jurisdictions that have implemented the PSA. The survey was part of a larger project to validate the use of the PSA and understand its

<sup>3</sup>The factors are weighted and converted to separate FTA and new criminal activity scales that range from 1 to 6, and a new violent criminal activity flag (i.e., binary indicator of yes/no).

implementation and actual use. The survey content was informed by information gathered from semi-structured interviews with legal actors conducted during site visits in three of the jurisdictions in an earlier phase of the project. The survey content was designed by a team of criminologists, assessed by a survey methodologist, and reviewed by a former probation executive.<sup>4</sup> All respondents were asked a series of questions about their jurisdiction, professional experience (e.g., time in position, experience with risk assessments), general information about the PSA (e.g., perceived strengths and weaknesses), training and technical assistance related to the PSA, and the actual implementation and use of the PSA (e.g., information received in the report and perceptions of accuracy). Each type of legal actor (i.e., judge, pretrial services, etc.) then received a set of questions tailored to their professional responsibilities to gain various perspectives on the use of risk assessment during pretrial. For example, judges were asked how often the PSA informed their release and bail decisions, while defenders were asked how often the PSA informed their release request.

The survey was administered to a convenience sample of legal actors in jurisdictions that had implemented the PSA. The LJAF provided us with contact information for at least one legal actor per jurisdiction. We introduced the survey to the point of contact in each jurisdiction and requested names and email addresses for all the legal actors in the jurisdiction who interacted with the PSA. All potential respondents were sent a prenotice informing them about the survey, followed by a link to the survey itself. Every two weeks, sample members were sent a follow-up reminder, and the LJAF sent a reminder the last week of administration. These procedures yielded a 72 percent response rate (n=171).

## Results

Table 1 shows the background characteristics of the survey respondents. Nearly half of the respondents worked for a pretrial agency (46.2 percent), about one-quarter were judges, 10 percent were prosecutors, and 7 percent were public defenders. On average, the respondents had been in their current position for 9 years and in the jurisdiction for 16 years. The PSA

<sup>4</sup>The survey instruments were developed by the authors of this report, and we are thankful to Zachary Del Pra for assistance reviewing and commenting on the instrument as part of his role as a technical assistance provider to PSA sites.

had been used in most jurisdictions for six months to one year. More than half (54 percent) of the respondents indicated they had experience with risk assessments prior to implementing the PSA.

### *Important Factors to Consider for the Release Decision*

The respondents were given a list of factors that could be considered important in the release/bail decision, such as current charge, criminal history, and defendant's mental health. For each item, they were asked to indicate whether it was extremely important, very important, somewhat important, not very important, or not at all important. Table 2 presents the percentage of respondents who indicated that each item was either "extremely" or "very" important when making release/bail decisions.

The results suggest that there is a level of shared agreement on what matters in the release/detention decision among judges, prosecutors, and pretrial staff; however, defenders perceive these factors differently. For example, most judges, prosecutors, and pretrial staff indicated that current charge, pending charge, victim injury, and weapon involvement were important factors in the pretrial release decision; however, 42 percent or fewer of the defenders indicated those were important considerations. Three out of four defenders indicated that arguments made by the prosecution or defense were important considerations; this belief was only subscribed to by fewer than half of the prosecutors and 15 percent or fewer judges and pretrial staff. Criminal history and the defendant's mental condition were among the limited number of factors that garnered agreement from more than half of each type of criminal justice professional. Agreement on the fundamentals of risk and what should be considered at pretrial is important in that these more philosophical beliefs may affect courtroom actors' acceptance and use of risk assessment tools.

### *Strengths and Weaknesses of the PSA and Decision-Making Framework*

Respondents were asked about their initial perceptions of strengths and weaknesses of the PSA and the recommendations that arise from its decision-making framework. As shown in Table 3, perceptions of the decision-making framework (DMF) aligned closely with the role of each courtroom actor. Not surprisingly, judges (33 percent) were most likely to view the loss of their discretion as a weakness

of the DMF. Interestingly, this was a similar concern among prosecutors (29 percent) and public defenders (25 percent). This is

placed in context when we see that more than half of prosecutors (59 percent) felt that the DMF "would result in releasing too many

**TABLE 1**

Survey Sample of Criminal Justice Professionals (n=150) <sup>1</sup>		
	Number <sup>2</sup> /Mean	Percentage
Current profession		
Judge	42	28
Prosecutor	17	11
Public defender	12	8
Pretrial Staff	79	53
Years in current position	9.4	41 <sup>3</sup>
Years in jurisdiction	15.9	54 <sup>4</sup>
Time PSA has been used in jurisdiction		
Less than 6 months	20	13
6 to 12 months	62	42
More than 12 months	57	38
Unsure/Don't know	10	7
Experience with risk assessment prior to PSA	86	54

<sup>1</sup> We excluded 21 respondents from the analyses because they indicated having an administrative or "other" role. The analyses focus on individuals indicating being a judge, prosecutor, public defender, or pretrial staff. The pretrial staff designation includes individuals that are probation officers conducting pretrial supervision.

<sup>2</sup> The results for every item may not add to 100 percent (n = 150) due to rounding and missingness.

<sup>3</sup> Percent of respondents indicating more than 9.4 years of experience in current position.

<sup>4</sup> Percent of respondents indicating more than 15.9 years in the jurisdiction.

**TABLE 2**

### **Percentage of Criminal Justice Professionals Who Perceive Items to be "Extremely" or "Very" Important in the Decision to Release/Detain Pretrial**

Factor	All	Judges	Prosecutors	Defenders	Pretrial
Current charge(s)	76%	85%	100%	42%	68%
Pending charge(s)	90%	100%	94%	42%	91%
Criminal history	91%	88%	100%	58%	98%
Prior failure to appear	81%	83%	71%	33%	93%
Victim injury	73%	75%	100%	27%	73%
Weapon involvement	80%	88%	100%	36%	77%
Defendant's age	44%	40%	18%	33%	58%
Defendant's mental condition	58%	63%	65%	55%	54%
Defendant's substance use history	33%	40%	29%	27%	30%
Arguments made by the prosecution or defense	25%	15%	47%	75%	14%
Presence of defendant's family, friends, or caseworker	16%	18%	6%	42%	12%
Presence of victim or victim's family, friends, or caseworker	25%	30%	29%	8%	25%
Jail capacity	6%	3%	0%	17%	7%
Other	10%	15%	20%	0%	5%

defendants,” and half of defenders (50 percent) felt it “would result in detaining too many defendants.” It seems that attorneys on both sides are concerned that the recommendations from DMF are not in their best interests. Judges (45 percent) and pretrial staff (41 percent) were more likely than prosecutors (0 percent) and defenders (8 percent) to indicate that the DMF did not have any weaknesses.

Overall, these results suggest that judges and pretrial staff have fewer concerns about the DMF than either prosecutors or defenders. These perspectives align closely with their professional roles and responsibilities. For example, pretrial staff are responsible for

gathering documentation and completing the PSA; it is not surprising that they see value in their work and identify fewer weaknesses. Judges are not bound to follow the recommendations and may use their discretion to disregard it on any given case. While prosecutors and defenders can argue for or against the DMF recommendation, the ultimate decision is with the judge. In some cases, the tool may be the deciding factor against their side, and it is understandable that they may have more concern or skepticism than others.

*Impact of Risk Assessment on Communities of Color*

In addition to the impact of risk assessment on the interests of different courtroom actors, its use may also affect racial disparities in pretrial outcomes. To assess perceptions of risk assessment and racial disparities during pretrial decision-making, respondents were asked two questions: (1) In regard to pretrial release for people of color, how often is race/ethnicity an issue? (2) How often do you feel the PSA and DMF contribute to disparities in the criminal justice system? As shown in Table 4, most defenders (92 percent) indicated that race/ethnicity is an issue at pretrial for people as color, compared with only 43 percent of prosecutors and pretrial staff and 33 percent of judges. Additionally, 82 percent of defenders believed that the PSA and decision-making framework contributed to racial and ethnic disparities in the criminal justice system.

*PSA Influence on Release/Bail Requests and Decision-Making*

Finally, respondents were asked about the extent to which they agree with recommendations from the tool and how frequently they use it (Table 5, next page). Virtually zero respondents indicated that they “always” or “never” agreed with the PSA recommendation. Judges (63 percent) and pretrial staff (72 percent) were more likely to indicate they agreed with it “often.” Half of defenders and 38 percent of prosecutors indicated they agree with the recommendation “sometimes.” Nearly one in three prosecutors “rarely” agree with it. This is consistent with earlier results suggesting that judges and pretrial staff saw fewer weaknesses in the DMF than prosecutors and defenders.

Agreement with the recommendations is aligned with how often courtroom actors indicate that the PSA informs their requests and decisions regarding the release/bail decision such that those who agree with its recommendations are more likely to use it. Nearly 80 percent of judges reported that the PSA “always” or “often” informs their release decision, while only 41 percent of prosecutors and 42 percent of defenders indicated that the PSA informs the release/detention request they make to the judge. Respondents were also asked job-specific questions about the tool’s usefulness at achieving specific goals (data not shown). More than half of judges indicated it had been useful when making a release decision, and nearly all defenders indicated it had been useful in securing a client’s release.

**TABLE 3**  
Percentage of CJ Professionals Who Perceived Strengths and Weaknesses of the PSA

	All	Judges	Prosecutors	Defenders	Pretrial
<b>Strengths of PSA</b>					
No defendant interview	37	19	24	50	48
Separate scores for FTA, NCA, NVCA	57	60	35	50	62
Time efficiency	43	45	24	25	49
Focus on risk	62	69	29	67	65
Not charge-based	29	17	6	75	33
Research-based	69	67	41	67	76
Developed from a national dataset	40	33	29	25	48
Other	4	5	18	8	0
No strengths	3	0	12	8	1
<b>Weaknesses of PSA</b>					
No defendant interview	32	36	24	42	30
Loss of judicial discretion	17	29	24	17	9
Not charge-based	30	36	47	8	27
Important factors were left out	37	36	71	25	33
Other	13	2	24	50	10
No weaknesses	17	14	0	8	23
<b>Weaknesses of DMF</b>					
Loss of judicial discretion	22	33%	29%	25%	14%
Release too many defendants	16	13%	59%	0%	10%
Detain too many defendants	16	8%	6%	50%	18%
No weaknesses	34	45%	0%	8%	41%

**TABLE 4**  
Perceived Impact on Communities of Color from a Pretrial Risk Assessment

	All	Judges	Prosecutors	Defenders	Pretrial
In regards to pretrial release for people of color, how often is race/ethnicity an issue?					
Always/Often/ Sometimes	44%	33%	43%	92%	43%
How often do you feel the PSA and decision-making framework contribute to racial/ethnic disparities in the criminal justice system?					
Always/Often/ Sometimes	27%	17%	47%	82%	21%

**TABLE 5**  
**Agreement with and Use of the PSA**

	All	Judges	Prosecutors	Defenders	Pretrial
<b>How often do you agree with the PSA recommendation?</b>					
Always	2%	0%	0%	0%	5%
Often	61%	63%	31%	42%	72%
Sometimes	31%	37%	38%	50%	21%
Rarely	6%	0%	31%	8%	2%
Never	0%	0%	0%	0%	0%
<b>How often does the PSA inform your release/bail decision [judges] or your release/bail request to the judge [prosecutors/defenders]?</b>					
Always	24%	31%	6%	25%	N/A
Often	39%	48%	35%	17%	N/A
Sometimes	21%	19%	18%	33%	N/A
Rarely	11%	2%	29%	17%	N/A
Never	4%	0%	12%	8%	N/A

However, most prosecutors reported that the PSA had not been useful in ensuring the detention of higher risk defendants. Moreover, prosecutors reported that they rarely or never invoke the PSA if the recommendation is release, but nearly half will mention it if the recommendation is detention. Nearly all pretrial staff indicated that the PSA had been useful in managing and assessing risk; slightly fewer indicated it had been useful in ensuring that pretrial defendants receive the type and level of services/resources appropriate for their risk level.

## Discussion

Several findings from the current study are worth discussing. First, we identified a level of shared agreement between courtroom actors in terms of items they considered important in the context of a decision to detain or release a pretrial defendant. The views among judges and prosecutors were more similar in terms of the perceived importance of current and pending charges, criminal history, prior FTAs, victim injury, and weapon involvement. Judges and prosecutors also agreed in their belief that the PSA is not based on current charges. The prosecutor and defenders agreed on the PSA's lack of time efficiency and on the importance of the arguments they presented to the court about the defendant.

Importantly, jail capacity is a shared non-concern among all courtroom workgroup actors for the decision to release/detain, which is interesting considering national concern about and legal attention to overincarceration (see Travis et al., 2014; Wagner & Rabuy, 2017), especially among pretrial defendants

being detained in local jails (see Schlanger, 2006). Specifically, among the 693,300 inmates who were incarcerated in local jails at yearend in 2015, at total of 434,600 (62.7 percent) were being detained prior to a conviction (Minton & Zeng, 2016). These findings indicate that the assessments of offender blameworthiness and perceived threats to public safety are perhaps more important considerations in a judge's calculus than the practical constraints related to detaining or releasing a defendant at the pretrial stage.

This study also adds to the literature on the courtroom workgroup by measuring and describing views among a less explored courtroom actor—pretrial officers. For the most part, pretrial officers were similar to judges in their views about factors assessed in the decision to release or detain a defendant. The role of pretrial officers is to complete the PSA tool based on known information about the defendant and submit this assessment to the judge. These actors may be probation officers who supervise the defendant or court staff members who take a clerical role in the criminal cases. One exception to this pattern concerns the PSA's strengths and weaknesses, where a higher percentage of pretrial officers (relative to judges) perceived not having a defendant interview as a strength of the tool. Based on the findings, the interests of pretrial officers are to have as much information as possible about the defendant to inform the judge's decision. Similar to the judge, pretrial officers are concerned with optimizing case flow efficiency, which these actors believe is strengthened by the PSA tool.

At the same time, there were also some

notable differences in the views between the actors. Prosecutors departed from the other actors in their beliefs about the importance of the defendant's age or presence of defendant's family, friends, or caseworker. They were also less concerned about the strengths and weaknesses posed by having separate scores for FTA, NCA, and NCVA, which other courtroom actors were more likely to deem a strength. Compared to other actors, prosecutors also perceived the PSA to be excluding important factors relevant to a pretrial release decision. Prosecutors are concerned with filing charges, securing a conviction where possible and necessary, and having discretion to bargain charges (Miller & Sloan, 1994).

Separately, defenders were less enthusiastic about the presence of the victim or victim's family, friends, or caseworker. Finally, while defenders believed that the DMF detained too many defendants, prosecutors believed that this tool released too many defendants. Combined, these findings suggest that courtroom work group actors may be more likely to adopt the recommendation provided by the assessment tool if they believe the pretrial assessment tool captures items important for their argument.

Second, and in light of the literature on risk assessment tools, we should highlight courtroom actors' views about the relevance of the PSA to understanding and contributing to racial and ethnic disparities in the criminal justice system. Nearly all public defenders believe that a defendant's race and ethnicity are issues that enter into the pretrial release decision; however, nearly all of them also believed that the PSA contributes to racial/ethnic disparities in the criminal justice system. While theoretical and hypothetical linkages between race and risk factors have been established (Skeem & Lowenkamp, 2016),<sup>5</sup> empirical bases for this relationship have been refuted (Flores, Bechtel, & Lowenkamp, 2016). Nonetheless, defenders in this sample still

<sup>5</sup> Scholars have argued that prediction variables within specific risk assessment tools are associated with race and may be biased against minorities (Smykla, 1986). In a validation of the LSI-R, Whiteacre (2006) assesses the possibility of false positives in classification in which certain groups of individuals may be over-classified and therefore receive more limitations on their privileges and freedoms. This author also draws attention to the fact that many risk assessment tools are validated using Caucasian male samples (see also Bloom, Owen, & Covington, 2003). Specifically, Whiteacre (2006) draws attention to the use of employment status and educational achievement as items of particular concern for introducing bias.



perceive the PSA to be contributing to racial and ethnic disparities.

Third, most courtroom actors at least sometimes agreed with the PSA recommendations and reported that it had informed their decision or request regarding bail or release. All judges in our sample reported that they at least sometimes agreed with the PSA recommendation, which is important considering they make the final decision. Additionally, 98 percent of judges in our sample indicated that the PSA at least sometimes informs their decision. This finding bodes well for the adoption of the PSA, since the judge is arguably the most powerful member of the courtroom workgroup in deciding whether to release or detain a defendant. In contrast to the acceptance among judges, 31 percent of prosecutors reported that they rarely agree with the PSA's recommendation, and 41 percent of them say that the PSA does not inform their release/detain request to the judge.

## Conclusion

In this article, we hope to contribute to an understanding of how risk assessment instruments are perceived and used by criminal justice actors during pretrial. We demonstrated the factors that criminal justice professionals believe should be considered in the release decision and whether this varies across professional fields. The survey showed the perceived strengths and weaknesses of the PSA and found how these perceptions vary by professions and whether it aligns with the factors that criminal justice professionals considered important. The survey included items about the potential racial/ethnic discrimination during pretrial and the impact that risk assessment may have on disparate treatment. We concluded by discussing whether (and how) the PSA influences judicial decision-making as well as prosecutorial and defense requests during the release/detention decision.

Researchers who examine the role of pretrial risk assessment in influencing release/detainment decisions should continue to explore how attitudes of the courtroom workgroup shape the use of these tools. While there was some level of shared agreement about the PSA, certain courtroom actors departed from others in their opinions about the tool in some domains. Much like structured guidelines at the sentencing stage, the recommendations of pretrial risk assessment tools are voluntarily followed by judges. Generally, however, future studies on actuarial risk assessment tools that guide sentencing decisions should better understand the link between legal actor

views, perceived legitimacy, and adoption of scores. Although the courtroom workgroup perspective theorizes that decision making at different stages of the criminal court process is shaped by multiple players, the judge makes the final decision to detain or sentence. Previous qualitative work by Gebo, Stracuzzi, and Hurst (2006) highlights the need to study differences in courtroom workgroup views about actuarial risk assessment tools across jurisdictions of varying sizes, resources, and workload. Both qualitative and quantitative studies should continue to examine how the different courtroom actors contribute to the ultimate decision to incarcerate a person: an outcome which is especially important due to the plethora of collateral consequences for an individual resulting from such a decision.

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# Residential Drug Treatment for High-Risk Probationers: Evaluating the Link between Program Integrity and Recidivism<sup>1</sup>

*W. Carsten Andresen  
St. Edward's University, Texas*

**DURING THE 1970s**, several prominent research reviews seemed to indicate that community corrections programs and prison-based interventions were ineffective at rehabilitating criminal offenders (Cullen, 2005; Maltz, 1984).<sup>2</sup> Broad reviews of research by Lipton et al. (1975) and Martinson (1974) stated that correctional programs—across the board—were incapable of reducing recidivism among offenders, including juveniles, probationers, parolees, and prison inmates. Additional social scientists of the day conducted further reviews and arrived at the same pessimistic findings, but with an additional criticism. These researchers criticized the prior evaluators whose studies had arrived at positive findings, faulting their methodologies, analyses, findings, and ultimately, even their personal motivations for undertaking these evaluations (Fienberg and Grambsch, 1979; Greenberg, 1977; Sechrest et al., 1979).

Despite these blanket criticisms of correctional programming, a few scholars reviewed the original “pro-rehabilitation” evaluations and reexamined the methodologies that led their contemporaries to arrive at the conclusion that rehabilitation was futile (Cullen, 2005; Maltz, 1984). A careful reading of

the original studies, considered outside the context of the 1970s research reviews, ultimately revealed a different and less extreme set of conclusions about the utility of correctional programming. In an examination of Martinson’s original study, Palmer (1975, 1978) highlighted that more than half of the studies analyzed actually had positive results and demonstrated reductions in recidivism among program participants—a point omitted from Martinson’s review (Cullen, 2005; Maltz, 1984). Based on his re-analysis, Palmer advanced a more nuanced thesis, stating that although no correctional program could rehabilitate everyone, several specific correctional programs could, if delivered in a specific manner to specific offenders, reduce recidivism. Although this more practical thesis lacked the simplistic allure of a more absolute position (i.e., Tough on Crime), the precision of Palmer’s reanalysis set a new research standard for a sustained inquiry into the nature of recidivism, recidivism reduction, and correctional programming (Cullen, 2005). Indeed, in subsequent research, Martinson (1979) reversed his original negative findings about correctional programming, to affirm that some treatment could reduce recidivism among specific offenders (Cullen, 2005).

The notion that specific correctional programming could reduce recidivism if tailored to specific offenders marked the beginning of an expansive period of correctional program theory and research (Cullen, 2005). Several scholars began to develop

improved supervision practices and correctional programs based on research. Canadian criminologists who are now well known—Andrews, Bonta, Gendreau—built a cannon of empirical research that demonstrated the importance of focusing on criminogenic risk-need factors when supervising and providing treatment to offenders (Cullen, 2005). The Canadian School also stressed the importance of assessing program integrity in correctional programs to ensure that interventions derived from theory and were properly implemented in the field (Gendreau et al., 1999). Some American criminologists also partnered with community corrections practitioners to provide assistance to improve the quality of their supervision and treatment (Cullen, 2005).

Following the example of the Evidence-Based Practices (EBP) movement within the medical profession, criminologists developed their own EBP approach to community corrections research, referring to their growing collection of empirical studies as the “what works” research. At present, the community corrections research has identified several best practices for administering correctional programs.<sup>3</sup> Specifically, the “what works” correctional research indicates that correctional programs should target higher risk offenders (Andrews et al., 2006; Bonta, 2002), employ cognitive-behavioral interventions

<sup>1</sup> Any opinions or views expressed in this study are the author’s and do not represent opinions or views held by Travis County Adult Probation, or any other agency or individual.

<sup>2</sup> This review summary is derived from Maltz (1984) and Cullen (2004) and is by no means intended as a historical overview.

<sup>3</sup> The “what works” research provides guidance for supervising people in the community, in institutional settings, and in maintaining effective court programs.

(Lowenkamp et al., 2009; Wilson et al. 2005), and tailor their service-delivery to the personalities and backgrounds of the program participants themselves (Lowenkamp et al., 2006a; Lowenkamp et al., 2006b).

Recent studies continue to indicate that correctional programs that follow the “what works” research seem to result in favorable outcomes among participants. Perez (2009) found that a treatment group of high-risk probationers who participated in a residential substance abuse program had fewer violent and property offense arrests and fewer convictions during an 18-month follow-up. The treatment group, however, did have a higher percentage of overall arrests, drug and “other” offense arrests, and incarcerations. A recent evaluation of a case management program for drug-involved women demonstrated clinical improvements over a 12-month period, but no changes in incarcerations (Guydish et al., 2008). A study of a specialized program for probationers suffering from chronic mental illness by Ashford et al. (2008) found reductions in arrests, but increased percentages of technical violations. Finally, Krebs et al. (2009) found that a correctional sample benefitted from nonresidential treatment, taking longer to recidivate than a comparison group who did not receive treatment and a group that received residential treatment. While these studies suggest that treatment programs that target high-risk or specialized offenders can reduce recidivism, the field could benefit from more discussion of how these studies ascertained the integrity of these programs to the “what works” research, especially since program implementation is often overlooked in establishing and managing a correctional program (Gendreau et al., 1999). Providing additional information about assessing program quality could provide guidance to future attempts to more precisely analyze the link between program integrity and recidivism.

The current study provides an outcome evaluation of a probation-run residential drug treatment facility in Travis County, Texas. This study is important for several reasons. First, this study focuses on a program that external evaluators from the University of Cincinnati assessed using the Correctional Program Assessment Inventory (CPAI) and the Correctional Program Checklist (CPC), standardized instruments for measuring correctional programs. Second, this study uses several recidivism measures to examine the effectiveness of this program. Third, this study adds to the research that examines whether

there is a connection between program integrity and recidivism outcomes.

### **Correctional Program Assessment Inventory (CPAI)**

For many years, researchers have used the CPAI to evaluate the integrity of correctional treatment programs. The CPAI, which was created by Gendreau and Andrews in 1994, comprises 65 items that measure treatment programs along six dimensions: the implementation of the program, the initial participant assessment, the quality and type of treatment, staff training and practices, evaluation, and other characteristics of the program (Gendreau & Andrews, 1994; Lowenkamp, 2004). During site visits to correctional programs, specially trained evaluators administer the CPAI, filling out the instrument as they analyze official program documents, conduct staff and participant interviews, and complete on-site observations of the program in action. Ultimately, the CPAI evaluator assigns each of the six program dimensions a percentage score that falls into one of the following categories: very satisfactory (70 percent +), satisfactory (60-69 percent), needs improvement (50-59 percent), or unsatisfactory (less than 50 percent). The evaluator also sums up each dimension score to arrive at an overall composite program score. Recently, evaluators have begun using the CPC, a new tool based on the CPAI, to measure the content and capacity of correctional programs. While the CPC differs from the CPAI in a few ways—there are variations in the assessment dimensions, items, and percentage scoring designations—this tool captures program integrity along largely similar criteria.

By creating a standardized scale to assess correctional program integrity, the CPAI/CPC established a foundation, a baseline, for researchers to conduct a sustained examination of what constitutes effective correctional programming. Researchers at the University of Cincinnati, for example, have conducted hundreds of CPAI assessments, primarily within the United States, and maintain a database of over 400 CPAI/CPC evaluations. Because they have a multitude of CPAI/CPC evaluations, these researchers have the ability to compare both the variety of correctional programs within the United States and the quality of these programs, based on the “what works” research. The University of Cincinnati researchers can also examine the progress of specific types of programs over time.

Several researchers have drawn on the

CPAI data to analyze the link between correctional program integrity, as evaluated by the CPAI, and specific recidivism outcomes. Researchers have analyzed the CPAI in community corrections studies (Lowenkamp et al., 2006) and doctoral dissertations (Holsinger, 1999; Lowenkamp, 2004; Nesovic, 2003). The prevalent theme throughout this research emphasizes the importance of ensuring program fidelity to the tenets of EBP. In an outcome study of 97 residential and nonresidential programs previously assessed by the CPAI, Lowenkamp et al. (2006) found that treatment programs that focused on high-risk offenders and that provided longer lasting treatment, demonstrated reductions in recidivism. These findings affirm the importance of program integrity in a positive way, emphasizing the demonstrated success of a quality and research-based intervention on future criminal behavior.

This research also confirms the importance of program integrity by presenting the recidivism figures for programs that received low CPAI scores. Treatment programs that targeted low-risk offenders for a short period of time, using non-cognitive interventions, experienced increased recidivism from their participants. Lowenkamp et al. (2006) found that programs that received low CPAI scores had higher recidivism than those that received high CPAI scores. A recent evaluation conducted by Latessa et al. (2009), which examined 54 residential correctional programs that received low CPAI scores, also found increased recidivism among treatment participants compared to a non-treatment comparison group. While correctional programs with high integrity scores seem to reduce recidivism; conversely, programs with low integrity scores appear to be linked to increased criminal behavior.

### **SMART Program**

In 1991, Travis County Adult Probation developed the SMART Program to provide residential drug treatment. The SMART Program has increasingly drawn from the “what works” research to improve the services that they deliver to their clients.<sup>4</sup> For

<sup>4</sup>At Travis County Adult Probation, the focus on the connection between program integrity and recidivism outcomes occurs within a context of EBP. Beginning in the fall of 2005, the Department began to change several dimensions of their organization to implement EBP (i.e., developing a new risk-need assessment diagnostic process, revamping supervision practices to focus on probationers’ risk-need factors and officer-probation supervision plans,

the past decade, for example, the SMART Program has used a cognitive-behavioral approach to provide drug treatment services to men and women in a residential setting, with an aftercare component for successful graduates (Shaffer & Thompson, 2008; Travis County Adult Probation, 2009). The SMART Program, which provides treatment services to high-risk felony and, in some cases, misdemeanor probationers, lasts an average of 11 months (including both residential and continuing care). Outside evaluators have played an important role in improving the SMART Program. Researchers from the University of Cincinnati have evaluated SMART three times using the CPAI/CPC from 1999 thru 2008 (Latessa, 2002; Latessa, 1999; Shaffer & Thompson, 2008). During the three assessments, the SMART Program has earned high

and developing the capacity to use official administrative records as data to evaluate their progress). The Travis County Adult Probation website has more information about this process, documented in several official reports and articles: [http://www.co.travis.tx.us/community\\_supervision/default.asp](http://www.co.travis.tx.us/community_supervision/default.asp)

scores in each of the dimensions, as well as the composite score, and over time, has made improvement in select program dimensions (see Table 1).

Guided by the correctional program research, which suggests that programs that target high-risk clients using a cognitive approach tailored to their clients' personal characteristics can reduce recidivism (Lowenkamp et al., 2006), this research focuses on correctional outcomes. Since the CPC assessment most recently identified the SMART Program as a highly effective program, the current study hypothesized that successful SMART participants would have lower recidivism compared to probationers who did not receive treatment. Specifically, this research hypothesized that successful SMART completers would have fewer arrests and probation revocations than a comparison group.

## Methods

### Participants

This study used a treatment and comparison

group to examine 1,048 Travis County Adult Probationers. The treatment cases include all probationers (N = 554) who successfully completed the SMART Program for three fiscal years (2006-2008).<sup>5</sup> The present analysis omits unsuccessful SMART discharges, which include those who absconded from treatment, who staff deemed to be inappropriately placed in the facility, who had their probation revoked while in SMART, and who committed program violations that resulted in their expulsion from SMART.<sup>6</sup>

This study excluded the unsuccessful SMART discharges for two reasons.<sup>7</sup> Prior evaluations of correctional programs have focused on participants who received the full dosage of the expected treatment regiment, as opposed to a percentage of the treatment (Lowenkamp & Latessa, 2004). Drawing on a medical analogy, Lowenkamp and Latessa (2004) succinctly argued in favor of only including successful correctional program completers because those who do not complete treatment have not received the full dosage of treatment:

We would not expect medical treatments to be as effective if a participant dropped out of the treatment halfway through an experimental trial. Likewise, we would not expect a correctional intervention to be as effective when an offender is only exposed to half of the treatment (p. 507)

Similarly, the present study is interested

<sup>5</sup>The fiscal year for Travis County Adult Probation begins 1 September and ends 31 August. The fiscal year for 2006, for example, started on 1 September 2005 and ended on 31 August 2006. Every adult probation agency in Texas uses the same dates for their fiscal year.

<sup>6</sup>Although most successful SMART participants went through the program a single time, a few probationers completed the residential program after enrolling in the residential treatment a second time. For these few probationers, we coded their second discharge date from SMART as their fiscal year of discharge. Because this analysis focused on individuals on probation as the unit of analysis, rather than the probation case, we excised the first SMART discharge for probationers who completed SMART after a second try.

<sup>7</sup>The unsuccessful SMART discharges represent only a small percentage of discharges for the fiscal years 2006-2008. Of 673 discharges, 83.1% discharged successfully, 7.6% absconded, 2.8% were discharged as inappropriate placements, and 6.5% were discharged for violations. The percentage of unsuccessful SMART discharges is relatively constant over the three-year period.

**TABLE 1**  
**SMART Correctional Program Assessment Inventory /**  
**Correctional Program Checklist Assessments**

Correctional Program Assessment Inventory	August 1992	January 2002
<b>Overall Score</b>	<b>61.8</b>	<b>67.1</b>
- Implementation	71.4	85.2
- Assessment	58.3	83.0
- Treatment	61.5	53.8
- Staff	54.5	72.7
- Evaluation	42.8	28.4
- Other	83.3	83.3

very satisfactory = 70% or higher  
satisfactory = 60% - 69%  
needs improvement = 50% - 59%  
unsatisfactory = less than 50%

Correctional Program Checklist	November 2008
<b>Overall Score</b>	<b>70.7</b>
- Leadership	71.4
- Staff	72.7
- Assessment	100.0
- Treatment	58.8
- Quality Assurance	62.5
- Capacity	69.7
- Content	71.4

highly effective = 65% - 100%  
effective = 55% - 64%  
needs improvement = 46% - 54%  
ineffective = less than 46%

in the effectiveness of the full SMART treatment—the benefit the probationer accrues upon successfully completing the program—over an 18-month follow-up period.

This study also excluded the unsuccessful program discharges because, on a conceptual level, it is complicated to create an appropriate follow-up period for these probationers. This study would have had to distinguish between unsuccessful discharges who participated in SMART for only a few days compared to those who had spent a month or longer in the program. Prior research has also noted the additional complication that it is difficult to devise a follow-up time for unsuccessful correctional program participants because, as a result of their unsuccessful treatment, they often find themselves sentenced to a more restrictive environment such as prison (Lowenkamp & Latessa, 2004). For similar reasons, this research omitted unsuccessful SMART probationers who absconded or who found themselves sentenced to correctional facilities. Finally, this research omitted the small percentage of probationers who found themselves unsuccessfully discharged from SMART as inappropriate placements. These probationers often had committed no violations, but suffered from physical or psychological health issues that made them unable to participate in the SMART residential program.

To construct the comparison group, this study began with a sampling frame of all Travis County adult probation placements for fiscal years 2006–2008. This study removed any probationers from the sampling frame who had previously entered the SMART Program.<sup>8</sup> Next, this study removed any probationers who had committed an enhanced or aggravated felony offense, since these offenses automatically bar probationers from admission into the SMART Program. This study then focused on the people in the sampling frame who had multiple probation cases to ensure that they were not selected multiple times for the comparison group. In instances where people had multiple probation cases, this study selected the most recent case based on the probation date, and eliminated the remaining cases. If the individual began his or her probation sentence for multiple probation cases on the same date, this study selected the most serious case based on the criminal charge and eliminated the remaining cases.

To create the actual comparison group, this

study conducted a one-for-one match with the SMART Program treatment group across seven individual-level variables. This study matched the treatment and comparison group on gender, race-ethnicity, offense degree (felony, felony-reduced, misdemeanor), offense category (violent, DWI, drug, property, other), and start year (fiscal year). For the treatment group, the start year is the fiscal year that the SMART Program successfully discharged the probationer. For the comparison group, the start year is the fiscal year the probationer began his/her community supervision term. This study also matched the treatment and comparison groups on two time-sensitive variables: age range at probation start date (17 thru 21, 22 thru 25, 26 thru 30, 31 thru 40, 41 thru 50, 51+) and composite risk assessment score (maximum, medium, minimum) at probation start date. Ultimately, this study was unable to create an equal number of one-for-one matches for our SMART completers, which resulted in a slightly smaller comparison group. Prior evaluations of correctional programs, however, have established a precedent for using smaller comparison groups (Lowenkamp & Latessa, 2004; Lowenkamp et al., 2010).

### *Measures*

This study used an 18-month follow-up time to track the treatment and comparison groups for potential recidivism events. The beginning of the 18-month period for the SMART completers started on the probationer's residential treatment discharge date, when he or she began to live independently in the community, supervised by a field officer. The start date for the comparison group began on the date the probationer started his or her community supervision term.

The current study used arrest and probation data to examine recidivism events for each group. This study submitted the probationers' State Identification Numbers (SIDs) to the Texas Department of Public Safety (DPS) to obtain arrest data. Using the SID, DPS provided criminal arrest histories for the probationers. A limitation of Texas DPS arrest data is that they generally exclude out-of-state arrests. If a probationer leaves the state, offends, and is arrested—it is quite possible that the arrest will not appear in these DPS arrest data. From the arrest data, this study created two dummy coded arrest variables: arrested at least once (0 = no arrest; 1 = at least one arrest) and multiple arrests (0 = at most one arrest; 1 = at least two arrests).

This study used Travis County Adult

Probation data to analyze revocation outcomes among these probationers. This study dummy coded the revocation data three ways: technical violations (0 = no technical violation revocation; 1 = revoked for technical violation), new offense revocations (0 = no new offense revocation; 1 = revoked for new offense), and any revocation (0 = not revoked; 1 = revoked). This study also developed a variable to capture any type of recidivism, arrest and/or revocation (0 = no recidivism; 1 = recidivism).

This study also created dichotomous dummy-coded variables for the independent variables. These variables include group (0 = SMART completers; 1 comparison group); age (0 = 17–30; 1 = 31+), gender (0 = female; 1 = male), race-ethnicity (0 = nonwhite; 1 = white), offense degree (0 = misdemeanor; 1 = felony), fiscal start year 2006 (0 = no; 1 = FY 2006), fiscal start year 2007 (0 = no; 1 = FY 2007), fiscal start year 2008 (0 = no; 1 = FY 2008), and risk score (0 = non-high-risk; 1 = high-risk). This study also developed the following five dummy variables to capture the probationer's original offense: violent (0 = non-violent, 1 = violent), DWI (0 = non-DWI, 1 = DWI), drug (0 = non-drug, 1 = drug), property (0 = non-property, 1 = property), and other (0 = non-other, 1 = other).

### *Analysis*

This study ultimately conducted several analyses to examine potential differences between the SMART treatment and control groups. First, this study conducted multiple chi-square analyses on the original demographic, risk, and criminal history variables used to match the treatment and comparison group, as well as the dummy-coded dichotomous variables created for additional analyses. Second, this study conducted a chi-square analysis for each recidivism measure to determine whether the percentage differences between the two groups rose to the level of statistical significance. Third, this research conducted six bivariate analyses—each recidivism measure served as a dependent variable in a separate model—to examine whether there were statistically significant differences between the SMART completers and the comparison group. Finally, this study conducted six logistic regressions—each of the six recidivism measures served as a dependent variable in a distinct model—to control for any treatment and comparison group variations that might arise due to differences in demographics, risk scores, and criminal offense variables.

<sup>8</sup> We also checked to make sure that none of these probation placements later entered SMART during fiscal years 2009 and 2010.

**TABLE 2**  
**Study Descriptives, Variables, and Chi-Square Analyses**

Variables		Treatment (N = 559)	Comparison (N = 489)
Race-Ethnicity	- African-American	17.7%	17.2%
	- Asian	0.2%	0.0%
	- Caucasian	46.7%	46.0%
	- Hispanic	34.7%	36.8%
	- Other	0.7%	0.0%
Age Range	- 17 thru 21 years	8.9%	10.0%
	- 22 thru 25 years	19.0%	20.2%
	- 26 thru 30 years	18.2%	19.8%
	- 31 thru 40 years	26.3%	25.4%
	- 41 thru 50 years	20.8%	19.2%
	- 51 or older	6.8%	5.3%
Offense Degree	- Felony	94.3%	94.3%
	- Felony-Reduced	1.3%	1.2%
	- Misdemeanor	4.5%	4.5%
Offense Category	- Violent (no sex)	3.0%	3.3%
	- Drug	46.7%	49.1%
	- DWI	27.7%	24.5%
	- Property	14.3%	16.2%
	- Other	8.2%	7.0%
Closest Risk Score <sup>^</sup>	- Maximum	85.8%	85.7%
	- Medium	13.9%	14.1%
	- Minimum	0.4%	0.2%
	- Missing	25	21
<b>Dependent Variables</b>			
** Arrest	- 1 = Yes	25.9%	36.2%
** Arrest 2+	- 1 = Yes	11.1%	17.0%
* Technical Revocation	- 1 = Yes	14.3%	10.0%
** New Offense Revocation	- 1 = Yes	10.6%	16.2%
Revocation	- 1 = Yes	24.9%	26.2%
* Any Recidivism	- 1 = Yes	37.4%	44.4%
<b>Independent Variables</b>			
Sex % Female	- 1 = Yes	18.1%	15.5%
Race-Ethnicity % Caucasian	- 1 = Yes	53.3%	54.0%
Age % 31+	- 1 = Yes	53.8%	49.9%
Offense Degree % Felony	- 1 = Yes	94.3%	94.3%
Offense % Violent	- 1 = Yes	3.0%	3.3%
Offense % Drug	- 1 = Yes	46.7%	49.1%
Offense % DWI	- 1 = Yes	27.7%	24.5%
Offense % Property	- 1 = Yes	14.3%	16.2%
Offense % Other	- 1 = Yes	8.2%	7.0%
Initial Risk % Maximum	- 1 = Yes	81.9%	82.0%
Start % FY 2006	- 1 = Yes	33.8%	34.8%
Start % FY 2007	- 1 = Yes	33.5%	33.7%
Start % FY 2008	- 1 = Yes	32.7%	31.5%

\*\*  $p < .01$

\*  $p < .05$

<sup>^</sup> Missing risk score-probationers excluded from base.

## Results

Table 2 shows the results of the chi square analysis of the original and dummy-coded variables used to match the probationers of both groups. Despite the smaller number of comparison group probationers, these groups closely resemble one another and there are no statistically significant differences between the two.

The Table 2 results also include the chi-square recidivism analysis for the SMART completers and the comparison group. Consistent with prior evaluations of correctional treatment programs that received high composite scores on the CPAI, the SMART Program probationers had a smaller percentage of new arrests, multiple arrests, new offense revocations, and overall instances of general recidivism. Contrary to initial expectations, however, the SMART Program probationers had a higher percentage of revocations for administrative violations than the comparison group. This higher percentage of administrative violations also impacted the percentage of overall revocations for the SMART completers, increasing the overall percent of revocations. Although the SMART completers had a slightly smaller percentage of revocations than the comparison group, this difference did not rise to the level of statistical significance.

This study also conducted six bivariate analyses of the various recidivism measures on the group variable, which distinguished between the SMART treatment participants and the comparison group probationers. These analyses, which appear in Table 3, reveal significant differences between the groups for several recidivism measures, with the comparison group being statistically more likely to be rearrested at least once, arrested multiple times, to be revoked for a new offense, and to commit any type of recidivism. At the same time, this bivariate analysis revealed that the comparison group was statistically less likely than the treatment group to be revoked for a technical revocation. The next question this research examined was whether some other demographic, risk score, or offense history variable might be accounting for these group differences.

In Table 4, this study presents the results of the six logistic regressions for the SMART Program probationers and the comparison group. The differences in recidivism between the SMART completers and the comparison group remain statistically significant, while controlling for demographics, risk scores,



and criminal offense variables. For these six logistic models, this study omitted fiscal year 2006 as a comparison group for start year and violent offense as a comparison group for

offense type. Examining the logistic regression models reveals that compared to the SMART completers, comparison group probationers were 60 percent more likely to be

arrested at least once, 58 percent more likely to be arrested multiple times, 58 percent more likely to be revoked for a new offense, and 30 percent more likely to engage in general

**TABLE 3**  
**Bivariate Analyses**

Group	Model 1. Any Arrest			Model 2. Arrest 2+			Model 3. Technical Revocation		
	B	SE	Exp(B)	B	SE	Exp(B)	B	SE	Exp(B)
Group	0.48**	0.14	1.62	0.49**	0.18	1.64	-0.41*	0.19	0.67
Group	Model 4. New Offense Revocation			Model 5. Revocation			Model 6. Any Recidivism		
	B	SE	Exp(B)	B	SE	Exp(B)	B	SE	Exp(B)
Group	0.49**	0.19	1.63	0.07	0.14	1.07	0.29*	0.13	1.34

\*\* p < .01  
\* p < .05

**TABLE 4**  
**Logistic Regression Models 1-6 Using all Probationers (N = 1,048)**

	Model 1. Any Arrest			Model 2. Arrest 2+			Model 3. Technical Revocation		
	B	SE	Exp(B)	B	SE	Exp(B)	B	SE	Exp(B)
Group	0.47**	0.14	1.60	0.46**	0.19	1.58	-0.44*	0.20	0.64
FY 2007	0.21	0.18	1.24	0.18	0.23	1.19	-0.45*	0.23	0.64
FY 2008	0.24	0.18	1.27	0.12	0.24	1.13	-0.73**	0.25	0.48
Sex	0.02	0.20	1.02	0.02	0.26	1.02	0.52*	0.24	1.69
Race-Ethnicity	-0.50**	0.15	0.61	-0.49**	0.19	0.61	0.00	0.20	1.00
Offense-Degree	0.07	0.34	1.07	-0.29	0.45	0.75	-0.73	0.43	0.48
Risk	0.51**	0.21	1.66	0.60*	0.30	1.83	1.27**	0.35	3.54
Age	-0.90**	0.15	0.41	-0.59**	0.20	0.56	0.49*	0.20	1.63
Drug Offense	-0.15	0.39	0.86	0.56	0.56	1.76	-0.23	0.52	0.79
DWI Offense	-1.11**	0.41	0.33	-0.81	0.62	0.45	-1.35*	0.57	0.26
Other Offense	-0.47	0.45	0.62	0.17	0.63	1.19	-0.35	0.61	0.71
Property offense	-0.08	0.41	0.92	0.63	0.58	1.87	0.24	0.54	1.27
Constant	-0.69	0.53	0.50	-2.24	0.75	0.11	-1.82	0.72	0.16
	Model 4. New Offense Revocation			Model 5. Revocation			Model 6. Any Recidivism		
	B	SE	Exp(B)	B	SE	Exp(B)	B	SE	Exp(B)
Group	0.46*	0.19	1.58	0.03	0.15	1.03	0.26*	0.13	1.30
FY 2007	0.41	0.23	1.50	-0.02	0.18	0.98	0.03	0.16	1.03
FY 2008	0.28	0.25	1.32	-0.27	0.19	0.77	-0.06	0.17	0.94
Sex	-0.02	0.26	0.98	0.31	0.19	1.37	0.19	0.18	1.21
Race-Ethnicity	-0.51**	0.20	0.60	-0.31*	0.15	0.73	-0.40**	0.14	0.67
Offense-Degree	0.29	0.50	1.34	-0.27	0.35	0.76	-0.11	0.31	0.90
Risk	0.49	0.30	1.64	0.95**	0.24	2.58	0.77**	0.19	2.16
Age	-0.64**	0.21	0.53	-0.09	0.16	0.91	-0.56**	0.14	0.57
Drug Offense	-0.09	0.49	0.92	-0.19	0.39	0.82	-0.13	0.37	0.88
DWI Offense	-1.07*	0.55	0.34	-1.39**	0.43	0.25	-1.20**	0.39	0.30
Other Offense	-0.20	0.56	0.82	-0.32	0.45	0.73	-0.26	0.43	0.77
Property offense	-0.02	0.51	0.98	0.13	0.41	1.14	0.05	0.40	1.05
Constant	-2.31	0.74	0.10	-1.04	0.55	0.35	-0.25	0.50	0.78

\*\* p < .01  
\* p < .05

recidivism. Although the odds of each recidivism is a few percentage points less than they were in the bivariate analyses, indicating that the size of these percentage differences are affected by the control variables as well, the odds still remain high. Other statistically significant predictors of these various recidivism measures include sex, race-ethnicity, risk, age, and offense type.

## Discussion

This study of the SMART Program examines the link between correctional program integrity and recidivism outcomes. Specifically, the SMART Program sought to improve their fidelity to EBP and the “what works” research by having external researchers administer the CPAI/CPC on their program. Following the CPAI, the SMART Program focused on improving the integrity of their program, and appear to have successfully strengthened the majority of areas that prior CPAI evaluations identified as areas in need of improvement, as reflected in the most recent CPC assessment in November 2008. To test whether high measures of program integrity correlated with reductions in recidivism, this study analyzed three fiscal years of successful SMART discharges against a comparison group. Over an 18-month follow-up period, the SMART completers had a smaller percentage of probationers who were arrested one or more times, arrested multiple times, revoked as a result of a new offense, revoked, and who had committed some type of recidivism.

It is important to emphasize that although this study draws on different data sources, each analysis of each data source, when considered alone, suggests that the SMART Program is an effective residential program. Evaluators from the University of Cincinnati evaluated the SMART Program in November 2008 for content and capacity along several programmatic dimensions and assessed an overall score of 70.7 percent, placing the program into their “Highly Effective” category (Shaffer & Thompson, 2008). Out of the over 400 correctional programs the University of Cincinnati researchers have evaluated using the CPAI/CPC, only about 7 percent have earned a “Highly Effective” composite score (Shaffer & Thompson, 2008). At the same time, this study also draws on different data to test whether the SMART Program affected recidivism outcomes. This study drew on an independent data source—DPS arrest records from the State of Texas—to examine arrest incidents for an 18-month follow-up period.

This analysis found that SMART participants, compared to the comparison group, were less likely to be rearrested one or more times and also less likely to have multiple arrests. This study analyzed an additional data source, Travis County Adult Probation data, and found slight decreases in overall revocations and larger decreases in revocations for new offenses. The use of several different sources of data allows for more confidence in the finding that the SMART Program is an EBP correctional program that appears to reduce future recidivism.

This study is also important because it tracks the SMART treatment and control groups across a variety of recidivism measures. The inclusion of multiple recidivism measures provides a broader context to examine, with greater specificity, the types of offending that occurring during the 18-month follow-up period. This study suggests that it is important to distinguish between different measures of new arrest, specifically one or more arrests and multiple arrests. In some cases, examining if a specific group is arrested one or more times provides limited information about the recidivism of the probationers. This measure, for example, does not differentiate between people who are arrested only once and those who are arrested multiple times. A single arrest may reflect some other social phenomena besides someone merely recidivating. It is possible that a police officer might have arrested the probationer by mistake, as a result of a mistaken identity or perhaps even a clerical error, such as a warrant that has yet to be administratively closed even though the person has taken care of his or her obligations. A single arrest may also not be the most accurate measure of recidivism if some probationers face a greater risk of being arrested due to their socio-economic status, demographic characteristics, or residential neighborhood. To provide additional information on arrest as a recidivism measure, we examined those probationers who were arrested two or more times, allowing us to identify those people who were apprehended for engaging in recidivating behavior on more than a single occurrence.

This study also separately studied technical offense and new arrest revocations. It is important to distinguish between revocation types because officer discretion can play a larger role in technical revocations. Compared to new offense revocations, technical revocations often involve a probationer violating an administrative rule. Therefore, in a technical

revocation, it is possible that an officer might take enforcement action against a probationer based on extralegal reasons that do not necessarily involve the probationer reoffending. The officers may also supervise the probationer more closely, or take more punitive action in response to specific violations, because he or she committed violations prior to the SMART Program or because he or she was in residential treatment. With this in mind, it might be more accurate to characterize a technical revocation as a combined measure of officer behavior and probationer behavior, rather than a measure of recidivism per se.

As with any study, this evaluation has limitations that might ultimately call into question the overall results. First, this evaluation does not adhere to the gold standard of social science research—this study does not have a traditional experimental design where researchers randomly assigned participants into either a treatment or control group. In creating our comparison group, it is possible that we created two different probationer groups that differed from one another, and that these differences impacted our probationer outcomes. We attempted to address this issue by matching the probationers from each group case-by-case across seven variables, including those specific variables that research has found to impact recidivism (i.e., composite risk score, gender, age range) and examining if there were statistically significant differences between the groups based on these characteristics.

Another weakness of the current study is that it lacks an equal number of one-for-one matched comparison probationers; this study relied on a comparison group that was slightly smaller than the treatment group. This should not impact the accuracy of the study. On the contrary, the decision to match these two groups on seven caseload variables, which reduced the number of comparison group participants, ultimately enhanced the similarities between these two groups.

Ultimately, this study suggests a possible approach for corrections professionals and funding agencies to use when they wish to determine if a correctional program is a sound investment. When funders and administrators find themselves having to make hard choices about which programs to invest in and which programs to defund, this evaluation demonstrates a way for them to make informed decisions based on peer-reviewed research and actual program-specific data. Specifically, this analysis presents three sources of data—the

CPAI/CPC assessments, Travis County Adult Probation revocation data, and Texas DPS arrest data—that indicate that the SMART Program seemed to reduce new arrests, multiple arrests, revocations for new offenses, revocations, and general recidivism in contrast to a comparison group.

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# Inherently Unstable: The History and Future of Reliance on Court-Imposed Fees in the State of Texas

Todd Jermstad

*Bell/Lampasas Counties Community Supervision  
and Corrections Department  
Belton, Texas*

**MUCH HAS BEEN** written and discussed about the imposition of fines, fees, and costs on criminal defendants in this country. And much of the academic research has rightly concerned the unfairness, especially to the poor, of over-relying on court-imposed fees to operate local and state criminal justice systems. Certain advocacy groups have focused their energy on ensuring that local courts and criminal justice agencies follow Supreme Court precedent in ordering the assessment of fines, fees, and costs. In this article I will focus more on the practicality of this problem, asking whether the continued reliance on the imposition of court-ordered fees to support the operation of local adult probation departments in Texas is sustainable.

This article is divided into two parts. The first part examines the history of the assessment of court-ordered fines, fees, and costs on probationers in one state—the State of Texas. This portion of the article attempts to address the question, “How did we get here?” with the disturbing notion that in some respects probation in Texas was more just, humane, and rational 50 years ago than it is today. The second portion of this article examines changes in the economy with a focus on wage growth—and stagnation—within certain demographic groups and on the impact on employment and wages due to advancing technological innovations in the field of artificial intelligence, robotics, and automation. This section ends with some recommendations for policy makers and adult probation departments to prepare for the radical changes that

they will be facing. Finally I conclude with an assessment of the future of the criminal justice system in Texas if the status quo remains and the public policy continues to rely on offenders to support the criminal justice system.

## **A History of Court-Imposed Probation Fees in Texas**

The State of Texas, like many other states, relies heavily on offender payments to fund adult probation services. However, historically it has not always been the case that probationers, in addition to paying an assessed fine, were also expected to pay a monthly fee for the operation of adult probation departments. Ironically, in recent years one of the selling points in promoting efforts to reform the probation system in Texas has been that by adding various fees and costs the reforms would pay for themselves. In this article I will first examine how this situation came about and how Texas has now reached the point that the overreliance on court-imposed fees has hurt not only impoverished probationers but also the state’s criminal justice system. In fact, overreliance on fees has distorted the system by providing probationers with incentives to recidivate and avoid probation; it has also made it less likely that probation in Texas could serve as an agent of rehabilitation.

Probation in Texas has existed in some form since 1913. Prior to this date, if a defendant was convicted of a criminal offense the sentencing authority had one of two options—the judge could assess penitentiary time or a jury could recommend that no punishment be

assessed. Since 1913 the laws establishing and regulating the probation system in Texas have undergone several significant revisions.

In 1935 an amendment was added to the Texas Constitution to affirm what prior case law had already authorized and state statute had codified under the Suspended Sentence Act of 1925, i.e., that the Courts of the State of Texas having original jurisdiction of criminal actions had the power, after conviction, to suspend the imposition or execution of sentence, place the defendant on probation, and re-impose such sentence, under such conditions as the legislature prescribed. The State Legislature continued to modify the adult probation system with the Adult Probation and Parole Law of 1947 and of 1957.

In 1965 the state legislature completely rewrote the Texas Code of Criminal Procedure, including the laws applicable to adult probation. As written in 1965, probation departments were wholly creatures of local government bodies. The district judges, with the advice and consent of the commissioners court, were responsible for employing department personnel, designating titles, and fixing salaries. Salaries and other expenses were paid from the funds of the county. However, the new Code of Criminal Procedure did not authorize a court to impose a monthly fee on probationers for the operation of the adult probation department. Moreover, the new Code specified only nine conditions that a judge could impose, although the judge was

not limited to imposing other conditions.<sup>1</sup>

It was in the next legislative session in 1967 that the legislature created a statute authorizing a trial judge to impose a supervision fee on a probationer as a condition of probation. The new statute provided that a court granting probation could fix a fee not exceeding \$10.00 per month to be paid to the court by the probationer during the probationary period. The legislature further stated that the court could make payment of the fee a condition of granting or continuing probation. Finally, the legislature specified that the court had to distribute the fees received under this new measure to the county or counties in which the court had jurisdiction for use in administering the probation laws.

Then in 1977 the legislature established the Texas Adult Probation Commission (TAPC). The changes made in 1977 made it clear that providing adequate probation services was no longer the county's responsibility; instead, the district judge or district judges trying criminal cases in each judicial district were directed to establish a probation office and employ district personnel. Moreover, the 1977 changes authorized the state to contribute funds for the operation of the probation departments in addition to mandating that TAPC establish minimum standards for caseloads, programs, facilities, and equipment, and other aspects of the operation of a probation office necessary to provide adequate and effective probation services. In addition, the 1977 legislation limited counties in their financial obligations to providing physical facilities, equipment, and utilities to adult probation departments. Finally, the monthly probation fee was now to be fixed in an amount not to exceed \$15.00.<sup>2</sup>

<sup>1</sup> These statutorily recommended conditions were as follows:

1. Commit no offense against the laws of this State or of any other State or of the United States;
2. Avoid injurious or vicious habits;
3. Avoid persons or places of disreputable or harmful character;
4. Report to the probation officer as directed;
5. Permit the probation officer to visit him (sic) at his home or elsewhere;
6. Work faithfully at suitable employment as far as possible;
7. Remain within a specified place;
8. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and
9. Support his (sic) dependents.

<sup>2</sup> The changes made in 1977 to the 1965 Code added new statutory conditions that the trial judge

The statutory changes made in 1977 to the probation system would serve as the template for further reform efforts. Not only was State funding first injected into the system along with new regulations to standardize the operation and practice of probation in the State, but the legislature also began adding more and more statutory conditions of probation and additional costs on probationers to support the system.

In the 1980s Texas, along with many other states in the country, began to see the effects of mass incarceration. In 1980 the state had 35,000 prison beds and could not confine all the new inmates being sentenced to prison. The result was a decade-long crisis in state corrections. The two methods for dealing with the prison strain were to drastically reduce the amount of time served in prisons through the parole process and to refuse to accept inmates, leaving them confined in county jails. Also in 1980 a final written decision in *Ruiz v. Estelle* was handed down by a federal district judge ruling that conditions in Texas prisons constituted cruel and unusual punishment and therefore violated the constitutional rights of the plaintiffs in the suit. This ruling led to years of continuing litigation and placed pressure on the state to rectify certain prison practices and conditions.<sup>3</sup> A second lawsuit, *Alberti v. Sheriff of*

could impose, to wit:

1. Participate in any community-based program;
2. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him (sic) in the case, if counsel was appointed;
3. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
4. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
5. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustain by the victim as a direct result of the commission of the offense.

In addition, a separate provision for misdemeanor probation continued the first nine statutory conditions, with the assessed fine not to exceed \$1,000 but added a tenth recommended condition that the misdemeanor probationer submit a copy of his fingerprints to the sheriff's office of the county in which he was tried.

<sup>3</sup> See 503 F. Supp. 1265 (S.D. Tex. 1980); see also,

*Harris County, Texas*, although initially filed in 1972, was litigated throughout the 1980s; it contested the jail conditions in the Harris County Jail, the most populous county in Texas.<sup>4</sup> Harris County in turn argued that the jail conditions were a result of the State of Texas's failure to accept inmates, i.e., paper-ready felons being held in the county jail for transport to the state's penitentiary system, and thus the State became part of the litigation. In addition to being a legal issue, the *Alberti* case became a political imbroglio as local officials across the state began to demand that the state accept paper-ready felons sentenced to prison in a timely manner.<sup>5</sup>

During the period of the 1980s the state legislature also addressed the imposition of supervision fees on several occasions. In 1985 the state legislature increased the amount that a court could order paid to a fee, not to exceed \$40.00 per month. There was no minimum fixed monthly amount. However, in the following legislative session in 1987 the legislature stated that a court granting probation *must* (emphasis added) fix a fee of not less than \$25.00 and not more than \$40.00 per month. The legislature further provided that a court could waive or reduce the fee or suspend monthly payment of the fee if it determined that payment of the fee would cause the probationer a significant financial hardship.

As a result of these legislative changes, not only was the monthly supervision fee increased and a minimum specified amount established by law, but the imposition of the fee was now the "default" position in all supervision cases. Instead of leaving it to the discretion of the court to impose any fee, it was now expected that the court would impose a supervision fee unless the court made the further determination that imposing a fee would cause the probationer a significant financial hardship.

The crises facing the state's correctional system led to the next great reform efforts in 1989, designed to divert more people who otherwise would be sent to prison. The reforms allowed adult probation departments to offer pre-trial diversion programs, added funding for substance abuse treatment, offered courts the means to use local community corrections facilities for short-term confinement,

550 F. 2d 238 (5<sup>th</sup> Cir. 1977).

<sup>4</sup> See 406 F. Supp. 649 (S.D. Tex. 1975).

<sup>5</sup> Both the state and county were eventually found liable for the unconstitutional conditions in the Harris County Jail. See 937 F. 2d 984 (5<sup>th</sup> Cir. 1991); see also, 978 F. 2d 893 (1992).

and included options for modifying probation instead of revoking the probation for a violation of the conditions of probation and confining the person in a prison. The reforms also required departments to collaborate with other local agencies and authorities to develop a community justice plan to identify the criminal justice needs of the community and to request funding from the state. The legislature created a new formula to allocate funding to departments across the state based on population and the number of felony cases being supervised, increased grant funding, and provided more funding for the supervision of felony cases. The legislature also increased funding to establish more community corrections facilities in the state, including restitution centers. Funding was also directed toward the use of electronic monitoring devices and batterers' intervention programs.

Unfortunately, the reforms made by the Texas Legislature in 1989 to improve probation increased the financial burdens on probationers. A good example of this was the creation of restitution centers in 1989. The intent was that the restitution centers could serve as an alternative to incarceration in prisons while at the same time making the victims of crime financially whole and providing rehabilitation and employment programs to probationers. As originally conceived, a judge could require as a condition of probation that the defendant serve a term of not less than three months or more than 12 months in a restitution center. However, the director of the facility had to deposit whatever salary was earned by the probationer working outside the center into a fund after deducting:

1. The cost to the center for the probationer's food, housing, and supervision;
2. Necessary travel expenses to and from work and community-service projects and other incidental expenses of the probationer;
3. Support of the probationer's dependents; and
4. Restitution to the victims of the offense committed by the probationer.

The statute provided that after making these deductions the remainder of money in the fund would be given to the probationer on his or her release. As one might reasonably expect, there was generally nothing left in the fund to give the probationer upon discharge from the center. Moreover, upon release the probationer often owed more fees than he or she did when accepted into the facility. Making this worse, these facilities were often located in

rural areas where jobs were scarce; in such cases, probationers were being transported for much of the work day to larger urban areas for employment. It is not surprising that outcome studies showed very poor success rates for persons confined in these facilities and that restitution centers were gradually phased out in the early 2000s.

Another example of the negative financial consequences of these reform efforts on probationers was the number of additional conditions of probation. A trial judge could now impose a condition of probation requiring a probationer to:

- Remain under custodial supervision in a community-based facility . . . and pay a percentage of his income to the facility for room and board;
- Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
- Make a onetime payment in an amount not to exceed \$50 to a local crime stoppers program.
- For probationers convicted of certain sexual offenses, upon a finding that the probationer was financially able to make a payment, the judge could require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense.
- Regarding fees and costs as part of the conditions of probation in intoxication offenses, the legislature provided that if a court required as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence, the court had to require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay.<sup>6</sup>
- Moreover, regarding intoxication offenses, the legislature authorized the court to require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle was equipped with a device that used a deep-lung breath analysis mechanism that prevented the

operation of the motor vehicle if ethyl alcohol was detected in the breath of the operator. The legislature further provided that the court had to require the defendant to obtain the device at his own cost.<sup>7</sup>

The legislature did add a provision that a court could not order a probationer to make any payments as a term and condition of probation except for fines, court costs, restitution to the victim, payment to a local crime stoppers program, and other terms and conditions expressly authorized by statute. In 1991 the legislature amended the language of this provision to clarify that the court could impose a condition ordering the probationer to make a payment if the condition was related personally to the rehabilitation of the probationer.

At this same time the legislature authorized the trial court to impose a condition ordering a probationer to reimburse a law enforcement agency for the agency's expenses for the confiscation, analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense. In addition, in 1991 the legislature added a provision that a person in a pretrial intervention program could be assessed a fee equal to the actual cost to an adult probation department, henceforth re-designated as a community supervision and corrections department (CSCD), not to exceed \$500, for supervision of the defendant by the department or programs provided to the defendant by the department as part of the pretrial intervention program.<sup>8</sup> Finally, in 1991 the legislature added a \$30 court cost for persons convicted of driving while intoxicated to reimburse the costs for a breath alcohol testing program.

<sup>7</sup> Subsequent legislation would make the imposition of an interlock device as a condition of community supervision mandatory for certain intoxication offenses.

<sup>8</sup> In 2005 as a result of a Texas Attorney General's opinion, (GA-0114) the legislature modified this statute to provide that a court that authorized a defendant to participate in a pretrial intervention program could order the defendant to pay the court a supervision fee in an amount not more than \$60 per month as a condition of participating in the program. The legislature further provided that in addition to or in lieu of the supervision fee authorized under this amendment to the statute, the court could order the defendant to pay or reimburse a community supervision and corrections department for any other expense incurred as a result of the defendant's participation in the pretrial intervention program or that was necessary to the defendant's successful completion of the program.

<sup>6</sup> In this same provision the legislature also stated that the court could, in its discretion, credit such cost paid by the defendant against the fine assessed.

Since the reforms of 1989 and 1991, the following conditions have been authorized that expose the probationer to additional fees:

- If the court grants probation to a person convicted of certain sex offenses, the court had to require as a condition of probation that the person pay to the probation officer supervising the person a probation fee of \$5 each month during the period of probation. This fee was in addition to court costs or any other fee imposed on the person. This fee was to assist in funding a state-wide sexual assault program (1993).
- If a defendant was granted community supervision for an intoxication offense and the person's driver's license was suspended and subsequently reinstated, pay to the Texas Department of Public Safety a \$50 reinstatement fee (1993).
- Reimburse the crime victims compensation fund for any amounts paid to a victim for the defendant's offense, or if no reimbursement was required, make one payment to the fund in an amount not to exceed \$50 if the offense was a misdemeanor or not to exceed \$100 if the offense was a felony (1995).
- Allow a judge who granted community supervision to a person charged with or convicted of indecency with a child or sexual assault of a child to order the probationer to make one payment in an amount not to exceed \$50 to a children's advocacy center (1999).
- Provide that if a judge granted community supervision to a person for an offense involving family violence, the judge could require the person to make one payment in an amount not to exceed \$100 to a family violence shelter that received state or federal funds and that served the county in which the court was located (1999).
- Provide that a judge granting community supervision had to fix a fee of not less than \$25 and not more than \$60 per month to be paid as a condition of community supervision, thus raising the maximum supervision fee from \$40 to \$60 (2001).
- Provide that a judge who granted community supervision to a sex offender could require the sex offender as a condition of community supervision to submit to treatment, specialized supervision, or rehabilitation. On a finding that the defendant was financially able to make payment, the judge had to require the defendant to pay all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation (2003).
- Add a statutory condition allowing a judge to order a defendant to reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case (2005).<sup>9</sup>
- Increase the reinstatement fee for the re-issuance of a suspended driver's license from \$50 to \$100 (2007).
- Provide that if a judge granted community supervision to a defendant younger than 18 years of age for certain possession offenses under the Controlled Substances Act, the judge could require the defendant as a condition of community supervision to attend an alcohol awareness program or a drug education program that was designed to educate persons on the dangers of drug abuse. Moreover, unless the judge determined that the defendant was indigent and unable to pay the cost of attending the program, the judge had to require the defendant to pay the cost of attending the program (2015).
- Provide that if a judge granted community supervision to a defendant convicted of certain cruelty to animal offenses, the judge could require the defendant to complete an online responsible pet owner course or attend a responsible pet owner course. Further provide that the Texas Department of Licensing and Regulation could charge a fee for course participation certificates and other fees necessary for the administration of the course or course providers (2017).<sup>10</sup>

Likewise, since the reforms of 1989 and 1991 the following court costs have been added, having an adverse impact on probationers:

- For persons convicted of an intoxication offense the court must impose as a cost of court on a defendant an amount that is equal to the cost of an alcohol or substance abuse evaluation conducted by an adult supervision officer (1994).
- A community supervision and corrections

<sup>9</sup> A previous Texas Attorney General's opinion (DM-245) had opined that a trial court could require a defendant to reimburse the county for paying for a foreign language interpreter in a court proceeding. However the United States Supreme Court's decision in *Tennessee v. Lane*, 541 U. S. 509 (2004) would probably invalidate the applicability of this provision to hearing-impaired defendants under the Americans with Disabilities Act.

<sup>10</sup> Although this condition was enacted into law in 2011, no fees for attendance of this course were specified by the Legislature until 2017.

department may assess an administrative fee for each transaction made by the officer or department relating to the collection of fines, fees, restitution or other costs imposed by the court. The fee may not exceed \$2 for each transaction (Applicable only to Harris County CSCD in 1995 and to all other CSCDs in 1999).

- Provide that a defendant convicted of the offense of graffiti must pay a \$5 graffiti eradication fee as a cost of court (1997). The assessed court cost was later ordered to be placed in a juvenile delinquency prevention fund in 2003.
- An additional \$100 cost of court imposed on a person convicted of an intoxication offense without regard to whether the defendant was placed on community supervision after being convicted of the offense or received deferred disposition or deferred adjudication for the offense to be used for emergency medical services, trauma facilities, and trauma care systems (2003).
- Provide that a person pay \$250 as a court cost on conviction of certain felony sex offenses and \$50 on conviction of certain offenses against a person that is punishable as a Class A misdemeanor or a higher category or certain misdemeanor sex offenses. Thirty-five percent of this court cost is dedicated to the state highway fund and 65 percent is dedicated to the criminal justice planning fund (2003).<sup>11</sup>
- Provide that if a court requires that a defendant make restitution in specified installments, in addition to the specified installments, the court may require the defendant to pay a one-time restitution fee of \$12.00, \$6.00 of which the court shall retain for costs incurred in collecting the specified installments and \$6.00 of which the court must order to be paid to the State-operated victims compensation fund (2005).
- In addition to other costs on conviction, a person must pay \$50 as a court cost on conviction of an intoxication offense or an

<sup>11</sup> Since the creation of this new court cost, the Legislature added an additional provision that a person must pay as a court cost \$34.00 on placement of the person on community supervision if the person is required to submit a DNA sample as a condition of community supervision. Moreover this new separate court cost is dedicated to the Texas Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by defendants who are required to pay a court cost under this statute (2009).

offense under the Controlled Substances Act punishable as a Class B misdemeanor or any higher category of offense. This court cost is to be used to fund specialty courts, include drug and veterans treatment courts, both at the State and local level (2007).<sup>12</sup>

- Provide that a person convicted of certain sex offenses must pay \$100 on the conviction of the offense, without regard to whether the defendant was placed on community supervision after being convicted of the offense or received deferred adjudication. The fund designated by this measure can be used only to fund child abuse prevention programs in the county where the court was located (2009).
- Increase the court cost to fund specialty courts in the state from \$50 to \$60 (2009).

### The Collections Improvement Program (CIP)

In 2005 the Texas Legislature made sweeping changes to the collections improvement program in order to increase collections for fines, fees, and costs assessed throughout the criminal justice system. These changes applied only to counties with a population of 50,000 or greater and municipalities with a population of 100,000 or greater. Under this new law, unless granted a waiver,<sup>13</sup> each such county and municipality had to develop and implement a program that complied with the prioritized implementation schedule by the Texas Office of Court Administration (OCA). The legislature specified that the program must consist of:

1. A component that conformed with

<sup>12</sup> At the same time as this court cost was authorized to fund specialty courts, the legislature also created the first of several statutorily described specialty courts. In creating these specialty courts the legislature authorized these drug court, veterans treatment court, and prostitution court programs to collect from a participant in the program a reasonable program fee not to exceed \$1,000 along with other participant fees.

The legislature further stated that fees collected under this measure could be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The Legislature also provided that the fees must be: (1) based on the participant's ability to pay; and (2) used only for purposes specific to the program.

<sup>13</sup> In order to obtain a waiver a county or municipality must provide the Office of Court Administration, in consultation with the Texas Comptroller of Public Accounts, sufficient information for OCA to determine whether it was not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

a model developed by OCA and designed to improve in-house collections through application of best practices; and

2. A component designed to improve collection of balances more than 60 days past due.

In addition, the Texas Comptroller of Public Accounts, in cooperation with OCA, must develop a methodology for determining the collection rate of counties and municipalities affected by the law and periodically audit counties and municipalities to verify information reported under this law and confirm that the county or municipality was conforming with requirements relating to the program. Finally, each county and municipality affected by the law had to at least annually submit to OCA and the comptroller a written report that included updated information regarding the program, as determined by OCA in cooperation with the comptroller.

### Are Changes Coming in Texas regarding the Adverse Effects of Court-imposed Fines, Fees and Costs on Indigent Defendants?

As explained in this article, there has been a trajectory over the last four decades in Texas to create more and more costs on criminal defendants, often in the name of criminal justice reform. Unfortunately, Texas is not alone in this long-term trend. However, in recent years advocates of reform on the national level have begun to decry the financial burdens placed on indigent defendants as well as the lack of oversight, training, and monitoring of courts of state and local government in following constitutional mandates regarding the imposition, enforcement, and collection of court-ordered fines, fees, and costs on indigent defendants. Such defendants often seem caught in a system more interested in generating revenue to operate multiple facets of government than in seeking justice. Texas is not immune to this new national awareness of the harm caused by unduly burdening indigent defendants with unreasonable fines, fees, and costs.

Since 2005, the Office of Court Administration has struggled in implementing the terms of the Collections Improvement Program, while also recognizing the substantive and constitutional rights of indigent defendants. The most recent standards to the CIP adopted by the OCA recognize this

dilemma.<sup>14</sup> The newest rules acknowledge that the CIP is designed to improve the enforcement of a defendant's compliance with the court-ordered payment of costs, fees, and fines without imposing an undue hardship on the defendant or the defendant's dependents. Thus OCA affirms that the CIP components should not be interpreted to conflict with or undermine the protections afforded to defendants of full procedural and substantive rights under the constitution and laws of this State and of the United States.

Hence these rules affirm that CIP does not alter a judge's legal authority or discretion to design payment plans for any amount of time; to convert costs, fees, and fines into community service or other nonmonetary compliance options as prescribed by law; to waive costs, fees, and fines, or to reduce the total amount a defendant owes at any time; or to adjudicate a case for noncompliance at any time. These rules recognize that CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan. Moreover these rules state that CIP does not apply to cases in which: 1) the court has waived all court costs, fees, and fines; 2) the court authorizes discharge of the costs, fees, and fines through non-monetary compliance options; 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course; or 4) the defendant is incarcerated, unless the defendant is released and payment is requested. Finally, the rules provide that CIP does not apply to the collection of community supervision fees assessed as a condition of community supervision.

The rules changes of the OCA to the CIP were explicitly made in response to certain national incidents that have brought the problem of the burden of financial penalties on indigent defendants to light, such as the situation found in Ferguson, Missouri, and the recent letter from the United States Department of Justice regarding the obligation of the courts in the United States to conform their practices to the decisions of the United States Supreme Court regarding the constitutional rights of indigent criminal defendants. Therefore, the changes made to the rules to the CIP, effective January 1, 2017, were designed to make the criminal defendant aware of the implications of entering into a payment plan, to require CIP staff to ascertain the ability to make payments in accordance

<sup>14</sup> See 1 Texas Administrative Code 174, effective January 1, 2017.



with the plan, to ensure that the payment plan did not result in an undue burden to defendants and their dependents, and to inform defendants who were having difficulties in complying with a payment plan of their right to petition the court and request a hearing for the judge to consider the defendant's ability to pay and any nonmonetary compliance options available for the defendant to satisfy the judgment.

The Texas Legislature has also started showing a concern about the adverse impact of court-imposed fees on criminal defendants. In 2017 the legislature passed two similar bills relating to the imposition of certain fines and costs. Both bills amended Article 42.15, Code of Criminal Procedure, by adding a subsection (a-1) to provide that during or immediately after imposing a sentence in a case where the defendant entered in open court a plea of guilty or "nolo contendere" or refused to enter a plea, the court had to inquire whether the defendant had sufficient resources or income to immediately pay all or part of the fine and costs. If the court determined that the defendant did not have sufficient resources or income to immediately pay all or part of the fine and costs, the court had to determine whether the fine and costs should be:

- (1) required to be paid at some later dates or in a specified portion at designated intervals;
- (2) discharged by performing community service;
- (3) waived in full or in part; or
- (4) satisfied through any combination of methods under these Acts.<sup>15</sup>

Article 43.05, Code of Criminal Procedure was also amended by adding subsections (a-1) and (a-2) to provide that a court could not issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms unless the court held a hearing on the defendant's ability to satisfy the judgment and:

- (1) the defendant failed to appear at the hearing; or
- (2) based on evidence presented at the hearing, the court determined that the *capias*

<sup>15</sup> Prior to the passage of these bills, judges in Texas had to fine an individual, wait for the person to default, issue a warrant, wait for the person to be picked up or come in voluntarily on the warrant, and then the judge could determine indigence and offer community service. In other words, even though everyone in court knew that a defendant was indigent and could not pay a fine or costs, the judge was still legally obligated to impose a fine and costs and could not take any further actions until the defendant defaulted on making a payment.

*pro fine* should be issued.<sup>16</sup>

Newly added Subsection (a-2) stated that the court had to recall a *capias pro fine* if, before the *capias pro fine* was executed:

- (1) the defendant voluntarily appeared to resolve the amount owed; or
- (2) the amount owed was resolved in any manner authorized by this code.

The fiscal note to this legislative initiative stated that it would have a negative, but indeterminate, fiscal impact to the state due to anticipated revenue decreases resulting from an unknown number of defendants that would be determined to be indigent or unable to pay receiving a waiver or discharge from fines, fees, and court costs. These concerns about revenue loss have not been borne out in practice. In testimony in August 2018 before the Texas House of Representatives Criminal Jurisprudence Committee, the Director of the Texas Office of Court Administration testified that:

- The number of warrants for failure to appear is declining.
- The number of warrants for failure to pay is also declining.
- The number of cases resolved through jail credit is declining.
- The number of cases resolved through community service is increasing.
- The number of defendants getting on payment plans has increased.
- Collections per case have increased by 6.7 percent at the local level and 7.3 percent at the state level.

Despite these positive signs, there continues to be resistance to offsetting the reliance on court-imposed probation fees and costs to fund the operation of adult probation departments in Texas. This is primarily because the state appropriations to fund community supervision and corrections departments

<sup>16</sup> However there was a variance in the language to this new Subsection (a-1) in another bill. This new Subsection (a-1) read as follows:

before a court could issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms:

- (1) the court had to provide by regular mail to the defendant notice that included:
  - (A) a statement that the defendant had failed to satisfy the judgment according to its terms; and
  - (B) a date and time when the court would hold a hearing on the defendant's failure to satisfy the judgment according to its terms; and
- (2) either:
  - (A) the defendant failed to appear at the hearing; or
  - (B) based on evidence presented at the hearing, the court determines that the *capias pro fine* should be issued.

across the State as well as the locally generated fees to support these departments rely so heavily on offender fees. It has been estimated that if the State were to replace the probation supervisory fees that support the operation of CSCDs across the State with state-generated revenue, the legislature would have to appropriate between \$320 and \$340 million additional dollars per biennium.

## The Future Prospects of Reliance on Court-Imposed Fees, Fines, and Costs

The driving factors in the increase in imposition of court-imposed fines, fees, and costs have very little to do with notions of punishment or justice and all too much to do with the need to generate revenues for the operation of the criminal justice system, as well as other facets of government. And while much of the well-justified criticism of the overreliance on court-imposed fees, fines, and costs to support governmental operations has been based on fairness and sound public policies, another pertinent question worth exploring is whether this practice is economically sustainable in the future.

The economy has been going through profound changes in the last several decades that are likely to increase exponentially in the years to come. Wages and individual wealth have been shifting in line with educational attainment, generational birth, and such demographic factors as gender, ethnicity, and race. Moreover, the acceleration in the use of artificial intelligence, automation, and robotics will likely have a serious adverse impact for those at the bottom of earnings potential. Because so many persons in the criminal justice system live in poverty, are poorly educated, are disproportionately younger, and are overrepresented by racial minorities, the continued reliance on these individuals to fund the operations of probation is unlikely to be economically viable.<sup>17</sup>

Economists have debated when the post-World War II decline in wage growth and increase in income inequality began. While some economists see this trend occurring as early as the late 1950s and early

<sup>17</sup> In Texas reliance on court-imposed fines, fees, and costs to operate a community supervision and corrections department varies from jurisdiction to jurisdiction. For the Bell/Lampasas Counties CSCD, approximately one-half of the funds to operate the department comes from the State and the other one-half comes from probationer paid court-imposed fees.

1960s, declining income growth rates and an increase in wealth inequality became a topic of widespread concern beginning in the 1970s. Likewise, economists have long noted the effects of automation on employment. However, only fairly recently have industries, governments, and academics begun to stress the profound economic changes that will arise from emerging technologies incorporating artificial intelligence, robotics, and new forms of automation.

Although arguably these changes in the economy have been occurring for well over 50 years, the second section of this article will examine changes in income levels since 1980—the same period in which mass incarceration and the heavy reliance on court-imposed fees began. One of the best sources for income trends over this period is *The Demographics of Wealth*, a series of studies by the Federal Reserve Bank of St. Louis. These reports are based on a series of surveys of income trends of 40,000 families in three-year waves from 1989 to 2018. The three reports for 2015 examine race, ethnicity, and wealth; education and wealth; and age, birth year, and wealth.

The first report, dated February 2015, examined race, ethnicity, and wealth.<sup>18</sup> This report found that, adjusted for inflation, the median wealth of a white family in 1989 was \$130,102 and in 2013 was \$134,008. For an Asian family the two medians were \$64,165 in 1989 and \$91,440 in 2013. For a Hispanic family they were \$9,229 and \$13,900, and for a black family, they were \$7,736 and \$11,184.<sup>19</sup> The report concluded that “viewing the period 1989-2013 as a whole, it would be difficult to assert that there had been any meaningful change in the relationship among the wealth of typical white, Hispanic, and black families.”<sup>20</sup> This report also found that median family incomes for blacks and Hispanics, as opposed to median wealth, “have remained about 40 percent lower than the median white family income since the early 1990s.”<sup>21</sup>

The Federal Reserve Bank of St. Louis’s second report, dated May 2015, examined

education and wealth.<sup>22</sup> Not surprisingly, there is a strong correlation between educational attainment and wealth. What is surprising is the vast and growing disparity in educational attainment and wealth over the years. Adjusted for inflation, the median income for a head of family without a high school diploma in 2013 was \$22,320, down one percent from 1989. For those heads of family households with a high school diploma, the median income in 2013 was \$41,190. However, that meant that median income for persons with a high school diploma was down 16 percent from 1989. For heads of families with a two- or four-year degree, the median income was \$76,293, or down 5 percent from 1989. Only those heads of families with an advanced degree had seen an increase in income from 1989 by four percent—a median income in 2013 of \$116,265.<sup>23</sup>

However, when this report looked at median wealth (net worth), the numbers were even more drastically uneven. The net worth of a head of a family without a high school diploma in 2013 was 44 percent lower than that of the same person in 1989. A head of family in 2013 with a high school diploma had a net worth 36 percent less than that of someone with the same education level in 1989. A head of family with a two- or four-year degree in 2013 was up 3 percent from 1989, and a head of family with an advanced degree in 2013 had a net worth up 45 percent from 1989.<sup>24</sup> In all, 24 percent of all U.S. families in 2013 owned 67 percent of the economy’s wealth.<sup>25</sup>

Possibly the one bright lining in this report was the acknowledgement that fewer heads of households have less than a high school diploma in 2013 than in 1989: Heads of families without a high school diploma decreased from 31 percent in 1989 to 12 percent in 2013. The share of families headed by high school graduates increased from 44 percent to 50 percent, college graduates increased from 16 percent to 25 percent, and graduate-degree holders increased from 10 percent to 13 percent.<sup>26</sup>

Nevertheless, these improvements do not

reflect the numbers in the criminal justice system. Twenty-five percent of the probationers being supervised by the Bell/Lampasas Counties Community Supervision and Corrections Department in Texas do not have a high school diploma or a general equivalency diploma (GED). In a survey appearing in March 2018 of women incarcerated in prisons in Texas conducted by the Texas Criminal Justice Coalition, 52 percent of incarcerated women reported that they had a total household income immediately before entering prison of less than \$10,000 per year. Eighty percent reported it was less than \$30,000 per year, and only 10 percent of women reported \$50,000 or more per year.<sup>27</sup>

The third report by the Federal Reserve Bank in St. Louis is in many ways the most interesting and makes the most compelling point about the futility of relying on court-imposed fines, fees, and costs in the future to fund the operation of the criminal justice system, especially adult probation. This report, issued in July 2015, examines age, birth year, and wealth.<sup>28</sup> In dividing heads of households into four age groups, i.e., the silent generation (born between 1925 and the end of World War II); baby boomers (born from 1946 to 1964); Generation X (those who followed the baby boomers); and Millennials (those born in the twenty-first century), what researchers have found is that each preceding generation has done better financially than later generations and the Generation Xers are doing quite poorly, while Millennials are projected to do even worse.

It is an obvious economic fact that there is an age curve to wealth creation. Young people finishing school, getting married and starting a family, and purchasing a home are going to accumulate a lot of debt in their 20s and early 30s. Yet, according to traditional economic thought, as they age they will increase their earnings and savings and thus will accumulate wealth into their 60s when they look at retirement. Then after retirement they will

<sup>18</sup> See *The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today’s Economy. Essay No. 1: Race, Ethnicity and Wealth*, February 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth>

<sup>19</sup> Ibid. page 4.

<sup>20</sup> Ibid. page 9.

<sup>21</sup> Ibid. page 9.

<sup>22</sup> See *The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today’s Economy. Essay No. 2: Education and Wealth*, May 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth/essay-2-the-role-of-education>

<sup>23</sup> Ibid. page 4.

<sup>24</sup> Ibid. page 4.

<sup>25</sup> Ibid. page 3.

<sup>26</sup> Ibid. page 18.

<sup>27</sup> See *An Unsupported Population: The Treatment of Women in Texas’ Criminal Justice System*, dated April 2018 pages 6-7. Texas Criminal Justice Coalition. <https://www.texasjc.org/system/files/publications/TCJC%20Womens%20Report%20Part%202.pdf>

<sup>28</sup> See *The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today’s Economy. Essay No. 3: Age, Birth Year and Wealth*, July 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth/essay-3-age-birth-year-and-wealth>

tend to spend down at least some of what they have acquired in assets. However, despite the widespread belief that each generation of Americans has generally done better than preceding generations, the opposite has been true for recent generations. This report finds that each past generation has accumulated greater wealth than each following generation, with the silent generation actually doing better than the baby boomers, baby boomers doing better than Generation X, and Millennials projected to do worse than Generation X.

Thus the median wealth of a family headed by someone at least 62 rose 40 percent between 1989 and 2013, from just under \$150,000 to about \$210,000. However, the median wealth of a family headed by an individual between the ages of 40-61 was 31 percent lower than in 1989, declining from \$154,000 to about \$106,000. Finally the median wealth of a young family dropped more than 28 percent from \$20,000 to just over \$14,000.<sup>29</sup>

As noted earlier, this decline in generational wealth, as well as declines for persons with less than a graduate-level degree and for racial minorities, is not a recent phenomenon and cannot be attributed to the Great Recession of 2008 and the decade-long recovery. Instead this report states that the evidence gathered supports the hypothesis that levels of income and wealth rose during the first several decades of the 20th century, but then stopped rising for most families around mid-century.<sup>30</sup> And that “the members of Generation X stand out for having low incomes and wealth for a given set of demographic characteristics.” As for Millennials, the authors state that as of 2013, there is no convincing evidence that they will do appreciably better than the members of Generation X.<sup>31</sup>

Nevertheless even though the economic phenomena described in this paper are long in the making, it also appears that certain economic factors are accelerating rapidly, thus making imprudent and unrealistic a continued reliance on court-imposed fees, fines, and costs for funding the criminal justice system, including probation. Part of support for this argument is the widely uneven distribution of economic growth, wealth, and employment in the United States. For example, the Metropolitan Policy Program at the Brookings Institution has found that since the Great Recession, 53 of the largest metro areas in the

country (those with populations of over one million residents) have accounted for 93.3 percent of the nation’s population growth since the economic crisis in 2008, even though they only account for 56 percent of the overall population.<sup>32</sup> Moreover, the biggest metro areas generated two-thirds of economic growth and 73 percent of employment gains between 2010 and 2016. In addition, as the economy has improved since the Great Recession, these numbers have not leveled off but are actually increasing. Since 2014, economic growth in these metro areas reached nearly 72 percent of the nation’s overall growth and 74 percent of employment growth.<sup>33</sup>

In contrast, smaller metropolitan areas with less than 250,000 people have seen a -6.5 percent economic growth. The decline in rural areas is even greater.<sup>34</sup> Finally, even the suburban areas are experiencing an increase in poverty rates. What makes poverty in suburbs particularly troubling is that more of the social services that assist the poor are located in cities than in suburbs.<sup>35</sup> What is also increasing the distress for people in these areas is that, according to the Hamilton Project, in recent decades American workers have become less likely to move to new places and to new jobs. Since 1990, interstate mobility has declined from 3.8 percent to less than 2 percent in 2016.<sup>36</sup> The Hamilton Project states that under normal economic conditions, job-to-job mobility generates about 1 percent earnings growth per quarter.<sup>37</sup>

While lack of mobility does not in itself explain the wage stagnation that has been occurring over the last several decades, it does indicate that probation departments in rural and small metropolitan areas are going to have an increasingly difficult time attempting to fund their departments by relying on

probationers tied to their communities but seeing their wages decrease or having difficulty obtaining meaningful employment. Likewise, these same departments cannot rely on an influx of new employees into their communities and an increase in economic growth that would raise the salaries of probationers on whose wages departments have come to depend.

## The Impact of New Technologies on Wages and Employment

If the last several decades have been fairly grim regarding income inequality, the future is forecast to be even more so. This is due to the revolution in artificial intelligence, robotics, and automation, which will replace large numbers of traditional forms of employment. These changes will have a particularly adverse impact on the people who are generally placed on probation. One of the leading research institutes on how emerging new technologies will impact employment and wages is the Oxford Martin Programme on Technology and Employment at the University of Oxford. Established in 2015, this program is investigating the implications of a rapidly changing technological landscape for economies and societies. The program also provides in-depth understanding of how technology is transforming the economy and helping leaders create a successful transition into new ways of working in the twenty-first century.

A report issued in January 2016 by Oxford Martin estimated that 47 percent of U.S. jobs are at risk from automation.<sup>38</sup> However, as previously noted, the economic structure in the United States is very unevenly balanced. Just as with uneven economic growth in various parts of the country, this report points out that not all cities in the United States have the same job risks. While cities such as Boston, New York, Denver, and San Francisco are least at risk, others such as Houston, Los Angeles, Oklahoma City, Sacramento, and Fresno are most at risk. This greater risk/lesser risk divide should be unsurprising, since economic growth in the United States is far greater in those places that heavily rely on technological innovation and labor-based cognitive skills and is far less in places that rely on extraction industries, agriculture, and manufacturing.

Much of the work by Oxford Martin is based on earlier work by Carl Benedikt Frey

<sup>29</sup> Ibid. page 4.

<sup>30</sup> Ibid. 17.

<sup>31</sup> Ibid. page 20.

<sup>32</sup> See *The Avenue Geographic Gaps Are Widening while U.S. Economic Growth Increases* by Mark Muro and Jacob Whiton, dated January 23, 2018. <https://www.brookings.edu/blog/the-avenue/2018/01/22/uneven-growth/>

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> See Slate Magazine, March 22, 2018. In the Suburbs, social Services Can’t Keep Up with Families’ Needs by Alieza Durana. <https://slate.com/human-interest/2018/03/in-the-suburbs-social-services-cant-keep-up-with-families-needs.html>

<sup>36</sup> See The Hamilton Project. *Thirteen Facts about Wage Growth* by Jay Shambaugh, Ryan Nunn, Patrick Lie, and Greg Nantz. page. 7. [http://www.hamiltonproject.org/papers/thirteen\\_facts\\_about\\_wage\\_growth](http://www.hamiltonproject.org/papers/thirteen_facts_about_wage_growth)

<sup>37</sup> Ibid.

<sup>38</sup> See *TECHNOLOGY AT WORK v2.0 The Future Is Not What It Used to Be*, January 2016, Citi GPS: Global Perspectives and Solutions, based on the findings of Berger, Frey and Osborne (2015).

and Michael A. Osborne, whom they cite in *Technology at Work v2.0*. In “The Future of Employment: How Susceptible Are Jobs to Computerisation?” dated September 17, 2013,<sup>39</sup> Frey and Osborne note that with the first commercial use of computers around 1960 there has been an increasingly polarized labor market, with growing employment in high-income cognitive jobs and low-income manual occupations, accompanied by a hollowing-out of middle-income routine jobs. Moreover, they observe that while historically computerization has largely been confined to manual and cognitive routine tasks involving explicit rule-based activities, following recent technological advances, computerization is now spreading to domains commonly defined as non-routine. As such, the authors state that “computerisation is no longer confined to routine tasks that can be written as rule-based software queries, but is spreading to every non-routine task where big data becomes available.” It is in this paper that the authors first stated that 47 percent of total United States employment is in the high-risk category of being automated perhaps over the next decade or two.<sup>40</sup>

Unlike past trends in computerization in which middle-income employees were most at risk of being replaced or downgraded to a lower income level, Frey and Osborne believe that in this new technical revolution lower income employees will be the most adversely impacted group, with the first wave affecting “most workers in transportation and logistics occupations, together with the bulk of office and administration support workers, and labour in production occupations” being substituted by computer capital.<sup>41</sup> The authors also believe that a substantial share of employment in services, sales, and construction occupations exhibit high probabilities of computerization.

On the other hand, the authors predict that “most management, business, and finance occupations, which are intensive in generalist tasks requiring social intelligence, are largely confined to the low risk category.” They also state that the same is true of most occupations

in education, healthcare, the arts, and media jobs. In addition, there is a low susceptibility of engineering and science occupations to computerization, largely due to the high degree of creative intelligence these occupations require. Although lawyers are also in the low-risk category, paralegals and legal assistants are in the high-risk category.<sup>42</sup>

Not everyone sees the revolution in artificial intelligence, robotics, and automation as having such dire employment consequences. The McKinsey Global Institute, an American-based global management consulting firm, recognizes the profound changes to employment that the rapid development in AI, robotics, and automation will have on employment worldwide. In a discussion paper dated May 2018, the Institute predicts that over the next 10 to 15 years, “the adoption of automation and AI technologies will transform the workplace as people increasingly interact with ever-smarter machines.” Moreover, this paper predicts that the demand for technological skills will gather pace in the 2016 to 2030 period, the need for social and emotional skills will similarly accelerate, and, by contrast, the need for both basic cognitive skills and physical and manual skills will decline.<sup>43</sup>

However, McKinsey does not believe that as many jobs as, for example, Oxford Martin estimates are at high risk of being eliminated due to AI, automation, and robotics. But even they believe that between 2016 and 2030 in the United States, up to 32 percent of the work force will need to move out of current occupational categories to find work.<sup>44</sup>

Nevertheless, for those persons who typically are seen caught up in the criminal justice system and for those who rely on them to support the operation of criminal justice agencies the McKinsey predictions may be of little comfort. Even McKinsey notes that in general the current educational requirements of the occupations that may grow are higher than those for the jobs displaced by automation, predicting that “in advanced economies, occupations that currently require only a secondary education or less see a net decline from automation, while those occupations

requiring college degrees and higher grow.”<sup>45</sup>

McKinsey argues for more job training, for displaced employees to obtain higher education degrees, and for implementation of lifelong learning for most future workers. However, from a practical standpoint, it is not certain that most of today’s workers have the inclination, much less the financial means, to go back to school and obtain a college or technical degree. From a policy standpoint, both at the state and national levels, there is little interest in providing the necessary funding to educate the current workforce. For example, the federal government is currently set to spend a mere \$17 billion on job training.<sup>46</sup> Over the past decade state funding for public education in Texas has declined rather than risen.<sup>47</sup>

Thus criminal justice agencies must make a realistic assessment of the future prospects of a continued reliance on court-ordered fines, fees, and costs for their operating costs. For adult probation departments, the issue of demographics is destiny. In the Bell/Lampasas CSCD, as previously noted, approximately 25 percent of the offender population does not have a high school diploma. Approximately another 25 percent of the offender population has had at least some college education.<sup>48</sup> Thirty-one percent of the offender population are females and 23 percent of the persons being supervised are between the ages of 17 and 25.

Seventy-nine percent of the probationers in Bell and Lampasas Counties are employed.<sup>49</sup> Those female probationers who are employed generally find work in nursing homes, as home health care providers, in retail, or in food services. Male probationers in the two counties who are employed generally find work in construction, manufacturing, retail, truck driving, or food services. For the vast majority of the work force on probation, their

<sup>39</sup> See “The Future of Employment: How Susceptible Are Jobs to Computerization?” by Carl Benedikt Frey and Michael A. Osborne dated September 17, 2014 at page 38.

<sup>40</sup> *Ibid.* page 38.

<sup>41</sup> A World Economic Forum study predicts that by 2025 52% of office tasks could be performed by a machine. See *Time Magazine*. October 1, 2018 at page 4.

<sup>42</sup> See “The Future of Employment: How Susceptible Are Jobs to Computerization?” at pages 40 and 41.

<sup>43</sup> See McKinsey Global Institute Discussion Paper dated May 2018. “Skill Shift: Automation and the Future of the Workforce” by Jacques Bughin, Eric Hazan, Susan Lund, Peter Dahlstrom, Anna Wiesinger, and Amresh Subramaniam.

<sup>44</sup> *Ibid.* page 86.

<sup>45</sup> See McKinsey Global Institute *Jobs lost, jobs gained: What the future of work will mean for jobs, skills, and wages*, dated November 2017 page 8.

<sup>46</sup> See *Foreign Policy*, dated July 11, 2018, “Learning to Work with Robots: AI will Change Everything. Workers must Adapt or Else” by Molly Kinder, page 9.

<sup>47</sup> What has happened in Texas is that the portion of funding for education at the state level has dropped and the portion of funding at the local level through property taxes has risen.

<sup>48</sup> Approximately 30% of the general population in the United States has a college or post-graduate degree.

<sup>49</sup> The remaining 21% are either unemployed, students, retired or disabled.

occupations would be considered at a high risk of being replaced by automation, either in the near future or in the next decade or two. The only occupations that would be considered low risk would be those in the health care industry, i.e., nursing homes and home health care. With an aging population, these last two occupations are deemed to expand in the future and are not considered easily replaceable by automation. Finally, at least 75 percent of the employed probation population in Bell and Lampasas Counties have occupations whose wages have stagnated or declined in the last three decades and will in all likelihood continue to stagnate or decline.

### Recommended Reforms to Relieve Overreliance on Court-Imposed Fines, Fees, and Costs

From an economic standpoint, I hope that in this article I have made a convincing case that relying on court-imposed fines, fees, and costs is no longer financially sustainable. Nevertheless, it is unrealistic to believe that the State of Texas will assume the complete cost for funding community supervision and corrections departments across the State. However, perhaps over a more extended period of time, the State can gradually assume a greater financial obligation. Failure to do so is likely to lead to increased probation caseloads, diminished specialized caseloads, and a decline in programs and services for probationers. The result will be more probationers revoked and sentenced to prison, especially for technical violations, at a great cost to the State.

The second recommendation is for court-imposed fines, fees, and costs to be tailored to the economic circumstances of the individual. It seems patently unfair for a single mother making a minimum wage to be fined the same amount as a millionaire. What may pose a minor inconvenience to a wealthy defendant may be economically devastating to a poor one. While some stakeholders will strongly object to any efforts to make court-imposed fines, fees, and costs more equitable, there needs to be a greater effort in Texas, as well as the rest of the country, to stop relying on the poor to fund the operations of the criminal justice system.

The third recommendation is based on the assumption that revenues supporting the operation of adult probation departments in Texas will continue to decline, and those departments must therefore make major changes to their operations. As with any

organization that depends on outside revenue to support its functions, there are only three ways to deal with declining revenues: seek new sources of revenue, decrease costs, or improve productivity. Assuming that there will be no additional revenues either through state appropriations or offender fees, an adult probation department must either decrease costs, improve productivity, or both.

While it is not the place for this article to discuss organizational restructuring, it is pertinent to mention that the new technologies described in this article can streamline the operation of adult probation departments and improve efficiencies in their operations. In 2014 representatives from community supervision and corrections departments in Texas and their state oversight agency held a series of meetings to examine how emerging technologies could assist adult probation in the state. This committee identified potential changes in interactions with probationers via telecommunication, social media, and other electronic interfaces; ways to incorporate new technologies to deliver programs and services for probationers and develop new supervision strategies; and ways to use technologies to improve the delivery of training to probation officers.

This series of meetings resulted in a report making the following recommendations:

- There should be greater reliance on technology that allows officers to spend more time in the field. Thus tablets and laptops should be issued to all staff that go into the field with access to WiFi, the department's case management system, and the county's computerized criminal justice records.
- Cell phones should be issued to officers to communicate with probationers so that they do not have to rely on personal cell phones. The use of personal cell phones should be discouraged if not outright prohibited.
- Cell phones, laptops, tablets, and PCs should be used for sending text messages to offenders.
- Officers should use laptops or tablets to testify in court. They should be able to mark portions of their electronic files so that they can immediately access information pertinent to the issues at the hearing. Officers should be able to instantly communicate with clerical staff or court officers during a hearing and also instantaneously access information such as eligibility for placements or referrals so that this information can be considered as part of the sentence.

- Telecommunication systems should be used for jail visits, interviewing defendants for presentence investigation reports, and conducting assessments in lieu of requiring the defendant to travel to a central location to conduct interviews.
- Officers should have access to remote desktops so that they can work at any location in their jurisdiction and still be able to access their office computer.
- For safety considerations, liability concerns, and the collection of evidence, officers conducting field or home visits should wear a body camera.
- Departments, especially those in remote or rural areas, should consider using a telecommunication system for counseling sessions, treatment, or for tele-health.

CSCD's state oversight agency's standards and regulations regarding contacts should be revised to reflect that interactions between officers, probationers, collaterals, and treatment providers can now be conducted by several forms of telecommunication or technological messaging and not just by face-to-face interactions.

Emerging technologies should be used to support evidence-based practices, such as cognitive/behavioral therapy, motivational interviewing, and core correctional practices. Social media and interface communication devices can be used to reinforce positive behavior, enhance the relationship between the officer and probationer, remind probationers of appointments, follow up on scheduled events, etc. Social media and interface communication devices can also be used to facilitate and speed up interventions.

Departments should strongly consider on-line training opportunities in lieu of sending staff long distances for training and incurring expenses. On-line training should also be considered for increasing the variety of training opportunities for staff.<sup>50</sup>

Perhaps the most important recommendation in this paper may be the most challenging but also the most necessary. That is to retrain probationers for jobs of the twenty-first century. This is actually being done in certain parts of the country. There are a number of organizations, both for-profit and non-profit, springing up to train people for employment in the new economy. Some of these are

<sup>50</sup> I am aware of the irony that the same economic and technological forces affecting the general population and justice-involved population will apply equally to staffing of adult probation departments in the future.

training low-income, low-skilled laborers and others are training people involved in the criminal justice system.

One of these organizations is 70MillionJobs, a for-profit recruiting firm located in the Silicon Valley for people with a criminal record. Another is Mile High Workshop in Aurora, Colorado. It is an employment and training program for individuals rebuilding from incarceration, addictions, and/or homelessness. Program participants receive job readiness skills, life skills, basic needs resources, hands-on training, and supported future job search. Also, The Last Mile (TLM) is a non-profit organization founded in San Francisco. In 2014, TLM launched the first computer coding curriculum in a United States prison (Code.7370), in partnership with the California Department of Corrections and Rehabilitation and the California Prison Industry Authority (CalPIA). The men learn HTML, JavaScript, CSS, and Python. In addition to these front-end skills, the curriculum will expand to include web and logo design, data visualization, and UX/UI. Finally, Rowdy Orbit Impact in Baltimore, Maryland, trains black and Latino ex-prisoners for programming and quality assurance tech jobs.

Other initiatives are focusing more on policy initiatives to deal with workers at a high risk of losing their jobs due to artificial intelligence, automation, and robotics. For example, the nonprofit organization Markle Foundation in 2017 established the Rework America Task Force. Rework America is a coalition of influential leaders with diverse backgrounds and experience who have joined together in service of modernizing the nation's outdated labor market and unlocking economic opportunity for American job seekers, workers, and businesses. The task force seeks to use the same digital technology that is disrupting the economy today to rewire the labor market; connecting relevant stakeholders, trainers and educators, and bringing new clarity and transparency to the job-search process so workers develop in-demand skills. Rework America will highlight successful existing training programs and deploy new training experiments to create practical solutions with the aim of transforming America's labor market from one based largely on traditional credentials, such as degrees and work history, to one rooted in the skills valued in the digital economy.<sup>51</sup>

Community supervision and corrections departments alone cannot develop these training opportunities that will assist people in Texas on supervision to transition to the new economy. This will require the support and vision of political leaders and policy makers. However, Texas, especially in its large urban centers, is fortunate to have many high-tech industries. There is no reason why these companies could not sponsor a non-profit organization, especially in Houston, Austin, and Dallas to provide training, similar to training described above in other parts of the country to assist those with a criminal record to find employment in the new economy. Moreover, it is imperative that local CSCDs be aware of employment training opportunities that will allow probationers being supervised to find meaningful employment in the twenty-first century. These are challenges that are not unique to Texas. Probation departments in other parts of the country must do the same thing.

## Conclusion

The overreliance on fines, fees, and costs to support the criminal justice system in Texas over the last three decades has also led to worse performance outcomes than before offender payments became such a popular way to finance government operations. In the early 2000s the then-Executive Director of the Texas Department of Criminal Justice (TDCJ) sent a survey to all the local adult probation departments in Texas regarding the rising trend in technical revocations to prison. In his cover letter he explained that in 1988, revocations for only technical violations comprised 38 percent of all felony revocations. He further stated that by 1993 the percentage was 42 percent and by 1999 revocations for only technical violations were 55 percent of all revocation. In its report on revocations to prison for fiscal year 2018, the Community Justice Assistance Division (a division of TDCJ and the successor organization of the TAPC) stated that slightly more than one-half (50.9 percent) of all felony revocations were for technical reasons only.

Part of the reason for the increase in technical revocations is that probation in the Texas, especially with its heavy demand for various court-imposed payments, has created a situation where probationers give up and become absconders. Thus even in those

circumstances where the reason for the technical revocation was a failure to report, the underlying motive for not reporting was that the fees had become impossible to pay and for the probationer, the better choice was to not report or leave the jurisdiction instead of having to repeatedly explain to his or her officer why a payment could not be made or face a sanction for failure to pay.

Thus probation has become so onerous that prison has often become a more preferable option for criminal defendants than probation. This is particularly true in misdemeanor cases, where the state as a whole over the last several years has seen a marked drop in the number of misdemeanants on probation. In Bell County, while historically the ratio of felony and misdemeanor probation cases was roughly 50/50, it is now two-thirds felony cases and only one-third misdemeanor cases. The reality is that it is far easier to accept a misdemeanor sentence to the county jail than to abide by all the requirements of community supervision.

A recent study by the Community Justice Assistance Division examining felony probationers who were revoked for technical violations to TDCJ Correctional Institutions Division during fiscal year 2017 found that almost a quarter of probationers in the study chose revocation in lieu of having their probation continued.<sup>52</sup> Moreover, among state jail felons, a category of fourth-degree felony offenses created by the Texas Legislature in 1993, the vast majority of inmates are directly sentenced to state jail prisons. As originally designed, it was contemplated that the vast majority of state jail felons would be sent to a state jail felony facility would be probationers placed in the facility for a short period of time as an initial or modified condition of probation. However, the most recent Statistical Report by TDCJ for fiscal year 2018 states that of the 7,400 now received to a state jail felony facility, only five were sent there on a revocation and only 28 were placed there as a condition of probation. In other words, over 99 percent, mostly through a plea bargain agreement, showed a strong preference to doing upfront jail time instead of accepting probation.<sup>53</sup>

<sup>51</sup> See Rework America press release dated September 27, 2017. In addition to support by the Markle Foundation, Rework America Task Force is

also supported by Carnegie Corporation, Microsoft Philanthropies, the Pritzker Traubert Foundation, and the Rockefeller Brothers Fund.

<sup>52</sup> See "Technical Revocations Among Felons: Unraveling the Process," by the Texas Department of Criminal Justice – Community Justice Assistance Division, dated February 9, 2019 at page 11.

<sup>53</sup> State jail felony offenses comprise mainly low-level drug offenses and property offenses. While an offender can spend up to 24 months in a facility,

Assuming that the status quo continues in Texas, one can easily predict an increase in commitments to prison and a decrease in revenue generated to operate adult probation departments in the State. Departments will be diverting more of their resources away from treatment and other services to probationers

while devoting much more time to grinding out payments from the shrinking number of probationers who have the means to pay. More and more potential probationers will elect prison over probation as the cheaper and less onerous means to be punished. Prison costs will in turn go up, and the legislature

will probably search for new ways to generate additional revenue from defendants. This scenario obviously is not sustainable, and it is unlikely that Texas will be the only state in the country facing this dilemma.

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over 15 percent will spend six months or less in a facility and 43 percent will spend seven to twelve months in a facility. Once release there is no form of supervision so it is impractical to enforce the payment of court-ordered fees, fines, and costs. Therefore there is a really strong incentive to accept prison time in lieu of probation.

# JUVENILE FOCUS

ALVIN W. COHN, D.CRIM.

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## Delinquency

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has updated its Statistical Briefing Book to include national estimates of delinquency and petitioned status offense cases processed in juvenile courts through 2016. Resources include:

- A Data Snapshot describing the characteristics and processing outcomes of delinquency cases handled in juvenile court in 2016.
- Data Analysis and Dissemination Tools, including: Easy Access to Juvenile Court Statistics and Easy Access to State and County Juvenile Court Case Counts.
- Frequently Asked Questions about Juveniles in Court and Juveniles on Probation.
- A Special Topics section, including detailed tables that describe delinquency cases involving Hispanic youth.

## Artificial Intelligence

Artificial intelligence (AI) applications can be found in many aspects of our lives, and even public safety and criminal justice are benefiting from AI. For example, traffic safety systems identify violations and enforce the rules of the road, and crime forecasts allow for more efficient allocation of policing resources. AI is also helping to identify the potential for an individual under criminal justice supervision to reoffend.

Research supported by the National Institute of Justice (NIJ) is helping to lead the way in applying AI to address criminal justice needs, such as identifying individuals and their actions in videos relating to criminal activity or public safety, DNA analysis, gunshot detection, and crime forecasting.

## Domestic Violence

NIJ archives on the National Criminal Justice Reference Service (NCJRS) offer the

Final Summary Overview from New York University for An In-depth Examination of Batterer Intervention and Alternative Treatment Approaches for Domestic Violence Offenders.

In fiscal year 2011, NIJ provided funding to NYU that enabled researchers to conduct an in-depth study to complement their National Science Foundation (NSF)-funded randomized controlled trial, comparing batterer intervention and alternative treatment approaches for domestic violence (DV) offenders.

Together, the NIJ and the NSF studies offer a potential paradigm shift in how communities address DV cases and what services are offered to offenders—and possibly to victims—to prevent future violence. The preliminary findings include information about factors that influence offender participation in treatment for DV, perceptions about the causes of violence in the relationship, and the infusion of restorative justice in treatment.

The results indicate that restorative justice, combined with batterer intervention programs, is a viable alternative treatment option for DV crimes. The findings challenge assumptions about restorative justice and, more specifically, assumptions that victim participation in treatment with their offender should be forbidden.

### *Dating Violence*

Youth in foster care with a history of early maltreatment are at high risk for experiencing dating violence in young adulthood, and certain risk and protective factors across the developmental trajectory play important roles.

## Prison Policy

In *Correctional Control: Incarceration and Supervision by State*, the Prison Policy Initiative calculates each state's rate of correctional control, which includes incarceration

(in all types of facilities) as well as community supervision (probation and parole). The report includes over 100 easy-to-read charts breaking down each state's correctional population. The report also includes an interactive chart that ranks states on their use of correctional control, with surprising findings including:

- Ohio and Idaho surpass Oklahoma—the global leader in incarceration—in correctional control overall.
- Pennsylvania has the second-highest rate of correctional control in the nation.
- Rhode Island and Minnesota have some of the lowest incarceration rates in the country, but are among the most punitive when community supervision is accounted for.

Many of the highest rates of correctional control are in states with high rates of probation. “All too often,” says report author Alexi Jones, “probation serves not as a true alternative to incarceration but as the last stop before prison.” Jones proposes specific reforms and highlights the flaws in current probation systems:

- Probation imposes time-consuming conditions and fees that people struggle to meet, and which can paradoxically hold them back from turning their lives around. Violating even the most minor of these requirements (such as missing a meeting) can result in incarceration.
- Probation terms can go on for years after the original offense, meaning even model probationers can serve decades under state scrutiny.

But probation is malfunctioning in even more fundamental ways, explains Jones: “States are putting people on probation when a fine, warning, or community treatment program would suffice,” thereby putting more people at risk of incarceration.

## Dating Violence

In a study funded by NIJ, researchers examined



the relationship between pre-adolescent risk factors and dating violence in young adulthood. The researchers also looked at other factors throughout mid-adolescence and young adulthood that may serve as a “link” between these pre-adolescent risk factors and later dating violence. The study recruited a total of 215 young adults between the ages of 18-22 who had previously been enrolled in the Fostering Healthy Futures program.

## Family Visits and Contraband

When jails cut family visits in the name of security, advocates should demand evidence. Sheriffs are increasingly welcoming video calling technology into their jails, with more than 500 local jails now contracting with video calling providers like GTL and Securus. Usually, sheriffs simultaneously do away with in-person visits, despite studies showing that they are crucial for maintaining family bonds. To ward off claims that this is just a money-grubbing scheme, sheriffs invoke the argument that doing away with face-to-face visits “increase[s] the safety and security of our facilities,” presumably by stopping contraband brought in by jail visitors.

This argument is demonstrably false, and yet jail administrators repeat it at every possible opportunity. Sheriffs raise the specter of visitors loaded down with drugs, somehow passing them through physical searches *and* through body scanners *and* through glass partitions, with the only solution being a move to remote technology.

For one thing, this scenario is implausible, given that in-person jail visitors are virtually always separated from their loved ones by a glass window. But more importantly, by blaming contraband on in-person visitors, sheriffs distract from a far more likely source: jail staff. A review of news stories of arrests made in 2018 of individuals caught bringing contraband into jails and prisons found that almost all contraband introduced to any local jail comes through staff. This year alone, 20 jail guards in 12 separate county jails were arrested, indicted, or convicted on charges of bringing in or planning to bring in contraband

## Prison Sentences

*Clemency isn't the only way for governors and legislators to show mercy. They should also consider reforms that will safely release more people, more often.*

More than 200,000 people in state prisons today have been there for a decade or more. But even when governors and legislators want

to give these individuals a “second chance,” they’ve had no handbook for doing so - until now. In a new report, the Prison Policy Initiative presents *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences*. “Clemency is far from the only option,” said author Jorge Renaud. “We don’t have to invent new strategies—there are many out there that are vastly underused.”

His report *Eight Keys to Mercy* gathers examples of innovations from around the country, and presents these strategies as a slate of options, including:

- Ways to fix broken state parole systems, such as presumptive parole;
- Solutions for states where few people are eligible for parole, such as second-look sentencing;
- Common-sense reforms, such as expanding good time, to support people already working hard to get out (and stay out) of prison.

The report’s eight recommendations also include:

- Visual aids and explainers, including a detailed guide to present-day parole systems;
- Instructions for implementing reforms while avoiding common pitfalls;
- Fact sheets for all 50 states, meant to help policymakers and journalists quickly assess the problem where they live.

## Gangs and Gang Crime

A rigorous trial application of Functional Family Therapy to youth at risk of gang involvement, or already involved, finds promising outcome and cost advantages.

Street gang membership typically only lasts a year or two, but that passing involvement can cause profound harm. Gangs and their members are disproportionately responsible for violent, property, and drug offenses, taking an unrelenting toll on society. In the near term, adolescents in gangs tend to be alienated from school and work, are more likely to become a teen parent, and tend to identify with negative peers while living their lives in anger, studies have established. Later, in their twenties and thirties, they tend to face greater economic hardship and family problems, worse health, more substance abuse, and more criminal activity leading to higher incarceration rates.

Despite the patent benefits of helping vulnerable adolescents find a path away from gangs, to date there have been no rigorous evaluations of therapeutic programs aimed at an urban, predominantly minority

population at high risk of gang involvement or currently involved in gangs. A recent randomized control trial—a first for a gang-focused intervention evaluation—found that it is possible to prevent subsequent criminal activity in a population that is at high risk for joining gangs using a version of Functional Family Therapy (FFT) tailored to youth who are gang-involved or deemed to be at risk for gang involvement. (FFT is a short-term, family-based program model for at-risk youth that focuses on addressing risk and protective factors.)

## New Publications

*Criminal Justice Solutions: Model State Legislation* is a first-of-its-kind package of model bills that state lawmakers can use to help end mass incarceration. Its innovative proposals include step-by-step legislative directions to end imprisonment for lower-level offenses, slash prison sentences for other crimes, eliminate fees charged on defendants, change prosecutors’ incentives, and end cash bail. The first two proposals alone would drop the nationwide prison population by 40 percent.

*Crime in 2018: Updated Analysis* analyzes the most recently available data from police departments in major American cities. Our research estimates that rates of overall crime, murder, and violence in 2018 are decreasing, continuing similar declines from the previous year. Their findings corroborate our *Preliminary Analysis* released in September. Many of these cities saw reforms in police practice, showing that justice and safety go together. Crime remains at historic lows, making now the prime opportunity to advance criminal justice reform.

America’s criminal justice system is in crisis. It is both inequitable, placing a disproportionate burden on communities of color, and extremely expensive, costing \$270 billion a year.

What’s more, our current approach is not necessary to protect public safety. Research conclusively shows that high levels of imprisonment are simply not necessary to protect communities. The Brennan Center has found that around 40 percent of America’s prison population is incarcerated with little public safety justification — in other words, they are behind bars unnecessarily.

Notably, if every state passed the Alternative to Prison Act and the Proportional Sentencing Act, two new and original policy proposals, the national prison population could safely be reduced by nearly 40 percent.

The report includes model and example legislation to:

- **Eliminate Imprisonment for Lower-Level Crimes.** Incarceration is too often the punishment of first resort. It can be especially counterproductive for people convicted of lower-level crimes who could be better sanctioned by alternatives to incarceration, such as treatment, community service, or probation. Our model bill would eliminate imprisonment for certain qualifying lower-level offenses and instead require diversion into various alternatives to incarceration.
- **Make Sentences Proportional to Crimes.** State prison sentences are excessively long. A growing body of research shows that there is little or no relationship between length of incarceration and recidivism. Our model bill would reduce sentences by 25 percent for those offenses that make up the largest share of the prison population.
- **Abolish Cash Bail.** The decision of whether a defendant should be jailed while awaiting trial is often based on a defendant's wealth and not on public safety considerations. This report highlights a model bill developed by Civil Rights Corps that would end the use of money bail.
- **Reform Prosecutor Incentives.** Our model bill incentivizes local prosecutors to change their practices by providing bonus dollars to their offices if they reduce incarceration while keeping recidivism rates low.
- **Reform Marijuana Laws.** Jail and prison spaces are expensive, and beds in these facilities should not be used for people convicted of low-level marijuana offenses. This report highlights a ballot initiative that legalized marijuana possession in California and legislation that decriminalized marijuana possession in Delaware, serving as useful models for lawmakers to enact as legislation in other states.
- **Calibrate Fines to Defendants' Ability to Pay and Eliminate Fees.** Courts continue to levy fees and fines on defendants convicted of crimes and civil violations without considering whether they are financially able to pay them. This leads to never-ending cycles of criminal justice debt and even modern-day debtors' prisons. Our model bill would calibrate criminal fines (monetary sanctions prescribed by courts as punishment for committing a crime) to a defendant's ability to pay and eliminate the assessment of court fees (flat fees intended to offset court costs) on criminal defendants. It would mandate that fines are

calculated with reference to the number of days of income a person must forego to pay them — called "day fines."

- **Reduce Opioid Deaths.** The over-prescription of legal opioids, such as oxycodone and codeine, contributes significantly to America's opioid crisis. This report highlights legislation in New Jersey that limits when and how doctors can prescribe opioids. It also highlights a Vermont bill that increases access to drugs that can neutralize the effects of opioid overdoses.
- **Curb the Number of Women Entering State Prisons.** The best way to help incarcerated women is to significantly reduce the female prison population. Additionally, incarcerated women have unique needs, and reforms aimed at conditions of confinement can help meet them. This report provides summaries of legislation in New Jersey and Oklahoma that encourage diversion and improve conditions of confinement and reentry services for women and primary caretakers.

## Identity Theft

The Department of Justice's Bureau of Justice Statistics released *Victims of Identity Theft, 2016*, which details the number, percentage, and demographic characteristics of victims who experienced one or more incidents of identity theft during a 12-month period. It focuses on the most recent incident and describes—

- how victims discovered the crime.
- financial losses and other consequences of identity theft, including the amount of time victims spent resolving associated problems.
- reporting of the incident to credit card companies, credit bureaus, and law enforcement agencies.
- level of distress experienced by victims of identity theft.

The report uses data from the 2016 Identity Theft Supplement (ITS) to the National Crime Victimization Survey (NCVS). From January to June 2016, the ITS collected data from persons about their experiences with identity theft.

## Firearms and Crimes

The Department of Justice's Bureau of Justice Statistics released *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, which presents statistics that describe firearm possession state and federal prisoners who were serving a sentence in 2016. This

report describes firearm possession during the crime for which prisoners were serving time and by type of offense, and

- How the firearm was used during the crime
  - Type of firearms possessed
  - Methods, sources and processes of obtaining firearms
- Description:
- Michigan State University studied different forms of police consolidation and investigated its associated impacts on officer satisfaction, police legitimacy, and in one site, impacts on crime and clearance rates.
  - The study found that police consolidation did not impact public perceptions of the police or police legitimacy. Officers, on the other hand, were generally supportive of consolidation in terms of cost effectiveness, job security and crime reductions.

Findings are based on BJS's 2016 Survey of Prison Inmates (SPI), formerly known as the Survey of Inmates in State and Federal Correctional Facilities. The SPI self-reported data were collected through face-to-face interviews with a national sample of state and federal prisoners.

## Police Consolidation

Michigan State University studied different forms of police consolidation and investigated its associated impacts on officer satisfaction, police legitimacy, and in one site, impacts on crime and clearance rates. The study found that police consolidation did not impact public perceptions of the police or police legitimacy. Officers, on the other hand, were generally supportive of consolidation in terms of cost effectiveness, job security and crime reductions.

## Incarceration Rates

United States is a world leader in incarceration rates and keeps nearly 7 million persons under criminal justice supervision. More than 2.2 million are in prison or jail, while 4.6 million are monitored in the community on probation or parole. Changes in sentencing law and policy, not changes in crime rates, have produced the nation's high rate of incarceration. Scaling back incarceration will require changing policy and practice to reduce prison populations, intentionally address racial disparity, and eliminate barriers to reentry. In recent years a number of states have enacted reforms designed to reduce the scale of incarceration and impact of the collateral consequences of a felony conviction.

## Opioid Deaths

A new report by the National Safety Council found that based on 2017 data, Americans have a 1 in 96 chance of dying from an opioid overdose (including heroin and fentanyl), while the probability of dying in a motor vehicle crash is 1 in 103.

## Transgender Teens

Transgender teens now represent almost 2% of U.S. high school students, according to the Centers for Disease Control and Prevention. This stems from the agency's analysis of data based on a nationally representative sample of 131,901 public school students in grades 9 through 12. The data also showed that transgender teens are more likely to have been victims of violence than their non-transgender peers—24 percent say they have been threatened or injured with a weapon at school. About 27 percent of transgender teens say they feel unsafe at school. About 35 percent report having tried suicide in the past year.

## School Violence

The Police Foundation, in collaboration with the COPS Office, implemented the Averted School Violence (ASV) database to provide

a platform for sharing information about averted incidents of violence in institutions of elementary, secondary, and higher education. The ASV project defines an incident of averted school violence as a violent attack planned with or without the use of a firearm that was prevented before any injury or loss of life occurred.

This preliminary report analyzes 51 averted incidents of school violence selected from the ASV database to begin to improve our understanding of averted school attacks. The report begins with a case study of one averted attack and then details findings on the 51 averted incidents in the study. It concludes with recommendations for law enforcement and school administration to improve school safety.

## Justice Statistics

This report describes persons processed by the federal criminal justice system. Data are from the Federal Justice Statistics Program (FJSP). The FJSP collects, standardizes, and reports on administrative data received from six federal justice agencies: the U.S. Marshals Service, Drug Enforcement Administration, Executive Office for U.S. Attorneys, Administrative Office of the U.S. Courts, U.S.

Sentencing Commission, and Federal Bureau of Prisons. From fiscal year 2015 to fiscal year 2016, federal arrests decreased by 1 percent, from 153,478 arrests to 151,460. The number of defendants sentenced to federal prison decreased by 3 percent, from 56,018 in fiscal year 2015 to 54,274 in fiscal year 2016. Of the nearly 380,000 persons under federal correctional control on September 30, 2016 (fiscal year-end), 59 percent were in secure confinement and 41 percent were under community supervision.

## Jail Phone Calls Costs

County and city jails frequently charge incarcerated people \$1/minute or more for a phone call, far more than even the worst rates in state prisons, a new 50-state report finds. The Prison Policy Initiative report *State of Phone Justice* uncovers the cost of phone calls in over 1,800 jails nationwide, explaining why sheriffs sign lucrative phone contracts that prey on pretrial detainees. "Jails have managed to escape the political pressure that forced many prisons to bring their rates down," said co-author Peter Wagner. "We found that many jails are charging three, five or even 50 times as much as their state's prisons would charge for the same phone call."

# CONTRIBUTORS

## *To This Issue*

### **W. Carsten Andresen**

Assistant Professor, St. Edward's University, Austin, TX. Ph.D., Rutgers University. Author of "Gay Panic as a Theory of Self-Defense in 44 Murder Cases. LGBTQ Legal Issues in Changing Times: What Every Texas Practitioner Needs to Know," Austin, State Bar of Texas (Dec. 2018).

### **Laura Baber**

Independent Consultant. Previously, Chief, Program Development Division, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. M.S., Information Technology Project Management, George Washington University. Author of "Inroads to Reducing Recidivism," *Federal Probation* (June 2015).

### **Kelle Barrick**

Research Criminologist, RTI International. Ph.D., Florida State University. Co-author of "Is policing safer today? The case for a more comprehensive definition of dangerousness." *Criminology & Public Policy* (2019).

### **Peter Baumgartner**

Research Data Scientist, RTI International. M.S., North Carolina State University. Author of "Utilizing big data and Twitter to discover emergent online communities of cannabis users" (May 29, 2017).

### **Megan Comfort**

Senior Research Sociologist, RTI International. Ph.D., London School of Economics and Political Science. Author of "Doing Time Together: Love and Family in the Shadow of the Prison" (2008).

### **David Cook**

Social Science Analyst, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. M.S., Purdue University; M.A., University of Maryland. Co-author of "The Supervision of Low-risk Federal Offenders: How the Low-risk Policy

Has Changed Federal Supervision Practices without Compromising Community Safety," *Federal Probation* (June 2016).

### **Roberto Cordeiro**

Chief, U.S. Pretrial Services Office, Eastern District of New York. M.S., New Jersey City University.

### **Matthew DeMichele**

Director, Center for Courts and Corrections Research, and Senior Research Sociologist, RTI International. Ph.D., University of Kentucky. Co-author of "Exploring probation officer styles and goals with individual, organizational, and social characteristics." *European Journal of Probation*, Vol. 10, No. 3 (2018).

### **Christine Dozier**

Chief, U.S. Pretrial Services Office, District of New Jersey. M.P.A., Rutgers University.

### **Todd Jermstad**

Director, Bell/Lampasas Counties Community Supervision and Corrections Department, Belton, Texas. J.D., Baylor Law School, Baylor University.

### **Aaron F. McGrath, Jr.**

Probation Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, U.S. Probation Officer, District of Massachusetts (on detail to the National Training Academy in Charleston, SC). B.A., Wake Forest University. Co-author of "The History of Training in the Federal Probation and Pretrial Services System," *Federal Probation* (Sept. 2015).

### **Shilpi Misra**

Public Health Analyst for the Victimization and Resilience Program, RTI International. B.S., University of North Carolina at Chapel Hill.

### **Medha Patel**

Deputy Probation Officer, Boulder County

Probation. Previously, Intern, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Bachelor of Arts, University of Colorado Boulder.

### **Samuel Scaggs**

Research Criminologist, RTI International. Ph.D., Florida State University. Co-author of "Politics in punishment: The effect of the state attorney election cycle on conviction and sentencing outcomes in Florida." *American Journal of Criminal Justice* (2017).

### **Janette Sheil**

Chief, Program Oversight and Support Division, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. M.S., Indiana State University. Co-author of "Imagining Sentinel Event Reviews in the U.S. Probation and Pretrial Services System," *Federal Probation* (Sept. 2016).

### **Heather Toronjo**

Research Associate, George Mason University. M.P.P., George Mason University.

### **Jay Whetzel**

Program Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Assistant Deputy Chief, U.S. Probation, District of Maryland. M.A., University of Chicago. Co-author of "Accountability and Collaboration: Strengthening Our System Through Office Reviews," *Federal Probation* (Dec. 2015).

### **Kevin T. Wolff**

Assistant Professor, John Jay College, CUNY. Ph.D., Florida State University. Author of "Does Treatment Quality Matter? Multilevel Examination of the Effects of Intervention Quality on Recidivism of Adolescents Completing Long-Term Juvenile Justice Residential Placement," *Criminology and Public Policy* (31 January 2018).

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