

## **Agenda: 9.15.15**

### **Community Supervision Subgroup**

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1. Welcome
2. Member Introductions
3. Policy Discussion
  - Incentivizing Positive Behavior
    - Earned Compliance Credits
  - Responding to Probation Violations: Swift, Certain, Proportional
    - Administrative Sanctions
    - Use of Incarceration
  - Focusing Resources
    - Probation Term Lengths
4. Subgroup Calendar
  - Meeting #2: Wednesday, October 14<sup>th</sup>: 1pm – 4pm
  - Meeting #3: Wednesday, November 18<sup>th</sup>: 1pm – 4pm

**\*\* Discussion Draft – Not for Distribution \*\*\***

# Incentivizing Positive Behavior (Earned Compliance Credits)

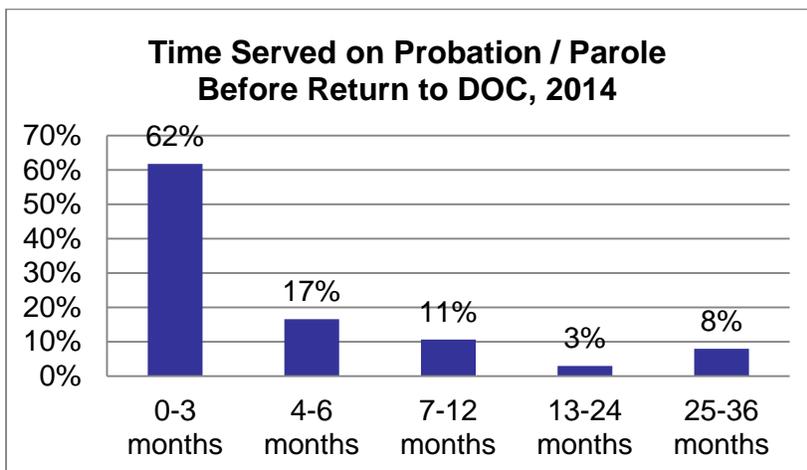
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## Review of Research Principles

- Provide rewards and incentives for meeting case-specific goals of supervision to enhance individual motivation
- Focus supervision and programming resources during the initial weeks and months following release from prison when violations and arrests are most likely to occur

## Relevant Alaska Data

- Over the past decade, offenders are spending more time on community supervision.
  - The average length of stay on community supervision is up 13% over the past decade
- Some parolees and probationers are serving long periods of supervision:
  - In 2014, 12% of parolees and probationers supervised by DOC who successfully finished their sentence spent more than 4 years on supervision without a revocation before they were discharged.
- If offenders fail, they are likely to fail in the first three months:



## Current Practice in Alaska

Alaska law does not currently allow parolees and probationers to earn their way off supervision for complying with their supervision conditions. There are opportunities in some cases for a judge to terminate probation early.

## Policy Option

We know from the research that allowing offenders to reduce their sentence terms for complying with supervision conditions provides incentives for positive behavior change and can free up resources to be used for offenders at a higher risk to reoffend.<sup>1</sup>

- **Earned Compliance Credits:** To incentivize compliance and focus supervision on offenders at the highest risk to reoffend, allow parolees and probationers to earn compliance credits that reduce their time on active supervision for each month that they are in full compliance with the conditions of supervision.

## State Examples

### *Utah*

Legislation passed by Utah in 2015 allows probationers and parolees to earn 30 days credit off their term of probation or parole for each month of compliance. Utah has set up an automated time accounting system; probationers/parolees automatically earn the credit each month unless a violation report has been filed.<sup>2</sup>

### *Mississippi*

Legislation passed by Mississippi in 2014 allows probationers and paroles to earn 30 days credit for each month of compliance. By law, the Mississippi Department of Corrections is required to review probationer/parolee case files every six months and award 30 days of credit for each month in the preceding six months that the offender went without any violation reports.<sup>3</sup>

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<sup>1</sup> Petersilia, J. (2007). Employ behavioral contracting earned discharge parole. *Criminology and Public Policy* (6)(4): 807-14.

<sup>2</sup> Utah Code § 64-13-21

<sup>3</sup> Miss. Stat. § 47-7-40

# Responding to Probation Violations: Swift, Certain, Proportional

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## Review of Research Principles

- Respond to problem behavior in a manner that will change that behavior
- Swift, certain, and proportional sanctions have a stronger deterrent effect than delayed, random, and severe sanctions
- Incarceration is not more effective than non-custodial sanctions at reducing recidivism

## Relevant Alaska Data

- Supervision violators make up 22% of Alaska’s prison population
- Number of supervision violators in prison up 15% in last decade
- Large majority of revocation filings are for technical offenses: 77% of revocation filings from Region One and 72% from Region Three are for technical offenses only

Region One PTRP and PVR Filings			Region Three PTRP and PVR Filings		
	N	%		N	%
Technical Only	1144	77%	Technical Only	2423	72%
New Offense and Technical	315	21%	New Offense and Technical	531	16%
New Offense Only	33	2%	New Offense Only	411	12%

Region One TV Types			Region Three TV Types		
	N	%		N	%
Drugs	265	23%	Drugs	532	24%
Alcohol	137	12%	Alcohol	391	18%
Multiple substances (alcohol and drugs)	36	3%	Multiple substances (alcohol and drugs)	43	2%

Rule violations <sup>4</sup>	270	24%	Rule violations	648	30%
Program failure	31	3%	Program failure	102	5%
Multiple types	392	34%	Multiple types	477	22%
Unknown	13	1%	Unknown	2	0%

- Petitions to revoke probation take a month, on average, to resolve
- Wide variation in average length of stay for supervision violators from court to court:
  - Average: 106 days
  - Range: 68.12 – 219.98 days
  - Does not include time spent in institution pre-resolution (avg = one month)

2014 Violator Post-Resolution Length of Stay by Court (50+ Releases Only) <sup>5</sup>		
	Mean LOS (Days)	Number Released
ANCHORAGE SUPERIOR COURT	97.62	976
BETHEL SUPERIOR COURT	176.83	99
DILLINGHAM SUPERIOR COURT	81.47	64
FAIRBANKS SUPERIOR COURT	128.75	123
JUNEAU SUPERIOR COURT	219.98	88
KENAI SUPERIOR COURT	84.09	151
KETCHIKAN SUPERIOR COURT	73.08	96
KOTZEBUE SUPERIOR COURT	79.55	134
NOME SUPERIOR COURT	68.12	149
PALMER SUPERIOR COURT	94.00	296

<sup>4</sup> E.g. Failure to report; failure to seek/maintain employment; unauthorized contact

<sup>5</sup> This data is drawn from the DOC release file data. Only individuals who entered DOC with a violation as their most serious charge on the day they entered are included. Individuals with a new charge AND a violation are not included if those were filed on the same day.

## Current Practice in Alaska

- PACE program incorporates swift and certain responses
  - PACE probation imposes swift, certain and proportional jail stays for higher-risk offenders who violate supervision conditions
    - Low-level sanction (e.g. failed UA): 1-3 days incarceration
    - Intermediate sanction (e.g. delayed/missed reporting): 4 – 15 days incarceration
    - Higher level sanction (e.g. absconding): 15 – 30 days incarceration
  - However, only applies to a small portion of offenders on community supervision
- For standard probation and parole, no system-wide framework for swift, certain, and proportional sanctions
  - Alaska law does not authorize field officers to respond to technical violations using administrative sanctions
    - ADOC policy does give field officers the authority to address minor violations administratively. However, the policy gives limited guidance to field officers in how they should respond to violations, what sanctions should be imposed, and in what time frame.
    - Some sanctioning processes are inconsistent with swift, certain, and proportionate principles, including long delays between the problem behavior and the response, and disproportionately long revocation sentences
- Alaska law does not limit the amount of time offenders can serve in prison on a technical revocation.

## Policy Options

- **Administrative Sanctions:** In order to improve public safety by holding offenders accountable and changing offender behavior, states have implemented reforms that respond to violations of conditions of supervision with swift, certain and proportional sanctions. Swift and certain sanctions have been shown to reduce violations and recidivism, resulting in fewer revocations to prison and reduced use of jail space for offenders awaiting revocation. Elements of an effective sanctioning process include:

- Develop a range of sanctions from lower to higher intensity and apply according to the frequency and seriousness of the violations
    - E.g. Sanction options can include: verbal warnings, increased reporting requirements, community service, substance abuse treatment, increased drug testing, curfews, electronic monitoring.
  - Communicate a credible and consistent deterrent threat.
  - Streamline procedures to allow for a swift response.
- **Administrative Incentives:** In order to change offender behavior and enhance individual motivation, some states have created a continuum of incentives to respond to positive behavior (compliance, meeting case plan goals, etc.) and round out the continuum of sanctions.
- Potential incentives include: reduced supervision level; reduced drug and alcohol testing; extended curfew; travel permits; verbal recognition by supervision officer; reduced fees; reduced community work hours; financial rewards (e.g.: bus tokens, movie passes); and earned compliance credits.
- **Limit Revocations for Technical Violations:** Responses that are swift, certain and *proportional* are more effective than those that are delayed, random and severe. To preserve prison space for the most serious offenders and respond more proportionately to non-criminal behavior, some states have placed caps on the length of time a probationer or parolee can be revoked to prison for a technical violation.

### **State Examples in Sanctioning**

#### *Missouri*

The Justice Reinvestment Act of 2012 authorized supervision officers to use administrative sanctions and incentives for both probationers and parolees.

- The range of sanctions include: electronic monitoring; increased supervision; day reporting center; written warning; victim impact statement; and random drug testing.
- The range of incentives include: reduced supervision level; reduced drug and alcohol testing; extended curfew; travel permits; verbal recognition by supervision officer; certificate of compliance; and earned compliance credits.<sup>6</sup>

#### *North Carolina*

The Justice Reinvestment Act of 2011 authorizes the use of administrative sanctions for technical probation violations in North Carolina. The legislation delegates the authority to

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<sup>6</sup> Mo. Rev. Stat. § 217.718

impose sanctions to probation officers, unless the court determines the delegation is inappropriate.

- The range of sanctions include: community service, increased supervision, random drug testing, substance abuse assessment and treatment, house arrest with electronic monitoring, educational or vocational skills development, and brief periods of confinement in jail in response to a violation.<sup>7</sup>

### *Georgia*

Legislation passed in 2012 authorized the Department of Corrections to impose graduated sanctions as an alternative to judicial modification or revocation of probation.

- The range of sanctions include: verbal and written warnings, increased restrictions and reporting requirements, community service and work crews, referral to substance abuse or mental health treatment or counseling programs in the community, increased substance abuse screening and monitoring and an intensive supervision program.<sup>8</sup>

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<sup>7</sup> N.C. Gen. Stat. Ann. § 15A-1343.2

<sup>8</sup> Ga. Code Ann § 42-8-153

## Focusing Resources (Limiting Probation Term Lengths)

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### Review of Research Principles

- Target the group of offenders with the highest risk of recidivism
  - Focus resources where they can have the biggest impact
  - Give offenders with the most risk factors the most supervision and access to the best programming and treatment
  - Violating this principle (targeting low-risk offenders) can actually *increase* recidivism
  
- Focus supervision and programming resources during the initial weeks and months following release from prison when violations and arrests are most likely to occur

### Relevant Alaska Data

- Average length of stay on community supervision up 13% (now 26.54 months)
  
- 39% of Probation/Parole population are low-risk
  
- Failure on supervision most likely to occur in first three months
  
- From court file sample<sup>9</sup>
  - Felons sentenced to average of 3.69 years of probation
  - Misdemeanants sentenced to average of 2.96 years of probation
    - Seventeen percent of misdemeanants sentenced to five or more years of probation

Misdemeanor Probation Sentences		
	N	%
Two years or less	95	38%

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<sup>9</sup> A random sample of 400 case files (usable N=310) from Anchorage, Juneau, Bethel, Fairbanks, and Nome Courts were selected and reviewed to examine pretrial releases conditions and sentence lengths. Data entry and analysis were conducted by Pew and the Alaska Judicial council.

Case files were reviewed and coded by Pew and ACJC staff to obtain information about bail conditions and probation sentence lengths.

Three years	98	39%
Four years	14	6%
Five years	41	16%
Seven years	2	1%
Ten years	1	0%

### **Current Practice in Alaska**

Probation terms in Alaska are statutorily limited to:<sup>10</sup>

- Up to 25 years for felony sex offenses
- Up to 10 years for all other offenses, including misdemeanors

### **Policy Option**

- **Reduce Maximum Term of Probation:** To focus scarce probation and parole resources on the highest risk offenders at the time they are most likely to re-offend or fail on supervision, reduce the maximum limit for a term of probation.

### **State Examples**

*Delaware:* Delaware limits the maximum term of probation as follows<sup>11</sup>:

- Violent Felonies: Two years
- Controlled substance offenses: 18 months
- All other offenses: One year

Exceptions: For sex offenses and violent felonies, term may be extended if court rules on the record that a longer period would enhance public safety. However, the total period of probation still cannot exceed the maximum term of commitment provided by law for the offense.

Under Delaware law, the term of probation can be extended up to 90 days past the limit for the purposes of treatment.

*Wisconsin:* Wisconsin limits the maximum term of probation as follows<sup>12</sup>:

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<sup>10</sup> A.S. 12.55.09

<sup>11</sup> Del. Code tit. 11 § 11-4333

<sup>12</sup> Wis. Stat § 973.09(2)

- Felonies: Three years or maximum length of confinement (whichever is greater)
- Higher level misdemeanors: Two years
- All other misdemeanors: One year

Exceptions: If offender is convicted of multiple crimes, term may be extended by 1 – 2 years (depending on number of crimes).

*Alabama:* Alabama limits the maximum term of probation as follows<sup>13</sup>:

- Felony: Five years
- Misdemeanor: Two years

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<sup>13</sup> Ala. Code. § 15-22-54