

DECEMBER 2020

Federal PROBATION

*a journal of correctional
philosophy and practice*

All Hands On Deck!—Toward a Reentry-Centered Vision for Federal Probation

By Jay Whetzel, Marie Garcia, Scott Anders

Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release

By Lauren Shuman

Beyond the New Jim Crow: Public Support for Removing and Regulating Collateral Consequences

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Practitioner Perceptions of the Use and Utility of Pretrial Risk Assessment: Focus Group Analysis

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PUBLISHED BY

The Administrative Office of the U.S. Courts

James C. Duff, *Director*

John J. Fitzgerald, *Chief*
Probation and Pretrial Services Office

Federal Probation ISSN 0014-9128 is dedicated to informing its readers about current thought, research, and practice in criminal justice, community supervision, and corrections. The journal welcomes the contributions of persons who work with or study defendants and offenders and invites authors to submit articles describing experience or significant findings regarding the prevention and control of crime and delinquency. A style sheet is available from the editor.

Federal Probation is published three times yearly—in June, September, and December. Permission to quote is granted on the condition that appropriate credit is given the author and *Federal Probation*. For information about reprinting articles, please contact the editor.

Subscriptions to *Federal Probation* are available from the Superintendent of Documents of the Government Printing Office at an annual rate of \$16.50 (\$22.40 foreign). Please see the subscription order form on the last page of this issue for more information.

Federal Probation can also be accessed online at no charge at www.uscourts.gov.

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THIS ISSUE IN BRIEF

All Hands on Deck!—Toward a Reentry-Centered Vision for Federal Probation

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This article considers the benefits of early and deeper officer engagement, and how we might enhance the reentry process in federal supervision, particularly with the recent passage of the First Step Act (FSA). The authors first discuss what we know about reentry, then discuss the possibility of a reentry-centered vision within federal probation, and consider the holistic approach taken by one U.S. probation office, the Eastern District of Missouri (EDMO), within a modified NIJ framework. We close by presenting principles, based upon research as well as real-life examples, that might inform new national reentry procedures.

By Jay Whetzel, Marie Garcia, Scott Anders

Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release

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Combined with the COVID-19 pandemic, the First Step Act (FSA) has led to a significant increase in the number of inmates seeking early release from prison through expanded use of home confinement and compassionate release. This article highlights some of the major implementation challenges presented by the recent expanded authority under the FSA and CARES Act to release inmates early to the community, and the response of the Judicial Conference and its Criminal Law Committee, working with the Administrative Office of the U.S. Courts, to these implementation challenges.

By Lauren Shuman

Beyond the New Jim Crow: Public Support for Removing and Regulating Collateral Consequences

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In *The New Jim Crow*, Michelle Alexander drew national attention to the extensive imposition of collateral consequences on those convicted of a crime and to their racially disparate effects. Based on a 2017 national-level YouGov survey, supplemented by a second 2019 YouGov survey, the current study finds that the public is split on allowing ex-offenders to sit on juries, but supportive of removing barriers to voting and employment. The respondents also favored providing defendants with a list of restrictions linked to conviction as well as having lawmakers review and eliminate collateral consequences found to have no purpose and to not reduce crime.

By Alexander L. Burton, Velmer S. Burton, Jr., Francis T. Cullen, Justin T. Pickett, Leah C. Butler, Angela J. Thielo

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This article focuses upon change implementation at the individual and interpersonal level for line officers supervising clients in the community. The author provides a generic practice model for enabling officers to establish a working alliance with probationers/parolees as quickly as possible. This practice model incorporates six best-practice tactics embedded within the framework of the four basic Motivational Processes.

By Bradford M. Bogue

Training Parole Agents: How Prior Criminal Justice Work Shapes Attitudes and Beliefs

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The present analysis gathered data from a self-administered questionnaire that assessed new parole agents' knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, showing support for offenders' reentry into the community, and understanding the principles on which effective correctional intervention programming is based. Overall, findings showed that parole agents' prior work history in the field of criminal justice measurably impacted knowledge, attitude, and beliefs about effectiveness of offender treatment programs and their responsibilities for facilitating successful community reentry.

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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 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.

All Hands On Deck! Toward a Reentry-Centered Vision for Federal Probation¹

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OVER THE LAST decade, U.S. Probation and Pretrial Services (USPPS) has made major strides in advancing the use of evidence-based practices (EBP) and adopting the Risk-Needs-Responsivity (RNR) model in community corrections.² However, officer engagement, and the application of these principles and model, do not commence until someone comes under the court's jurisdiction.³ Of the 128,000 persons currently under federal

post-conviction supervision, 89 percent arrive after serving an often-lengthy term of incarceration within the federal Bureau of Prisons (BOP).⁴ There is now growing consensus, based upon the empirical literature, that incarceration actually compounds criminogenic needs and increases the barriers that await those reentering their communities.⁵ This reality makes any delay in the application of EBP seem even more problematic. As early as 18-24 months prior to release, BOP begins release planning to determine where an individual will return. For those transitioning home and on to a term of supervised release, USPPS officers serve as a fundamental support system. Most individuals release from prison with intentions to turn their lives

around and remain crime-free, but, confronted with longstanding, unaddressed risk factors and multiple barriers, some become frustrated and struggle to succeed.

In this article we consider the benefits of early and deeper officer engagement, and how we might enhance the reentry process in federal supervision. As USPPS begins to reassess its supervision procedures, there is also an opportunity to evaluate reentry procedures, particularly with the recent passage of the First Step Act (FSA).⁶ In this article, we first discuss what we know about reentry, drawing from a recent summary of reentry research developed by the National Institute of Justice (NIJ). We then discuss the possibility of a reentry-centered vision within federal probation, and consider the holistic approach taken by one U.S. Probation Office, the Eastern District of Missouri (EDMO), within a modified NIJ framework. We close by presenting principles, based upon research as well as real-life examples, which might inform new national reentry procedures. Could earlier and deeper officer engagement improve rapport and build trust, and increase the likelihood of success? Can USPPS provide programs and

¹ Opinions or points of view expressed in this document are those of the authors and do not reflect the official position of the U.S. Department of Justice.

² Lowenkamp, C. (2013), Introduction to Federal Probation Special Focus on Implementing Evidence-Based practices, *Federal Probation*, 77(2); Lowenkamp, C., et al. (2016), Enhancing community supervision through the application of dynamic risk assessment, *Federal Probation*, 80(2); Cohen, T., et al. (2016), The supervision of low-risk offenders: How the low-risk policy has changed federal supervision practice without compromising community safety, *Federal Probation*, 80(1); Alexander, M., et al. (2014), Driving evidence-based supervision to the next level, *Federal Probation*, 78(3).

³ Courts impose special conditions at the time of sentencing that are tailored to the risks and needs of the defendant. During the course of supervision, probation officers ensure that conditions, including rehabilitative interventions, are implemented.

⁴ U.S. Probation Caseload Statistics, JNet. Table E-2.

⁵ Petrich, D., et al. (2020), A revolving door? A meta-analysis of the impact of custodial sanctions on reoffending, working paper University of Cincinnati; Mears & Cochran (2018), Progressively tougher sanctioning and recidivism: Assessing the effects of different types of sanctions. *Journal of Research in Crime and Delinquency*, 55; Nieuwbeerta et al. (2009), Assessing the impact of first-time imprisonment on offenders' subsequent criminal career development: A matched sample comparison, *Journal of Quantitative Criminology*. 13.

⁶ The FSA was enacted on December 21, 2018.

additional resources that systematically target known and broadly present reentry obstacles? Could such efforts potentially reduce rearrest and supervision failure among higher risk persons during the first few months of release?

Reentry and Why It Matters

Long before the term was coined in the late 1990s, corrections agencies have engaged in reentry practices; however, it is only in the last few decades that the release and return of individuals from a term of incarceration to the community has received increased legislative and empirical attention. As an example, the federal government enacted two significant reentry reforms, the Serious and Violent Offender Reentry Initiative (SVORI) in 2002 and the Second Chance Act of 2007,⁷ to address the challenges of reentry at the state, local, and federal levels. Since this time, the federal government has continued to fund a wide array of efforts aimed at improving reentry outcomes through empirical research. In fiscal year 2020 alone, the Department of Justice's Office of Justice Programs (OJP) supported more than \$92 million in grants designed to improve reentry outcomes and reduce recidivism among adults and youth returning to their communities.⁸

When individuals are released from a term of incarceration, they face numerous barriers to their successful reintegration into their communities. Concurrent with the passage of legislation at the federal and state levels to address these concerns, there has also been a surge in the empirical assessment of the effectiveness of various programs, services, and practices that aim to improve the reentry experience. The most common and widely used measure of effectiveness is whether an individual has recidivated within a certain time frame of release from custody.⁹ While useful for practitioners and policy makers, on its own, recidivism does not account for the myriad of challenges faced by returning offenders. Reentry is a process and the conduits to successful reintegration require

⁷ The Second Chance Act of 2007 was reauthorized in Title V of the First Step Act in December 2018.

⁸ For more information, see <https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/reentryfactsheet.pdf>.

⁹ The most common measures of recidivism include three events: an arrest, return to prison, or reconviction. Other key measures of reentry include housing, employment, substance use, improved physical and mental health, and reconnection with families, social networks, and communities, just to name a few.

additional empirical attention.

The post-prison experience is tenuous, especially in the first few months of release. Results from the multi-year, multi-site evaluation of SVORI found that offenders returning to the community are often high-risk and high-need, and the delivery and receipt of reentry services often decline after release. And there is often a disconnect between service need and service receipt. An analysis of the agreement between SVORI program directors' reports of pre-release service provision for those participating in the SVORI reentry programs and the program participants' reports of receipt of those services found that program directors, on average, reported providing services to larger percentages of program participants than the average percentage of participants reported receiving said service.¹⁰ This finding speaks to the potential difficulty and variation in implementing reentry programs.

Further, individuals often reengage with the criminal justice system after returning to the community. As an example, a 9-year follow-up study of offenders released in 2005 found that approximately 68 percent of released prisoners were rearrested within three years.¹¹ Similarly, a five-year examination of trends from individuals placed on federal community supervision in 2005 found that 35 percent of offenders were arrested within 3 years and 43 percent were arrested within 5 years.¹² Recent rearrest rates for individuals on federal supervision are significantly lower, approximately 14 percent over that last 18 months. However, the highest risk "red band" cases were rearrested at approximately 32 percent during the same period, with 11 percent arrested for violent offenses.¹³

¹⁰ Lattimore, P. K., Visher, C. A., & Steffey, D. M. (2011). Measuring gaps in reentry service delivery through program director and participant reports. *Justice Research and Policy*, 13(1), 77-100.

¹¹ Alper, M., Durose, M. R., & Markman, J. (2018). *2018 Update on prisoner recidivism: A 9-year follow-up period (2005-2014)*. Washington, D.C.: Bureau of Justice Statistics. See <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

¹² Markman, J. A., Rantala, R. R., & Tiedt, A. D. (2016). *Recidivism of offenders placed on federal community supervision in 2005: Patterns from 2005 to 2010*. Washington, D.C.: Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/ropfcs05p0510.pdf>

¹³ Communication with Dr. Christopher Lowenkamp, October 30, 2020. Markman, J. A., Rantala, R. R., & Tiedt, A. D. (2016). *Recidivism of offenders placed on federal community supervision in 2005: Patterns from 2005 to 2010*. Washington, D.C.: Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/ropfcs05p0510.pdf>

There is no one-size-fits-all model for successful reentry. Given the large number of individuals releasing to the community each year, how should USPPS address this challenge? What works to reduce recidivism? And importantly, what works to enhance the reentry process?

What Works in Reentry? An Overview by the National Institute of Justice

To concisely present key reentry findings to its stakeholders, NIJ conducted an extensive literature review, including an assessment of the federal government's significant reentry investments during recent years.¹⁴ The summary asserts the process of reentry is a difficult one to traverse and that available reentry resources do not meet the needs of those returning from prison to the community. As noted, this population of individuals is high-risk and high-need and often presents with a diverse set of physical and mental health challenges. Addressing these challenges is key to their success. The key issues to addressing reentry are presented below:

Relationships

- Family members often provide the greatest tangible and emotional support to those who reenter the community.¹⁵
- Former inmates who are married or have long-term relationships are less likely to recidivate or use drugs or alcohol compared to those in more casual relationships.¹⁶

Health

- Many who return to their community report having chronic or infectious diseases, depression or other mental illnesses.¹⁷

[gov/content/pub/pdf/ropfcs05p0510.pdf](https://www.nij.gov/content/pub/pdf/ropfcs05p0510.pdf)

¹⁴ NIJ reentry primer: <https://www.ncjrs.gov/pub/files1/nij/251554.pdf>

¹⁵ Naser, R. L., & Visher, C. A. (2006). Family members' experiences with incarceration and reentry. *Western Criminology Review*, 7(2), 20-31.

¹⁶ Research Brief. (2009). *The impact of marital and relationship status on social outcomes for returning prisoners*. Washington, D.C.: U.S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/180146/rb.pdf>

¹⁷ Visher, C. A., Lattimore, P. K., Barrick, K., & Tueller, S. (2017). Evaluating the long-term effects of prisoner reentry services on recidivism: What types of services matter? *Justice Quarterly*, 34(1), 136-165. Recently, with passage of the FSA and the CARES Act of 2020, there has been a marked increase in the number of inmates releasing with major medical problems.

- Access to health care within facilities varies greatly. And existing reentry-related health programs are insufficient in their ability to meet the physical and mental health needs of those men and women who return from prison.¹⁸

Employment

- Many people returning from prison face significant employment barriers and deficits.¹⁹ More than half have been previously fired from a job and many depended upon illegal income before incarceration.²⁰
- Employment is an important starting point in the reentry process²¹; however, to date no causal link has been established between the impact of post-release employment programs on employment or rearrest.²²
- Because the integration of reentry and employment services presents a challenge, successful integration requires a high level of coordination and collaboration between policymakers, practitioners, and service providers.²³

Education

- Approximately two-fifths of individuals entering prisons lack a high school diploma and many will return to the community with similar deficits.²⁴

¹⁸ Dumont, D. M., Brockmann, B., Dickman, S., Alexander, N., & Rich, J. (2012). Public health and the epidemic of incarceration. *Annual Review of Public Health*, 33, 325-339.

¹⁹ Duwe, G. (2015). The benefits of keeping idle hands busy: An outcome evaluation of a prisoner reentry employment program. *Crime & Delinquency*, 61(4), 559-586.

²⁰ La Vigne, N. G., & Kachnowski, V. (2005). *Texas prisoners' reflections on returning home*. Washington, D.C.: Urban Institute. <https://www.urban.org/sites/default/files/publication/42901/311247-Texas-Prisoners-Reflections-on-Returning-Home.PDF>

²¹ Bushway, S. D., & Apel, R. (2012). A signaling perspective on employment-based reentry programming. *Criminology & Public Policy*, 11(2), 21-50.

²² Visher, C. A., Winterfield, L., & Coggeshall, M. B. (2005). Ex-offender employment programs and recidivism: A meta-analysis. *Journal of Experimental Criminology*, 1(3), 295-315.

²³ Bond, B. J. & Gittell, J. H. (2010). Cross-agency coordination of offender reentry: Testing collaboration outcomes. *Journal of Criminal Justice*, 38(2), 118-129. There is no national or even regional coordinated effort between BOP and USPPS to assure inmates that institutional based vocational training aligns with programming in the districts to which they are returning.

²⁴ Duwe, G. (2018). *The effectiveness of education and employment programming for prisoners*.

- Studies of the effects of in-prison education programs are mixed and many suffer from methodological shortcomings. However, prison-based educational programs participants who earned a high school degree had better employment rates upon release; nevertheless, this did not lead to reductions in recidivism. Earning a post-secondary degree, though, did result in both greater employment outcomes and recidivism reductions.²⁵
- Prison education may increase the employability of offenders when they reenter society.²⁶

Housing

- Returning individuals face difficulties in finding stable housing due to individual challenges (mental health/substance use disorders) and systemic barriers (housing restrictions).
- The provision of housing assistance can have a positive effect on individuals.²⁷
- More research is needed to understand how housing may serve as a platform for successful reentry.

Substance Abuse

- Therapeutic communities and long-term residential treatment programs for substance abuse disorders have been shown to reduce recidivism.²⁸

Technology

- Technology is emerging as an important tool for reentry.
- Global Positional System (GPS) have been found to be effective in identifying parole violations for some offender types; for

Washington, D.C.: American Enterprise Institute. <https://files.eric.ed.gov/fulltext/ED585975.pdf>

²⁵ Duwe, G., & Clark, V. (2014). The effects of prison-based educational programming on recidivism and employment. *The Prison Journal*, 94(4), 454-478.

²⁶ Ibid.

²⁷ Wright, B. J., Zhang, S. W., Farabee, D., & Braatz, R. (2014). Prisoner reentry research from 2000 to 2010: Results of a narrative review. *Criminal Justice Review*, 39(1), 37-57.

²⁸ Swan, S., & Jennings, J. L. (2018). Reentry program combines therapeutic community, rehabilitation, work release and parole: Long term outcomes. *Journal of Forensic & Genetic Sciences*, 1(4), 1-9; Prendergast, M. L. (2009). Interventions to promote successful re-entry among drug-abusing parolees. *Addiction Science & Clinical Practice*, 5(1), 4-13.

example, high-risk sex offenders.²⁹

This succinct list of findings will not surprise experienced community corrections professionals, but the summary provides focus and can assist in the identification and deployment of resources and programming, as well as the use of probation officer time. However, from an RNR perspective, missing from the summary is discussion of (1) the importance of individual risk assessment, and (2) the role of criminal thinking and criminal peers in recidivism. Indeed, these have been a primary focus for USPPS for the past 15 years.³⁰ Within the federal post-conviction supervision population, criminal thinking and criminal peers are the most predictive—and roughly equivalent in their predictive ability—of the identified risk factors. Moreover, criminal peers is the most prevalent.³¹ To advance reentry procedures, and potentially frontload resources and interventions, a more holistic approach to reentry, including risk assessment, criminal thinking and criminal peers, needs to be part of the solution.

U.S. Probation and Reentry

As noted earlier, 89 percent of those persons under post-conviction supervision in the federal system have served a term of confinement in prison.³² This percentage has steadily increased over the past few decades as the risk profile of those reentering has also increased. BOP releases approximately 45,000 onto community supervision annually. For the first time in decades, the BOP's population has decreased, and now stands at 154,859, down from a high of 219,298 in 2013.³³

As the only federal law enforcement authority not under control of the Department

²⁹ Gies, S. V., Gainey, R., Cohen, M. I., Healy, E., Yeide, M., Bekelman, A., & Bobnis, A. (2013). *Monitoring high-risk gang offenders with GP technology: An evaluation of the California Supervision Program*. Washington, D.C.: National Institute of Justice. <https://www.ncjrs.gov/pdffiles1/nij/grants/244164.pdf>

³⁰ Lowenkamp, C., et al. (2016); Robinson, C. et al. (2011), A random (almost) study of Staff Training Aimed at Reducing Re-Arrest (STARR): Reducing recidivism through intentional design, *Federal Probation*. Vol. 75, Number 2, 57-63.

³¹ As of December 1, 2020, approximately 82 percent of persons under federal post-conviction supervision have criminal peers as a risk factor. DSS Report 1048. Email from AOUSC Senior Social Science Analyst Dr. Thomas Cohen.

³² U.S. Probation Caseload Statistics, JNet. Table E-2.

³³ BOP website 10/22/2020.

of Justice, USPPS rests within the federal judiciary, which is highly decentralized. Each chief U.S. probation officer and their staff, totaling 7,874 nationwide, serve at the pleasure of the federal judges in each of the 94 judicial districts across the U.S.³⁴ In addition to community-based supervision, USPPS provides a diverse set of services including but not limited to substance abuse disorder and mental health treatment, cognitive behavioral therapy, sex offender treatment, location monitoring, and emergency and transitional services.³⁵ For a host of reasons, including being situated in different branches of government and having differing treatment philosophies,³⁶ BOP and USPPS have had difficulty providing a seamless continuity of care for those leaving prison and returning home.³⁷ Enactment of the FSA in December 2018, as well as the recent onset of the COVID-19 pandemic, have placed a greater strain on the continuum of care. While the FSA could lead to significant improvements to and expansion of inmate programming, and therefore improved inmate release preparation, full and effective implementation is not a foregone conclusion. USPPS needs to be innovative to help inmates take advantage of enhanced programming and additional prerelease credits established by the FSA.

During the past 15 years, USPPS has fully embraced the RNR model and made great progress adopting EBP. First, the Probation and Pretrial Services Office (PPSO) at the Administrative Office of the U.S. Courts (AOUSC) developed risk assessment tools for both pretrial defendants and those on post-conviction supervision that district staff have been trained in and use.³⁸ These instruments continue to evolve; a supplemental violence trailer was included in the PCRA in 2017. Second, the majority of USPPS post-conviction supervision officers received training in

the courts' version of core correctional practices and cognitive restructuring skills, known as Staff Training Aimed at Reducing Rearrest (STARR).³⁹ More recently, PPSO has piloted in several districts the use of the Criminogenic Needs and Violence Curriculum (CNVC), created in partnership with the University of Cincinnati. CNVC is a comprehensive curriculum for USPPS to use with persons under supervision. It includes self-study materials, as well as resources for family members and treatment providers.⁴⁰ Although refinements in EBP implementation continue, PPSO is fully committed to using the most rigorous research evidence available to improve supervision outcomes. National supervision policy has correspondingly evolved with these developments. The term "offender" has been replaced with "person under supervision" and the supervision officer is considered "the primary change agent" assisting those under supervision to achieve "lawful self-management."⁴¹ As PPSO now works with the field in updating more granular procedural guidance, particular emphasis will be placed on the importance of the relationship between officers and those under supervision.

The variety of obstacles individuals released must begin to navigate as they leave prison underscores the need for officers to kick-start the reentry process as early as possible. Although case "activation" and engagement with inmates can begin 120 days prior to commencing their term of supervision,⁴² in effect, officers start from scratch with persons as they return to the community. And sometimes early engagement is perfunctory. However, one major improvement to federal reentry came with statutory changes contained in the Second Chance Act of 2007.⁴³ These changes greatly expanded the breadth of services that USPPS officers could provide, if fully resourced, to those returning.⁴⁴ Yet

despite complicated jurisdictional issues, there remains a need for USPPS to focus on inmates prior to their leaving the BOP.⁴⁵

Recent enactment of the FSA has brought renewed attention to federal reentry, particularly regarding BOP's responsibility to prepare inmates for release. The FSA's landmark provision required the BOP to establish a risk assessment system for all inmates that would be used to determine which evidence-based recidivism reduction programs⁴⁶ inmates should participate in as a way to reduce their level of recidivism risk. Once implemented, this process will allow a subset of inmates to earn credits that could be applied for additional prerelease time in the community.⁴⁷ FSA also established new programs that would increase the release of elderly and terminally ill inmates onto U.S. probation supervision.⁴⁸ Indirectly, however, the FSA assumes a greater level of inter-agency reentry collaboration and, effectively, raises expectations for USPPS reentry strategy.

Given current caseload demands, many post-conviction supervision officers struggle to prioritize releasing inmates until they are back in the community.⁴⁹ Officers conduct prerelease investigations as requests are received from BOP case managers, although often they arrive too far in advance.⁵⁰ Such

services, including housing, job training, mentoring, CBT, child-care, non-emergency medical assistance, transportation, etc. Whetzel & McGrath, (2019), Ten years gone: Leveraging Second Chance Act 2.0 to improve outcomes, *Federal Probation*, 81(1).

⁴⁵ With the exception of inmates who are under the supervision of USPPS via an interagency agreement, the courts cannot pay for services for those who remain under the jurisdiction of the Attorney General.

⁴⁶ Under the First Step Act, an evidence-based recidivism reduction program (EBRR) is defined as "either a group or individual activity that has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism" and "is designed to help prisoners succeed in their communities upon release from prison," First Step Act §3635(3).

⁴⁷ According to the United States Sentencing Commission, approximately a third of BOP inmates are precluded from earning credits toward prerelease due to their instant offense. *Ussc.gov. Updated January 2019 Impact Assessment – The First Step Act (S.756)*.

⁴⁸ Whetzel & Johnson, *ibid*.

⁴⁹ Many USPPS assign certain officers as reentry officers or reentry affairs specialists, often co-locating within the BOP-contracted RRC.

⁵⁰ PPSO data confirmed anecdotal reports that officers often conduct multiple home visits before

³⁴ Conversation with AOUSC Social Science Analyst David Cook, October 30, 2020.

³⁵ See uscourts.gov Probation and Pretrial Services – Supervision.

³⁶ BOP does not compel inmates to participate in rehabilitative programming, whereas treatment is often required once persons have come under the court's jurisdiction.

³⁷ Whetzel, J., & Johnson, S. (2019), To the greatest extent practicable: Confronting the implementation challenges of the First Step Act. *Federal Probation*. Volume 83, Number 3.

³⁸ Lowenkamp, C., et al. (2016); Lowenkamp, C., & Whetzel, J. (2009), The development of an actuarial risk assessment for U.S. Pretrial Services, *Federal Probation*, 73(2).

³⁹ Robinson, C., et al. (2011), *ibid*.

⁴⁰ PPSO is currently developing a long-range implementation plan for leveraging CNVC across the USPPS system. Conversation with Division Chief Scott VanBenschoten, December 1, 2020.

⁴¹ *Guide to Judiciary Policy* Volume 8, Part E, Chapter 1, Section 150 (d), JNet.

⁴² Each office's workload determines funding that is received the following year. Once a probation officer has met in person with an inmate, typically while he or she is in an RRC, the case can be statistically "opened" but no earlier than 120 days before the beginning of the term of supervised release.

⁴³ 18 U.S.C.3672 and 18 USC 3154.

⁴⁴ SCA's statutory changes enabled USPPS to provide a wide range of emergency and transitional

requests are straightforward, requiring an inspection of an inmate's proposed home, interviews with and investigations of other residents, and on some occasions, exploring proposed employment options. Officers are quite skilled in establishing rapport with the newly released, assessing risks, and identifying barriers, though often the scale of deficits and presenting challenges is not apparent until release, requiring reentry triage.⁵¹

It is now more commonly acknowledged that, not discounting any perceived benefits of incapacitation or just desert requirements, incarceration can be iatrogenic, that is, it can make people worse, exacerbating the drivers of illegal behavior that led to incarceration in the first place.⁵² Moreover, it often creates new barriers for those who reenter. Also, it has long been recognized that the overwhelming majority of persons in prisons do indeed return. Coined by former NIJ Director Jeremy Travis, what has been referred to as the iron law of imprisonment states that "they all come home."⁵³ Taken together, these two premises tell us that the vast majority of those convicted of serious crimes in the federal criminal justice system will come under USPPS supervision and may likely be more dangerous and more encumbered than when they entered custody. This is a discouraging reality. To counter this, critics of the American criminal justice system, and its dependence on incarceration, have argued for a "reentry-centered vision of criminal justice."⁵⁴

Reentry represents the most crucial component of the system of criminal justice given its intersection with the

finding one that is appropriate.

⁵¹ In cases when inmates choose to forego RRC placement, which BOP allows, or are considered too high risk and precluded by BOP, they release directly onto supervision with USPPS. Additionally, immigration authorities will sometimes remove detainees at the last moment, in which case BOP and USPPS are forced to hurriedly make release arrangements. Both situations are far from ideal.

⁵² Nieuwebeerta et al. (2009). It is often seemingly lost on American correctional and community corrections professionals that the United States rate of incarceration dwarfs that of other Western developed nations.

⁵³ Travis, J. (2005). *But they all come back: Facing the challenges of prisoner reentry*. Washington, D.C.: Urban Institute Press. Travis, J., Visher, C. (Eds.) (2005). *Prisoner reentry and crime in America*. New York. Cambridge University Press.

⁵⁴ Pinard, M. (2007). A reentry-centered vision of criminal justice." *Federal Sentencing Reporter*, 20(2).

community. A reentry-centered vision redirects the focus of key actors across the system of criminal justice to the defendant's eventual return to the community. It does not in any way diminish the punishment that befalls individuals convicted of crime; rather, it brings into focus the range of punishments that will actually be imposed [including the collateral sanctions of a criminal conviction] and considers the effects of the punishment on the individual, his or her family, and his or her community. In calling for a different configuration among the system's players, a reentry centered vision of criminal justice seeks to embed front-end strategies and decision-making with a commitment to the individual's community reintegration.⁵⁵

The federal system has not been spared criticism. "Without ... the adoption of a truly reentry centered vision of criminal justice, the federal criminal justice system will continue to deliver what it has delivered for the past thirty years: a glut of imprisonment that is inefficient, unsustainable, and, ultimately, criminogenic."⁵⁶ The federal criminal justice system comprises multiple criminal justice bureaucracies with different cultures and, at times, seemingly conflicting missions.⁵⁷ This landscape does not lend itself to a seamless continuity of care and undoubtedly reduces opportunities for those who seek to undo the harms they have caused and start over with a non-criminal lifestyle. The question then, as USPPS begins to reassess its reentry procedures, is what might reentry-centered supervision look like?

Considering the Eastern District of Missouri (EDMO) Model

In recent years, many federal probation offices have increased engagement with BOP and staff BOP's contracted residential reentry centers (RRCs), including meeting with inmates within institutions to clarify expectations about supervision and assisting with mock job fairs.⁵⁸ While this engagement is

⁵⁵ Rhine, E., & Thomson, C. (2011). The reentry movement in corrections: Resiliency, fragility and prospects. *Criminal Law Bulletin*, 47(2).

⁵⁶ Olesen, J. (2014). A decoupled system: Federal criminal justice and the structural limits of transformation. *Justice System Journal*, 35(4).

⁵⁷ Ibid.

⁵⁸ In a survey sent to all 94 districts in 2012, 52 percent of responding districts reported they assist

not currently required by national policy, it reflects those offices' commitment to improving the reentry continuum and increasing the likelihood of post-release success. Physical proximity to federal institutions is also a factor. For years, the Eastern District of Missouri (EDMO) has stood out in their reentry efforts. Below we present the district's efforts in the context of an expanded version of what works in federal reentry.

In-Depth Early Assessment

As mentioned, a comprehensive review of the "what works" reentry literature should not overlook the importance of assessment. Risk assessment is the cornerstone of the RNR model, and is ever evolving within USPPS. However, EDMO takes multiple extra steps to ensure that officers are fully informed in advance about those coming to supervision, particularly regarding sometimes under-explored responsivity factors.⁵⁹

Vocational Assessments in Presentence Reports

During all presentence interviews, officers in EDMO ask that defendants complete an occupational assessment, the results of which are added to the Presentence Report. This enables the court to make specific recommendations to BOP at sentencing regarding desired programming and institutional placement. Such details, particularly now given the FSA's emphasis on prison-based intervention, can be very helpful as BOP staff rely heavily of the presentence reports prepared by USPPS officers.⁶⁰

SENTRY Investigation

SENTRY is BOP's primary case management system and is accessible to USPPS. However,

the BOP within their institutions in conducting mock job fairs for inmates. Also, 77 percent reported they had, in the last year, provided pre-release orientations or other assistance to inmates still within BOP institution. Seventy-four percent of respondents reported having dedicated staff working with inmates and case workers within the BOP-contracted RRCs. See Whetzel, J., et al (2014), Interagency collaboration along the reentry continuum, *Federal Probation*, 78(1).

⁵⁹ See Whetzel, J., & Cohen, T. (2014). The neglected "R": Responsivity and the federal offender, *Federal Probation*, 78(2). Some barriers, for example, child-support debt, may dramatically compound if efforts are not made prior to incarceration to have the order stayed.

⁶⁰ The courts' recommendations for programming are not binding upon BOP.

it is antiquated, having been created in 1981.⁶¹ USPPS officers find it difficult to use, and many rely instead on the Offender Release Report (ORR),⁶² which pulls certain data elements from SENTRY. The ORR, however, does not consistently include complete and accurate inmate data. Certain EDMO employees, some formally BOP staff, have expert knowledge of SENTRY and comprehensively gather data during the prerelease process, running nine distinct inquiries on each inmate. These inform the assigned officer's prerelease investigation and case planning.⁶³ They also run inmate rosters of all those who are returning to EDMO, which they use to determine who has completed vocational training, certifications, and UNICOR jobs; who are veterans, etc. These data then help coordinate employment linkages upon their return to the community. Screening is also conducted to see which inmates have a disability that will qualify them for Medicare/Medicaid.

Prerelease Request Form

For years, EDMO officers provided prerelease services to inmates in two federal prisons in the district, such as assisting with job fairs, supervision, and orientations. However, given that federal inmates are housed throughout the country, EDMO was unable to serve 75 percent of those returning to the district. To address this gap, EDMO developed a Pre-Release Request Form questionnaire that is emailed to every inmate releasing to that district. The questionnaire aims to identify specific training and education needs to better

⁶¹ Privacy Impact Assessment for the SENTRY Inmate Management system, July 2, 2010. SENTRY comprises approximately 700 program routines written in COBOL, which is used to process data to a database management system.

⁶² The ORR, originally known as the Red Flag Report, was created in 2009 in order to better ensure that USPPS was notified of all BOP inmates when they released to assure that supervision was put in place.

⁶³ pp37 (ARS) - Inmate History, lists the inmates facility assignments.

pp37 (DRG) - Inmate History, lists the inmates substance abuse treatment assignments.

pp41 - Inmate Load Data, lists inmate pedigree information.

pp44 - Inmate Profile, a summary of an inmate's current status.

pida - Financial Responsibility Program status, summary of financial obligations and payments.

peed - Education records.

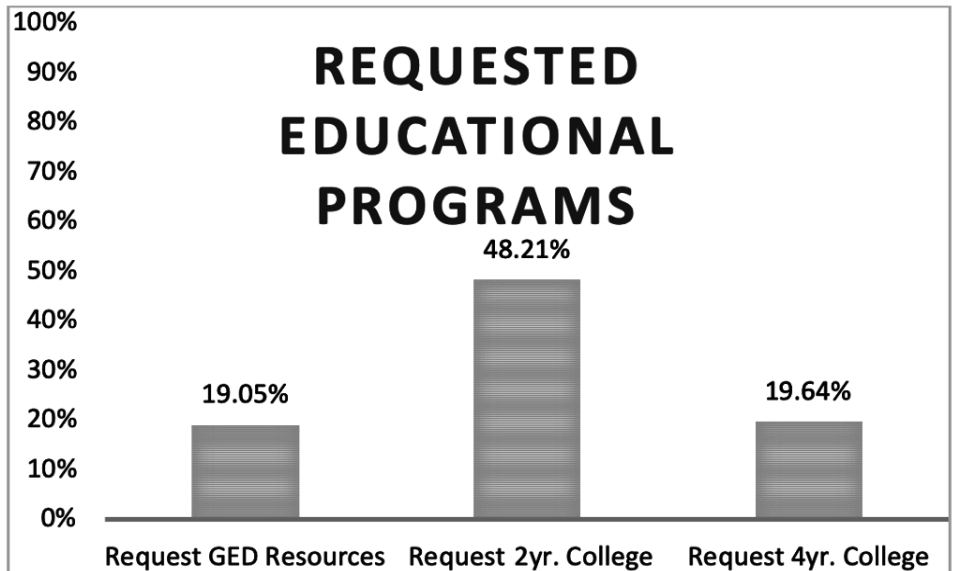
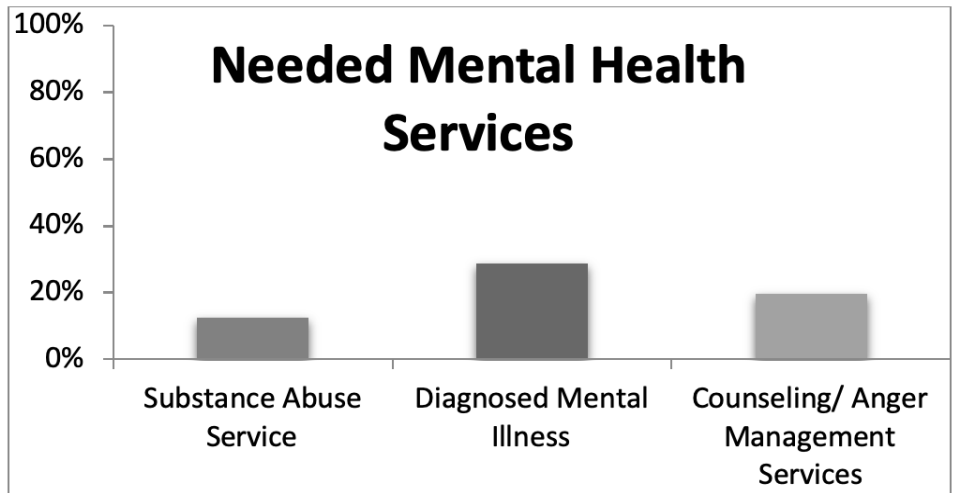
pscd - Sentencing monitoring computation, which contains the calculations on all BOP sentences.

pd15 - Chronological disciplinary record.

PP85 - DNA.

prepare inmates for the workforce; their barriers and strengths; and the basic needs they need addressed (i.e., food, clothing, and housing). Using this information, officers mail the inmates resources specific to their needs and requests. See below aggregate inmate survey results from the questionnaires collected by EDMO staff:

These charts demonstrate that inmates anticipate significant needs upon their release. The second chart is particularly troubling, revealing the majority of inmates are concerned about being able to meet their own basic needs. The third suggests a strong desire among many respondents to advance their education, particularly for post-secondary



programs. The use of the Pre-Release Request Form provides officers clear insight into what the inmates perceive as the greatest barriers that await them upon release. Gained two years in advance of their release, this enables EDMO to plan future programming. The use of the Prerelease Resource Request Form prompted EDMO to expand their reentry services and provide inmates with viable resources to plan for release.

Future Directions in Early Assessment

EDMO has recently entered into a memorandum with the consulting firm Deloitte to use artificial intelligence and natural language processing to “read” presentence reports. The algorithms will be used to pre-score much of the Post-Conviction Risk Assessment (PCRA) that is the basis of all post-conviction supervision.⁶⁴ It also could create an opportunity to inform officers’ recommendations in Presentence Reports, particularly regarding special conditions.⁶⁵

Criminal Thinking, Criminal Peers

Thorough risk and needs assessments are critical to reentry success. Once criminogenic needs are identified, appropriate interventions with adequate dosage and duration are essential. In the federal post-conviction supervision, criminal thinking and criminal peers are the biggest obstacles to “lawful self-management.”⁶⁶ The EDMO has taken steps to address both.

Manualized Cognitive Therapy in BOP

Many U.S. probation offices provide some “in-reach” to inmates within BOP institutions. In EDMO, officers wanted to go beyond conducting a seminar on the conditions of supervision and mock job fairs. In 2016, several officers began conducting Moral Reconciliation Therapy (MRT) groups at BOP’s FCI Greenville facility. Aimed at addressing inmates’ criminogenic thinking prior to release and to assist them with developing sound goals and

⁶⁴ Alexander, M., et al. (2014).

⁶⁵ This exploratory study complements EDMO’s current process that notifies participating districts when events have occurred, as noted in PACTS, that warrant the officer to reexamine the PCRA score, e.g., a loss/gain of employment, a positive drug test. Currently half of all districts receive these notices from EDMO.

⁶⁶ *Guide to Judiciary Policy* (ibid.).

⁶⁷ See Ferguson, L. M., and Wormith, J. S. (2013), A meta-analysis of Moral Reconciliation Therapy, *International Journal of Offender Therapy and Comparative Criminology*, 57 (9).

direction, the 12-step MRT module took a minimum of 3 months for the entire group to complete. EDMO officers later used Thinking for Good, another manualized cognitive program published by the same company, a shorter 10-week model that allows disrupted sessions. The primary objective of conducting cognitive groups in these institutions was not simply to reduce recidivism, but to develop a collaborative relationship with the inmates and to demystify supervision. As a result of working with these inmates in the cognitive group setting, officers were able to identify issues that could potentially impact or hamper their successful supervision, and in some instances officers who facilitated the group requested particular inmates be referred to their caseload because the officer felt more suited to address the inmates’ needs. The EDMO officers have now expanded the program to United States Penitentiary, Marion.⁶⁸ Those under supervision in EDMO have expressed their appreciation for the officer bringing programming into the institution. For example:

I could not possibly neglect the most important things that would help me address and change my criminal thinking and behavior. Thanks to one of the programs that was brought inside of the prison, I was able to have the professional assistance in making improvements. One of these programs was called “Life Map Cognitive Skills Program.” The course book consisted of mapping your life from birth to the current. There was a lot of writing and self-revelation involved. The only way that you could truly benefit from this program was to be completely honest and have a strong desire for change in your personal life.

Gang Reentry Initiative Program

Reengaging with criminal gangs virtually ensures reentry failure. Often those releasing to the community continue criminal associations as they have strengthened these ties for protection while incarcerated. Gang-involved subjects have great difficulty in developing new, positive associations in the community as they lack social, educational, and vocational skills necessary to successfully reintegrate into society. In 2010, the EDMO established the Gang

⁶⁸ Some CBT is available through the BOP in some institutions but it is limited. CBT is not part of the BOP Statement of Work for RRCs.

Re-Entry Initiative Program (GRIP) to help address this challenge.⁶⁹ This specialty court⁷⁰ connects individuals with resources, training, and support that will improve their social, educational, and vocational abilities, offering positive support and a platform to succeed. As of today, Project G.R.I.P. remains the only federal gang court in the federal system.⁷¹

Families

As noted by NIJ, solid prosocial family support is critical to successful reentry, and there is significant empirical support that family visitation is helpful in maintaining ties and increasing probability of post-release success.⁷² EDMO officers have taken steps to bolster family connections.

Family Video Conferencing

Recognizing the importance of healthy family ties, EDMO officers search for a way to help inmates, many housed hundreds of miles away from home, to reengage with their loved ones. Because federal inmates are located throughout the U.S., the average cost to a federal inmate’s family to visit them is insurmountable. EDMO began coordinating family video conference visits for EDMO inmates in various facilities from Kansas to Texas to be granted two family video visits a year.⁷³ Before the family video conference, inmates would receive information on community agencies, EDMO programs, Second Chance funded trainings, child support

⁶⁹ When EDMO analyzed its revocation data from 2004 through 2008, they found there were over 305 African American males revoked, and 155 of those were gang-involved individuals, mostly engaged in new criminal conduct.

⁷⁰ GRIP is just one of several specialized judge-involved supervision programs that focus on subsets of the supervision population with unique challenges. These include Mental Health Court and a Veterans Court.

⁷¹ In 2018, the Project G.R.I.P. team was selected to receive the Frederic Milton Thrasher Award, established by the Journal of Gang Research, for “superior accomplishments in gang intervention.” Project GRIP has not, however, been subject to a rigorous evaluation to date.

⁷² See, The effects of prison visitation on offender recidivism; Minnesota Department of Corrections National Institute of Corrections, Accession Number 026127.

⁷³ The criminal justice system’s response to the COVID-19 pandemic has accelerated the use, and even the perceived legitimacy of, virtual technologies. Virtual interactions between officers and inmates could jump start the establishment of the “therapeutic alliance.” Trotter, C., *The involuntary client* (2006).

obligations, and veterans benefits. Surveys of participating inmates and family members after the video-conferencing suggested all benefitted from the program.⁷⁴

Family Day

In 2014, EDMO officers piloted a family day event with FCI Greenville. EDMO secured sponsorship for food and transportation to the facility and recruited community partners to assist with programming at the facility. Over 20 inmates have received visits from their children and significant others. Since 2014, officers have conducted an overnight family visit with daughters and their incarcerated mothers at FPC Greenville and coordinate an annual two-day trip to USP Leavenworth. All expenses to USP Leavenworth are paid through sponsorship from the faith-based community for the hotel stay, charter bus, food, and snacks. Families incur no expense for the trip. To date, only one program participant has been revoked and received a new felony arrest since we began the in-person family visit program. Those on supervision who participated in this EDMO effort describe the impact below:

As a participant of this program, the opportunity presented, assisted in relieving the stress experienced by separation of family due to incarceration. It was mainly for the children who are often the victims of a mother or father separated by incarceration. This program should always be a part of the prison experience and serve as the bridge that re-unites families.

The Family Program

For over 10 years, EDMO officers have run a Family Program for the children of those under their supervision, as well as those still incarcerated. The program features a Back-to-School drive which provides backpacks, notebooks, and pencils that are supplied by a local religious organization. The Family

⁷⁴ The survey found the following: 82 percent of inmates and 93 percent of family members either agreed to or strongly agreed that the program helped them keep a good relationship between those incarcerated and family member on the outside; 45 percent of inmates and 27 percent of family members stated they had not met with each other in over 2 years; and 82 percent of inmates and 92 percent of family members said that because of the program they would be more likely to have a good, open relationship with the assigned probation officer.

Program also assists supervision clients who have college-age students with dorm essentials, laptops, book fees, and study abroad scholarships. Every December, there is an annual drive-through toy drive to ensure that the children of those on supervision receive gifts during the holidays. These efforts all aim to help reduce the stress facing those on supervision so they might focus on succeeding.

Health

As noted above by NIJ, there has been growing awareness of the health problems facing those returning from prison. According to the Transitions Clinical network:

The health risks of returning to the community include higher rates of deaths, hospitalizations, and worsening of chronic conditions. Incarcerated people have higher rates of chronic health conditions, including infectious disease like (HIV, hepatitis C), non-communicable diseases like hypertension and asthma, and mental health and substance abuse use disorders. Individuals face serious barriers caring for themselves upon release, such as poor health literacy, limited access to housing and employment, and difficulties continuing their medications and accessing health insurance and primary care.⁷⁵

In a recent comparison to other developed nations, the United States ranked 15th in the quality of its healthcare systems.⁷⁶ Regrettably, this unenviable position has been highlighted by the disproportionate impact of COVID-19 on the United States, particularly on communities of color, compared to many other countries. The recent COVID-19 pandemic, coming on the heels of FSA enactment, has prompted the early release of terminally ill, elderly, and medically vulnerable inmates,⁷⁷ revealing a frayed, under-resourced health care system where those with a history of criminal justice system involvement are unlikely to be the first offered assistance.⁷⁸

⁷⁵ Transitions Clinical Network, Transitionsclinic.org

⁷⁶ *U.S. News and World Report*, 10/13/20.

⁷⁷ See Whetzel et al., FSA, COVID-19, and the future of location monitoring, *Federal Probation*, forthcoming.

⁷⁸ Increasingly, social workers who manage the release of sick and elderly inmates are finding that nursing homes and similar facilities are

The federal judiciary, including USPPS, does not bear the responsibility for ensuring medical coverage for those releasing from federal prison onto community supervision yet often confronts these challenges.

Inter-Agency Agreements

In the EDMO, the U.S. Probation Office strives to improve the healthcare dimension of the reentry continuum first by assisting those under supervision to navigate the federal benefit application process. For those reentering, the EDMO has entered into a Memorandum of Understanding (MOU) with the Missouri Department of Social Services. Approximately one-third of inmates have underlying conditions related to mental health, physical disabilities, etc. This MOU enables EDMO-bound inmates in institutions around the country to apply for Medicaid prior to release, ensuring continuity of medical services for those reentering, although the process remains complex.⁷⁹

Specialized Staff

The EDMO has experienced staff who specialize in assisting EDMO-bound inmates to access warranted services. As described earlier, some staff specialize in gathering inmate data from SENTRY, such as finding inmates with qualifying disabilities. Others, in turn, engage directly with inmates sending information on the Medicare/Medicaid and SSI/SSDI programs.

The EDMO has a total staff of 123, of

inquiring if a patient has a history of criminal justice involvement.

⁷⁹ Upon inmates' release into the community, officers identify those who have a disability and refer them to a community resource specialist to register them for SSI/SSDI and Medicare/Medicaid. An application is done online for them for SSDI and Medicare first to see if they qualify for them based on work credits. If they qualify based on their work credits, they will potentially receive their benefits of SSDI and Medicaid within 30 days of applying pending verification of their disability. If they lack enough work credits, the system automatically transfers their application to the SSI and Medicaid programs. The approval or rejection process takes 30 days pending verification of their disability and whether the Social Security Administration deems them to have a disability. If the application is denied for SSDI or SSI and Medicare/Medicaid, they are provided with contact information for legal services that specialize in Social Security cases. When applying for SSI/SSDI online, the system also applies applicants for their medical coverage. If the clients cannot get Medicare/Medicaid, they pursue coverage under the Affordable Care Act if they have some verifiable means of income.

whom 90 are sworn law enforcement officers. However, 14 staff have a master's degree in social work (seven are Licensed Clinical Social Workers) and four others have master's degrees in counseling. The office has deliberately hired staff with the training, skill sets, and professional orientation needed to address the needs of those reentering the community. In addition to specialized staff, EDMO has what might be called a "two-hat" culture, where officers perform their core responsibilities, but are also encouraged to identify resources and establish programs if they come upon previously unaddressed, unique issues among those under supervision.

Second Chance Act Authority

Probation officers in the EDMO, and in many other districts, take advantage of authority granted under the SCA to help those under supervision with non-emergency medical assistance. Meant to meet pressing humanitarian needs and overcome barriers, non-emergency medical assistance has been used in EDMO to address a variety of problems:

In one instance, a participant in our mental health court was working at a fast-food restaurant when his hearing aids went out. Without SCA funding, the participant would have suffered both professional and personal consequences as he would not have been able to work. In another example, an individual with a physical difficulty secured employment at an office but could not work due to the battery of her wheelchair malfunctioning. We were able to use SCA funds to provide her with a new battery and allow her to continue working without delay.⁸⁰

Ongoing Research

Assistance as described above makes a world of difference in individual lives. However, these are stop-gap measures that fail to address the totality of reentry health care needs. To further explore this growing problem, the EDMO has recently joined with the Transitional Clinical Network and the Washington University School of Medicine. The study's primary focus is "to describe the unique health outcomes of those released during COVID-19 pandemic and compare them to health outcomes of individuals released prior to COVID-19." Noting

the impact of FSA and COVID-19 on releasing more medically vulnerable inmates, the research proposal states that

While the release of these individuals has been welcomed by community advocates and correctional systems alike, the health risks have been unexamined. Already, these obstacles are compounded by transitions of health-care, which challenge the federal correctional system where there is little communication between correctional and community health systems....We anticipate that our findings will inform release procedures at the BOP level and will provide local Federal Probation offices with data that will guide their work in addressing the health needs of people being released from federal prison, and especially now during COVID-19.⁸¹

Employment

The Eastern District of Missouri has long promoted the importance of employment within the USPPS system. For many years, the EDMO, in coordination with the National Institute of Corrections (NIC), trained U.S. probation officers in NIC's Defendant/Offender Workforce Development (D/OWD) and hosted annual D/OWD conferences.⁸² To a certain extent in the federal system, addressing employment deficits has received less attention, given the salience of criminal thinking and criminal peers. However, within the EDMO culture, improving employment possibilities remains a high priority.

Second Chance Act-Funded Interventions

In recent years, EDMO officers have used SCA authority and funds to provide the

⁸¹ The primary outcomes of interest will be health care use patterns for ambulatory sensitive care conditions, opioid use-related health outcomes (overdose events and death) and criminal justice contact within 12 months of release. Healthcare use outcomes for this study will include preventable emergency department visits and hospitalizations which we will ascertain from hospital administrative data in Missouri.

⁸² Lichtenberger, E. (2012), Offender Workforce Development specialists and their impact on the post-release outcomes of ex-offenders, *Federal Probation*, 76(3); Visher, C., et al. (2010), Workforce Development Program: A pilot study in Delaware, *Federal Probation*, 74(3); Rakis, J. (2005), Improving the employment rate of ex-prisoners, *Federal Probation*, 69(1).

following employment training programs: Commercial Driver's License (CDL), pre-apprenticeship with the Carpenter's Union, as well as certifications in culinary arts, welding, automotive repair, electrical repair, and certified nursing assistance. Additionally, EDMO officers have found ways to eliminate barriers to attend trainings. For instance, they work with a Computer Numerical Control (CNC) program that offers participants lodging, transportation to and from the training site, lunch, and even a stipend that the provider pays participants while they are engaged in training. Upon completion, the participants receive assistance with obtaining employment from the vendor, local career services, and/or their supervision officer. In addition, officers use SCA funding to address employment barriers by providing bikes and helmets for transportation to work, daycare for a limited time while job searching and while awaiting other funding or self-pay sources, basic work clothes or steel toe shoe to start a job they have obtained, and funding for on-the-job training with employment partners. During fiscal year 2020, the EDMO spent more than \$250,000 in SCA funding to support vocational training. Those under supervision appreciate the assistance they have received.

The training program provided to me through the government was very helpful to my career I received my CDL Class A from MTC training school. It has always been a dream of mine to be a truck driver the government help me obtain my dreams and got me started in the right directions since I've been released. It was a very life-changing situation for me and I appreciate the opportunities that it's given me to help better myself once released from incarceration. To anyone who wants a better career and better pay I suggest you take up the CDL Class A training program.

Inter-Agency Agreements

As with health care needs, EDMO has additional MOUs that address employment barriers, including one with the U.S. Selective Service. Very often, releasing inmates have never registered with the Selective Service and are therefore ineligible to receive federal job assistance and/or financial aid for education. EDMO shares data directly with the Selective Service and they are automatically enrolled if eligible. Additionally, EDMO has a MOU with

⁸⁰ U.S. Probation Officer Michael Alvarez.

the Missouri Department of Motor Vehicles (DMV) and the Department of Social Service (DSS). The agreement allows EDMO to assist those releasing to secure a driver's license, including removing suspensions for failure to pay child support and combining cases to arrange payment plans.

Housing

The inadequate supply of affordable housing is a problem that confronts many, if not most, American communities. For those returning from prison, the housing challenge can seem colossal. The stigma of incarceration, the lack of financial resources or employment, and poor or no credit history, often combine to relegate the recently released to dependency upon others for basic shelter for longer periods than all would likely prefer. Within federal community corrections, housing is likely the most problematic barrier—or responsibility factor in RNR language—that those beginning post-conviction supervision confront. Fortunately, SCA enactment gave the federal courts authority to assist with emergency and transitional housing.⁸³

Second Chance Act-Funded Emergency and Transitional Housing

As noted earlier, there are few criminogenic needs and responsibility factors for which a SCA response is not available. Housing needs, however, have increasingly consumed limited SCA funds. During fiscal year 2020, federal courts spent approximately \$3.6 million for all SCA services. Forty-three percent (\$1.56 million) of the funding supported emergency and transitional housing. Housing expenditures in the federal system increased 80 percent from 2019 to 2020.⁸⁴ EDMO has long been a leader in housing assistance. By September 2020, EDMO had spent more than \$272,000 for housing, about 17.5 percent of the \$1.56 million spent for all housing across the federal courts combined that same year. Over the prior four years combined, the district has spent over \$1.3 million for housing.

Many who reenter have a difficult time finding housing, but none more so than those who were convicted of a sex offense. Very often family ties are attenuated, and local and state residency restrictions limit where they may reside. In fiscal year 2020, the office used SCA funding for 11 higher risk sex offenders,

⁸³ 18 USC 3672 and 3154.

⁸⁴ This increase was likely fueled in part by COVID-19's impact on employment and resulting increase in evictions.

which totaled more than \$10,500. The benefit is not lost on those who receive housing assistance, as shared by one person who had spent 6.5 years in custody for child pornography:

Without my probation officer finding this apartment, I don't know what I would have done. Second chance funding allowed me to get a nice apartment, that I can afford. For the first time in over seven years, I have my own place. I'm really proud of that.

The probation office has identified and worked with several different property owners who have committed to assisting this population. Part of the reentry process has been to educate these property owners on the sex offender registration laws. Housing someone convicted of a sex offense on one's property poses challenges. These property owners are aware of the risks involved, including unannounced searches and public acknowledgement. Making the property owners aware of the convictions these individuals have allows the reentry process to continue more smoothly.

Project Home

EDMO started "Project Home" 13 years ago. Its mission is to show those on federal supervision that home ownership is possible. EDMO officers assist people on supervision in becoming homeowners through education and coordination using local resources. Through financial budgeting and credit counseling, participants understand their personal finances and the power afforded to them when they establish and maintain good credit. Officers provide mentorship and guide them through the home buying process, working with reputable lenders and non-commission-driven realtors. To date, more than 75 participants have purchased a home through this program, all at 30-year fixed rate mortgages that are often less than what they had paid in rental expenses.⁸⁵ Three other federal probation offices have now replicated the Project Home program.⁸⁶ For many under supervision, this program makes a major impact.

⁸⁵ In January, St. Louis University began working with the program to measure its outcomes and provide a cost-benefit analysis. With more than 100 variables being recorded and analyzed, this study will provide valuable information on recidivism and other factors of interest.

⁸⁶ The Middle District of Tennessee, the Northern District of Texas, and the District of Nevada.

Without the people and support of the entire Project Home team, I am positive it would have taken me years to accomplish the same results. I love my home and plan to stay here for the foreseeable future. I owe my happiness and stability in the community to the caring people of the St. Louis Probation Office who, working as volunteers in the Project Home program, made it all possible and I will never forget them.

All Hands On Deck!— Toward a Model of Reentry-Centered Supervision

A truly reentry-centered vision for the federal criminal justice system could require major legislative and even structural changes⁸⁷ that may never be realized. However, on the "receiving end" of that system, USPPS is perhaps the best informed and most vested in mitigating the challenges, second only perhaps to those releasing who are living under its constraints. Given advances in EBP as described above and growing expertise in the gauntlet of reentry, U.S. probation officers could take the first steps, in collaboration with the BOP, to expand their current role.

The breadth and depth of deficits with which defendants arrive in prison are regrettably, and perhaps unavoidably,⁸⁸ compounded during lengthy periods of incarceration. And many, if not most, of the persons releasing from BOP onto federal supervision may want to "lawful[ly] self-manage," but struggle to succeed. Within current federal post-conviction policy, the supervision officer is identified as the "primary change agent" tasked with assisting the person under supervision to gain needed skills and to move toward "lawful self-management."⁸⁹ And we know from the EBP literature that a positive, working relationship between officers and those reentering from prison is the *sine qua non* of effective supervision.⁹⁰ Typically, however,

⁸⁷ Olesen, J. (2013).

⁸⁸ Considering the four identified criminogenic needs (or risk factors) in the PCRA (criminal thinking, criminal peers, employment/education, and substance abuse), it is hard to imagine an environment less helpful than what is found in "modern" American prisons.

⁸⁹ *Guide to Judiciary Policy*, Volume 8, Chapter E.

⁹⁰ Taxman, F. (2008) No Illusions: Offender and organizational change in Maryland's pro-active community supervision efforts, *Criminology & Public Policy*, 7(2).

in the federal system, the officer does not substantively engage until someone reenters the community. This contrasts with the timing and degree of risk assessment, reentry planning, prison in-reach, and comprehensive assistance delivered in the EDMO. The breadth of needs demands a sort of “All Hands On Deck” approach within the organization, coordinating all of their efforts, and extending into the larger community, including non-profits, governmental agencies, and private sector employers.

The holistic approach described above is arguably the most comprehensive reentry approach in the federal criminal justice system. Is such a model worth it? Is it realistic? Does it distort the role of the probation officer? Consider a similar situation. Within the world of criminal defense, there is an approach referred to as “holistic advocacy,” a view where the role of the defense attorney and staff includes addressing the full range

of challenges confronting their clients, rather than just focusing all energies on the criminal charges at hand and securing the best outcome for the client. The most well-known effort at holistic advocacy is with the Bronx Public Defenders Office,⁹¹ although critics consider this a distortion of the true role of criminal defense.⁹² However, in a recent comparative evaluation, researchers found that holistic advocacy significantly decreased the frequency of and length of custodial sentence.⁹³ Can this model be replicated within USPPS? Should the holistic EDMO reentry model be replicated? Is it sustainable? Are there tradeoffs in providing this level of assistance?

The NIJ research-based framework discussed above helpfully conveys key reentry realities, and the EDMO reentry model addresses many of the challenges identified. Considered in its totality, several themes, which could inform a new national approach

to reentry, are clear:

- Providing early and in-depth information gathering and risk assessment.
- Expanding in-reach.
- Building trust and rapport.
- Meeting individual needs.
- Creating opportunities for *change*.
- Recruiting specialized staff.
- Creating inter-agency agreements.

USPPS could address reentry challenges with a more holistic approach if committed, if adequately resourced, and if supported internally and externally. This would require significant innovation and change in policies and procedures. EDMO is but one example of what reentry-centered supervision might look like. Now, particularly given the expanded public awareness of mass incarceration and its grossly disparate racial impact, can such an effort not be made?

⁹¹ A new model of public defense, bronxdefenders.org

⁹² Holland, B.() “Holistic Advocacy,” An important but limited institutional role, *N.Y.U. Review of Law & Social Change – Legal Scholarship for Systemic Change*, 30(4).

⁹³ Anderson, J. et al. (2019) The Effects of Holistic Defense on Criminal Justice Outcomes, *Harvard Law Review*, Volume 132, Number 3.

Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release

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INTRODUCTION

On December 21, 2018, the First Step Act of 2018 (“FSA”), Pub. L. No. 115-391, was enacted. The FSA created sweeping reforms to the criminal justice system, including front-end and back-end sentencing reforms.¹ About one year after the enactment of the FSA, the Coronavirus Disease 2019 (COVID-19) pandemic expanded across the United States.

Soon after the pandemic began, there was a sharp increase in the level of advocacy for expanding the use of compassionate release and home confinement to increase the number of inmates released from imprisonment. By the end of March 2020, the Attorney General and Bureau of Prisons (BOP) Director had heard from various senators expressing concerns about the health of federal prison staff and inmates and urging that steps be taken to protect vulnerable inmates by using existing statutory authorities, including provisions of the FSA. To address concerns, the Attorney General issued memoranda to the BOP directing the BOP to prioritize the use of home confinement, because some at-risk inmates who are non-violent and pose minimal likelihood of

recidivism may be safer serving their sentences in home confinement.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, was enacted in response to the COVID-19 pandemic. Among other relief initiatives, the Act temporarily broadens the authority of the BOP to place inmates in prerelease home confinement for a period determined appropriate by the Director of the BOP.

Combined with the COVID-19 pandemic, the FSA has led to a significant increase in the number of inmates seeking early release from prison through expanded use of home confinement and compassionate release. This article highlights some of the major implementation challenges presented by the recent expanded authority under the FSA and CARES Act to release inmates early to the community, and the response of the Judicial Conference and its Criminal Law Committee, working with the Administrative Office of the U.S. Courts, to these implementation challenges.

Overview of Four Statutory Provisions Authorizing Release from Prison That Have Been Impacted by the FSA and/or COVID-19 Pandemic

The FSA and COVID-19 pandemic have had a significant impact on four prominent statutory provisions that authorize release of a person from prison: (1) 18 U.S.C. § 3624(c) (traditional early prerelease); (2) 18 U.S.C. § 3624(g) (release for risk and needs assessment

system participants; (3) 34 U.S.C. § 60541 (release under the elderly and family reunification for certain nonviolent offenders pilot program); and (4) 18 U.S.C. § 3582(c)(1)(A) (compassionate release).

Under 18 U.S.C. § 3624(c), also known as “traditional prerelease custody,” the Bureau of Prisons (BOP) has authority to release an inmate into the community up to 12 months prior to the end of the inmate’s prison term.² As part of the BOP’s authority under § 3624(c), the BOP may place an inmate in home confinement “for the shorter of 10 percent of the term of imprisonment of that [inmate] or 6 months.”³ To the extent practicable, the BOP must place inmates with lower risk levels and lower needs on home confinement for the maximum amount of time permitted.⁴

This statutory provision has been impacted by the COVID-19 pandemic and the enactment of the CARES Act. Specifically, the CARES Act temporarily expanded prerelease custody to home confinement under 18 U.S.C. § 3624(c)(2) by increasing the cohort of

¹ For more information about the FSA and its criminal justice reforms, see Whetzel & Johnson, *To the Greatest Extent Practicable – Confronting the Implementation Challenges of the First Step Act*, Federal Probation, Vol. 83.3 (Dec. 2019); *All Hands On Deck!—Toward a Reentry-Centered Vision for Federal Probation*, this issue, Federal Probation, Vol. 83.3 (Dec. 2020).

² “The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.” 18 U.S.C. § 3624(c)(1).

³ 18 U.S.C. § 3624(c)(2).

⁴ *Id.*

inmates who can be considered for home confinement and by temporarily allowing the BOP Director to lengthen the maximum amount of time a prisoner spends on home confinement.⁵

Although the FSA did not amend traditional early prerelease authority under 18 U.S.C. § 3624(c), it had a direct impact on the other three statutory provisions authorizing early release from prison. The FSA created 18 U.S.C. § 3624(g), which allows eligible participants of the risk and needs assessment program to earn time credits and be released early from prison. Program participants eligible for early release are placed in prerelease custody or supervised release for an amount of time that is equal to the remainder of their term of imprisonment.

The FSA not only expanded prerelease custody under 18 U.S.C. § 3624(g) (risk and needs assessment program), it also expanded early release to the community through the elderly home confinement program. Under 34 U.S.C. § 60541(g), the elderly home confinement program was expanded by including eligible terminally ill offenders, reducing the age eligibility for elderly offenders from 65 years old to 60 years old, and reducing the time an elderly offender must serve to be considered eligible for the program from 75 percent to two-thirds of the term of imprisonment sentenced.

Furthermore, the FSA expanded authority to reduce a term of imprisonment under 18 U.S.C. § 3582(c)(1)(A), which is sometimes referred to as the “compassionate release statute.” Compassionate release provides for an individual’s release from prison when illness, age, or other circumstances lead to the conclusion that continued incarceration no longer serves the ends of justice. Prior to enactment of the FSA, inmates were required to petition the BOP for compassionate release; the BOP then made recommendations to the court after conducting an extensive investigation and developing a plan for release to the community that addressed the inmate’s home, medical, and other needs. The FSA now allows inmates to make motions directly to the court, under 18 U.S.C. § 3582(c)(1)(A), if the BOP does not act on an inmate’s motion within 30 days or if the inmate has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant’s behalf (whichever is earlier).⁶

⁵ The appropriate length of expansion is to be determined by the Director of the BOP.

⁶ The motion made to the court under 18 U.S.C. § 3582(c)(1)(A) is a request for a sentence reduction.

Criminal Law Committee Actions Taken to Address FSA Implementation Challenges

The provisions of the FSA and the CARES Act that expand the authority to release inmates early to the community have presented significant implementation challenges. Two areas posing particular challenges include prerelease custody to home confinement and compassionate release. The increase in the number of inmates released early to the community resulting from FSA provisions and the COVID-19 pandemic has also had a significant impact on the management of criminal cases in the courts and on the U.S. Probation and Pretrial Services Offices.

To aid with implementation challenges, the Judicial Conference and Criminal Law Committee have been working to make improvements in the administration of criminal law. The Judicial Conference of the United States was created by Congress in 1922. Its fundamental purpose is to make policy for the administration of the United States courts, including the probation and pretrial services system. The Conference operates through a network of committees. One of the committees, the Criminal Law Committee, oversees the federal probation and pretrial services system and reviews legislation and other issues relating to the administration of the criminal law.

To reduce challenges presented by the COVID-19 pandemic and implementation of the FSA, the Criminal Law Committee recommended, and the Judicial Conference subsequently approved, several legislative changes in April and June 2020 to improve the administration of the criminal justice system. These legislative proposals and other Committee actions are discussed below.

Criminal Law Committee Actions Relating to Prerelease Custody to Home Confinement

The Criminal Law Committee recommended two proposed legislative changes to address challenges related to prerelease custody to home confinement. The first proposed legislative fix seeks to clarify the obligation of the U.S. probation system to assist inmates on

Under the statute, if the court finds that certain circumstances are met, the court may reduce a term of imprisonment, including a reduction to “time served.” Generally, a sentence reduction to “time served” results in the immediate release of the inmate from BOP custody.

prerelease.⁷ As discussed above, there are three different statutory provisions that authorize the BOP to release an inmate into the community: 18 U.S.C. §§ 3624(c) and (g), and 34 U.S.C. § 60541(g). Under each provision, United States probation officers are authorized to supervise inmates in the custody of the BOP who have been placed on prerelease custody; however, all the provisions differ in the degree of officer assistance required. If an individual is released to home confinement under 18 U.S.C. § 3624(c), the probation system must offer assistance “to the extent practicable”; if an individual is released pursuant to the BOP’s risk and needs assessment system under 18 U.S.C. § 3624(g), the probation system must offer assistance “to the greatest extent practicable”; and if an individual is released pursuant to the BOP’s elderly home confinement program under 34 U.S.C. § 60541(g), the probation system must offer “such assistance . . . as the Attorney General may request.”

The differing language for all three provisions creates inconsistent requirements for U.S. probation’s involvement in assisting inmates on prerelease custody. The language discrepancies in the three provisions, requiring different degrees of assistance from the probation system, also fail to take into account that the federal probation system does not always have the resources necessary to supervise prerelease inmates. The lack of resources is even more problematic under the expanded release authorities of the FSA and in response to the COVID-19 pandemic. Additionally, the language fails to take into account that any arrangement to supervise prerelease inmates should be jointly agreed to by the BOP and the probation system.

To clarify and harmonize the obligation of the federal probation system to assist inmates on prerelease custody, in April 2020 the Criminal Law Committee recommended amending the more compulsory language of 18 U.S.C. § 3624(g) and 34 U.S.C. § 60541(g) to track the more permissive language of 18 U.S.C. § 3624(c). Specifically, the Criminal Law Committee recommended that 18 U.S.C. § 3624(g) and 34 U.S.C. § 60541(g) be amended to require the U.S. probation system to provide assistance only “to the extent practicable.” On April 21, 2020, the Executive

⁷ Prerelease inmates released to the community remain in the custody of the BOP. The majority of prerelease inmates are supervised by private contractors; however, the U.S. probation system is authorized to assist the BOP with supervising prerelease inmates.

Committee, acting on an expedited basis on behalf of the Judicial Conference,⁸ approved the proposal and included it in a legislative package submitted to House and Senate Judiciary Committee staff to be considered for inclusion in supplemental legislation to respond to the COVID-19 pandemic.

The second legislative proposal relating to pre-release custody to home confinement that the Criminal Law Committee recommended focuses on promoting the effectiveness of location monitoring. While the location monitoring program⁹ is most commonly used as a condition of pretrial release, probation, or supervised release, the probation and pretrial services system also uses it to provide assistance to BOP inmates in three forms of pre-release custody: (1) “home detention” under the elderly and family reunification for certain nonviolent offenders pilot program under 34 U.S.C. § 60541(g)(1)(A)¹⁰; (2) “home confinement” under 18 U.S.C. § 3624(c)¹¹; and (3) “home confinement” for FSA risk and needs assessment system participants under 18 U.S.C. § 3624(g).¹² Each category of release,

however, carries different statutory requirements for the method of monitoring. Persons on supervision under 18 U.S.C. § 3624(g) are required, except when it is “infeasible for technical or religious reasons,” to be “subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time.” Persons on supervision under 34 U.S.C. § 60541(g)(1)(A) are required to be monitored in accordance with the description of “home detention” under the Federal Sentencing Guidelines as of April 2008, which “ordinarily” requires that persons be supervised by electronic monitoring unless alternative means of surveillance are “as effective as electronic monitoring.” Section 3624(c) of Title 18 does not specify the required form of monitoring.

The different statutory requirements create challenges to the effective and efficient implementation of the location monitoring program. Each of the current statutory frameworks is also in tension with the probation system’s own policies and procedures for using appropriately tailored supervision methods to ensure effective and efficient supervision that allows for a more flexible adjustment of the level of supervision based on the recidivism risk of the individual under supervision. Section 3624(g)’s requirement for the use of “24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time,” except where “infeasible for technical or religious reasons,” unduly burdens the location monitoring program and limited probation resources by effectively requiring that GPS technology be used in most cases. GPS technology is costly, requires close monitoring of the data by the supervising probation officer and thus creates heavier workloads for officers, may not be appropriate for persons with medical conditions that prevent them from wearing or charging the ankle bracelet, and may be unnecessary depending on the risk level, criminogenic needs, and circumstances of the individual on location monitoring. However, these types of considerations would not fall under the “infeasible for technical or religious reasons” exception. Other widely available and commonly used location monitoring technology, such as voice verification or radio frequency, may be as effective and a more efficient means for monitoring persons under supervision.

While 34 U.S.C. § 60541(g)(1)(A) defines “home detention” as it is used in the 2008 pre-release custody.

Federal Sentencing Guidelines; those guidelines were amended in 2018 to better reflect the probation system’s own more flexible location monitoring policies and procedures. Instead of the 2008 requirement that electronic monitoring “ordinarily” be used unless alternative means of surveillance are “as effective as electronic monitoring,” the 2018 guidelines instruct that electronic monitoring or any alternative means of surveillance may each be used as “appropriate.”¹³ The specific reference to the 2008 version of the guidelines in 18 U.S.C. § 60541(g)(1)(A) precludes the probation system from relying on this more updated version.

Finally, while 18 U.S.C. § 3624(c) does not specify any particular method of monitoring that must accompany home confinement under that section, the statute’s silence on that matter subjects BOP pre-release custody inmates under the supervision of the probation and pretrial services system by default to BOP’s policies and procedures. These do not necessarily track the probation system’s own policies and procedures for ensuring consistency with established social science research on the effectiveness of supervision, and they do not account for limited supervision resources. Thus, a statutory amendment to 18 U.S.C. § 3624(c) would allow the probation system to follow what it considers to be more appropriate monitoring protocols even where they may conflict with BOP policies.

To harmonize the requirements for “home detention” and “home confinement” across 18 U.S.C. §§ 3624(c) and (g) and 34 U.S.C. § 60541(g), the Criminal Law Committee recommended that the Judicial Conference seek legislation to adopt the 2018 Sentencing Guideline definition of “home detention” for each. Under the 2018 Sentencing Guidelines definition, “[e]lectronic monitoring is an appropriate means of surveillance for home detention. However, alternative means of surveillance may be used if appropriate.” In addition to adding consistency and clarity to the statutory scheme, the flexibility afforded by this definition would allow for more efficient and effective implementation

⁸ The Executive Committee of the Judicial Conference serves as the senior executive arm of the Conference, acting on its behalf between sessions on matters requiring emergency action as authorized by the Chief Justice. In emergency matters, only the Executive Committee has authority to act on the Conference’s behalf as provided in its jurisdictional statement.

⁹ The location monitoring program of the probation and pretrial services system provides officers with an array of electronic monitoring technologies and other surveillance options to assist them in supervising persons released to the community. The use of appropriately tailored location monitoring technology can create supervision efficiencies by providing a better allocation of time and therefore avoid under-supervising high-risk persons under supervision and over-supervising low-risk persons under supervision. *Guide to Judiciary Policy*, Vol. 8E, Section 160.

¹⁰ Section § 60541(g)(4) of Title 34 requires that the Administrative Office of the United States Courts and the United States probation offices provide such assistance and carry out such functions as the Attorney General may request in monitoring, supervising, providing services to, and evaluating eligible elderly offenders and eligible terminally ill offenders released to home detention under this section.

¹¹ Section 3624(c)(3) of Title 18 requires that the probation and pretrial services system, to the extent practicable, offer assistance to a prisoner during pre-release custody under this subsection.

¹² Section 3624(g)(8) of Title 18 requires the probation and pretrial services system, to the greatest extent practicable, to offer assistance to any prisoner not under its supervision during such

¹³ In explaining the reason for this change, the Federal Sentencing Guidelines Manual notes that the U.S. Sentencing Commission received testimony consistent with the probation system’s concerns that electronic monitoring is resource-intensive and otherwise demanding on probation officers, as well as inconsistent with the evidence-based “risk-needs-responsivity” model of supervision and may be counterproductive for certain lower-risk offenders.

of home detention and maximize use of limited resources in the probation and pretrial services system. In June 2020, the Judicial Conference approved the Criminal Law Committee's recommendation and agreed to seek such legislation.

Criminal Law Committee Actions Relating to Compassionate Release

In addition to making recommendations to ease implementation challenges related to prerelease custody to home confinement, the Criminal Law Committee also made recommendations to address issues arising from compassionate release motions.

As noted above, the FSA amended 18 U.S.C. § 3582(c)(1)(A) to permit a defendant to make a motion for compassionate release directly to a court (rather than through the BOP) after the defendant has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant's behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier. These expanded procedures, combined with the recent COVID-19 pandemic, have led to an increase in requests for compassionate release made to both the BOP and the courts. This increase in turn has led to a lag in obtaining inmate medical records from the BOP to assess whether an inmate may qualify for compassionate release based on medical needs. To address these issues, the Criminal Law Committee recommended that the Executive Committee act on an expedited basis on behalf of the Judicial Conference to seek legislation amending 18 U.S.C. § 3582(c)(1)(A). The recommended legislation would provide that if a motion for reduction of the imprisonment term includes as a basis for relief that the defendant's medical condition warrants a reduction, the BOP must promptly provide the defendant's BOP medical records to the court, the probation office, the attorney for the government, and the attorney for the inmate. If additional time is required by the BOP to produce such records, they are to be produced within a time frame ordered by the court. The Executive Committee approved the recommendation and included it in a legislative package submitted to House and Senate Judiciary Committee staff to be considered for inclusion in supplemental legislation to respond to the COVID-19 pandemic.

The Criminal Law Committee also made a recommendation to the Judicial Conference to seek legislation to clarify how the imposition

of a term of probation or supervised release authorized under the compassionate release statute interacts with a previously imposed term of supervised release. The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), authorizes a judge to modify a term of imprisonment and permits the judge to impose a term of supervised release or probation when granting compassionate release. Specifically, it states "the court . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)[.]"

Supervised release authorized under this provision is sometimes referred to as a "special term" of supervision, and the language authorizing its imposition was added to the compassionate release statute in 2002. The special term of supervision was rarely imposed, because prior to the FSA only a small number of compassionate release cases were being granted, and those were typically reserved for terminally ill persons. Accordingly, supervision upon release was probably not a major concern, and therefore fewer special terms of supervision were being imposed. Since the FSA was enacted, there has been a substantial increase in the number of motions for compassionate release filed with the courts, particularly during the COVID-19 pandemic. With the increased number of compassionate release cases resulting from the FSA and COVID-19 pandemic, more courts are granting compassionate release and imposing a special term of supervised release.

Although the judge is authorized to impose a special term of supervised release under the compassionate release statute, the statute provides no guidance on how this special term should be imposed, whether a judge can revoke and reimpose a special term of supervision, or how the special term interacts with a previously imposed term of supervised release. In September 2020, the Judicial Conference, upon the Criminal Law Committee's recommendation, agreed to seek legislation to clarify how an original term of supervised release interacts with an additional term of supervised release imposed under 18 U.S.C. § 3582(c)(1)(A).

In addition to recommending legislative fixes to clarify provisions of the compassionate release statute and ease implementation of FSA provisions affecting compassionate release, the Criminal Law Committee also endorsed a standardized court order and pro

se form to be used in connection with motions for compassionate release. As discussed, courts have seen an increase in the number of compassionate release motions as a result of the FSA and COVID-19. The pro se compassionate release motions vary significantly in their level of detail and often do not have the information necessary for courts to make prompt and informed decisions. To assist courts with streamlining the process of filing and considering compassionate release motions and to help the federal probation system obtain information necessary for verifying a release plan, the Criminal Law Committee, at its June 2020 meeting, endorsed a standardized court order and pro se form to be used in connection with motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A).¹⁴

Criminal Law Committee Actions to Address Extended Periods of Supervision

The provisions of the FSA and CARES Act expanding prerelease custody to home confinement have resulted in an increased number of persons released early from incarceration and spending an extended period of time in prerelease custody through compassionate release and home confinement. Many of the individuals released to home confinement could remain on this status for months or even years. Despite being in the community on prerelease home confinement for extended periods of time before their release from BOP custody, these individuals must then serve their terms of supervised release. Under 18 U.S.C. § 3583(e)(1), defendants who have been in extended prerelease custody must still wait one year before becoming eligible for early termination of supervised release.¹⁵

¹⁴ The forms (AO 248 and AO 250) are available on www.uscourts.gov. The pro se form (AO Form 250) was also sent to the Bureau of Prisons to be made available to inmates seeking to file pro se motions for compassionate release with the courts.

¹⁵ Under 18 U.S.C. § 3583(e)(1), a court may terminate a defendant's term of supervised release at any time after the defendant has served one year of supervised release, if warranted by the defendant's conduct and the interest of justice. In 2013, noting that there are cases where early termination would be appropriate prior to one year, and based on factors independent of the offender's conduct (for example where defendants are physically incapacitated, dying, or aged to the point that they are no longer a risk to the community and cannot meaningfully engage in the supervision process), and that it makes little policy or financial sense to keep such cases under supervision, the Criminal Law Committee recommended, and the Judicial

This requirement can result in unnecessary supervision of persons who no longer require such supervision under the risk principle,¹⁶ including many elderly and terminally ill persons who may be physically incapacitated, dying, or aged to the point that they are no longer a risk to the community and cannot meaningfully engage in the supervision process. Serving a term of supervised release after a period of prerelease custody that offered the same or substantially similar services can be duplicative, resulting in over-supervision in some cases that may even be counter-productive and reduce a person's chance of success. Additionally, the increased number of persons on supervision and the longer periods of supervision can be costly and demanding on the U.S. probation system, taking focus away from higher priority cases.

In April 2020, the Executive Committee agreed, based on a recommendation by the Criminal Law Committee, to act on an expedited basis on behalf of the Judicial Conference to seek legislation that permits the early termination of supervision terms, without regard to the limitations in 18 U.S.C. § 3583(e)(1), for

an inmate who is released from prison under 18 U.S.C. §§ 3582(c), 3624(c), or 3624(g), or under 34 U.S.C. § 60541(g).

Future Implementation Initiatives

The FSA will take several years to fully implement, and there are a substantial number of unanswered questions that will need to be addressed.

One of the most significant provisions of the FSA with longer term implications is the requirement that the DOJ create, and the BOP implement, a risk and needs assessment system and recidivism reduction programming that may result in early release to the community through prerelease custody or supervised release for certain inmates. The BOP is in the early stages of a two-year phase-in period of implementing the risk and needs assessment system. As of January 2020, all inmates have received their initial risk assessment classification from the BOP, which will be used to determine eligibility for participation in programming to earn credits toward early release. Any challenges faced by expanded home

confinement will continue to be evaluated, including the need for adequate resources for the probation and pretrial services system, which is anticipated to be impacted by the number of persons obtaining early release under the risk and needs assessment system program.

Additionally, there remain unanswered questions about how the imposition of a term of probation or supervised release under the compassionate release provisions of 18 U.S.C. § 3582(c)(1)(A) interacts with a previously imposed term of supervised release. As noted above, the Judicial Conference agreed to seek legislation to clarify this issue.

The Criminal Law Committee remains committed to addressing FSA implementation challenges and challenges faced by expanded home confinement. The Criminal Law Committee will continue to collaborate with stakeholders to understand the potential impact of the COVID-19 pandemic and the FSA on the administration of the criminal justice system and discuss ways to address challenges that may arise.

Conference approved, seeking legislation that permits the early termination of supervision terms, without regard to the limitations in 18 U.S.C. § 3583(e)(1), for an inmate who is compassionately released from prison under section 3582(c) of that title (JCUS-SEP 13, p. 18).

¹⁶ According to well-established social science research, the "risk principle" states that over-supervision of persons in the community may inhibit their chance of success in the community and in some cases may even make success less likely by disrupting the person's prosocial networks.

Beyond the New Jim Crow: Public Support for Removing and Regulating Collateral Consequences

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IN 2010, MICHELLE Alexander published *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. This volume proved to be not only an important academic work but also a best-selling trade book. Its status as a contemporary classic can be traced to the fact that its message resonated with the growing sense that the policy of mass conviction and incarceration, which disproportionately impacted African American communities, was doing considerable harm (see also Clear, 2007; Kennedy, 1997; Pattillo, Weiman, & Western, 2004; Tonry, 1995, 2011; Wacquant, 2001, 2009).

Alexander's (2010) chapter on "The Cruel Hand" was particularly poignant. She drew this title from a statement by Frederick Douglass in which he noted how many Americans, despite being "strangers to our character," subjected Blacks to "the withering influence of a nation's scorn and contempt," which resulted in "a heavy and cruel hand [being] laid against us" (quoted in Alexander, 2010, p. 137). Because of the collateral consequences attached to a criminal conviction, observed Alexander

(2010, p. 138), "today a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living 'free' in Mississippi at the height of Jim Crow." Criminals "are the one group in America we have permission to hate" (p. 138).

But this animus reflected in the contemporary cruel hand—whether against Blacks or many Whites—is masked by its apparent colorblindness and neutrality. It is rationalized as just a matter of applying the law. "A criminal record today," Alexander (2010, p. 138) points out, "authorizes precisely the forms of discrimination we supposedly left behind—discrimination in employment, housing, education, public benefits, and jury service. Those labeled criminal can even be denied the right to vote" (see also Jacobs, 2015; Lageson, 2020). Echoing this theme, Wacquant (2001, p. 119, emphasis in original) observes that "*mass incarceration also induces the civic death* of those it ensnares by extruding them from the social compact"—including the denial of access to cultural capital (e.g., educational benefits), social

redistribution (e.g., welfare benefits), and political participation (e.g., voting).

Alexander draws the parallel between the new and old Jim Crow, trying to show that its contemporary version manifests similar characteristics. These include, among other facets, a lifetime of "legalized discrimination" such as in employment, "political disenfranchisement," and "exclusion from juries" (2010, pp. 186–189). The policy implications of Alexander's analysis are clear: Lift the weight of the cruel hand off offenders. In this regard, the current project focuses on the issues of employment discrimination, voting rights, and jury service. Using two sources of national-level data, we examine the extent to which the public supports *removing* these collateral consequences. Are they prepared to move "beyond the new Jim Crow"?

In her analysis, Alexander (2010, p. 140) illuminates a particularly insidious aspect of the collateral consequences attached to conviction: "judges are not required to inform criminal defendants of some of the most important rights they are forfeiting when

they plead guilty to a felony.” In all likelihood, she notes, “judges, prosecutors, and defense attorneys may not even be aware of the full range of collateral consequences for a felony conviction” (p. 140). In the current project, we probe whether the American public supports the mandatory disclosure of collateral consequences at the time of a plea bargain or jury verdict. Further, given the proliferation of economic, social, and civic disabilities attached to a criminal conviction, we assess public support for reviewing the need for collateral consequences, especially with regard to their effectiveness in reducing crime. In short, we examine the extent to which the citizenry endorses the *regulation* of collateral consequences.

The removal and regulation of collateral consequences address a problem large in scope and, as Alexander (2010) shows, involving racial disparity. Each day, the FBI adds more than 10,000 names to its database of criminal records (Murray, 2016; Roberts, 2015). The Sentencing Project (2019, p. 1) estimates that “between 70 and 100 million—or as many as one in three Americans—have some type of criminal record” (see also Bureau of Justice Statistics, 2014). Twenty million of these are felony records (Jacobs, 2015). But Blacks are differentially affected by criminalization, starting with being more likely to be arrested (Brame, Bushway, Paternoster, & Turner, 2014). One study found that in the United States, 8 percent of all adults but 33 percent of African Americans had a felony conviction—a status incurring the most diverse and damaging collateral consequences (Shannon et al., 2017). These impacts are felt widely. According to Enns et al. (2019), 45 percent of all Americans but 63 percent of African Americans have had a family member incarcerated for one night or longer; the racial divide for a family member locked up for over one year is 14 percent versus 31 percent. As such, any decrease in collateral consequences potentially has a disproportionate benefit to Black citizens and Black communities.

The sheer number of collateral consequences in the United States is disquieting. A national inventory of statutes and regulations compiled by the Council of State Governments (2020) placed the current number at 44,778. One analysis calculated the number of collateral consequences as varying from a low of 342 in Vermont to a high of 1,831 in California (Denver, Pickett, & Bushway, 2017). Most of these legally imposed disabilities remain invisible to the convicted until they seek to enjoy

the fruits of their rights as full citizens (Travis, 2002). Again, the challenge of disclosing these consequences and weighing their justification for existing remains a public policy concern (Chin, 2012, 2017).

Notably, corrections in the United States is at a policy turning point—a time when mass incarceration is in decline and get-tough rhetoric seems to strike the wrong chord (Butler, Cullen, Burton, Thielo, & Burton, 2020; Petersilia & Cullen, 2015). A wealth of evidence shows that public opinion has a pronounced effect on criminal justice policymaking (Pickett, 2019). Strong public support in favor of removing and/or regulating collateral consequences would provide policymakers with the incentive, or at least the political permission, to consider a range of modifications (Thielo, Cullen, Cohen, & Chouhy, 2016). Most salient are the attitudes of White Americans and whether they will resist reform efforts. Although Whites are also subject to collateral consequences if convicted, the impact of criminal records falls disproportionately on African Americans. A key issue is thus whether a racial divide exists in the public’s willingness to reform collateral consequences statutes or whether people of all colors support such an initiative. Another issue is whether beliefs about redeemability, which appear to influence attitudes toward reentry and criminal record policies (Burton et al., 2020; Burton et al., in press; Lehmann et al., 2020), shape views about collateral consequences. We address both questions in our study.

Collateral Consequences in an Era of Mass Conviction

In recent times, writings on collateral consequences have been extensive (see, e.g., Chin, 2017; United States Commission on Civil Rights, 2019; Whittle, 2018). Within criminology, scholarship detailing the pervasiveness of these restrictions extends back several decades, most notably in the writings of Burton and colleagues (see, e.g., Burton, 1990; Burton, Cullen, & Travis, 1987; Burton, Travis, & Cullen, 1988; Olivares, Burton, & Cullen, 1996). The concern over reentry, which surfaced early in the 2000s—especially in the work of Jeremy Travis (2002, 2005) on invisible punishments—was crucial in calling attention to how collateral consequences serve as barriers to reentry (see also Bushway, Stoll, & Weiman, 2007; Petersilia, 2003). As noted, Alexander’s (2010) *The New Jim Crow* reinforced these insights, showing how these legal

restrictions disproportionately affect African Americans.

Again, our study focuses on public opinion about collateral consequences in two domains fundamental to adult life in the United States. The first area is civic participation, where we assess whether respondents believe that felony records should restrict voting and jury service, two “pillars of American democracy” (Binnall & Peterson, 2020, p. 2). The second area is employment, where we examine the sample’s support for “ban-the-box” laws. Following this analysis, we then consider the extent to which the public favors the regulation of collateral consequences statutes. Until now, laws imposing these statutes have been passed over many years in a piecemeal fashion with no consistent scrutiny, let alone empirical evaluation.

Removing Collateral Consequences Disenfranchisement

In the United States, more than 6 million Americans are prohibited from voting due to a felony conviction (Chung, 2019; Jacobs, 2015). A 2016 study found that only 23 percent of disenfranchised felons were in prison or jails, while 77 percent were residing in the community. Among those in the community, about 1 in 4 were on probation (8 percent) or parole (18 percent). More than half (51 percent) had completed their sentences (Uggen, Larson, & Shannon, 2016). At present, two states, Maine and Vermont, do not restrict the franchise, allowing even prison inmates to vote. From the remaining 48 states and the District of Columbia, 38 permit offenders to vote once they have completed either their imprisonment or their entire sentence—prison, parole, and/or probation. Eleven states ban voting for at least some offenders permanently (e.g., those convicted of a violent or sex crime or more than one felony), until a waiting period is completed, or unless the governor awards clemency (Chung, 2019; “Felon Voting Rights,” 2019; Uggen et al., 2016).

The forfeiture of this constitutional right of citizens is a case of American exceptionalism. “European democracies,” notes Jacobs (2015, p. 250), “mostly permit even incarcerated felons to vote” (see also Lemon, 2019). Including the United States, only four democracies limit the franchise following incarceration (Lemon, 2019). As Manza and Uggen (2006, p. 41) observe, “Felon disenfranchisement laws in the United States are unique in the democratic world. Nowhere else are millions of offenders who are not in prison denied the right to vote.” Although

other factors likely played a role, they argue that race is central to this story—first following the Civil War when many restrictions on the franchise were passed and then in more modern times when racial threat seemed to inspire limits on voting (Manza & Uggen, 2006; see also United States Commission on Civil Rights, 2019). The extant racial disparity is telling: “One in 13 African Americans of voting age is disenfranchised, a rate more than four times more than non-African Americans” (Uggen et al., 2016, p. 3).

Still, there is promising news to report. In December 2019, New Jersey Governor Phil Murphy signed a bill that extended the franchise to 80,000 people on probation and parole, and Kentucky Governor Andy Beshear issued an executive order restoring the vote to 140,000 nonviolent offenders who had completed their sentence (Romo, 2019; Vasilogambros, 2020). In August 2020, Iowa Governor Kim Reynolds followed suit, issuing an executive order restoring the franchise to all felons completing their sentence, with the exception of those convicted of a homicide offense. Prior to this order, convicted felons in Iowa faced a lifetime ban on voting unless an appeal to the governor was granted (Stracqualursi, 2020). These gubernatorial actions reflect a growing trend. In fact, since 2019, a number of states have had legislative initiatives to limit or end felony disenfranchisement that were introduced in a legislative committee, passed one chamber of the legislature, or were implemented (“Disenfranchisement and Rights Restoration,” 2020).

Most notably, in 2018, more than 65 percent of Florida voters passed a constitutional amendment overturning a 150-year-old law permanently banning felons from voting, thus extending the franchise to 1.4 million individuals (Breslow, 2020; Gardner, & Rozsa, 2020; Vasilogambros, 2020). Governor Ron DeSantis and Republicans in the Florida legislature have attempted to delay ex-felons from voting until all their court-related fees, fines, and restitution are paid—though no system exists to tell ex-offenders what is owed. The U.S. Supreme Court refused to vacate a decision by the 11th Circuit Court of Appeals blocking an earlier injunction that ruled Florida’s action unconstitutional. The matter will now receive a hearing by the full 11th Circuit Court (Gardner & Rozsa, 2020; Totenberg, 2020).

Although not plentiful, existing polls indicate that a clear majority of the public

supports extending the vote to ex-felons who have completed their sentence (see Wilson, Owens, & Davis, 2015, p. 73). In a notable study, Manza, Brooks, and Uggen (2004, p. 284) reported on a 2002 survey finding that 80 percent of their national sample supported extending the franchise to “people convicted of a crime who have served their entire sentence, and are now living in the community.” When specific crime types were used, the level of support declined, but was still 66 percent for violent offenders, 63 percent for white-collar offenders, and 52 percent for sex offenders. Similarly, Chiricos, Padgett, Bratton, Pickett, & Gertz (2012) found that 73 percent of Floridians supported extending the right to vote to felons generally, 50 percent to violent offenders, 69 percent to white-collar offenders, and 49 percent to sex offenders. A 2017 California survey ($N = 815$) found that 67 percent believed that felons “should be allowed to vote” as opposed to being “barred from voting permanently” (Binnall & Peterson, 2020, pp. 9, 11). Three national 2018 polls revealed similar results. First, in the PRRI/*Atlantic* 2018 Pluralism Survey ($N = 1,073$), 71 percent of the sample agreed that “A person who has been convicted of a felony should be allowed to vote after they have served their sentence” (Najile & Jones, 2019). Second, a Pew Research Center survey found that 69 percent endorsed extending the vote to felons who had paid their debt to society (Bialik, 2018). Third, a YouGov study conducted for the Huffington Post ($N = 1,000$) showed that 63 percent supported the proposal, compared to only 20 percent who opposed it; 16 percent were not sure (“HuffPost: Restoration of Voting Rights,” 2018).

The dividing line, however, comes when the public is asked about extending the vote to those still in prison. About 7 in 10 oppose doing so, or 6 in 10 if “not sure” is a response option in the survey (“HuffPost: Restoration of Voting Rights,” 2018; Manza et al., 2004; Sheffield, 2019). Foretelling possible change in the time ahead, the 2018 YouGov poll showed that among those 18–29 years old, 40 percent supported restoring felons “their voting rights while they are in prison” as opposed to 37 percent who opposed this initiative and 24 percent who were not sure (“HuffPost: Restoration of Voting Rights,” 2018).

Exclusion from Juries

In the United States, Maine is the only jurisdiction that allows felons to serve on a jury

without restrictions (Binnall, 2018a). The federal government and 27 states permanently exclude convicted felons from jury duty. Twelve states prohibit such service while on probation or parole for a felony conviction. The remaining states impose some conditions limiting jury service, such as a waiting period following sentence completion, nature of the conviction offense, type of jury, and dismissal as a potential juror simply on the basis of a felony conviction (see Binnall, 2016, 2018a). Given that about a third of African Americans have a felony conviction, these restrictions have a disparate effect on the racial composition of juries (Binnall, 2014b; see also Wheelock, 2011).

Two reasons are given for excluding felons from jury service (Kalt, 2003; United States Commission on Civil Rights, 2019). The first is that their inclusion would threaten the “probity” of the jury because they lack the character and trustworthiness to judge their peers. The second is their “inherent bias” in rendering a verdict either because of their compassion toward offenders or because of their active animus toward the state. These arguments fall apart upon further scrutiny. For example, because most Americans commit crimes for which they have not been detected (e.g., illegal drug use, driving while intoxicated, domestic violence, tax fraud, and common crimes), it is an empirical question whether a criminal record reliably distinguishes who is morally appropriate for jury service (see Barnes, 2014; Pratt, Barnes, Cullen, & Turanovic, 2016). Similarly, research suggests that convicted felons tend to be pro-defense in their attitudes, but so do other groups (Binnall, 2014a). More instructive, except through the voir dire process that could also be applied to felons, the state makes no effort to exclude from juries those with strong pro-prosecution views (e.g., crime victims and their families, law enforcement officers and their kin, those with racial resentment or with strongly held punitive sentiments).

Binnall and Petersen’s (2020) California survey noted above is the only prior study to examine public support for felon jury service. Their question asked whether “a citizen who has been convicted of a felony” (A) “should be allowed to serve as a juror” or (B) “should be barred from serving as a juror permanently” (2020, p. 9). Forty-nine percent chose option A, meaning that the sample was about evenly divided on the issue of felon jury service.

Ban the Box

“The mark of a criminal record,” notes Pager (2007, p. 145), “indeed represents a powerful barrier to employment” (see also Holzer, Raphael, & Stoll, 2004). For young Black men, the combination of race and a criminal record so limits their employability as to be described as “two strikes and you’re out” (Pager, 2007, p. 100). The ability to avoid disclosure of a past record is limited by job applications that require prospective candidates to check a box noting an arrest or conviction. Notably, Denver, Pickett, and Bushway (2018, p. 584) estimated that in a single year, “over 31 million U.S. adults were asked about a criminal record on a job application.” To be sure, employers have reason to ask about applicants’ past involvement in crime, given high recidivism rates among reentering prisoners and the fact that criminal history is a predictor of future law-breaking (Bonta & Andrews, 2017; Doleac, 2019; Jonson & Cullen, 2015). Still, the near-automatic culling of ex-offenders from job pools ignores the heterogeneity in antisocial propensity among justice-involved people and the risks of encouraging recidivism by excluding them from meaningful employment (Doleac, 2019; Flake, 2019).

First proposed two decades ago, one compromise solution is to preclude employers from asking about an applicant’s criminal record until later in the job-hiring process (e.g., until interviewees were decided upon; Mauer, 2018). The candidates’ criminal history would still be disclosed, but only after employers had judged offenders’ qualifications absent the taint of a criminal mark. In this way, these applicants would have the same chance at further review as all others in the pool of candidates. Because job applications would no longer require anyone to “check the box” revealing their criminal record, these laws are known as “ban-the-box” laws. According to Avery (2019, p. 1), “Nationwide, 35 states and over 150 cities and counties have adopted what is known as ‘ban the box’ so that employers consider a job candidate’s qualifications first—without the stigma of a conviction or arrest record.” This legal reform now means that “over 258 million people in the United States—more than three-fourths of the U.S. population—live in a jurisdiction with some form of ban-the-box or fair-chance policy” (Avery, 2019, p. 2; see also Flake, 2019).

Notably, some research has challenged the efficacy of this reform, arguing that ban the box might have the unanticipated consequence of depressing the hiring of African American

applicants. The logic is that with no criminal-history information available, employers will be unable to differentiate which Black applicants are record-free. Assuming that Blacks as a group are more at risk than Whites of having a criminal record, employers will “play it safe” by not calling back such job-seekers for in-person interviews (for a summary, see Doleac, 2019). Not all research, however, finds this racially disparate effect (see, e.g., Flake, 2019).

Research that asks directly about the policy of ban the box is in short supply. Investigations using public samples have been conducted on the weight respondents give to various factors (e.g., offender race, type of conviction offense, job qualifications) if they were making hiring decisions (see, e.g., Cerda, Stenstrom, & Curtis, 2015; Varghese, Hardin, Bauder, & Morgan, 2010). Two decades ago, the Bureau of Justice Statistics (2001) conducted a comprehensive study of how the public views the uses of criminal history information. To our knowledge, however, only two studies have probed the extent to which the public might support the policy of ban the box.

First, in a 2016 survey ($N = 1,009$), Denver et al. (2018) asked the following question: “In your view, when should employers FIRST be allowed to ask about a job applicant’s criminal record, or do you think they should never be allowed to ask?” Almost 6 in 10 respondents (57 percent) chose “on the job application,” suggesting opposition to the ban-the-box policy. The other results were 28 percent for “at the interview stage,” 6 percent for “after the hiring decision,” and 9 percent for “never.” Second, another 2016 survey ($N = 1,203$) used the same question, with slightly more support for the ban-the-box principle on when records could be used: 49.1 percent at the application stage; 34.1 percent at the interview stage, 9.3 percent at the final hiring stage, and 8.5 percent never (Lehmann, Pickett, & Denver, 2020). Although suggestive, these surveys did not explain the ban-the-box policy to the sample members (or use the term) prior to asking them if they would endorse the measure. The current study does so and, as will be reported, finds a higher level of support.

Regulating Collateral Consequences

In offender sentencing, the courts distinguish between “direct” consequences such as probation, fines, or incarceration and “collateral consequences” such as being ineligible to vote, receive government benefits, or earn professional occupational licenses.

Direct consequences are defined as part of the criminal law—as punishments—and thus are protected by the U.S. Constitution. The courts have ruled, however, that collateral consequences are not criminal punishments but civil regulations. They can be found to be unconstitutional if they are purely punitive and cannot be shown to serve any “rational basis” (Chin, 2012, p. 1809). For all practical purposes, virtually any collateral consequence can pass the rationale standard if shown to save taxpayers money or contribute to public safety (Chin, 2012, 2017).

It is possible that the courts might extend protections to offenders, at least to the extent that, at the time of plea bargaining or sentencing, they are told the full civil, social, and economic disabilities that will attach to a criminal conviction. In the landmark case of *Padilla v. Kentucky* (130 S. Ct. 1473 [2010]), José Padilla, an immigrant from Honduras who had lived in the United States for 40 years, was told by his lawyer that if he pled guilty on a charge of transporting marijuana, he would not be deported. Although deportation is a collateral consequence, the U.S. Supreme Court ruled that Padilla had to be advised of this possible outcome by his lawyer prior to reaching his plea deal. On a personal level, José Padilla, a Vietnam War veteran, would avoid deportation and become a U.S. citizen on March 19, 2019 (Das, 2019). On a policy level, the possibility now exists—as yet unfulfilled—that the Supreme Court might use this logic to require defense attorneys or the trial court to inform defendants of all consequences a guilty verdict entails. Doing so would eliminate the fiction that collateral consequences are not, in reality, often a form of certain and unavoidable punishment (Chin & Love, 2010; see also Love, 2011; Quincy, 2018; Wikstrom, 2012).

However, there is a silver lining to the definition of collateral consequences as civil regulations. Because they are not embedded in the criminal law, these restrictions could be open to scrutiny just as any other government regulation can be (Cullen, Jonson, & Mears, 2017; Love, 2011). Although Americans favor state measures that protect their safety (e.g., from unsafe consumer products), they generally have ambivalent views about expanding government regulations (Bowman, 2017; Jones & Saad, 2019). In particular, Republicans are far less likely than Democrats to endorse governmental regulations as impeding business productivity (Bowman, 2017; Jones & Saad, 2019). These findings have implications for

the existing civil regulations imposed by collateral consequence laws: Bipartisan support for their reevaluation might exist. For those on the political Right, such regulations may lose legitimacy if they cannot be shown to pass the standards of transparency, utility, and crime-reduction effectiveness. Government regulations themselves must be regulated to ensure that they are helpful rather than hurtful. Those on the political Left might have similar concerns, but they are likely to favor scrutinizing offender-related restrictions because they are seen as punitive rather than as progressive.

In this context, the current study probes whether the public supports subjecting collateral consequences statutes to careful regulation to determine whether they can be justified. Three issues are examined: transparency—the disclosure of restrictions to offenders; evaluation of their utility—whether statutes should be assessed regularly to ensure that they still serve a purpose; and effectiveness—whether prescribed collateral consequences can be linked to the reduction of crime. Public concern over how collateral consequences are being imposed potentially opens a new avenue of reform. No prior public opinion research has been conducted on this salient issue.

Research Strategy

Based on a 2017 national-level survey, the analysis explores the level of public support for individuals convicted of felonies to vote and sit on juries. We then follow up these results by reporting public opinion on these same issues drawn from a 2019 national-level survey. Data from the 2017 survey are also used to examine Americans' endorsement of ban-the-box reform and of the increased regulation of collateral consequences statutes that ensure they are imposed with transparency and have demonstrably defensible outcomes. The current study makes a contribution in adding to prior opinion studies on offender disenfranchisement and provides data on topics where few or no studies exist—public support for jury service, ban the box, and regulating collateral consequences.

Although the current project is primarily concerned with presenting public opinion on removing and regulating collateral consequences, we also explore potential sources of support for this policy agenda—a contribution many polls reported above did not make. In addition to standard control variables, the multivariate analyses focus on four factors.

First, given that previous research finds

that Whites are more punitive than people of color (Unnever, Cullen, & Jonson, 2008) and the disproportionate impact of collateral consequences on African Americans (Alexander, 2010; Manza & Uggen, 2006; United States Commission on Civil Rights, 2019), we predict that Whites will be less supportive of collateral consequences reform than non-Whites. Second, although differences are not always large or statistically significant (see, e.g., Thiello et al., 2016), research shows that political partisanship and ideology affect support for criminal justice reform, with Republicans and those with a conservative ideology being more punitive and less progressive in their policy preferences (Lageson, Denver, & Pickett, 2019; Pickett & Baker, 2014; Unnever & Cullen, 2010). In particular, prior public opinion polls report those with rightward political leanings are less favorable to convicted felons voting (see, e.g., Bialik, 2018; "HuffPost: Restoration of Voting Rights," 2018; Najile & Jones, 2019). We anticipate finding a political effect in our analyses.

Notably, race and politics are central to Alexander's (2010) analysis in *The New Jim Crow*. Collateral consequences are "color-blind" in the sense that they apply to all those convicted of a criminal offense, but their "Jim Crow" effect lies in how they disproportionately impinge on the lives of African Americans. Scholars have argued that punitive collateral consequences were part of a larger get-tough movement aimed at securing White political support for the Republican Party, especially among conservatives, by passing criminal justice policies that would reduce a supposed racial threat (see, e.g., Chiricos et al., 2012; Wilson et al., 2015; see also Maxwell & Shields, 2019). The goal was to fuel and capitalize upon racial resentment. Beyond Blacks' utilitarian interest in reducing racially disparate restrictions, it is possible that Whites have been inspired to favor policies punitive toward people of color. The alternative possibility is that a racial and political divide no longer exists—or is now a small rather than a large cleavage—and that there is a consensus among Americans with regard to reforming the collateral consequences attached to a conviction.

Third, consistent with past research showing the effect of correctional orientation on policy preferences, we explore the influence of punitiveness and support for offender rehabilitation on whether the public endorses removing and regulating collateral consequences (Burton et al., 2020; Lehmann et al., 2020). It is anticipated that favoring relief from

collateral consequences will be negatively related to punitive sentiments and positively related to rehabilitative sentiments, although we do not expect these relationships to be large, given that retributiveness appears to have less influence on attitudes about post-release policies (Lehmann et al., 2020).

Fourth and closely related, we include a measure of the public's belief in the redeemability of offenders. Although still evolving, research is emerging showing that when people view offenders as malleable and capable of growth, they are less supportive of a punitive criminal justice system and more supportive of a range of progressive policies aimed at including offenders in the community—such as restorative justice, reentry services, and criminal record expungement (see Burton et al., 2020; Burton et al., in press; Maruna & King, 2009; Moss, Lee, Berman, & Rung, 2019; Ouellette, Applegate, & Vuk, 2017; Rade, Desmarais, & Burnett, 2018; Reich, 2017; Sloas & Atklin-Plunk, 2019; Tam, Shu, Ng, & Tong, 2013). It is hypothesized that respondents who believe more strongly in offender redeemability will be more favorable to limiting collateral consequences. We also anticipate that the effects of redeemability will be stronger than the punishment and rehabilitative correctional orientations. Punishment and rehabilitation are perhaps more relevant to the response to offenders at sentencing and under correctional control, whereas redeemability might be particularly salient to post-conviction and post-corrections policies, such as exposure to collateral consequences (Lehmann et al., 2020).

Methods

As noted, the main data for this paper are drawn from a 2017 survey, which was then supplemented by a 2019 survey. The sample and methods for the 2017 survey are discussed first, followed by information on the 2019 survey.

Sample for 2017 Survey

Participants in this study were surveyed by YouGov, a large survey research firm that conducts public opinion research globally. YouGov is considered to be at the forefront of opt-in web-based survey designs (Graham, Pickett, & Cullen, 2020; Kennedy et al., 2016), and as a result, is relied upon often by criminal justice researchers (e.g., Burton et al., 2020). For the current study, we commissioned YouGov to survey 1,000 U.S. adults (18

TABLE 1.
Descriptive Statistics

Variables	Bivariate Correlations with Outcomes									
	YouGov 2017 Sample		YouGov 2019 Sample		YouGov 2017 Sample				YouGov 2019 Sample	
	Mean or %	SD	Mean or %	SD	Voting Rights	Jury Duty Rights	Ban-the-Box	Regulate CCs	Voting Rights	Jury Rights
Outcome Variables										
Voting Rights (%)	76.40	-	59.56	-	-	-	-	-	-	-
Jury Duty Rights (%)	48.25	-	41.71	-	-	-	-	-	-	-
Ban-the-Box (%)	64.72	-	-	-	-	-	-	-	-	-
Regulate CCs	4.52	0.93	-	-	-	-	-	-	-	-
Independent Variables										
White (%)	66.76	-	64.16	-	-.06	-.04	.02	-.03	-.01	.07*
Redeemability	3.56	0.83	3.87	0.58	.38***	.42***	.32***	.38***	.25***	.38***
Punitiveness	1.48	1.09	1.09	0.98	-.36***	-.38***	-.30***	-.32***	-.01	-.21***
Rehabilitation	4.19	0.97	3.77	0.74	.38***	.41***	.28***	.49***	.21***	.47***
Control Variables										
Republican (%)	23.46	-	27.27	-	-.20***	-.18***	-.11***	-.15***	.05	-.16***
Conservative (%)	34.66	-	33.24	-	-.28***	-.25***	-.21***	-.19***	.01	-.21***
Male (%)	48.48	-	48.74	-	-.01	.05	-.06	-.03	-.01	.01
Age	48.08	17.52	48.19	17.60	-.15***	-.13***	-.01	-.05	.17***	-.02
Education	3.17	1.53	3.32	1.53	-.05	-.11***	.05	.09**	.03	.13***
Southerner (%)	36.00	-	38.02	-	-.03	-.02	.05	-.02	.00	-.01
Married (%)	44.10	-	47.75	-	-.07*	-.10**	-.02	-.03	.05	-.04
Religiosity	0.01	0.78	0.00	0.88	-.11***	-.13***	-.07*	-.11***	.06*	-.20***

Notes: The data are weighted; * $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed).

and over) between March 3–7, 2017.

To field the sample, YouGov used a two-stage, sample-matching design. First, YouGov selected a matched (on the joint distribution covariates, e.g., political ideology) sample of respondents from its online panel (over two million adult U.S. panelists) using distance matching with a synthetic sampling frame (the synthetic sampling frame came from the American Community Survey [ACS]). Then, propensity score matching is used to weight the sample to resemble the U.S. population on the matched covariates (Ansolabehere & Rivers, 2013). Clear evidence exists showing that findings from YouGov surveys often generalize to the U.S. population (Simmons & Bobo, 2015).

When compared to estimates from the U.S. Census and the 2017 ACS 5-year estimates (in parentheses), preliminary analyses reveal the weighted sample looks much like the U.S. population: non-Hispanic White, 66.8 percent (64.5 percent); male, 48.5 percent (48.7 percent); Bachelor's degree, 26.5

percent (28.4 percent); married, 44.1 percent (48.2 percent); Northeast, 18.7 percent (17.2 percent); Midwest, 20.1 percent (20.9 percent); South, 36.0 percent (38.1 percent); West, 25.3 percent (23.8 percent) (U.S. Census Bureau, n.d., 2017). When compared to the Pew Research Center's (2018) estimates of party identification among registered voters (in parentheses), the weighted sample also looks like the U.S. population: lean Republican or Republican, 41 percent (42 percent); lean Democrat or Democrat, 46 percent (50 percent). Given these similarities in major population demographics, we have greater confidence that the sample generalizes to all adults in the United States.

Dependent Variables

The survey included a battery of questions that assess support for removing and regulating collateral consequences policies. *Voting Rights* is a binary variable that assesses whether individuals convicted of felonies should either retain or lose their right to vote. The variable

was coded such that 0 = *they should lose permanently lose their right to vote*, 1 = *they should not lose their right to vote at all/they should lose their right to vote only until they have completed their sentence*. Table 2 shows the question wording and response options provided to the respondents.

Jury Rights is a binary variable (0 = *convicted felons should be permanently excluded from sitting on juries*, 1 = *convicted felons should be allowed to sit on juries once their sentence is complete*) that assesses whether the respondents believe those convicted of felonies should be able to serve on juries. *Ban the Box* is also a binary variable (0 = *banning the box is a bad idea*, 1 = *banning the box is a good idea*) that assesses whether the respondents believe individuals convicted of felonies should have to mark a box that denotes their felony status on employment applications. See Table 3 for the exact question wordings and response options provided to the respondents.

Regulate CCs is a mean index ($\alpha = .743$) comprising three items that assess support

for providing offenders with information about collateral consequences and eliminating collateral sanctions unless they are shown to reduce crime. These items tap whether the respondents believe the collateral consequence incurred upon conviction should be transparent to those receiving them and whether collateral consequences policies should be regularly reviewed and discarded if they are shown to have no crime-reducing effect. See Table 4 for the full question wordings and response categories. The respondents indicated their support for all of the items using a 6-point Likert scale (1 = *strongly disagree*, 6 = *strongly agree*). The variable was coded such that higher values on the index correspond with greater support for regulating collateral consequences.

Independent Variables

With regard to race, *White* is a binary variable where 1 = *all White respondents* and 0 = *all other races*. We focus on Whites because, as noted, their role in supporting or resisting collateral consequences reform may be distinct from that of other racial groups. We also ran all analyses (tables available upon request) in which we compared 1 = *White* versus only 0 = *Blacks*, excluding respondents from other groups from these analyses (e.g., Asians, Hispanics). The results proved to be the same substantively.

To measure the respondents' belief in redeemability, we used questions from Burton et al. (2020). Similar measures of this construct have been used in prior research (e.g., Dodd, 2018; Maruna & King, 2009). Thus, *Redeemability* is a mean index ($\alpha = .718$) created from the respondents' opinions (1 = *strongly disagree*, 6 = *strongly agree*) to the following four statements: (1) "Most offenders can go on to lead productive lives with help and hard work"; (2) "Given the right conditions, a great many offenders can turn their lives around and become law-abiding citizens"; (3) "Most criminal offenders are unlikely to change for the better"; and (4) "Some offenders are so damaged that they can never lead productive lives." Items 3 and 4 were reverse coded such that higher values on the index represent a greater belief in redeemability.

The respondents' punitiveness was assessed using three widely used measures of this construct (see Enns, 2016): support for the death penalty, support for harsher courts, and belief that the main goal of prisons should be

punitive, rather than rehabilitative. We used question wordings drawn from the General Social Survey (death penalty and harsher courts questions) and the Harris Poll (main goal of prisons question) (see Cullen, Fisher, & Applegate, 2000; Enns, 2016). The respondents endorsing the punitive option for each item were coded as 1, whereas those not supporting the punitive option(s) were coded as 0. Thus, the three items were summed together to create *Punitiveness*, a 3-item index that ranges from 0 to 3, where higher values correspond to greater punitiveness.

Five items were used to measure the respondents' support for correctional rehabilitation. Accordingly, *Rehabilitation* is a 5-item mean index ($\alpha = .841$) measured with questions that asked how much the respondents supported five statements. Examples of these items include: (1) "It is important to try to rehabilitate adults who have committed crimes and are now in the correctional system," and (2) "It is a good idea to provide treatment for offenders who are supervised by the courts and live in the community." The same scale was used in Burton et al. (2020). Items were all coded in a direction such that higher values indicated greater support for rehabilitation.

Control Variables

Our analyses include additional factors that are commonly controlled for in public opinion studies on criminal justice policies (e.g., Burton et al., 2020; Thielo, Cullen, Burton, Moon, & Burton, 2019). The control variables in the analyses are the respondents' political party affiliation (1 = *Republican*) and ideology (1 = *Conservative*), gender (1 = *Male*), Age (in years), Education (1 = *no high school*, 6 = *graduate degree*), region of residence (1 = *Southerner*), and marital status (1 = *Married*). Finally, we also control for religious beliefs using a 3-item standardized mean index, *Religiosity* ($\alpha = .741$), based on three questions assessing the importance of religion in the respondents' lives, their frequency of church attendance, and their frequency of praying.

Table 1 provides the descriptive statistics for all of the variables, and the bivariate correlations between each independent and dependent variable included in the multivariate analyses. Regression assumptions were assessed and appeared to be met in all of the models. In the multivariate models, VIF values ranged from 1.02 to 2.11, indicating that multicollinearity was not a concern.

Analysis Based on 2019 YouGov Survey

To further assess the extent and correlates of attitudes toward collateral consequences policies, we analyze data from a 2019 YouGov survey—designed for other purposes (see Butler, 2020)—that included measures of the constructs examined in the current study. The measures of *Punitiveness*, *Rehabilitation*, and all control variables were identical to those used in the 2017 YouGov survey. The measure of *Redeemability* in the 2019 YouGov survey was a similar measure to the Burton et al. (2020) scale. Thus, *Redeemability* in the 2019 YouGov survey is an 8-item mean index using select items from a scale developed by O'Sullivan, Holderness, Hong, Bright, and Kemp (2017). *Voting rights* was measured with an item that asked respondents to indicate the extent to which they agree or disagree with the statement "If someone is convicted of a crime, they should lose their right to vote, but have it restored once they have completed their sentence and paid their debt to society" (0 = *strongly disagree*, *disagree*, or *neither agree nor disagree*; 1 = *agree* or *strongly agree*).¹ *Jury Rights* was measured with a single item that asked respondents to indicate the extent to which they agree or disagree with the statement "If someone is convicted of a crime, they should be permanently excluded from sitting on a jury, even after they have paid their debt to society" (0 = *strongly disagree*, *disagree*, or *neither agree nor disagree*; 1 = *agree* or *strongly agree*). To be consistent with the measures of these policy opinions in the 2017 YouGov survey, both *Voting Rights* and *Jury Rights* were coded as dichotomous indicators of attitudes in favor of removing collateral consequences.

Note that YouGov used the same procedures for sampling and fielding the 2019 survey as were used for the 2017 survey. Accordingly, the 2019 sample looks similar to U.S. population estimates from the U.S. Census and the 2017 ACS five-year estimates: non-Hispanic White, 64.2 percent (64.5 percent); male, 48.7 percent (48.7 percent);

¹ A possible limitation on this question should be noted. The question was framed to elicit who favored extending voting rights to offenders. However, someone who believed that offenders should have the right to vote under all circumstances could have answered "neither agree nor disagree" or "disagree/strongly disagree." Substantively, this means that the response to this item underestimates support for voting rights. Given that nearly 6 in 10 respondents answered in support of extending the franchise to offenders, the conclusion that public support was strong would not be affected by the question wording.

Bachelor's degree, 28.7 percent (28.4 percent); married, 47.8 percent (48.2 percent); Northeast, 18.7 percent (17.2 percent); Midwest, 20.2 percent (20.9 percent); South, 38.0 percent (38.1 percent); West, 23.2 percent (23.8 percent) (U.S. Census Bureau, n.d.; U.S. Census Bureau, 2017). When compared to the Pew Research Center's estimates of party identification among registered voters (in parentheses), the weighted 2019 sample also looks like the U.S. population in terms of party identification. When compared to estimates from the Pew Research Center (2018), the data are as follows: lean Republican or Republican, 39 percent (42 percent); lean Democrat or Democrat, 45 percent (50 percent). Thus, we have confidence that the 2019 YouGov sample also generalizes to all adults in the United States.

Results

Table 2 (Items 1 and 3) reports on the sample members' support for allowing convicted offenders to vote across the 2017 and 2019 YouGov national-level surveys. Although two different questions are used (forced-choice and Likert agree-disagree responses), the results are consistent. In both samples, about 6 in 10 respondents favored extending the right to vote to those convicted of a crime once they have completed their sentence. In the 2017 sample, less than a quarter of the respondents (23.6 percent) believed that felons should permanently lose the right to vote, whereas 17.0 percent favored no restrictions on the right to vote—presumably meaning that the franchise should be extended to those offenders not only outside but inside prisons.

Support for allowing convicted offenders to sit on juries is evenly split. The 2017 survey found that 51.8 percent favored and 48.2 percent opposed the permanent exclusion of convicted felons from jury duty (see Table 2, Item 2). Item 4, drawn from the 2019 survey, may be more instructive. Here, only about a quarter of the sample (27.3 percent who answered agree or strongly agree) favored excluding offenders for jury service, whereas about 4 in 10 (41.7 percent disagreed or disagreed strongly) did not. However, about 3 in 10 respondents (31.0 percent) answered "neither agree nor disagree." This undecided group might truly be uninformed or might endorse jury service under certain conditions—an issue future research should explore.

Support for ban-the-box laws is clear. About two thirds of the respondents (64.7

percent) chose the option that this reform was a "good idea" versus only a third (35.3 percent) who thought it was a "bad idea" (see Table 3). In other words, most respondents support delaying or eliminating background checks during the hiring process. Other data in the 2017 survey (not presented in the tables) reveal that the respondents believed that employment was integral to offender reentry. First, when asked what would help reentering offenders "stay out of crime" after "being in prison for five years," nearly 8 in 10 sample members (79.1 percent) selected "employers who give them a chance to work" as a measure that would "help them stay crime-free." Second, when asked "what services should be provided to offenders after release from prison," 94.7 percent supported "job training" (48.8 percent strongly agreed this service should be available, 27.8 percent agreed, and 18.1 percent somewhat agreed).

Table 4 presents public views on the regulation of the collateral consequences of a conviction. A unifying theme emerges from the responses: The sample members believe that restrictions should be imposed with transparency and only if they can be shown to have utility. They do not favor civil sanctions

that are not disclosed to offenders at the time of trial (Table 4, Item 1) or that are never reviewed (Item 2) and do not reduce crime (Item 3). Thus, more than 9 in 10 respondents (91.3 percent total agree) agreed that offenders should be informed about potential collateral consequences both when charged with a crime and when pleading guilty; more than 8 in 10 (86.2 percent) agreed that collateral consequences statutes should be reviewed every five years and eliminated if they had "no useful purpose"; and more than 7 in 10 (73.5 percent) favored the elimination of a collateral sanction "unless it is shown to reduce crime."

The multivariate results are presented for the 2017 survey in Table 5 and for the 2019 survey in Table 6. Note that a significant race effect was revealed in only one model (in Table 5), where Whites were less supportive than people of color in extending voting rights to offenders. Even at the zero-order level, the bivariate correlation for race is nonsignificant for 5 of 6 outcomes and never exceeds .07 (see Table 1). When Whites were compared only to Blacks, similar results were obtained. For the 2017 survey, race was not significantly related to support for voting rights and to support for regulating collateral consequences. Whites

TABLE 2.
Public Support for Voting and Jury Rights for Offenders (Percentages Reported)

Questions (YouGov 2107 Survey)	Percent					
1. Which of the following comes closest to your opinion about voting for U.S. citizens who have been convicted of felonies?						
A. They should permanently lose their right to vote	23.6					
B. They should lose their right to vote only until they have completed their sentence	59.4					
C. They should not lose their right to vote at all	17.0					
2. Which of the following comes closest to your opinion about people who have been convicted of felonies sitting on juries?						
A. They should be permanently excluded from sitting on juries	51.8					
B. They should be allowed to sit on juries once their sentence is complete	48.2					
Items (YouGov 2019 Survey)	TA	SA	A	NAND	D	SD
3. If someone is convicted of a crime, they should lose their right to vote, but have it restored once they have completed their sentence and paid their debt to society.	59.6	27.5	32.1	23.6	10.3	6.6
4. If someone is convicted of a crime, they should be permanently excluded from sitting on a jury, even after they have paid their debt to society.	27.3	10.4	16.9	31.0	23.5	18.2

Note: TA = total agree; SA = strongly agree; A = agree; NANAD = neither agree nor disagree; D = disagree; SD = strongly disagree.

Note: Total Agree includes respondents answering 1= strongly agree and 2 = agree.

were found to be significantly less supportive of jury rights but more supportive of ban the box. For the 2019 survey, Whites were significantly less supportive of voting rights than Blacks, but race was unrelated to support for jury rights. The takeaway from these findings is clear. Although some differences were reported, our results do not indicate a consistent or large racial divide in attitudes toward collateral consequences; in most cases, Whites are just as supportive as Blacks of reform, or are only slightly less supportive.

Turning to the other variables of interest,

we see that political allegiances do not appear to be a consistent dividing line in support for or opposition to collateral consequences policy. In some models, being a Republican or having a conservative ideology was significantly associated with opposition to extending voting rights to felons and with support for excluding them from jury service. Across all the dependent variables, however, being a Republican was significant in only 2 of 6 models and holding a conservative political ideology was significant in only 1 of 6 models. Although political ideology was

not consistently important, having a rehabilitative orientation was; in 5 of the 6 models, those with a rehabilitative orientation were significantly more supportive of progressive collateral-consequences policies. By contrast, punitiveness reached statistical significance in only 2 of the 6 models, where it was associated with less support for extending voting and jury rights to the convicted. It does not appear then, that public opinion about collateral consequences is driven by retributive concerns.

Although most independent variables in the analyses had weak relationships with the various outcomes, which were either non-significant or inconsistently significant, one pattern was apparent across outcomes, survey years, and question wording: Belief in offender redeemability increased support for eliminating and regulating collateral consequences. Indeed, in every model, belief in redeemability had a statistically significant positive effect. Thus, it had a more robust effect than race, political ideology, and correctional ideology. Such belief was associated with support for extending voting and jury rights to the convicted, with implementing ban-the-box laws, and with policies ensuring that collateral consequences were disclosed to offenders and eliminated if lacking any demonstrable utility.

TABLE 3.
Public Support for “Ban the Box” Laws

Question	Percent
Which of the following views about ban the box laws is closer to your own?	
A. “Ban the box” laws are a <i>good idea</i> because ex-offenders’ skills and qualifications for jobs will be considered. This could help them get jobs because they won’t just be rejected right away for having criminal records.	64.7
B. “Ban the box” laws are a <i>bad idea</i> because they make employers waste time considering hiring people that they may end up rejecting later when they find out about their criminal records.	35.3

Note: Question Asked—As you may know, many job applications contain a “box” that a person applying for the job must check if they have a criminal record from their past. Recently, however, many elected officials have passed “ban the box” laws. These laws say that employers must remove this “box” on job applications that people must check if they have been arrested and/or convicted of a crime. With ban the box laws, employers can still conduct criminal background checks and choose not to hire someone who has a criminal record. However, they can only do this AFTER they have looked at the person’s job application and decided to interview them or give them a job offer. Which of the following views about ban the box laws is closer to your own?

TABLE 4.
Public Support for Regulating the Collateral Consequences of Conviction

Items	TA	SA	A	SWA	SWD	D	SD
1. Offenders should be given information regarding all of the possible collateral sanctions they may face if they are convicted of a crime, both at the time they are charged with a crime and before entering a plea of guilty or innocent.	91.3	32.6	33.1	25.6	6.0	2.2	0.6
2. Every five years, state and federal lawmakers should review all of the existing collateral sanctions of convictions, and eliminate the ones that are found to have no useful purpose.	86.2	23.1	32.3.	30.8	9.1	3.3	1.4
3. A collateral sanction should be eliminated unless it is shown to reduce crime.	73.5	13.7	26.8	34.1	12.6	8.8	3.9

Note: TA = total agree; SA = strongly agree; A = agree; SWA = somewhat agree; SDA = somewhat disagree; D = disagree; SD = strongly disagree.

Note: Total agree includes respondents answering 4= somewhat agree, 5 = agree, 6 = strongly agree (versus 3 = somewhat disagree, 2 = disagree, and 1 = strongly disagree).

Note: Question Asked— As you may know, when people are convicted of many types of misdemeanor and felony crimes, they often also face a lot of other regulatory or civil penalties, called collateral sanctions. Collateral sanctions are separate from the direct punishments for crimes (such as a prison sentence or a probation term) and offenders are generally not told about these restrictions when they are convicted of a crime. Thus, someone convicted of a crime might face many different types of restrictions on the rights and privileges that U.S. citizens typically have. Such collateral sanctions include not being allowed to work in a lot of jobs, to serve on a jury, to join the military, to receive student loans and other forms of public assistance, and to have a driver’s license. How much do you agree or disagree with each of the following statements?

Discussion

Beyond the New Jim Crow

Michelle Alexander’s *The New Jim Crow* was a milestone publication. It captured sentiments at the heart of a new era in corrections that was marked by the growing sense that the nation’s four-decade punitive movement was ideologically bankrupt and burdened by too many iatrogenic effects. Part of Alexander’s special contribution was in illuminating what was especially pernicious about this past policy agenda—that seemingly “colorblind” or race-neutral laws and practices could have racially disparate outcomes. The other part was in showing that the collateral consequences of mass criminalization and mass imprisonment were oppressive. Some disabilities imposed on the convicted were purposefully oppressive—pushing down our collective thumbs on offenders simply to be nasty (e.g., limiting government benefits). Other disabilities were imposed with some rational basis in mind but with an absence of any scientific proof of their effectiveness. As Alexander made clear, the end result was an extensive legal apparatus—never systematically and publicly codified for all to see—that compromised the lives of millions of justice-involved individuals.

Academic criminologists are unified in arguing that we must move beyond *The New Jim Crow* (see, e.g., Chin, 2012, 2017; Manza & Uggen, 2006; Mears & Cochran, 2015; Whittle, 2018). To be sure, some restrictions on ex-offenders might make sense (e.g., excluding those convicted of certain sex crimes from teaching children). But it is clear that the time has come to separate the wheat from the chaff—to eliminate the practices that are gratuitously punitive and that do not serve the public commonweal. Any reform movement, however, must align with the public will. Research on public opinion is important for at least two reasons. First, it reveals where opportunities for change are more promising (what the public supports) or less promising (what the public opposes). In the latter case, it becomes possible to probe how deeply and for what reasons citizens resist a given policy proposal—and perhaps to learn how their concerns might be addressed and their minds changed. Second, knowing what the public favors provides reformers with a resource to use in campaigns to alter extant policies. Other factors certainly matter—financial cost, effectiveness, political loyalties and values, the views of interest groups—but it is a valuable

asset to be able to say that “70 percent of voters support the proposed reform.”

In this context, the current project explored public opinion about policies intended to remove key collateral consequences of conviction and, more generally, to regulate an area of legal restrictions that heretofore has received scant empirical scrutiny. As a qualification, the survey did not probe the full array of restrictions that offenders—especially individuals with felony convictions—experience, and each analysis presented can be studied in future research in ways that examine contingencies that might shape opinions. Nonetheless, taken as a whole, the results indicate a clear willingness of the American public to reduce the negative impacts of collateral consequences and, in this sense, to remedy many of the concerns raised by Alexander and others (see also Johnston & Wozniak, 2020). We explore this promising theme further below.

Removing Collateral Consequences

Combined with similar results from prior opinion polls cited previously, our data from two recent national-level surveys suggest that a clear majority of the American public endorses extending the franchise to

convicted felons once they have “paid their dues to society.” At least with regard to voting, the full completion of a sentence wipes the slate clean. Given this consensus, laws or ballot initiatives expanding the right to vote to ex-offenders (with the exception of murderers and sex offenders) are likely to earn widespread support. As noted, Florida’s 2018 Voting Registration Amendment, which restored voting rights to 1.4 million offenders (excluding those convicted of murder and sex offenses) comprising 10.6 percent of the state’s voting-age population, was approved by about a two-thirds margin (United States Commission on Civil Rights, 2019). Such reforms matter (Manza & Uggen, 2006). The United States Commission on Civil Rights (2019, pp. 112–113) points out the racial impact of the Florida initiative:

In Tampa alone, during the first week that the amendment took effect, the average numbers of voter registrations surged to about 2.5 times the weekly average in the preceding months. Moreover, at the start of 2019, black people represented 22 percent of Tampa’s registered voters; but on the

TABLE 5.
Regression Analyses Predicting Support for Removing and Regulating Collateral Consequences (YouGov 2017 Sample)

Variables	Model 1: Voting Rights			Model 2: Jury Rights			Model 3: Ban-the-Box			Model 4: Limit CCs	
	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE	OR	<i>b</i>	SE
Race											
White	.059	.28	1.061	-.064	.22	.938	.363	.33	1.438	.056	.08
View of Offenders											
Redeemability	.701**	.46	2.015	.612**	.35	1.845	.817***	.42	2.264	.113*	.06
Correctional Orientations											
Punitiveness	-.303*	.10	0.739	-.387***	.07	0.679	-.151	.09	0.860	-.003	.04
Rehabilitation	.504**	.25	1.656	.402**	.23	1.495	.001	.15	1.001	.386***	.05
Control Variables											
Republican	-.582*	.15	0.559	-.078	.25	0.925	.180	.28	1.197	-.048	.08
Conservative	-.219	.21	0.804	-.187	.22	0.830	-.486	.16	0.615	.011	.08
Male	-.126	.19	0.882	.325	.27	1.384	-.004	.20	0.996	.053	.07
Age	-.010	.01	0.990	-.003	.01	0.997	.011	.01	1.011	.005*	.00
Education	-.049	.07	0.952	.069	.07	1.071	-.013	.06	0.987	-.009	.02
Southerner	.022	.08	1.022	-.020	.07	0.980	.132	.08	1.141	-.026	.02
Married	.245	.30	1.278	-.132	.18	0.876	-.029	.19	0.971	.067	.07
Religiosity	-.175	.14	0.840	-.143	.13	0.866	-.020	.13	0.980	-.051	.05
<i>N</i>	989			978			973			989	
<i>R</i> -squared	.212			.182			.109			.236	

Notes: The data are weighted. *b* = unstandardized regression coefficient; SE = standard error; OR = odds ratio; pseudo *R*-squared reported for Models 1–3, adjusted *R*-squared reported for Model 4; * *p* < .05, ** *p* < .01, *** *p* < .001 (two-tailed).

first day the amendment took effect (January 8), black people accounted for 47 percent of new voter registrations. . . . These numbers illustrate the disproportionate effect of felony disenfranchisement on black voters in just one city in Florida.

At least without additional information, the public is unlikely to support prisoners voting. Beyond Bernie Sanders and the progressive Left, few politicians are likely to assume the mantle leading such a reform. Dismissive rhetoric is a common response, with opponents saying they would welcome debating “whether Dylann Roof and the Marathon bomber should have the right to vote” (Sheffield, 2019). Still, as noted, younger voters are more open to the idea, and it might be possible to carve out a reform where the right to vote could be earned by inmates who “signaled” their reform (e.g., record of good behavior, complete treatment program or citizenship class; see Bushway & Apel, 2012).

More compelling is that denying the right to vote to the incarcerated is a case of “prisonization without representation.” Often called “prison gerrymandering,” 44 states count

inmates as residents where their institution is located rather than in their “usual” or home residence (Ebenstein, 2018; United States Commission on Civil Rights, 2019). This practice has two pernicious effects. First, because many prisons are located away from cities where inmates originate, it “shifts political power from urban to more rural areas,” skewing the distribution of government resources and “legislative apportionment” (Ebenstein, 2018, p. 325). The racial bias is palpable, as Black inmates are counted as residents of rural White communities. Second, although counted as a resident, they do not enjoy the privileges of local citizenship—from sending their children to community schools to voting. As Ebenstein (2018, p. 372) notes, they have no “representational nexus” with elected officials because they “cannot vote, take their concerns to their representatives, or seek redress for the issues that affect their daily lives.” This political hypocrisy might create a rationale for extending the vote to prisoners: It is simply un-American and anti-democratic—and thus indefensible—to crassly use a person’s body for one’s own political purposes and then to turn around and say that this very person has no ethical claim to the franchise.

As reported, the public seems divided on allowing felons to serve on juries (see also Binnall & Petersen, 2020). But let us probe this a bit more. The 2019 survey, which included a “neither agree nor disagree” category, found that nearly a third of the respondents selected this option. This finding suggests that many Americans may not have thought much about this issue, so their views may be uncertain or weakly held. At first blush, it might seem obvious to many people that convicted offenders would be suspect as jurors, given their past moral deficits and potential bias against “the system.” But as noted, a moment’s thought undermines this understandable but knee-jerk view that a criminal record is necessarily a good predictor of juror quality (Kalt, 2003). With more information, minds might be changed. Thus, it is clear that most Americans have not abstained from crime themselves and import their own biases into the courtroom. Further, those ex-offenders who see service as a privilege might be better jurors than so-called upstanding citizens who see jury duty as an inconvenient, unwanted interference in their lives (Binnall, 2018b). Future research on this issue should focus on the conditions under which citizens might support offender jury service (e.g., crime-free waiting periods, signals of rehabilitation). Further, studies should examine whether support for not excluding the convicted from this civil right would be increased if respondents were alerted to the racially disparate effect of laws prohibiting offender jury participation (Binnall, 2014b; Wheelock, 2011).

Finally, as Alexander (2010, p. 145) reminds us, “Aside from figuring out where to sleep, nothing is more worrisome for people leaving prison than figuring out where to work” (see also Western, 2018). Americans seem to understand this stubborn reality. Almost 8 in 10 in the 2017 sample saw the need for employers to give offenders a chance at employment, and more than 9 in 10 favored job training as a reentry necessity. Most notably, nearly two-thirds endorsed ban the box as a “good idea.” They seem to understand the barriers offenders face in employment (Pager, 2007) and the role a stable job can play in desistance (see Bushway et al., 2007; Denver, Siwach, & Bushway, 2017; Sampson & Laub, 1993; Western, 2018). Future research should probe public support for reducing another barrier to employment—the use of criminal records to bar or limit access to occupational licenses. Across the United States, there are an estimated 15,000 “provisions of law (contained

TABLE 6.
Logistic Regression Analyses Predicting Support for Removing Collateral Consequences (YouGov 2019 Sample)

Independent Variables	Voting Rights			Jury Rights		
	<i>b</i>	SE	OR	<i>b</i>	SE	OR
Race						
White	-0.313*	.14	0.731	0.097	.15	1.102
View of Offenders						
Redeemability	0.638***	.16	1.894	0.641***	.18	1.898
Correctional Orientation						
Punitiveness	0.083	.07	1.086	-0.052	.08	0.950
Rehabilitation	0.316*	.13	1.372	1.052***	.15	2.863
Controls						
Republican	0.352*	.17	1.422	-0.122	.20	0.885
Conservative	-0.299	.17	0.741	-0.562**	.19	0.570
Male	0.059	.13	1.061	0.278*	.14	1.321
Age	0.017***	.00	1.017	-0.003	.00	0.997
Education	-0.011	.04	0.989	0.122**	.05	1.130
Southerner	-0.092	.13	0.912	0.104	.14	1.110
Married	0.060	.13	1.062	0.108	.15	1.114
Religiosity	0.111	.08	1.118	-0.287**	.09	0.750
<i>N</i>		1,195			1,195	
Cox & Snell <i>R</i> -Squared		.092			.250	

Notes: The data are weighted. *b* = unstandardized regression coefficient; SE = standard error; OR = odds ratio; * *p* < .05, ** *p* < .01, *** *p* < .001 (two-tailed).

in both statutory and regulatory codes) that limit occupational licensing opportunity for individual with criminal records” (Umez & Pirius, 2018, p. 1). One possible reform is prohibiting blanket bans and excluding people from licenses only if “convictions are recent, relevant, and pose a threat to public safety” (quoted in Fetsch, 2016, p. 13).

Regulating Collateral Consequences

One of the current study’s most salient findings is that the public appears prepared to support the systemic reform of collateral consequences. Right now, collateral consequences attached to criminal convictions in any given jurisdiction comprise a byzantine system of largely unknown and unreviewable restrictions (Cullen et al., 2017). In the internet age where information can be available with a few clicks of a mouse (Lageson, 2020), it is indefensible for states not to codify all penalties triggered by any given criminal conviction. More than 9 in 10 respondents thus favored giving offenders, when charged and when entering a plea, “information regarding all of the possible collateral sanctions they may face.” The American public thus would support reforms requiring transparency in the disclosure of restrictions to offenders.

As noted, the civil nature of collateral consequences makes them an inviting target for regulatory review. Collateral consequences are a form of regulation, not of punishment (Chin, 2012; Cullen et al., 2017). This legal status may mean that, in most instances today, the courts will not mandate their disclosure as they would a criminal sanction. But as regulations, their very existence hinges on serving a purpose other than imposing just deserts. Liberals see gratuitous restrictions as unjust; conservatives may see them as an unnecessary infringement of liberty (Cullen et al., 2017). Our data suggest that more than 8 in 10 Americans would endorse a reform mandating the periodic review of collateral consequences and the elimination of those “found to have no useful purpose.” In particular, more than 7 in 10 respondents wanted collateral sanctions eliminated unless they could be “shown to reduce crime.” Importantly, reformers can argue that the public only supports the regulation of ex-offenders’ behavior if the restriction serves a purpose and lowers crime. If not, then its existence imposes a cost on the convicted that accrues no benefits. Regulatory reform is thus good public policy likely to be embraced by the American public.

Sources of Support for Limiting Collateral Consequences

One key finding that must be reemphasized is the lack of a racial divide in attitudes toward policies regarding collateral consequences. Whatever effects racial politics about crime and other social issues have had at the ballot box (Maxwell & Shields, 2019), the data suggest that Blacks and Whites now see collateral consequences in similar ways. Racially resentful Whites do exist, and studies suggest they may oppose criminal justice reform, including about collateral consequences (see, e.g., Chiricos et al., 2012; Lehmann et al., 2020; Wilson et al., 2015). But Whites overall do not comprise an adult voting block that would staunchly resist attempts to move “beyond the New Jim Crow.” A recent study focusing on the willingness to deny benefits to convicted offenders has reached a similar conclusion. There is “little evidence,” observe Johnston and Wozniak (2020, p. 1), “that any group of Americans would mobilize to vote against a legislator who works to reform collateral consequences policies.”

Another important finding is that even controlling for political variables and measures of correctional ideology—which had some effects on support for the policy outcomes—the most consistent factor across two independent surveys influencing support for removing and regulating collateral consequences was belief in offender redeemability. This finding is consistent with a limited body of past research (see, in particular, Burton et al., 2020; Maruna & King, 2009). Its substantive significance is that how the public and policymakers view the malleability of offenders’ criminality will shape their advocacy of correctional second chances. During the height of the get-tough era, images of justice-involved individuals as remorseless “super-predators” (DiIulio, 1995, p. 23) and as “an unchanging lethal threat” (Simon, 2014, p. 131) for whom “we can have no sympathy and for whom there is no effective help” (Garland, 2001, p. 136) justified their incapacitation. Now, however, belief in offender redeemability is fairly widespread, perhaps due to increased interpersonal contact among members of the public with people who have criminal records (Lageson et al., 2019), and is likely to be a source of inclusionary, rather than exclusionary, public policies—including support for limiting the imposition of collateral consequences.

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The take-away message of this study is that the public is receptive to limiting collateral consequences, whether by removing restrictions or requiring the restrictions to be regulated. The respondents were divided in their approval of former offenders serving on juries but were supportive of extending the franchise to those who had completed their sentence, of ban the box, of disclosing collateral consequences to those being prosecuted, and of eliminating any disabilities that served no purpose and did not reduce crime. More nuanced studies can build on these results, but the general finding of a public favoring inclusive correctional policies because it believes in offender redeemability is likely to remain robust. The implication is that in a time when concern for social justice runs high, the possibility of moving “beyond the New Jim Crow” awaits us.

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Practitioner Perceptions of the Use and Utility of Pretrial Risk Assessment: Focus Group Analysis¹

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PRETRIAL RISK ASSESSMENTS are increasingly popular tools used to inform release decisions during the pretrial process. There are three main pretrial release outcomes, decided by a judge, magistrate, or similar bond release authority: detention without bond, financial release, or release on nonfinancial conditions (Martinez, Petersen, & Omori, 2020). Pretrial risk assessment tools are designed to shed light on the potential risk that a released defendant will fail to appear to a scheduled court date and/or commit a new offense while released on bond—through the consideration of factors that have been empirically related to an increased likelihood of such outcomes (Bechtel, Holsinger, Lowenkamp, & Warren, 2017). Commonly used pretrial risk assessment tools employ an actuarial approach when assessing these risks, combining the weighted values of the employed risk factors into a total score that is then cross-referenced with a table describing outcome

rates/probabilities (Desmarais, Zottola, Duhart Clarke, & Lowder, 2020). Given that a central rationale for using pretrial risk assessment tools is to improve decision-making in the criminal justice system, the actuarial approach is believed to provide objectivity to pretrial release decisions (Bechtel et al., 2017; Desmarais & Lowder, 2019).

There is an increasing amount of literature examining the predictive validity of pretrial risk assessment tools (e.g., Cadigan, Johnson, & Lowenkamp, 2012; Lowenkamp, Lemke, & Latessa, 2008; Terranova & Ward, 2018; for a comprehensive review see Desmarais et al., 2020); however, less is known about how these tools are *perceived* to contribute to objective decision-making. Knowing more about how pretrial risk assessments tools are perceived by the practitioners who use them carries important implications for how assessment scores are interpreted and used to inform pretrial decisions (DeMichele et al., 2019; Ferguson, 2002; Latessa & Lovins, 2010). This study sought to fill this gap in the literature by reporting central themes from 14 separate focus groups of judges, prosecutors, defense attorneys, pretrial officers, and criminal justice administrators about the pretrial risk assessment tool that they use.

The Pretrial Assessment Process

Pretrial risk assessment tools are used to quantify the probability of a defendant being arrested or failing to appear to a scheduled court setting while released on bond (Desmarais & Lowder, 2019). Common implementation protocol for such instruments identifies pretrial services officers as those responsible for administering and scoring the assessment (Mamalian, 2011). Pretrial officers will also review the defendant's official criminal/court records, as well as contacting their employer(s), landlord, and kin to verify information ascertained from the interview process. Once this information is verified and compiled, it may then be calculated into a risk score and corresponding category that is delivered to the other stakeholders involved in the pretrial process (Lowenkamp, Lemke, & Latessa, 2008). At a defendant's bond hearing, prosecutors and defense attorneys may use the risk assessment score to advocate for their respective positions on the pretrial release decision. Prosecutors may use them to advocate for a defendant to remain detained pretrial, while defense attorneys may use them to advocate for their client to be released on bond (DeMichele et al., 2019).

¹ Acknowledgement: This project was funded in part by the State of Colorado's Governor's Office as part of the Colorado Pretrial Assessment Tool Validation study. We would like to thank the members of Colorado's Pretrial Executive Network for their help in developing and disseminating the survey as part of this project. The authors would also like to thank the anonymous reviewers for their thoughtful and helpful review of the manuscript.

Perceptions and Implementation

Adhering to the implementation protocol of a validated pretrial risk assessment tool is important to ensure the accuracy and reliability of the risk score (Bechtel et al., 2017). The standardization of such tools ensures that they are implemented and scored the same way by each pretrial officer and jurisdiction (Summers & Willis, 2010). For pretrial officers, this means conducting the assessment interview according to a protocol, as well as interpreting a pretrial defendant's information according to an assessment tool's definitions and scoring of risk indicators. For the other actors in the pretrial process—judges, prosecutors, and defense attorneys—this means interpreting and using a calculated risk score with a complete understanding of how it should be interpreted and used to inform decisions.

Adherence to a tool's implementation protocol is important because validated and properly implemented assessment tools can contribute to a greater number of bond release decisions (Desmarais & Lowder, 2019). Perceptions about pretrial risk assessment have been found to impact adherence to a tool's implementation protocol. Negative perceptions can interfere, while positive perceptions can facilitate adherence to a protocol (Gottfredson, Gottfredson, & Conly, 1989; Latessa & Lovins, 2010; Lowenkamp, Latessa, & Holsinger, 2004).

Training plays an important role in perceptions of pretrial risk assessment and implementation. Negative perceptions related to pretrial risk assessment have been attributed to a perceived lack of accessible training on its use/functions (Miller & Maloney, 2013). Enhanced training efforts have been found to solicit buy-in and positive perceptions about pretrial risk assessment (Latessa & Lovins, 2010).

Perceptions of an assessment's accuracy and potential bias in predictive performance also play a role in implementation (DeMichele et al., 2019; Terranova, Ward, Slepicka, & Azari, 2020). Judges, prosecutors, and pretrial officers have been described to agree with a release recommendation that is consistent with a pretrial risk score but qualify this with concerns about bias in risk assignment. Across these roles, pretrial officers have been described to assign the highest perceived value to the use of pretrial risk assessment, followed by judges and prosecutors (Terranova et al., 2020). On the other hand, defense attorneys have generally reported less agreement with

the pretrial risk assessment scores and maintain greater concerns about the potential for predictive bias (DeMichele et al., 2019).

Given prior literature that has highlighted the differing beliefs regarding pretrial risk assessment tools, the goal of the current study is to capture and examine perceptions about the role and implementation of pretrial risk assessment tools by those that use them. This study maintains policy implications for effective implementation and training practices. These perceptions are captured using focus groups and defined using a thematic qualitative analysis of the feedback from pretrial officers and supervisors, judges, prosecutors, and defense attorneys.

Current Study

Focus groups were conducted across six counties as part of a larger pretrial risk assessment validation in a Midwestern state. The larger study was conducted to assess the predictive performance of a statewide pretrial risk assessment tool, examine how it is implemented, and identify evidence-based recommendations for improving both its construction and implementation.

The statewide pretrial risk assessment tool was first implemented in 2012. It was constructed to assign the risk of either new arrest or an FTA during the pretrial release period. It contains twelve risk factors, five of which are self-report and the remaining seven confirmed with criminal history records. In practice, the self-reported responses of the tool may be overridden by prior records. For example, a pretrial defendant that self-reported not having an alcohol problem but had an extensive history of alcohol-related offending could be scored in the positive for this risk factor. This practice can vary across jurisdictions, with some relying solely on self-reported information and others confirming with records.

The tool's risk score was used to inform a recommendation about pretrial release and supervision conditions. Supervision matrices were used to help determine the level and type of bond supervision that a defendant would be assigned during the pretrial process. All of the participating counties in this study had a supervision matrix that incorporated the pretrial defendant's risk category, but the categories of these matrices vary across jurisdictions. Judges would use this recommendation to inform their release decision but could override the risk score and recommendation according to their professional

discretion. Estimating the frequency of these overrides is beyond the scope of this study, but recommendation overrides were practiced in all jurisdictions participating in the study.

A survey and focus groups were employed to understand how the tool was implemented, as well as perceptions of risk assessment by practitioners and stakeholders. The preliminary survey was used to identify respondents interested in participating in the focus groups, as well as to inform discussion questions. To examine perceptions of the role of pretrial risk assessment, we ask: What is the perception of pretrial risk assessment tools by those that carry out the pretrial process?

Sample

A total of 14 focus groups were conducted between May and June 2018. Focus groups were held with two categories of individuals involved in the pretrial process: a) pretrial officers who conduct risk assessment interviews and investigations, as well as pretrial supervisors, and b) pretrial stakeholders that use risk assessment tools to inform release decisions and bond arguments (e.g., judges, prosecutors, defense attorneys, and other criminal justice administrators). In five of the six counties, one focus group was conducted with pretrial officers and supervisors and another with pretrial stakeholders. In the sixth county, a total of four focus groups were conducted. Participants for each of these four focus groups were defined by role in the pretrial process: a) pretrial officers and supervisors, b) judges, c) prosecutors, and d) defense attorneys. The four focus groups in one county were the result of the large number of interested participants in certain roles in the county. To ensure that all interested participants were afforded the opportunity to express their perceptions related to the statewide tool, role-specific focus groups were conducted accordingly.

Participants were recruited through two methods. The first method was a survey of criminal justice stakeholders that ended with an inquiry into their interest in taking part in a focus group in the future. This survey was distributed via various listservs of state agencies that have direct roles in the pretrial process (i.e., pretrial officers, prosecutors, judges, public defenders) and through chain-referral sampling of those who had completed the survey. If interested, these participants provided an email address, with researchers later inviting them to take part in a focus group discussion. Due to low availability or

nonresponses to these emails, a second strategy was employed—pretrial administrators in each of the participating counties recruited participants through county-wide email listservs. The focus groups were scheduled in one-hour blocks and took place in either courthouse or administrative building conference rooms. During the focus groups, one of the authors served as lead facilitator, one as co-facilitator, and at least one other served as a note taker. The focus groups were audio recorded and followed a semi-structured interview guide.

In total, 109 participants took part in the 14 focus groups. Six of the focus groups were with pretrial officers and supervisors, involving 41 individuals. Eight of the focus groups were with pretrial stakeholders (i.e., judges, prosecutors, defense attorneys, jail staff), involving a total of 68 individuals. To ensure confidentiality, demographic information was not collected about the focus group participants. The diversity amongst participants' criminal justice role was useful for soliciting different perspectives. Disagreement across diverse perspectives can encourage participants to reconsider their perspective, enriching the overall findings (Bryman, 2008). Following the conclusion of each focus group, the audio recordings were transcribed and de-identified to further ensure confidentiality of the participants.

Methodology and Analysis

Focus groups garner information about pretrial assessment, making them valuable for examining how they are used throughout the pretrial process (Mamalian, 2011). They are defined as planned discussions about perceptions, feelings, and attitudes amongst a group of interest. (Massey, 2010; Kahan, 2001, Kitzinger, 1994). The goal of these discussions is to generate important insights into a particular topic that would not be available through one-on-one interviews (Kitzinger, 1994).

The initial questions were broad and included how participants felt about the tool in its current state, as well as the perceived utility of the tool. Other questions pertained to perceptions of buy-in for the tool, training, and how—or if—stakeholder's views of the tool would be impacted if certain modifications were made. The interview protocol was followed for all of the focus groups. In some instances, focus group conversations would stray from the protocol; however, such conversations still pertained to the pretrial risk assessment tool in question, and thus were

welcomed by the facilitators.

Each focus group was recorded, transcribed, and subsequently analyzed in NVivo, a qualitative data analysis software. Thematic analysis was conducted upon coding each focus group transcription (Braun & Clarke, 2006). Following Braun and Clarke's (2006) recommendations for conducting thematic analysis, the researchers analyzed each of the focus group transcripts and coded similar comments into nodes. Emergent themes were identified through reviewing each transcription. To address inter-rater reliability between the coders, reliability checks were conducted using a peer debriefing approach (Guba, 1981). The themes were compared by the two leading authors for consistency. Any discrepancies in themes were discussed and clarified amongst the authors. Once identified, the researchers reviewed each of the NVivo coded responses and transcripts to confirm these themes and identify quotations that exemplified each theme.

Results

Five themes emerged from the thematic content analysis, all of which help elucidate the study's main research question: What is the perceived utility of pretrial risk assessment by those who carry out the pretrial process? The themes include: 1) the role of the risk assessment tool; 2) risk override and discretion; 3) informing pretrial supervision and outcome; 4) consideration of other factors, independent of the risk assessment; and 5) training and education for tool.

Theme 1: The Role of the Risk Assessment Tool

The role of the risk assessment tool pertains to perceptions about how these tools are used, specifically when informing the bond release decision. This is especially relevant to the implementation and resulting accuracy of an assessment tool. Negative perceptions of assessment tools can result in pushback about adherence to implementation protocol (Gottfredson, Gottfredson, & Conly, 1989). Diverting from implementation protocols can ultimately compromise the accuracy of an empirically constructed and validated assessment tool (Latessa & Lovins, 2010).

Feedback from both categories of focus groups indicated that the pretrial risk assessment tool played a role in the arraignment process, but should be used in conjunction with professional discretion. One pretrial officer noted: "I want a tool to be used as a

foundation.... use your professional judgement...it's a starting point, it's an anchor" (pretrial participant: pretrial officer).

Importantly, many of the respondents did not prioritize the tool in their decision-making process. Rather, the risk score and category were one piece of information among many that are considered. A pretrial stakeholder described pretrial risk assessment:

I think the best way to describe it is, from our perspective, it's a piece of information. It's not something that we are heavily relying upon, in making our arguments to the judges because we are still going to have to go back and do the work. (Stakeholder participant: prosecutor)

The pretrial risk assessment score and category are also perceived by stakeholders as being no more or less important than other factors.

Theme 2: Risk Override and Discretion

Another emergent theme from the thematic content analysis pertained to differences in assessed and perceived risk. Judicial override occurs when a resulting release decision differs from the risk-informed release recommendation. These decisions require a balance of professional discretion and the challenge of predicting a pretrial outcome (Goldkamp, 1993).

Based on feedback across all the stakeholder focus groups, the risk assessment score was thought to occasionally differ from one's perceived risk based on professional discretion. This difference was reported to occur due to many factors including but not limited to how the individual interpreting the score would use it, training, what other information was provided about the defendant, and the decision-maker's perception of the defendant. In numerous focus groups, sex offender was identified as an example where the judge would likely override a low risk score and not order release on bond. Prosecutors and defense attorneys that use the pretrial risk assessment score to inform bond arguments also used the tool differently according to the specific case. As one judge describes:

So the [defense attorneys] are always arguing for bond, and the [prosecutors] are all arguing for no bond...And if the [risk assessment tool] is in their favor they argue it, and if it's not in

their favor they disregard it. And not every single argument, but...often, and it's completely aggravating, because... well, I'm not getting any help from the litigants (Stakeholder Participant: magistrate judge).

Since judges used pretrial risk assessment tools along with a variety of other factors, resulting release decisions can vary greatly. As one public defender noted: "The same person could see three different judges and get three different results, based on the [risk assessment tool]" (Stakeholder Participant: public defender). Interestingly, participants perceived this variation in the resulting decision to be negative but still supported accompanying pretrial risk assessment with professional discretion for release decisions.

Theme 3: Supervision/ Outcome of the Risk Score

Supervision/outcome of the risk score refers to the variety of decisions that assessment tools were used to inform. Pretrial risk assessment tools are constructed to assess the risk of new arrest or failing to appear to court (Bechtel et al., 2017). By design, supervision needs are not an outcome included in the predictive performance of pretrial risk assessment tools. This means that little is known about the accuracy of pretrial risk assessment tools when used for bond condition assignment.

Across all roles in carrying out the pretrial process, participants expressed that the pretrial risk score was used to inform decisions about pretrial release and also the conditions of supervision that may be ordered if a defendant is released. Similar to bond release decisions, the role of pretrial risk assessment to inform recommendations and orders of pretrial supervision conditions was perceived to be accompanied by professional discretion. Although the pretrial risk assessment tool was not constructed to directly inform the pretrial supervision decision, the tool was favored by pretrial officers because it was thought to provide tangible information about the pretrial defendant that is useful for supervision purposes. One pretrial officer that supervised pretrial defendants' bond compliance advised:

We use our [risk assessment] scores for supervision, also. I don't think it was created to do that, but, we just use that on the supervision side to say, we think this person is a Category One, so then we set their frequency for testing, or

whatever it is, their check-ins, based on that category. And then case managers have the room to flex that...depending on how they are doing...again, I don't think the [risk assessment] was intended to ever focus on supervision, we just do that because it gives a good baseline on how to supervise somebody. (Pretrial Stakeholder: pretrial supervisor)

A common theme across participants was frustration with the uncertainty of the pretrial outcomes of release and bond condition decisions. Pretrial risk assessment tools were reported to provide valuable information about a pretrial defendant and insight into uncertain pretrial outcomes. One pretrial stakeholder noted:

Once we get our score, it's kind of just like, okay, now it is on me to decide what this guy's going to have to do, so...once we have the score, what do we do with it? What do we recommend, and what conditions are going to make this person more successful? I mean, there is really no research, or anything, that we have saying that...random drug testing isn't going to help this person, but we are just ordering it for everyone, because we don't know. (Pretrial Stakeholder: pretrial supervisor)

Theme 4: Consideration of Other Factors

Participants in all roles emphasized the importance of considering other factors in conjunction with the risk assessment score during the bond release decision. This theme is consistent with findings that reviewing factors beyond the risk score is considered the most effective at informing accurate decisions, because not all risk or protective factors are included in a single assessment (Desmarais & Lowder, 2019; Mamalian, 2011).

In the participating counties, judges were given information from pretrial services about a pretrial defendant's drug history, employment, and prior number of FTAs. This information was commonly reported on a bond report along with recommendations about release and supervision. These items were independent of the risk assessment tool and therefore not included in the resulting risk category. The type of offense (e.g., sex offense, domestic violence) was reported to be a primary consideration for the release

and supervision decision that is not included in the risk assessment score. If a defendant is charged with a high-profile sexual offense and is assessed to be low risk, judges reported often being hesitant to make the decision to release on bond.

Pretrial stakeholders across focus groups described how they incorporate additional information, such as type of charge, into their decision-making process. For example, one judge notes:

From a judicial perspective, in order to maintain a level of consistency, I have to give the same weight to the [risk assessment tool] that I would give on... a SAOC, or sex assault on a child, that's a [low risk]... but I also have to take into consideration the nature of the offense...and the nature of the history, the type of offenses they were charged with, not just plead to, and how recent in time those were. That's something I do independent of the score, because the score doesn't, really, take that into consideration. (Stakeholder Participant: judge, 1st and 2nd Advisement Court)

Charge severity and community ties were additional factors perceived to be critical to stakeholders' decision-making process. One prosecutor succinctly summarized this point stating:

Yeah I think our judges or our players recognize that [the risk assessment category] is just a guideline...Our community values are going to be taken into consideration... high stakes and low stakes crime. (Stakeholder Participant: prosecutor)

The impact of the defendant's release on the local community was another aspect that was reportedly considered. These factors included the impact of pretrial release and supervision decisions on the overall jail capacity, as well as the decrease in bail industry involved cash bonds. As one stakeholder noted:

One observation I have too... is that my contact...my lawyer contact with bail bonds people plummeted since we had the [risk assessment tool]... they use to be around the courts and the courthouse and we haven't seen that nearly as much... (Stakeholder Participant: District Attorney's Office).

Theme 5: Training and Education for Tool

A common theme that emerged from all of the focus group discussions related to training and education. Training about risk assessment has been linked to enhanced buy-in from those that use it, which carries implications for adherence to implementation protocol (Latessa & Lovins, 2010). The respondents overwhelmingly reported that training about pretrial risk assessment was perceived to be important. Formal training for the pretrial risk assessment tool was provided to pretrial officers and supervisors throughout the state on a semi-annual rotation but not to the other judicial stakeholders.

One perceived advantage of the formal training was to ensure consistency in the tool's implementation. It was reported that counties implemented and even scored certain items on the tool differently. For example, one item on the risk tool asked defendants to self-report a problem with substance abuse. As part of the instructional guide, the self-reported response to this question should be relied on. However, some counties allowed their officers to override this item. For example, one pretrial officer noted:

Some people agree, some people disagree, but if you have five DUI convictions, and you say you don't have a problem with alcohol...I think you might be a little...wrong on that. So I mean, we take it...case by case...I mean, we don't do it...sparingly we just...if it shows they have an alcohol problem, even though they say no...we'll override that and say yes. (Pretrial Participant: pretrial officer)

Stakeholders identified that they had not received the formal state-wide training for the tool. Many of the stakeholders supported the idea of going through training about the use of the risk assessment tool if it were more widely available. As one judge notes:

I think one thing that is very important, as I think is very obvious just from the questions I've been being asked, or I've asked, is that [training] needs to be, I think, ongoing. Either annually, or something, or if there is any slight modifications that we continue...because I think if you don't actually understand the instrument, or the theories, and the evidence based theories behind it, it's hard

to have a lot of confidence. (Stakeholder Participant: County Court judge)

Pretrial officers and supervisors, as well as pretrial stakeholders, expressed a perceived need for more education about how the tool is implemented, as well as more education regarding pretrial risk assessment in general. One stakeholder advised:

There needs to be a lot more education, with the whole system, about what risk assessments do, what their purpose is, what their limitations are, what they are effective at, and what they're not effective at. (Stakeholder Participant: pretrial administrator)

Participants across multiple focus groups expressed that expanding the frequency, accessibility, and content of the formal trainings and education could improve the tool's utility for informing pretrial decisions.

Often, the discussion surrounding buy-in for the use of the tool was incorporated into the discussion about training and education. Importantly, participants noted that training alone would not likely increase stakeholder buy-in of the tool. Education regarding the construction and statistics used to create and score the tool would clarify the utility of the risk assessment. The participants perceived this level of transparency about the pretrial risk assessment tool as critical for ongoing support of the use of the tool. As one stakeholder noted, "I really think just understanding why...why these questions were the ones picked, why this works, because I feel like there's just not a lot of faith in the tool as it is. Especially with the other stakeholders" (Pretrial Participant: pretrial officer).

Discussion

The pretrial phase of the criminal justice system can meaningfully impact the post-arrest trajectory for defendants. Research has demonstrated that those who have been released have better outcomes in the disposition of their case than those that stay in jail (Lowenkamp et al., 2013). The bond release decision is paramount to the pretrial phase. This decision depends on input from pretrial officers, prosecutors, and defense attorneys, but is ultimately made by judges or bonding authorities. Designed to aid in this decision-making process, pretrial risk assessment tools have been implemented in many jurisdictions

throughout the United States.² While they may differ in their construction, items, and risk outcomes, these tools are a factor that stakeholders consider during their bond arguments and decisions.

The current study sought to understand the perceived utility of a statewide pretrial risk assessment tool using focus groups of pretrial officers and supervisors, judges, prosecutors, and defense attorneys. A thematic content analysis of focus groups with those that carry out the pretrial process resulted in five emergent themes: a) the role of the risk assessment tool, b) how the tool is used, c) risk override and discretion, d) consideration of other factors, independent of the risk assessment, and e) training and education for the tool. These themes are relevant to the overall perceptions of the tool and its accuracy, the assessment process, and challenges to implementation.

The emergent themes indicate that the perceived accuracy of the tool and also its actual statistical accuracy may be adversely affected when the tool's risk score clashed with professional discretion. This is consistent with Gottfredson et al. (1989), who reported that negative perceptions of assessment tools can lead to resistance in the adherence to the tool's implementation protocol, as well as Latessa and Lovins (2010), who claimed that diverting from protocols could compromise the accuracy of an assessment tool. It was identified that participants overrode a risk score and considered other factors when applying professional discretion to an assessment-informed release decision. Relying on both factors to inform pretrial decisions introduces a potential conflict for pretrial decision-makers when a risk score and one's professional discretion estimate two different probable pretrial outcomes for a defendant. Findings indicate that when decision-makers are presented with this conflict, they will often favor a decision that is consistent with their own professional discretion over the assessment tool's risk score.

Themes about the assessment process emerged pertaining to both the role of the tool for different actors in the pretrial process and how it was used. It became clear from the stakeholder groups that the perceived use of the tool depends on the utility of the score to those who are using it. This was reported

²In a recent review of pretrial practices across the United States, approximately two-thirds of surveyed counties reported using a pretrial risk assessment instrument (Pretrial Justice Institute, 2019).

particularly often for defense attorneys and prosecutors that use risk assessment for their bond arguments.

Many participants stressed that they did not believe the tool was designed to directly inform decisions about supervision condition. Instead, a decision-making matrix was reported to be used that employs risk score to inform a supervision category that is used to make condition decisions. These assessments are designed to assist in release decisions, and overgeneralizing for supervision purposes can compromise the tool's accuracy. An accurate assessment designed for this purpose is needed. Overall, more research is needed about the role of pretrial supervision in mitigating FTA, recidivism, cost to pretrial defendants, and supervision noncompliance.

Relevant to the challenges of implementation, training and education about the tool and risk assessment was another emergent theme. Many respondents agreed that more education would lead to buy-in for the tool but that they had not been trained in the use of an assessment tool. Prior literature about the reliability of pretrial risk assessment tools has identified training as a critical aspect of their performance (Mamalian, 2011). This provides support for structured training and education about pretrial risk assessment to pretrial officers that administer assessments and stakeholders that use these tools to inform pretrial decisions.

Limitations of this study are found in the representativeness of the stakeholders sampled. The participants were selected based on their availability during the time these focus groups were conducted. While email invitations went out to all judges, prosecutors, pretrial officers, and defense attorneys in each of the counties, some were unable to attend, or one or two were selected internally to represent their agencies. While a limitation for representativeness, this led to smaller, more manageable groups and accomplished the goal of focus group methodology and allowing for in-depth discussions among stakeholders who hold differing views. Future research should codify these themes into a survey instrument and distribute it amongst a wide, representative sample to determine if these themes and concerns are widespread.

The qualitative feedback from this study has important implications on the use and accuracy of pretrial risk assessment. Stakeholders throughout the focus groups shared differing concerns with the tool currently being used in their jurisdictions, including how it

was constructed, how it is used, buy-in, and training and education relating to the tool. As stakeholders maintain varying concerns about the tool, clear and transparent training should be developed translating the specifics of how these tools are constructed, what they are intended to do as well as not intended to do, and standardized instructions on how the tool should be implemented.

Future research should examine how implementation across all roles in the pretrial process may impact predictive accuracy. More attention should also be given to how these tools are used to inform decisions outside of pretrial release such as bond condition assignment and pretrial supervision. Findings largely support policies that enhance and formalize training and education about pretrial risk assessment tools for pretrial stakeholders. Such a practice would fill a perceived gap in the comprehensive implementation and overall accuracy of pretrial risk assessment tools.

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Rapid Involuntary Client Engagement

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Aligning for Growth & Change

In this evolving era of evidence-based practices we have an extraordinary array of knowledge to draw upon to improve many of our processes in corrections. We now have considerable evidence on what are regarded as best practices for engaging new clients in what has come to be called an effective *working alliance* or working relationship. A strong working alliance is a function of a shared understanding and respect for each other's roles, the ability of the change agent to listen empathetically, and a joint commitment to progress on behalf of the client. According to the research, the stronger the working alliance, the better the outcomes. However, establishing a working alliance with non-voluntary clients can often be challenging.

When a working alliance is not established, pseudo-compliance and attrition are more likely. The research¹⁻³ on offender compliance and attrition indicates that the first few sessions are critical in determining the direction and course of supervision. Attrition is highest immediately after these early sessions. As any officer knows, when compliance issues arise, neither the clients nor the officer benefits from the complications that typically take place. In short, in community supervision, the sessions one would least want to make major mistakes on are the first two to three sessions.

The Assessment Function Provides a Great Opportunity to Align With the Client

What we can do as officers to avoid misunderstandings and create a good connection with our clients is as much an art as a science. However, research is showing us some preferred paths that integrate a variety of EBPs into the assessment process, where, according to many, treatment and change often begin.

A third-generation assessment offers a potential intersect for several EBPs in corrections and human services: role clarification for non-voluntary clients,^{4, 5} Motivational Interviewing (MI),⁶⁻⁸ normative feedback,⁹ and stimulation of the precursors for change.^{10, 11} These four practices are methods for engaging clients in a responsive manner. Not surprisingly, they are highly interdependent and effective in reducing discord, attrition, and noncompliance.

Together the above practices make up the guts of a very blended and rich skill set that ideally starts during the assessment process and readily carries over into subsequent sessions. MI is capable of encompassing the entire intake process from assessment to change planning, and thus it serves as a guiding framework. The other processes, however, are woven in and out of this larger process, in conjunction with the unfolding steps necessary to complete an assessment and guide a person in developing a related plan of action.

We see six steps in this larger process:

1. Role Clarification.
2. Interview Stages.
3. Normative Feedback.
4. Agenda Mapping.
5. Refining the Focus.
6. Change Planning.

In this article I will first describe and discuss each strategy independently; I will then discuss the mechanics of transitioning from one to another of these tactics and how to blend and combine certain combinations of them.

Motivational Interviewing

In their most recent (third) edition of *Motivational Interviewing: Preparing People to Change* (2012), creators of Motivational Interviewing (MI) William Miller and Stephen Rollnick greatly simplified how they portray MI. While emphasizing the same technical skills and spirit, they construe MI as an additive model that incorporates and ultimately uses four basic processes:

- Engaging
- Focusing
- Evoking
- Planning

The authors describe how MI begins with engaging clients to explore possibilities for a relationship, and the need for the interviewer to adjust to the client's world during this process via reflective listening. As trust and

FIGURE 1
Assessment Case Management Engagement Flow



respect emerge, the interviewer naturally can shift into considering with the client what values, changes, and goals of the client might provide a helpful shared focus. This second process of focusing builds upon the previous engaging process taking place between the two persons, which leads to a clear focus or direction for subsequent discussion, with an emerging change target (e.g., quit smoking, exercise more, improve attitude, etc.). Once there is a mutually agreed-upon change target, the conversation will best be served (from an MI perspective) by moving into the evoking process, in which the interviewer begins to deliberately elicit and reinforce change talk regarding that topic. Finally, and not always in the same session, when the client expresses and demonstrates a definite commitment towards the target change, the last process of planning might usefully be employed.

Though there is clearly a sense of linear movement across the four processes of MI, it is not hard and fast and it can be relatively iterative. For example, if, in the midst of focusing with a client to establish a good change

agenda, the client becomes overwhelmed and unsure, it may be good to shift back into engaging in and concentrating on further building trust and rapport. Thus the four processes of MI provide loose guidelines for rolling out an entire assessment and case planning process. Give and take amongst the processes is assumed all along the way, where one is cycling in between two or more processes. However, there is good reason to also refer to the processes as markers for ideally initiating certain stages or tactics.

As Figure 1 suggests, certain MI processes are more likely to be associated with specific steps in the assessment/change planning cycle. Use of reflective listening, which is so core to engaging, is quite consistent with moving through the information-gathering phase of the interview. Providing and exploring feedback with the assessment scores and profiles can readily trigger agenda-setting or the focusing process. By the same token, once a promising change target has emerged in a client's mind, even a cursory discussion of the client's precursors for making this change can

enable better evocation and real change talk. In what follows, I will try to make it clear how the four processes of MI "map" to other assessment steps (role clarification through change planning).

The MI Engaging Process in Assessment
 Whether engaging the client via active listening skills helps to facilitate the role clarification process or the other way around is a moot point. The two strategies go well together, and both work best up front, before the actual fact-finding part of the interview begins. Engaging is the MI process particularly well-suited for creating an inviting atmosphere in which to conduct the assessment interview. The primary skills for engaging are empathetic listening and use of active listening skills such as OARS (Open questions, affirmation, reflective listening, and summary reflections).

Setting aside a few minutes *prior* to the information-gathering process to draw out the client and listen to some of the client's in-the-moment concerns and agenda can be most productive. Clients often say interesting things

when they aren't encumbered by any sort of agenda. Sometimes what they share provides answers to certain assessment items, which thus don't need to be probed later. Other things they share help the interviewer get a better feel about pace and alignment possibilities during the rest of the interview.

Ideally, off-the-cuff comments help establish early on more of the personhood of both the client and the staff. Genuineness is a key component of engaging.

1. Role Clarification

Chris Trotter's work⁴ analyzing outcomes for non-voluntary client populations such as probationers or social services neglect/abuse cases identifies an often overlooked and underused mechanism—role clarification—as a promising practice. Trotter and others have determined that until repeated role clarification has taken place, there really are no safe assumptions about the nature of the relationship between staff and clients, when the clients are non-voluntary. Numerous studies^{4, 5, 12, 13} have determined that workers who spend extra effort clarifying roles (their own, their client's, the agency mission, along with the limits of their authority and any non-negotiable terms) have over time significantly better outcomes than staff who don't do so. Consequently, many of the recently adopted practice models for integrating EBPs into probation/parole supervision sessions (e.g., STICS, EPICS, COMBINES, STARR, Vogelvang's, JSAT's generic model, etc.) incorporate role clarification as a core component.

When staff clarify their roles, the client's current expectations, their agency's mission, and their use of authority, second-guessing is reduced and engagement becomes more effective and real. Role clarification can signal to the client aspects of the engagement that are soon to emerge, enabling the client to become used to these aspects and better accept them before the actual engagement occurs. For example, spending a few minutes reviewing a skill in the abstract and then later providing clients with some skill coaching in job interviewing or drink/drug refusal skills will give them a better idea of what to expect and how to show up for their part. This kind of clarification can be ongoing, flexible, and very situational. Staff might check in to see if they can test some statements about a client's thinking distortions and specify that they would like the client to correct these distortions as the client can, thus enabling a deeper dialogue.

Assessment is another context where role

clarification applications can pay terrific dividends. For example, providing a *structuring statement* as a prelude to a clinical interview is standard practice. Usually these structuring statements deliberately include information that is likely to assure the person about to be interviewed that he or she is getting involved in a safe, engaging, and productive process. Standard things the interviewer wants to convey are:

1. The purpose of the assessment interview in positive and general terms;
2. Because the assessment is so personal and has a lot of potential, the importance of drawing upon multiple sources of information to make it as well-rounded and helpful as possible;
3. When the interview is over, sharing with the client (if he or she is interested) scored, objective information—comparable to blood pressure measures—about how the person compares to others in the criminal justice system (cjs); and,
4. Because this is the person's story and assessment, asking questions back and forth.

The above specific application of role clarification for assessment—providing a structuring statement—can help head off the client's subsequent uneasiness and second-guessing about the purpose or direction of the interview. It provides a foundation for the next phase, which funnels into progressively more personal and "hot" case information. Consequently, the more the interviewer personalizes and tailors his or her upfront structuring statements to the specific client, even if the interviewer barely knows the client, the better. With practice, the interviewer develops a set of template statements in his or her skill portfolio that range along a continuum corresponding to the different types of clients typically seen. When this takes place, the interviewer finds it easier to adjust his or her language to fit individual clients. As a result, clients become more engaged.

2. Interview Stages

The actual assessment interview is best conducted in the context of the MI engaging process. This involves the use of considerable reflective listening while navigating and maintaining sensitivity to the stages of a clinical interview. Until the interviewer is thoroughly familiar with what items, in what domains, need to be scored, it can be challenging to "trust the process," but ultimately that's what is called for.

The three stages of an interview are: 1) the set-up, or structuring statement that is described above under role clarification; 2) the information-gathering funnel that represents the bulk of the interview; and 3) the close-out steps for getting strong closure. The interview set-up steps are designed to assure the client that the interview will be safe—the interviewer has the client's best interests at heart, such that the interview may be of some use to him or her personally—through the feedback that is provided later.

The so-called "Information-Gathering Funnel" refers to how most semi-structured assessment tools are built or organized, beginning with the more impersonal domains or subscales (e.g., criminal history, education, or employment) and moving in a sequence to the progressively more personal content and subjects (such as regulating emotions and attitudes). Structuring interviews this way can help establish and build rapport early on. Moreover, semi-structured interviews give interviewers the freedom to deviate from the order of the domains for the sake of gathering information in a more conversational style. And the more personable and engaging the style, the stronger the possibility for moving ahead with a fuller MI approach in subsequent supervision sessions.

One way of initiating the information-gathering stage is to ask the client to tell his or story regarding involvement in the criminal justice system. After providing the client with a structuring statement, some officers find that it is easy to get almost any client talking by asking them to:

Please talk to me about your experience with the criminal justice system. If you just start with the first time you ever were in trouble with the law, and then the next, I'll try to take notes on any patterns that emerge. It doesn't have to be in perfect order either, we'll probably get distracted talking about other things sometimes, but this might provide at least one theme for us to follow.

This technique should provide ample opportunity for the interviewer to employ empathy, lots of OARS, and discernment. As the client brings up issues related to various domains (such as education/employment, alcohol and drugs, peers, or self-regulation), the interviewer decides whether or not to systematically explore that area in the immediate moment. After finishing investigating

any respective domain, the interviewer should summarize it to the client for closure before bringing the interview to the next topic.

When the interviewer begins to feel a bit confident of having covered the “content space” of the assessment tool’s scoreable items (that is, the interviewer has enough information to score all or almost all of the items of the respective assessment tool), it’s time for the last stage of the assessment—the close-out. Several potential steps are involved in this stage:

1. Segueing into a transition, using a grand summary, a “magic question” or some other device to indicate that the interview has gone well and is about over—including asking the client to review or complete some paperwork while the interviewer double-checks for items with not enough information to be scored accurately;
2. Addressing any issues that have been flagged during the interview that need closure;
3. Either finishing scoring and providing feedback, or suggesting and setting up the future possibility for the client to receive feedback from the various scale scores in the assessment.

Signaling and drawing the assessment to a conclusion in a way that provides closure to the client and the interviewer is important. The client has just spent the better part of an hour or more sharing his or her life story with a relative stranger. The interviewer has listened, taken notes, and guided the interview, but he or she still has to score this assessment and use the results pragmatically. One way to respectfully acknowledge the client’s personal disclosure is to use a grand summary that pulls together the bigger patterns of the individual’s life: his or her experiences being in trouble, as well as other positive factors and strengths the client has demonstrated that provide grounds for more hope in the future. Another method is to use some playful magic questions, now that some rapport has been established, to check that no significant parts of the client’s life are missing from the interview.

Magic questions are simply big, goofy open-ended questions. For example:

- “If your fairy godmother were to jump out of your car’s glove box on the way home and tell you could have anything you wished for, providing you do it in 10 seconds... what would you wish for?”
- “What have we not talked about that, as far as you are concerned, might be important

in terms of success on supervision?”

- “What goals, short or long-term, are you considering for yourself?”
- “Suppose you died today and came back to your funeral in a few days... who would likely be there? What would they say about you? Why?”
- “What do you see your future looking like two years from now?”

When significant new aspects emerge, the interviewer should probe and explore them before concluding the interview with a last request. The interviewer can ask the client to sit tight for a minute or two while he or she reviews the scoreable items of the respective assessment tool and more often than not identifies a few that could use additional probing. Sometimes this pause with the client for review can be facilitated by giving the client a required agency form to fill out or a self-administered assessment, such as the ASUS, ASUDS, or RSAT, to complete; both the client and the interviewer are then doing something useful.

Finally, once the assessment is scored or ready to be scored, it’s appropriate for the interviewer to address any loose items like flagged items—any “hot cognitions” such as suicidal ideation or other critical acute needs (such as necessary psychotropic or health medications, shelter problems, or significant legal issues such as restraining orders). Then the interviewer indicates how the client can get feedback on the results of the assessment.

The MI Focusing Process in Assessment

Opportunities for developing a shared focus for supervision can emerge at almost any point during the assessment interview. It’s not uncommon for corrections clients to indicate areas that they are interested in changing at various points throughout the assessment interview. These notions are always worth noting and sometimes reinforcing, especially when the area coincides with strong criminogenic factors (e.g., antisocial companions, attitudes, self-regulation skills, etc.). However, the focusing process most often begins in earnest once the interview is over.

3. Normative Feedback

The best time to begin focusing on change goals with a client is whenever *the client* is ready for this activity. Having said this, we also know that the process of providing normative feedback—feedback that is both personal and objective, such as sharing specific measures of

blood pressure or scale scores in a risk/need assessment—can often stir up some readiness regarding the client’s interest in looking at personal goals. Due to the potential this strategy has for facilitating the focusing process, it is important for the interviewer to plan for it deliberately, whenever possible.

Preparing to Provide Feedback

There are five simple steps to planning for providing normative feedback:

1. Scoring all related assessment tools;
2. Considering the overall patterns and relationships between the assessment score, notes and prior records, i.e., case analysis;
3. Objectively identifying the top criminogenic and non-criminogenic case factors;
4. Identifying the related possible lowest precursors to change for the priority target behavior and some of the related strategies for engaging that precursor with your respective client;
5. Considering and selecting the best timing considerations for introducing feedback and related possible case focusing.

Once the interviewer has re-engaged the client and finished clarifying insufficiently probed items, it’s time to score the assessment. This may also be the time to set a follow-up appointment, thank the client, and excuse him or her. Sometimes, for many intake officers, this may be the last time they will see the client; therefore, they may have the client wait nearby while they finish scoring. Regardless, the scoring should take place soon after the interviewer completes the interview. This will enable the interviewer to capitalize on his or her immediate memory capacity and avoid having the case details blur with subsequent intervening other cases.

The complexity of assessment scoring and recording varies, of course, depending on the assessment tools that are used. Most corrections systems rely upon what are referred to as “third-generation risk/need tools.” These kinds of tools (such as LSI-R, Compass, SDRRC, SPIN, and LS/CMI) minimally provide summary risk measures and a profile of the criminogenic needs factors currently in the client’s life. Some systems require the use of multiple tools, where the information tapped through an interview-driven protocol is complicated by knowledge gained through a self-administered survey tool. In order to analyze the case and prepare for giving the client feedback, it’s important to score and

complete all the necessary tools and review their various components.

This case review needn't take more than a few minutes. It should include any assessment notes, the resulting assessment scores, and the rap sheet or criminal records as well as prior treatment and/or supervision records. These documents should enable the interviewer to piece together some of the larger patterns in the client's life and begin to assess where the most promising one or two change target areas are. When documents or information from different sources converge, they might need to be taken more seriously. For example, if a client states things in the interview that cause the interviewer to score a particular subscale rather high, and in the case analysis the officer discovers that the client's self-report on a survey tool also scored unusually high in this area, one can probably more confidently conclude that the respective area is significant in the client's life.

The interviewer should consider non-criminogenic case factors or issues as well as the criminogenic ones. Sometimes certain non-criminogenic issues (e.g., need for psych meds, recent blacklisting at the local shelter, serious tooth infection) have a way of trumping any other change targets until the issue is addressed. Of course, attention must still be paid to addressing the more criminogenic factors, but these should not necessarily exclude possible deal-breaking, non-criminogenic areas.

After reviewing the assessment and case materials, the officer should be in a more informed place to determine what the top criminogenic factor is—the one that most likely currently has the most influence on the client's ongoing criminal behavior. This factor or domain tentatively becomes one of the two top case priorities; the other top priority is the domain most important to the client. In some cases there may be so much ambiguity and/or ambivalence on the part of the client that it may not be productive to plan further until the feedback has been presented and processed with the client. In other cases it may be relatively clear, however, what the top criminogenic factor is and/or what the client's preferred change targets are. If there is clarity in either of these areas, the final step in preparing can be taken.

Considerable research now supports officers focusing with their clients on the more criminogenic change targets. Among the *central eight* criminogenic factors are antisocial peers, antisocial attitudes, history of anti-social behavior (aka low self-control), and

antisocial pattern or personality. These four factors, sometimes referred to as the "Big Four" because of their prominence in the meta-analysis research, are likely to have a more potent influence on criminal behavior than other factors. But this does not mean that other factors should not be considered.

Sometimes other so-called non-criminogenic factors such as mental or physical health, living situation, and clothing can become deal-breakers if not addressed upfront. Sorting criminogenic and non-criminogenic factors requires a high degree of discrimination and ability to navigate and negotiate what are sometimes very grey areas. Officers who maintain a balanced commitment to fulfilling both the need and the responsivity principles are less likely to sort in a rigid fashion.

When there are reasonably safe assumptions about what some of the future change targets might be, reviewing the client's possible precursor strengths is an excellent last step in preparing for providing feedback. The precursor model developed by Fred Hanna represents a potential breakthrough in methods for working with challenging clients. Hanna and his colleagues have identified seven distinct personal change enablers or precursors to change. When these precursors are *not* present in someone, they represent obstacles that interfere with an individual's ability to make any fundamental change:

Precursors of Change (Hanna, 2002)

1. **Sense of Necessity for Change**—expresses desire for change and feels a sense of urgency.
2. **Willing to Experience Anxiety**—open to experiencing emotion and more likely to take risks.
3. **Awareness**—able to identify problems and sort thoughts and feelings.
4. **Confronting the Problem**—courageously faces the problem with sustained attention towards the issues.
5. **Effort Toward Change**—eagerly does homework, high energy; active cooperation.
6. **Hope for Change**—positive outlook; open to future; high coping; therapeutic humor.
7. **Social Support for Change**—wide network of friends, family; many confiding relationships.

The seven precursors of change can be used not only to enable the interpersonal context for change, but as a scale (5-point Likert:

None = 0; trace = 1; Small = 2; Adequate = 3; Abundant = 4) to assess client readiness for change stages. This can be an invaluable aid with higher risk and potentially difficult clients. After reviewing the precursors for a particular client on a specific change target, officers with some sense of which precursors are weakest can prepare themselves further by reviewing the techniques and strategies associated with those specific precursors.¹⁴ This enables the client and officer to get the maximum alliance in the impending normative feedback session.

The last piece in preparing to provide assessment feedback is identifying options for providing feedback. The key to normative feedback is providing personal information to someone in a manner that appears objective and unbiased. Therefore we often find it useful to share total scores for risk and protective measures and subscale scores and profiles. While it's quite appropriate to use the scored assessment tools themselves, sometimes it is more helpful to refer to what are called norming charts or profile documents that sometimes can make things a bit clearer to clients and still come across as objective.

Depending on the assessment instrument, a typical norming chart provides separate norms for men and women, as this is now considered best practice in the assessment process. Norm charts typically show the client how his or her specific risk score falls into a range of all possible scores, for a representative sample of other clients. The client then can see what percent are at more or less risk than the client and can make more informed decisions about his or her own behavior change.

Another format for providing feedback is to profile the various subscales in the assessment so that they convey a sense of which subscale areas have more influence on a respective client's life. There are two ways to convey this. One approach is showing the proportion of items that scored as risk factors—this would be the intensity of the factor. The other is to depict the relative potency of the factors. For example, within the Central Eight criminogenic factors, repeated meta-analysis results reinforces that certain factors, sometimes referred to as the Big Four, are much more influential on criminal behavior—at least two times more impactful—than other factors. Thus authors tend to emphasize these areas (history of criminal behavior, low self-control, anti-social attitudes, anti-social peers, anti-social personality or pattern). These facts can be indicated readily by

color-coding that denotes the more potent factors in red, the next in orange, and the weakest factors in yellow.

Another playful example for giving feedback is the use of Legos. Since the whole idea behind the use of feedback is to help clients get aroused and involved with looking at the discrepancies in how they experience their lives, using a game like Legos can be useful. For example, after a quick explanation of the Central Eight criminogenic factors, the client can be asked to select and assemble a wall or fort made of Legos that represents the client's biggest challenges to getting out of and staying out of the criminal justice system. Whatever the client comes up with will usually provide an excellent set of reference points for the subsequent discussion. If at some point the client is interested in what obstacles the assessment indicated, then the officer can build a parallel wall alongside the client's, to compare and contrast in the conversation.

Providing Normative Feedback

Thanks to research and the ever-expanding communities of MI adherents, there is a well-established initial formula for providing and exploring feedback and information sharing. The steps for providing feedback and advice are: 1) Elicit whether or not the client is interested; 2) Provide the information succinctly; and 3) Elicit what the client makes of that information, or what the client needs to make more sense of it. Thus the acronym E-P-E is often referenced for this process.

Asking someone if he or she would actually like to receive feedback is a respectful way to begin. It acknowledges the other person's autonomy and values his or her ability to

self-regulate and make good decisions. Most clients, like people in general, are fundamentally curious, and they rarely turn down this offer. (If they do, interviewers should accept this decision, but leave the door open for a change of mind later.)

Some keys to presenting assessment feedback are: 1) use the KISS principle (keep it simple, stupid); 2) tailor your language level to the client's; 3) remain open and ready to puzzle with the client what it might mean to *him or her*. The task when presenting feedback is to engage and partner with the client more than to educate.

It's often very helpful *not* to push or promote a particular point of view too strongly, but instead take a neutral position. If your client is ready to learn anything from you, it will become evident as you go along.

Finally, the last part of providing feedback/advice is exploring with the client his or her thoughts and reactions to the feedback. This step is where active listening skills can really pay off for the interviewer. To be flexible and client-centered while the client sorts out the new information or perspective can be very effective. The client should be allowed to soak in whatever possible insights he or she may be processing and, at the same time, be willing to really listen to them, often through the competing chorus of the client's defenses. If and when change talk emerges, the interviewer should massage and reinforce some of this with reflective listening.

4. Agenda Mapping

Miller & Rollnick⁶ describe three common scenarios likely to occur when someone tries to set a practical course of change with a client:

1) The client knows exactly what the problem is and what steps he or she needs to take to change and improve the situation; 2) the client is torn between two to three change targets and isn't sure how to prioritize them or resolve the ambiguity and/or the client's ambivalence; and 3) the client is overwhelmed by the magnitude of possible change, and his or her perspective is very global and stuck. An interviewer might adopt very different agenda-mapping strategies depending on which scenario the client is presenting.

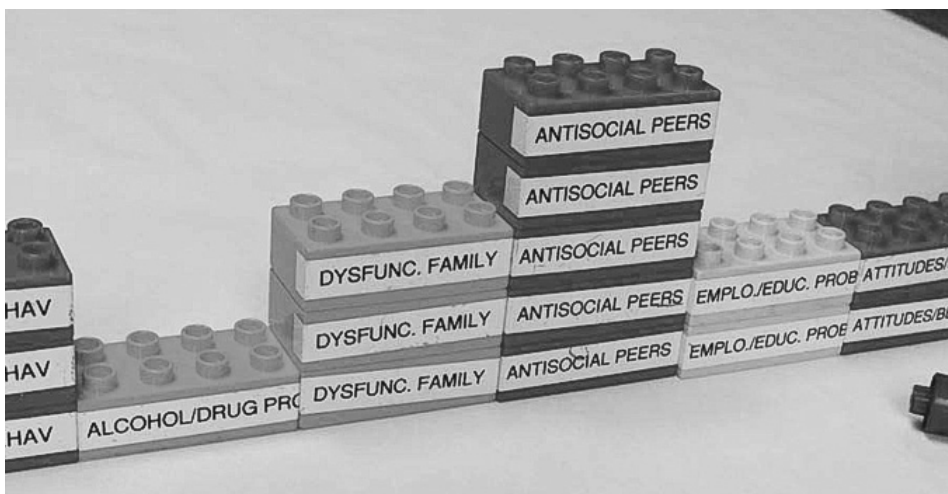
In case number one, where the client has a relatively good idea where he or she needs to be heading in terms of personal change, the segue from the focusing to the evoking process seems barely necessary. However, it still might not be a bad idea to review the possible targets with the client to eliminate any loose ends before engaging the client in a way that draws out change talk for targeted change and strengthens his or her commitment.

The second case is probably much more common for higher risk clients. They have multiple criminogenic factors present in their lives, and the initial challenge is helping them sort out which one or two are the most important to them to change. There are various techniques to help clients with this sorting. One of them is to facilitate some decisional-balance or SWOT (strengths, weaknesses, opportunities, and threats) analysis work to the various contenders. Another approach might be to return to the precursor model and, after teaching the client how to assess each possible target area for the presence of precursors, consider starting the change process for success with the area that has the greatest amount of precursors present.

In the third case, where an individual is confused and at best very global about what he or she would like to be different, a third strategy is recommended. When someone is so overwhelmed by the degree and variety of demanding change agendas that he or she finds it hard to focus, taking some steps "backwards" can pay dividends. In this case, encouraging the client to back up a bit and look at his or her life from a less constrained view may get better results.

Rather than diving into prioritizing and problem-solving, this last type of client should be supported in detaching a bit, so the client can discuss his or her problems more broadly and begin to articulate how they might be related. Once some of these larger patterns become clearer to the client, he or she can more productively begin sorting priorities.

FIGURE 2
Legos Format for Feedback



Out of the three strategies for focusing, this last one often requires the most equipoise and self-restraint of the officer's "righting reflexes."

Regardless of the strategy that is ultimately effective, the preferred result will be arriving at a mutually satisfactory change target or two; the targets then become the ongoing center of attention in the supervision process. What kind of attention depends on the stage of readiness the client is in. When a client remains essentially in the Contemplation stage, even though some agreement exists about the change objective, the primary goal is helping the client build the necessary commitment and resolve for change.

The MI Evoking Process in Assessment

In MI, evoking is a process that involves deliberately eliciting and reinforcing what is called *change* and *commitment talk* from the client's deeper well of resources and perspective. Client change talk consists of things a person might say when he or she is giving voice to desires, abilities, reasons, and needs for change. Commitment talk continues and extends these same types of statements ("I would love to be able to spend that money on other things besides..."; "If I could do it before, I'm pretty sure I can do it..."; etc.) into a less abstract, more immediate, personal, and volitional context (e.g., "I will use that money to pay the back rent"; "Starting today, I am changing and not using any more"). The goal with evoking is to encourage the client to both surface and settle into a clear and different cost-benefit understanding regarding the behavior or change area.

5. Refining the Focus

Throughout the assessment process, starting with role clarification, there can be many opportunities to elicit and strengthen change talk and commitment. However, until the client and agent have arrived at mutually understood change goals, facilitating change talk can: a) distract from the immediate task at hand; b) be premature; c) be ineffective; or d) all the above. The best time, therefore, to place a premium on the client's change talk is once there is a rather sound agreement about the direction in which the client is headed. Once the client has acknowledged that it is time for him or her to move beyond the fork(s) in the road and possibly take some action in a given direction, that's the time to start paying attention to how one is structuring the conversation relative to change talk.

Usually quite a journey is involved when

anyone moves from a natural and understandable ambivalence about changing to achieve a targeted behavior to a full-on commitment, with no "hole cards" or reservations. Within the framework of the stages of change model, this is tantamount to traveling from the *Contemplation* stage through *Preparation* and into the *Action* stage. Moving through the Preparation stage is sometimes discussed as a relatively brief passage (compared to the time it can take to navigate Contemplation and Action). However, this does not mean it isn't a significant change. The headset or mental model for someone in Action no longer revolves around talking or thinking about a change in the abstract, but taking active behavior-changing steps. The key to this journey is forging commitment.

Two main ingredients are necessary for fostering commitment: desire for the outcome and belief in one's ability to achieve it. Serious gaps in either of these will undermine the growth of commitment. The term desire can be confusing, because it is also referred to as a component of change talk (desires, abilities, reasons, needs). As an essential ingredient however, what is meant by the term is an overarching desire. Many reasons, needs, and smaller desires contribute to the relative importance of an objective—and determine whether or not it is an overarching desire. So it is that change talk builds towards and into commitment. However, while desire is essential or necessary, it may not be sufficient, for without belief in one's ability to accomplish the task, desire will often flicker and fail.

Belief in one's ability to complete a specific task or objective has been termed self-efficacy by Albert Bandura,¹⁵ a leader in developing social learning theory. According to Bandura, self-efficacy is strongly associated with the probability of someone initiating a new behavior. When someone believes he or she cannot accomplish a specific task, there is a low probability that the person will either initiate or strive to complete it. A person must believe the objective is actually possible in order to have a commitment to it.

Using Techniques and Strategies to Develop Precursors (Readiness)

Earlier, in the context of preparing to provide normative feedback, we discussed the value of inventorying a generic set of seven precursors to change.¹⁶ To the degree that someone has all these precursors fully on board regarding a specific change enterprise, the more likely the person is to forge a real and successful

commitment to change. Conversely, if certain precursors are negligible or non-existent, the struggle to change can be very protracted, if not unsuccessful. Therefore, with difficult clients it is very important to use some methods that help the person specifically engage his or her weakest precursors. Fortunately, a clearly defined set of techniques and strategies exists¹⁷ for helping clients develop each of the seven precursors.

Over 70 strategies and techniques for developing specific precursors are provided not only in Hanna's book *Doing Therapy With Difficult Clients*, but in certain case management software as well as rolodex card prompts, to enable this urgent developmental process on the spot (i.e., in real time). For example, if an officer were to determine that a client had only a trace of the precursor *Sense of Necessity* for changing a priority change target (such as tapering substance abuse, terminating fist-fighting, obtaining a GED, or finding some prosocial friends), the officer might refer to the software or rolodex prompts and select one of the following:

A SENSE OF NECESSITY:

Techniques & Strategies

1. **Align Client Values with Therapy**
2. **Reality Therapy Approach**
3. **Answer the "What's-in-it-for-me?" Question**
4. **Subpersonality Approach**
5. **Increase Client Anxiety Levels**
6. **Explore if the Client Feels Deserving of Positive Change**
7. **Identify Secondary Gains**
8. **Scaling Necessity from 1 to 10**
9. **Identify and Refute Possible Core Beliefs that Inhibit Necessity**

For the sake of convenience, suppose the officer selects #1 above, Align Client Values with Therapy. The coaching prompt that would follow would look something like the steps that follow below. It would be a simple set of reference points regarding the specific technique that officers can readily use to guide them when initially engaging that particular technique.

Align Client Values with Therapy

- A. Find out what is important to client
- B. Reframe it in terms of the target change behavior and coaching/counseling
- C. Point out that coaching/counseling can provide it
 1. For example, substance abuse seeks same goals as coaching/counseling
 - a. Find out what the person is trying to change drugs/alcohol

1. Change in feelings
 - (a) narcotics
 - (b) benzodiazepines
 2. Change in beliefs
 - (a) cocaine
 - (b) crystal meth
 3. Change in behaviors
 - (a) alcohol
 4. Change in relationships
 - (a) marijuana
 - (b) ecstasy
- b. Show how coaching/counseling can provide what drugs cannot

This process of employing precursor strategies will be greatly enhanced if, in keeping with strong engagement with non-voluntary clients, the tenets listed below are adhered to. More detail on these tenets can be found in Hannah's *Techniques for Motivating Difficult Clients: The Precursors Model of Change*¹⁷ as well as his book *Therapy With Difficult Clients*.¹⁰

Relationship-Building Strategies

1. Prior to using these techniques, the officer and client have spent a minute or two clarifying their roles (with the officer emphasizing his or her role as potential coach).
2. The officer is engaging his or her MI spirit.
3. The officer has strong precursors—all seven—for engaging the client and working with the client's precursors.
4. The officer is ready, willing, and able to "empathize, even when it hurts or sickens."
5. Attention is given to the metalog (what is being thought in the conversation but not given voice).
6. Courtesy and permission are exercised—the officer is MI-adherent and uses the rhythm of Elicit—Provide—Elicit as much as possible.
7. Empathy is established before confronting (as in reality therapy, not critical judgment).
8. Boundaries are set that further positive change and are referred to in subsequent role clarification.
9. Find the connection with the client—it's not something one has to necessarily wait for....
10. Develop the ability to see through situations, read between the lines and don't take just any old bait.
11. Leave your ego at the door, avoid

taking things personally.

12. Validate the client's abilities.
13. Admire negative behaviors and attitudes—adjust to the client's world and sense the value and utility of negative client behaviors and attitudes before reframing or helping the client pivot the skill toward the positive.
14. Give the client plenty of options for telling you to back off.

Refining the focus for change involves fully appreciating what it's really going to take for the client to develop and finish forging a commitment to change. Working more closely with the precursors to change quickly enables this process to become very granular and real. Discussing precursors eliminates the risk, vagueness, and ambiguity of talking about things in the abstract and keeps the focus in the room, on one's relationship with the client.

The use of MI and coaching around the precursors go a long, long way towards helping clients find the desire and courage to change. With practice, officers can readily access and use various MI skills for structuring conversations to promote the client's change talk. This activity alone can account for significant shifts in the importance a client places on a particular change target. In a similar fashion, engaging the client around his or her weaker precursors for change translates into a very straightforward method for drawing out and enhancing the client's confidence for making the change. As a person's desire (importance) and courage (confidence) rise, so does resolve or commitment and probability for success. Planning out how a change can be made becomes less problematic once an individual has made a commitment to change something.

6. Developing a Change/Case Plan

Once an individual is ready to commit to a change behavior, the energy he or she has around that particular target begins to shift and increase, making it much easier for the person to move and be open to new possibilities. A frequently used analogy is swooshing downslope on skis through three or four gates or stages of change planning.

According to Miller & Rollnick⁶ and other MI trainers,¹⁸ there are four sets of considerations inherent in change planning:

1. Setting goal(s).
2. Sorting options or strategies for change.
3. Formulating a plan.
4. Reinforcing commitment.

These four steps form a natural or logical

sequential order that makes guiding people through the "gates" of change planning relatively simple. Setting goals is often just a matter of formalizing what has already been occurring in the conversation regarding the target behavior. Typically the interviewer might nudge the person by asking how things need to be different or what specific goals the client might now have. Without being overly directive (and detracting from the client's sense of agency), the goal here is to get a better picture of the goal by getting everything on the table.

Sorting through the options can begin easily with some brainstorming for other possibilities that might not have surfaced thus far in the conversation. It might also be helpful during this step to make sure that all the client's relevant current strengths, attributes, and resources (e.g., social network capital, available family and organizational support, etc.) are taken into consideration.

The next step, formulating the plan, is often best preceded by a certain type of structuring statement that suggests to the client that plans that are more complete and have some aspects of a SMART format can often help in successfully achieving goals. If the client is open to suggestions, the interviewer should indicate how some of the following things can contribute to achieving goals:

- Putting the plan in writing.
- Making the plan specific and concrete instead of abstract.
- Setting objectives that are not too far out in time.
- Stating the goal in positive terms of what the client would like (rather than emphasizing what they won't be doing).
- Identifying people that will support the goal-achieving efforts.
- Identifying possible goal barriers and quick remedies ahead of time.
- Sharing your plan with others and posting it conspicuously anywhere you hang out.

Such a structuring statement can then be followed with an invitation to begin drafting the plan: "What do you think about us trying to throw something together in writing?"

In this way one can begin a very collaborative process of generating a plan. Ideally this produces a written draft that can be subsequently refined by the individual. However, in some cases, especially when a person has an aversion to writing things down, this might start out by only verbalizing the plan—let the client drive the process and the format when possible!

Finally, look at ways the client can pick up extra reinforcement for his or her plan along the way. Who can the client share the plan with that is almost certain to give him or her support? What milestones can be built into the plan for easy recognition and opportunities for self-reinforcement as well as positive reinforcement from the officer? Processes that are reinforced lead to completion and more successful outcomes. If the reader is interested in more detailed information regarding change planning, please see Bogue and Nandi's guide to implementing MI in Corrections.⁸

Conclusion

This article has been an effort to make sense of the wonderful intersecting research-supported strategies that the field of community corrections has available for integrating into the first few sessions with our clients. The early sessions are so critical for forming effective relationships with our clients. The cognitive scientists like to tell us these days how people run on impressions and not necessarily facts. Salespeople, on the other hand, are quick to point out that it is the first and last impressions that matter.

Part of the inspiration for this inquiry unquestionably has been the emergence of practice models¹⁹ that deliberately integrate combinations of EBP into the space of typical case management sessions. These models are showing tremendous efficacy for reducing recidivism, underlying the good news that the officer can, after all, be the best possible intervention the system has. However, as

straightforward as these practice replacement strategies are, they require enormous work of the individual officer, the supervisor, and upper management to be effectively implemented. This article was written to help us all better understand how the various moving parts of any practice model can be initiated, harmoniously, from the very start at assessment.

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Training Parole Agents: How Prior Criminal Justice Work Shapes Attitudes and Beliefs

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PRISON TREATMENT AND rehabilitative programming have had varying levels of support among the general public and politicians since Martinson's "What works?" findings (Martinson, 1974). Over the past few decades, many correctional environments have adopted inmate and offender-based programs that follow a cognitive-behavioral approach to rehabilitation for lower recidivism rates after release from prison (see, Saxena, Messina, & Grella, 2014; Van Voorhis, Spiropoulos, Ritchie, Seabrook, & Spruance, 2013). In general, research shows that cognitive-behavioral interventions can be effective if they address known factors that promote criminal behavior and focus on changing inappropriate behavior (Latessa, Cullen, & Gendreau, 2002). This study explores the relationship between support for rehabilitative programming among correctional staff and respondent characteristics (sex, race, and age) and job classification. Additionally, it reveals how previous work experience in the criminal justice field impacted new parole agents' knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, showing support for offenders' reentry into the community, and understanding the principles on which effective correctional intervention programming is based.

Background

Prior research examined differences among correctional staff attitudes toward offender treatment and rehabilitative programming by various demographic characteristics. For example, attitudes and beliefs differed greatly

by the sex of the respondent. Findings showed that female probation officers were significantly more likely to prefer rehabilitative programming compared to male officers (Miller, 2015). Female correctional officers displayed a more "human services orientation," focused on interpersonal communication, and disagreed with punitive approaches to corrections more than their male counterparts (Hemmens & Stohr, 2000; Johnson, 2002; Stohr, Hemmens, Kifer, & Schoeler, 2000).

Support for offender programming also differed by the age of respondent. Kelly (2013) found that correctional officers aged 21-30 showed less support for correctional rehabilitation initiatives and a greater inclination for maintaining strict and punitive control over inmates compared to officers from other age groups. Similarly, other research findings showed that correctional staff under the age of 25 were custody-oriented and focused more on inmate discipline (Young, Antonio, & Wingard, 2009). In general, research showed that support for the punitive treatment of inmates decreased with age (Kelly, 2013; Maahs & Pratt, 2001; Stohr et al., 2000), with older correctional officers reporting the most engagement and support for inmate rehabilitative programming (Miller, 2015).

Finally, we examined support for correctional programming by the race of the respondent. These findings showed differences in attitude along racial lines. For example, Maahas & Pratt (2001) found that correctional officers who were racial minorities held more favorable attitudes toward treatment and rehabilitative programs than did White officers;

additionally, Grattet, Lin, & Petersilia (2011) found that African American officers held less punitive attitudes toward offenders than did other racial minority groups.

Other findings about support for correctional programming by staff characteristics were less clear. Specifically, staff education level showed mixed results for support of rehabilitative programming. Overall, some research in the U.S. showed that the educational level of correctional staff played no significant role in attitudes toward treatment and rehabilitative programming (Hemmens & Stohr, 2000; Maahs & Pratt, 2001). However, findings from outside the U.S. revealed that more highly educated staff showed more support for treatment and rehabilitative programming (Burton, Ju, Dunaway, & Wolfe, 1991).

Research regarding the number of years an officer was employed in a correctional setting (i.e., job tenure) also presented mixed findings. Some research found that as on-the-job experience increased, attitudes about punitive treatment decreased (Kelly, 2013), and officers who had the most years of service reacted positively toward less punitive inmate treatment and rehabilitative programming (Antonio & Young, 2011; Stohr et al., 2000). Other findings revealed that tenure diminished support for correctional rehabilitation, with an apparent increase in the likelihood for staff to engage in custodial responses to offenders (Cullen, 1989).

In addition to staff characteristics like sex, age, and race, previous research examined job classification as a factor related to attitudes

and beliefs about offender programming. Overall, findings suggested that job classification strongly predicts support for prison rehabilitation programs (Griffin, Hogan, & Lambert, 2012; Robinson, Porporino, & Simourd, 1996), possibly due in part to differences of the job such as aspects of supervision, job autonomy, role strain, and administrative support (Lambert, Hogan, Moore, Tucker, Jenkins, Stevenson, & Jiang, 2009; Lambert & Paoline, 2012). Kelly (2013) found that correctional staff whose roles related to overseeing the well-being of prisoners (such as healthcare staff) took a less punitive approach to incarceration, while staff who were responsible for ensuring successful operation of the prison (such as security and residential staff) treated inmates more punitively. Other findings revealed that treatment staff were more inclined to recognize the benefits of rehabilitation compared to correctional officers, who were more custody-oriented and less likely to support rehabilitation of offenders (Gordon, 1999; Larivière & Robinson, 1996; Young et al., 2009). Finally, parole staff in community supervisory roles maintained a less enforcement-oriented focus, while maintenance and technical staff showed low levels of support for rehabilitation (Larivière & Robinson, 1996; Steiner, Travis, Makarios, & Taylor, 2011).

Work History

Previous research revealed how characteristics of correctional staff such as age, sex, years of service, and job classification are associated with support for rehabilitative programming, perceived responsibilities for correcting inappropriate behavior, and modeling appropriate behavior for a correctional population. How do these attitudes and beliefs come to be? Do correctional staff develop them while on the job? In other words, are they the result of learned behavior from fellow peers who share the same job classification and workplace duties? Alternatively, do correctional staff enter the profession with a previously determined set of attitudes and beliefs about how incarcerated populations should be treated?

Mandatory training provided to newly hired correctional staff is designed to educate employees about the correctional environment, policies and procedures, and protocols for interacting with inmates and offenders. This training may provide sufficient instruction for many staff to learn the duties associated with their job and perform their roles adequately; however, a standard curriculum may not consider the diverse

backgrounds and lived experiences of all employees appropriately. For example, newly hired employees who have a prior criminal justice work experience may already possess the attitude and beliefs that previous research suggests are related to age, sex, years of service, and job classification. In these instances, a preconstructed training curriculum may fail to convey information in a manner that best resonates with the individual characteristics of the new employees.

Curriculum developers and training facilitators may need to more carefully consider audience background. While individualized training sessions for correctional staff are not feasible for obvious reasons, identifying who the audience is, including prior work history, may help instructors tailor the training in a manner that will be most receptive to new employees.

Present Analysis

This study adds to the current body of literature regarding the relationship between correctional job classification and attitudes toward offenders, perceived effectiveness of the rehabilitative process, and accepted roles and responsibilities among staff employed in the criminal justice system. In this analysis, responses on a self-administered questionnaire (SAQ) were gathered from staff recently hired by Pennsylvania's Board of Probation & Parole (PBPP). The staff were surveyed during a mandatory eight-week new employee training regulated by the Board. All staff included in this analysis were undergoing training to become parole agents employed by the Commonwealth of Pennsylvania. The main purpose of the study was to assess new parole agents' knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, showing support for offenders' reentry into the community, and understanding the principles on which effective correctional intervention programming is based. Findings showed that parole agents' prior work history in the field of criminal justice measurably correlated with knowledge, attitude, and beliefs about effectiveness of offender treatment programs and their responsibilities for facilitating successful community reentry.

Method

Sample

The focus of this analysis was to compare how prior work experience in the criminal justice field impacted parole agents' knowledge, attitude, and beliefs about modeling

appropriate behavior for offenders; support for offenders' reentry into the community; and understanding of the principles on which effective correctional intervention programming is based. An agent's response to the following question uncovered prior work experience in the field: Is this your first time being employed by a criminal justice agency? Respondents indicating a previous work history were prompted to specify each job title, location, and length of time (years) of criminal justice-related employment. Overall, 6.5 percent of respondents (22 out of 336) did not provide an answer to this question.

Among the parole agents who responded, four broad categories of work history were found. These categories included *no prior criminal justice experience* (NP), *prior probation and parole experience* (PP), *prior custody or law enforcement experience* (CLE), and *prior social services or social work experience* (SSW). The category of NP included respondents who indicated no prior work experiences in the criminal justice field; PP consisted of respondents who reported a prior work history as an adult or juvenile probation or parole officer at the state or county level; CLE included correctional officers and police officers from state prisons or county jails, military police and personnel, investigative and security experience; and SSW consisted of prior counseling, case management, social work, or youth development experiences.

Procedure

The data used in this analysis were gathered from a SAQ completed by newly hired parole agents employed by the Commonwealth of Pennsylvania. Data collection occurred during a four-year period from April 2014 through January 2018. PBPP offers three orientation training sessions for new employees annually; generally, these trainings commence in January, April, and September. During the data collection phase of the study, PBPP cancelled some orientation training sessions, while at other times researchers were unavailable to collect data from certain cohorts.

Overall, data was gathered from 10 separate cohorts representing newly hired parole agents. The trainings were eight weeks in duration and provided detailed instruction about PBPP policy and procedures, including responsibilities and roles for community supervision, contact with offenders, tactical training, treatment and rehabilitation, etc. The number of agents enrolled in each session during the data collection phase of this study

varied significantly from a low of 14 agents to a high of 64 agents.

The mandatory training provided parole agents with much information about the state-operated organization of probation and parole and their individual duties and expectations for community supervision of offenders. Agents received intensive instruction about meeting offenders' needs for treatment and rehabilitation in the community during week two of the training. The specific materials included an overview of evidence-based practices related to motivational interviewing and case planning. Agents were trained to administer the Level of Service Inventory-Revised tool and to identify criminogenic needs among offenders. Researchers attended the orientation session during the fifth week of the training. They were present to explain the study, address specific questions, and obtain respondent consent. The researchers distributed the SAQ and collected the completed instrument. Staff from PBPP were not present at any time when the study was being explained or data was being gathered. The individually completed questionnaires were never viewed by parole administrators.

The questionnaire gathered responses on numerous topics related to appropriate supervision of offenders and successful reentry into the community. Approximately 25 questions or statements assessed agents' knowledge about duties and responsibilities, attitudes about offender treatment and rehabilitation, and understanding about risk and needs, including factors contributing to or promoting criminal behavior. Responses were measured using a 5-point Likert scale (1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree). Agents also reported demographic characteristics and their work histories related to the criminal justice field. Drafts of the

questionnaire were provided to PBPP for review and validation purposes. During several meetings, specific statements or questions were added, removed, and/or modified for clarity. After PBPP gave final approval of the SAQ, the revised instrument was pilot tested during one training session prior to the official start of the study in order to assess the clarity of instructions and readability of the SAQ among agents. Findings from the pilot study provided valuable insights and facilitated minor revisions to the questionnaire.

Results

Respondent Characteristics

Table 1 shows demographic characteristics for the full sample of parole agents participating in the new employee orientation training offered by PBPP and provides a comparison by prior criminal justice work experience. Overall, a total of 336 respondents completed the questionnaire that assessed knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, showing support for offenders' reentry into the community, and understanding the principles on which effective correctional intervention programming. The full sample of parole agents was young (mean age of 33.6), male (58.9 percent), and White (84.7 percent). The respondents reported an average of 7.5 years of work experience in other criminal justice agencies prior to starting in PBPP.

The table also reveals findings about the specific type of prior criminal justice work experience the agents had by separating responses into the four broad job categories. About one-third of the respondents were NP agents (N=106), followed by CLE (N=96), SSW (N=57), and PP (N=55). The data revealed several differences among the four groups. For example, one difference was related to age,

where the mean age of NP agents (31.3 years) was younger than the other groups: PP agents, 33.3 years; SSW agents, 34.4 years; and CLE agents, 35.4 years. Another clear difference among the groups was related to respondents' sex, where the overwhelming majority of CLE and PP agents were male (71.4 percent and 63.5 percent, respectively), compared to just slightly more than half of the SSW agents and slightly less than half of the NP agents (51.9 percent and 45.9 percent, respectively). While all groups were predominantly White, NP agents reported slightly more racial diversity, with 10.8 percent self-identifying as Black compared to the other groups (PP, 9.1 percent; SSW, 7.0 percent; and CLE, 5.3 percent). Finally, CLE agents reported a longer prior criminal justice work history than did PP agents and SSW agents (9.2 years, 6.7 years, and 5.8 years, respectively).

This analysis focused on comparing agents' responses based on prior criminal justice work experience. Table 2 shows responses by the four categories of work experience examined in this analysis: NP, PP, CLE, and SSW. Separate ordinal regression analyses were conducted using the three statements about understanding of and support for offender rehabilitative programming as dependent variables, while controlling for an agent's prior work history. Overall, the analyses showed significant differences among the work categories. For example, SSW agents (4.39) more strongly agreed with the statement "Treatment/rehabilitation programming can contribute to lowering recidivism among offenders" than did CLE agents (4.20). This finding was statistically significant beyond the .05 probability level. Responses for NP agents (4.36) and PP agents (4.40) also showed more agreement and were statistically different from those of CLE agents beyond the .10 probability level.

TABLE 1
Demographic characteristics for all respondents and by prior criminal justice work experience

Demographic Characteristics	response category					
		all respondents (N=336)	1 no prior CJ work experience (N=106)	2 prior probation or parole (N=55)	3 prior custody or law enforcement (N=96)	4 prior social services/ social work (N=57)
age	years (M)	33.6	31.3	33.3	35.4	34.4
sex	male (%)	58.9	45.9	63.5	71.4	51.9
race	White (%)	84.7	78.4	83.6	91.5	89.5
	Black (%)	8.3	10.8	9.1	5.3	7.0
CJ work experience	years (M)	7.5	--	6.7	9.2	5.8

Table 2 also reveals that NP agents (1.42) and SSW agents (1.39) more strongly disagreed with the statement, "Overall, nothing works with regard to offender treatment," than did CLE agents (1.64). These findings were statistically significant beyond the .01 probability level. Differences in level of disagreement between PP agents (1.51) and CLE agents were statistically significant beyond the .10 probability level. Generally, there was a low level of disagreement and indecisiveness for the statement, "Offender programming is more effective as a sanction to punish poor behavior than a strategy to promote good behavior." Differences among responses by the four work categories were not statistically significant beyond the .10 probability level.

Table 3 shows responses about agents' perceived impact on community-supervised offenders by the four categories for prior criminal justice work experience. Separate ordinal regression analyses were conducted using the four statements about perceived impact as dependent variables, while controlling

for agents' prior work history. Respondents from each work category reported levels of agreement with the statement, "Promoting pro-social behavior among offenders is a requirement of a parole agent's profession," and levels of disagreement with the statement, "What I say or how I act around offenders has little impact on their daily behavior." None of the differences in responses by work category, for either statement, were statistically significant beyond the .10 probability level.

The table also reveals findings from two other statements about agents' perceived impact on community-supervised offenders. There was a low level of agreement and indecisiveness for the statement, "Family and friends have more impact on an offender's behavior than do parole agents." SSW agents (3.81) reported greater indecisiveness about this statement than did CLE agents (4.01), who were the work category expressing the most agreement. These findings were statistically significant beyond the .10 probability level. Also, many respondents expressed uncertainty

when responding to the statement, "Staff who facilitate treatment/rehabilitation groups impact an offender's behavior more than the supervising parole agent." Differences among responses by the four work categories were not statistically significant beyond the .10 probability level.

Discussion

Support for prison programming varies widely among the general population. In this article we examined how characteristics of correctional staff impact the support for treatment and rehabilitative programming by predicting attitudes and beliefs among newly hired parole agents based upon previous work experience in the criminal justice field. Overall findings revealed that the majority of parole agents were young, male, White, and had several years of prior work experience in the criminal justice field. When agents' prior work history was compared, it was found that CLE agents were, on average, older, more likely to be male, and less racially diverse. This group of agents

TABLE 2
Agent understanding and support for offender rehabilitative programming by prior criminal justice work experience

Statement	1 no prior CJ work experience (N=106)	2 prior probation or parole (N=55)	3 prior custody or law enforcement (N=96)	4 prior social services/social work (N=57)	Grp diff, sign
Treatment/rehabilitation programming can contribute to lowering recidivism among offenders.	4.36	4.40	4.20	4.39	3<1, p=.053 3<2, p=.064 3<4, p=.021
Overall, nothing works with regard to offender treatment.	1.42	1.51	1.64	1.39	1<3, p=.009 2<3, p=.088 4<3, p=.004
Offender programming is more effective as a sanction to punish poor behavior than a strategy to promote good behavior.	2.16	2.04	2.23	2.04	

Note. Responses for each item: 1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree

TABLE 3
Parole agents' impact on community supervised offenders by prior criminal justice work experience

Statement	1 no prior CJ work experience (N= 106)	2 prior probation or parole (N=55)	3 prior custody or law enforcement (N=96)	4 prior social services/social work (N=57)	Grp diff, sign
Promoting pro-social behavior among offenders is a requirement of a parole agent's profession.	4.35	4.29	4.23	4.35	
What I say or how I act around offenders has little impact on their daily behavior.	1.61	1.65	1.71	1.65	
Family and friends have more impact on an offender's behavior than do parole agents.	3.96	3.96	4.01	3.81	3>4, p=.082
Staff who facilitate treatment/rehabilitation groups impact an offender's behavior more than the supervising parole agent.	2.98	2.80	2.93	2.89	

Note. Responses for each item: 1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree

also had the longest history of criminal justice work experience prior to starting employment as parole agents for PBPP. Previous research showed how characteristics like age (Kelly, 2013), sex (Miller, 2015), and race (Grattet et al., 2011) impacted attitudes and beliefs about the criminal justice system and those who are prosecuted and incarcerated for criminal behavior. This study's findings about how prior criminal justice work experience affected responses offers initial evidence that differences in knowledge, attitude, and beliefs may be revealed by job category.

In this study, CLE agents reported that the greatest differences in responses among the work categories came from CLE agents, who were less likely to record agreement that rehabilitative programming can lower offender recidivism rates and also were less likely to disagree with the "nothing works" mentality about treatment. The demographic makeup of this group, including the large percentage of males, lack of racial diversity, and number of prior years of criminal justice work experience, may account for the overall differences from the other work categories, which is consistent with previous research findings. Clearly, the regular training materials related to meeting the needs of offenders through community-based treatment and rehabilitative programming did not resonate with and/or were not convincing for many CLE agents. These findings suggest that a more refined training approach for new employees may be preferable, including one that focuses on the lived experiences of correctional officers and law enforcement officers, military police and personnel, and investigative and security staff.

Other responses to the SAQ revealed findings about how the newly hired parole agents perceived their impact on offenders supervised in the community. Many agents showed a weak level of agreement about whether an offender's family and friends impact him or her more than the supervising agent, with SSW agents showing the most indecisiveness. This finding is problematic, because offenders may often be surrounded by family and friends in the community who have antisocial personalities, are substance abusers, and/or make poor life decisions. In these situations, the outcome for offenders can be severe, including involvement in further incidents of criminal behavior and a possible return to prison. An astute agent will be aware of the social environment of his or her offender and should intervene when and where necessary to refocus the offender and restate the agreed conditions of parole.

Also concerning was the finding that agents deferred to group facilitators as primarily responsible for offenders' behavioral change. This finding suggests additional and/or a modified staff training curriculum may be required for newly hired parole agents. Agents should recognize that time spent with offenders during mandatory contacts is important and can impact and determine an offender's success in the community. Agents will likely have more one-on-one contact with offenders than a group facilitator will. Therefore, time spent with the offender should involve reinforcing and practicing skills learned during rehabilitative programming. It is clear that all agents, regardless of prior work experience, need to feel more empowered about the positive impact they can have on offender behavior and that behavioral change is not solely learned and mastered while participating in rehabilitative programming.

Limitations

There are limitations associated with the study's data collection procedures that are worthy of mention. First, all findings were gathered through a SAQ exclusively. Respondents may have concealed their true beliefs by providing the most socially desirable response, despite being instructed that their responses were anonymous and would not impact their employment status in any way. Additionally, this study represented a post-test-only data collection approach. The main concern is that this approach does not provide information about changes in attitude or beliefs over time. For example, were the parole agents' knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, their support for offenders' reentry into the community, and their understanding of the principles on which effective correctional intervention programming is based different at the start of the new employee training session compared to when the questionnaire was provided during week five? This line of questioning would be appropriate if the purpose of the current study was to assess the effectiveness of the training curriculum, provide education, and/or alter agents' personal opinions about treatment and rehabilitation. However, the purpose here was to establish a baseline for knowledge, attitude, and beliefs among newly hired parole agents who were starting their employment with PBPP. Because of the study's purpose, the detrimental effects of a one-time data collection approach are minimized.

Finally, during the data collection phase for this study, PBPP began implementing the Effective Practices in Community Supervision (EPICS) program at the new employee orientation training sessions (Latessa, Smith, Schweitzer, & Labrecque, 2012; Smith, Schweitzer, Labrecque, & Latessa, 2012). This program was a modified version of the Strategic Training Initiative in Community Supervision program that originated in Canada (Bonta, Bourgon, Ruge, Scott, Yessine, Gutierrez, & Li, 2010; Bonta, Bourgon, Ruge, Scott, Yessine, Gutierrez, & Li, 2011). EPICS was delivered in three days and at various weeks throughout the training orientation, starting at the end of 2015. The influence of EPICS on the current study was minimal, as it only impacted data collection efforts from three training cohorts. Findings from these cohorts were analyzed separately and then compared with the aggregate findings from cohorts questioned before EPICS was delivered. Findings from this comparison showed that agents who received EPICS training reported slightly more agreement with their responsibility to promote prosocial behavior and slightly more disagreement that offender programming is more effective as a sanction than in promoting good behavior. All findings by job category remained the same.

Conclusion

The main purpose of the study was to assess new parole agents' knowledge, attitude, and beliefs about modeling appropriate behavior for offenders, showing support for offenders' reentry into the community, and understanding the principles on which effective correctional intervention programming is based. Findings showed that parole agents' prior work history in the criminal justice field measurably impacted knowledge, attitude, and beliefs about effectiveness of offender treatment programs and their responsibilities for facilitating successful community reentry. These findings suggest that mandatory orientation training sessions for parole agents, and possibly correctional staff in general, should consider the employment history and background of individual employees. Training curriculum should be examined with a goal of adding and/or modifying materials to address the lived realities and experiences of the new employees.

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JUVENILE FOCUS

ALVIN W. COHN, D.CRIM.

Administration of Justice Services, Inc.

Housing Inequalities—Anti-segregation Policing

According to a recent article by Yale Law Professor Monica C. Bell published in the *New York University Law Review*, residential segregation contributes to mass criminalization and poor economic outcomes in urban areas. Bell notes that some aspects of fair housing law could be used to form a duty for police departments to create policies that counteract segregation by avoiding racial steering in policing. Bell's other recommendations include reorganizing police districts to lessen the likelihood of racial disparities in policing by creating more racially diverse districts, allowing police the option of not responding to 911 calls that seem born from racial bias, and advancing structural reform litigation such as by the Department of Justice under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994.

National Crime Victimization Survey

After rising from 1.1 million in 2015 to 1.4 million in 2018, the number of persons who were victims of violent crime excluding simple assault dropped to 1.2 million in 2019, the Bureau of Justice Statistics has announced. Statistics on crimes that have occurred in 2020, during the coronavirus pandemic, are being collected now and will be reported next year. These statistics are based on data from the 2019 National Crime Victimization Survey. The NCVS is the nation's largest crime survey and collects data on nonfatal crimes both reported and not reported to police. The rate of violent crime excluding simple assault declined 15 percent from 2018 to 2019, from 8.6 to 7.3 victimizations per 1,000 persons age 12 or older. Among females, the rate of violent

victimization excluding simple assault fell 27 percent from 2018 to 2019, from 9.6 to 7.0 victimizations per 1,000 females age 12 or older. Violent crimes other than simple assault are those that are generally prosecuted as a felony.

From 2018 to 2019, the portion of U.S. residents age 12 or older who were victims of one or more violent crimes excluding simple assault fell from 0.50 percent to 0.44 percent, a 12 percent decrease. There were 880,000 fewer victims of serious violent or property crimes (generally felonies) in 2019 than in 2018, a 19 percent drop. From 2018 to 2019, 29 percent fewer black persons and 22 percent fewer white persons were victims of serious crimes. Victims of serious crimes are those who experienced a serious violent crime or whose household experienced a completed burglary or completed motor-vehicle theft. This year, BJS provides new classifications of urban, suburban, and rural areas, with the goal of presenting a more accurate picture of where criminal victimizations occur. Based on the NCVS's new classifications, the rate of violent victimization in urban areas declined from 26.5 victimizations per 1,000 persons age 12 or older in 2018 to 21.1 per 1,000 in 2019, a 20 percent decrease from 2018 to 2019.

Nationally, rape or sexual assault victimizations declined from 2.7 per 1,000 persons age 12 or older in 2018 to 1.7 per 1,000 in 2019. Across all crime types, victimizations reflect the total number of times people or households were victimized by crime. Based on the 2019 survey, less than half (41 percent) of violent victimizations were reported to police. The percentage of violent victimizations reported to police was lower for white victims (37 percent) than for black (49 percent) or Hispanic victims (49 percent).

Youth Coronavirus

The Sentencing Project's report *Youth Justice Under the Coronavirus: Linking Public Health Protections with the Movement for Youth Decarceration* (by Josh Rovner) provides recommendations to slow the spread of the virus in juvenile facilities, starting with reduced use of incarceration, and provides examples of successful steps taken by states that have followed experts' recommendations.

COVID-19 cases have been reported among incarcerated youth in 35 states, the District of Columbia, and Puerto Rico. However, the true incidence of the virus is largely unknown due to a lack of testing and a lack of reporting from all facilities.

The report summarizes lessons learned through the first months of the pandemic, focusing on system responses, both positive and negative, to slow the virus's spread and to protect the safety and wellbeing of youth in the juvenile justice system while keeping the public informed. Drops in admissions during the pandemic, alongside decisions to release youth at a higher rate than during ordinary times, buttress the long-standing case that youth incarceration is largely unnecessary. Jurisdictions must limit the virus's damage by further reducing the number of incarcerated youth.

Capital Punishment

The Department of Justice's Bureau of Justice Statistics recently released *Capital Punishment, 2018 – Statistical Tables*. This report presents information on persons under sentence of death on December 31, 2018, and persons executed in 2018. Tables show state-by-state statistics on the movement of prisoners sentenced to death during 2018, the status of capital statutes, and methods of execution.

Data include offender characteristics, such as sex, race, ethnicity, criminal history, and time between the imposition of a death sentence and execution. The report also summarizes preliminary findings on executions in 2019. Data in this report are from the National Prisoner Statistics program.

Highlights:

- At year-end 2018, a total of 30 states and the Federal Bureau of Prisons (BOP) held 2,628 prisoners under sentence of death, which was 75 (3 percent) fewer than at year-end 2017.
- Eight states executed a total of 25 prisoners in 2018, with Texas accounting for more than half (13) of the executions.
- California (28 percent), Florida (13 percent), and Texas (8 percent) held about half of the prisoners under death sentences in the United States at year-end 2018.
- The largest declines in the number of prisoners under death sentences in 2018 were in Pennsylvania and Texas (down 11 prisoners each), followed by Washington (down 8) and then Alabama, Florida, California, and Nevada (down 6 each).

Use of Force

CRI-TAC's technical assistance offerings will now include the topic of "use of force." In response to tremendous requests from the field, use of force will now join a number of other highly requested topics including community engagement, de-escalation, mass demonstration response, officer safety and wellness, and school safety. Technical assistance on use of force will include:

- Offering training and awareness on best and promising practices, including offering peer-to-peer exchanges to share those practices.
- Reviewing and providing tailored guidance on an agency's policies, procedures, and training.
- Training and guidance on how to conduct use of force investigations.
- Developing a calibrated use of force investigation process tailored to the type and size of the agency.
- Addressing how to handle complaints, as well as how to follow up complaints to ensure investigations are safe, and accountable.

Agencies can request more information by visiting [CollaborativeReform.org](https://www.collaborativereform.org) or contacting TechnicalAssistance@usdoj.gov.

Crime Victim Award

The Justice Department's Office for Victims of Crime, a division of the Office of Justice Programs, presented the National Children's Alliance with the Award for Professional Innovation in Victim Services. This National Crime Victims' Service Awards category recognizes a program, organization, or individual who has helped to expand the reach of victims' rights and services. "The National Children's Alliance is staffed by a team of talented and dedicated professionals, all committed to ensuring that Children's Advocacy Centers across the nation provide the highest level of services to America's abused and neglected children," said Principal Deputy Assistant Attorney General Katharine T. Sullivan. "Thanks to the Alliance's laser focus on quality and comprehensive care, child victims across the country have access to a wide range of treatment and support that are helping them to find justice and a path to health and healing."

NCA is a nonprofit membership organization that helps communities provide a coordinated, comprehensive response to child victims of abuse through Children's Advocacy Centers and multidisciplinary teams. NCA has nearly 900 CAC members nationwide, delivering services to nearly 400,000 child victims annually. NCA has also implemented a mental health standard to raise the bar for child victim services. The 2017 Standards for Accredited Members requires CACs to provide victims with access to trauma-focused, evidence-based mental health care.

Solitary Confinement and Deaths

A recently published study in the *Journal of the American Medical Association* (JAMA) of people released from North Carolina prisons after solitary confinement found those who had been in solitary confinement were 24 percent more likely to die in the first year after release. (The article can be accessed at [doi:10.1001/jamanetworkopen.2019.12516](https://doi.org/10.1001/jamanetworkopen.2019.12516)) They were 78 percent more likely to die of suicide in that first year after release, 54 percent more likely to die of homicide; in addition, they were 127 percent more likely to die of opioid overdose in the first two weeks after release. In the U.S., an estimated 80,000 people are held in some form of isolation on any given day, and in a single year, over 10,000 people were released to the community directly from solitary.

The study identifies two additional factors correlated with a heightened risk of death

after release: race and the amount (length and frequency) of solitary confinement. All incarcerated people of color are more likely to die within a year of release, and the experience of solitary confinement only amplifies this racial disparity.

Capital Punishment, 2018

According to the Bureau of Justice Statistics (BJS), at year-end 2018, a total of 30 states and the Federal Bureau of Prisons (BOP) held 2,628 prisoners under sentence of death, which was 75 (3 percent) fewer than at year-end 2017. In 2018, the number of prisoners under sentence of death declined for the 18th consecutive year. Thirteen states and the BOP received a total of 38 prisoners in 2018 who were under death sentences. Three of the most populous states, California (28 percent), Florida (13 percent), and Texas (8 percent), held about half of the prisoners under death sentences in the United States at year-end 2018. Eight states executed a total of 25 prisoners in 2018, with Texas accounting for just over half (13) of the executions. The BJS report presents statistics on persons who were under sentence of death or were executed in 2018, and on state and federal death-penalty laws. At year-end 2018, a total of 34 states and the federal government authorized the death penalty. Each jurisdiction determines the offenses for which the death penalty can be imposed. Once a person has been convicted of a capital offense, a separate sentencing hearing is held. During the sentencing hearing, a jury will consider aggravating and mitigating factors as defined by state or federal law. Before a person can be sentenced to death, a jury must find that at least one aggravating factor is present and that mitigating factors do not outweigh the aggravating factor(s).

Responses to Police Calls

According to a Sept. 2020 report from the Vera Institute (see <https://www.vera.org/downloads/publications/understanding-police-enforcement-911-analysis.pdf>), at least 240 million calls to 911 are made each year. Responding to these calls takes up a sizable amount of police officers' time, even though relatively few calls stem from crimes in progress. Little research about the nature of 911 calls or how police respond is available, including basic information, such as the number of calls and reasons they are made, how call volumes vary across different call types, and what happens from the time a call is placed to when an officer arrives on

the scene. The current study was designed to define the landscape of 911 calls for police service and answer fundamental questions about how communications personnel and police respond to them. The study examines how 911 calls are resolved by identifying the categories of dispositions and their frequency, as well as how they vary by call volume, type, time, and location. The ultimate outcomes of police contacts initiated by 911 calls are also reviewed to understand what factors have the greatest contribution to 911 call responses. In addition, the current research examines communications systems among call-takers, dispatchers, and police officers in the field to determine whether all information relevant to outcomes is being effectively conveyed.

Police Publications

The National Police Foundation and the COPS Office created the Averted School Violence (ASV) database to provide a platform for sharing information about averted incidents of violence in elementary, secondary, and higher education. This report examines 12 case studies of incidents in which planned violence targeting K–12 schools was averted by the potential attackers' peers, school administrators, and other school safety stakeholders, including school resource officers (SRO). Each case includes a discussion of lessons learned from examining the potential attackers' intentions and the actions of those who averted the attack.

Victimization

The portion of U.S. residents age 12 or older who were victims of violent crime excluding simple assault decreased 12 percent from 2018 to 2019. The rate of violent victimization in

urban areas—based on new classifications of urban, suburban, and rural areas—declined 20 percent from 2018 to 2019. From 2018 to 2019, 29 percent fewer black persons and 22 percent fewer white persons were victims of serious crimes (generally felonies). According to crime victims surveyed in 2019, the percentage of violent victimizations reported to police was lower for white victims (37 percent) than for black (49 percent) or Hispanic victims (49 percent).

Supervision Violations

As stated in the Prison Policy Initiative briefing “Technical difficulties: D.C. data shows how minor supervision violations contribute to excessive jailing,” parole and probation violations are among the main drivers of excessive incarceration in the U.S., but are often overlooked policy targets for reducing prison and jail populations. Nationally, 45 percent of annual prison admissions are due to supervision violations, and 25 percent are the result of “technical violations”—noncompliant but non-criminal behaviors, like missing meetings with a parole officer.

Despite their impact on local jail and state prison populations, technical violations are not well understood, often appearing in the data simply as “violations” without any description of the underlying behavior. However, Washington, D.C., publishes a wealth of local jail data as well as contextual data from federal agencies like the Court Services and Offender Supervision Agency (CSOSA), which offers a fuller story of what happens to people on supervision.

Given this abundance of data, the authors use D.C. as an illustrative example to explore excessive jail detention for technical violations,

including what behaviors lead to violations, the extraordinary lengths of time people can be held for violations, and important demographic information showing that people on supervision face serious employment and housing barriers, which are only exacerbated when violations lead to re-incarceration. Following analysis of D.C. technical violations, the authors discuss the problematic legal process underlying these violations.

Prisoners In 2019

BJS's report *Prisoners in 2019* is the 94th in a series that began in 1926. It provides counts of prisoners under the jurisdiction of state and federal correctional authorities in 2019 and includes findings on admissions, releases, and imprisonment rates. It describes demographic and offense characteristics of state and federal prisoners.

Highlights:

- The number of prisoners under state or federal jurisdiction decreased by an estimated 33,600 (down 2 percent) from 2018 to 2019, and by 184,700 (down 11 percent) since 2009, the year that the number of prisoners peaked in the United States.
- In 2019, the imprisonment rate fell for the 11th consecutive year, hitting its lowest point since 1995.
- The imprisonment rate fell 3 percent from 2018 to 2019, and 17 percent from 2009 to 2019.
- From 2009 to 2019, the total imprisonment rate fell to 29 percent among black residents, 24 percent among Hispanic residents, and 12 percent among white residents.

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Federal Probation Author Style Sheet

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