

Agenda: 11.19.15

Community Supervision Subgroup

Meeting #3

1. Review of Previously Agreed-Upon Policy Items

- Earned Compliance Credits
- Early Discharge
- Administrative Sanctions & Incentives
- Dual Supervision
- CRCs
- Use of Incarceration for Technical Revocations

2. Policy Items Needing Final Approval

- Discretionary Parole
- Probation Term Limits
- Focusing ASAP Resources

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

Review of Previously Agreed-Upon Policies

Earned Compliance Credits

- To reduce caseloads, focus supervision on offenders at the highest risk to reoffend, and incentivize compliance:
 - Statutorily establish a system of earned compliance that grants probationers and parolees one month credit towards their probation term for each month they are in compliance with the conditions of supervision.
 - Establish an automated time accounting system wherein probationers/parolees automatically earn the credit each month unless a violation report has been filed in that month.

Early Discharge

- To reduce caseloads, focus supervision on offenders at the highest risk to reoffend, and incentivize compliance with treatment conditions:
 - Statutorily require DOC to recommend early termination of probation or parole to the court/Parole board for any offender who has completed all treatment programs required as a condition of probation and is currently in compliance with all conditions of probation.
 - Amend statute to allow court to terminate probation early in cases where the sentence was imposed in accordance with a plea agreement under Rule 11.
 - Amend statute to remove requirement that offender serve two years on parole before being discharged.
 - Recommendation from Parole Board: Change from two years to six months
 - If restitution remains, require court or parole board to issue a restitution judgement converting remaining restitution to a civil judgement.
 - Require DOC to provide notification to victim when recommending early discharge, with opportunity for victim to give input at court/parole hearing.

Good Time for Electronic Monitoring

- To reduce caseloads, focus supervision on offenders at the highest risk to reoffend, and incentivize compliance:

- Allow offenders who are placed on electronic monitoring to qualify for good time credits.

Administrative Sanctions & Incentives

- To reduce recidivism and increase success rates on probation and parole through the use of swift, certain, and proportional sanctions and incentives:
 - Statutorily authorize the DOC to create a graduated sanctions and incentives matrix using swift, certain, and proportional responses and to use the matrix when responding to technical (non-criminal) violations of supervision.
 - Require field agents to be trained on principles of effective intervention, effective case management and how to properly target criminal risk factors with administrative sanctions and incentives.

Dual Supervision

- To eliminate confusing dual supervision practices:
 - For offenders who are on parole and probation at the same time, grant the Parole Board primacy when it comes to conditions of release and sanctions.
 - Dual supervision would technically continue (probation time would continue to toll), but only Parole board conditions would apply while offender is on parole, and only the Parole board would have authority to issue sanctions.
 - If offender has a residual term of probation to follow parole, the offender would be discharged to court supervision following the end of parole.
 - If offender had served at least one year of parole without violations or new charges, and was currently in compliance with conditions of parole, DOC would recommend to the court immediate early termination of probation at the point the parole term is successfully discharged.

Community Residential Centers (CRCs)

- To reduce recidivism and improve outcomes for offenders placed in CRCs:
 - Require CRCs to provide treatment (cognitive-behavioral, substance abuse, after care and/or support services) designed to address offender's individual criminogenic needs
 - Adopt admission criteria for CRCs that:

- Prioritize placement in CRCs for people who would benefit most from more intensive supervision and treatment, using the results of a validated risk and needs assessment
- Minimizes the mixing of low and high risk offenders

Revocation Caps for Technical Violations

- To preserve prison space for the most serious offenders and respond proportionately to non-criminal behavior, limit the use of prison as a sanction for technical violations:
 - Limit revocations to prison as a potential sanction for technical violations of probation and parole as follows:
 - First revocation: Up to 3 days
 - Second revocation: Up to 5 days
 - Third revocation: Up to 10 days
 - Fourth revocation & subsequent: Up to 10 days & referred to PACE program
 - If PACE not available in that region, judicial discretion up to 90 days.
 - These revocation caps would apply to offenders on both DOC and court probation/parole (felonies and misdemeanors).

Estimated Bed Impacts: 584 beds

- Require that probationers and parolees who are detained awaiting a revocation hearing for a technical violation of their community supervision be released OR after serving 3/5/10 days (depending on revocation number) unless new criminal charges have been filed.

Estimated Bed Impacts: 474 beds

Note about bed impacts:

- “Bed impacts” refer to the impact of a specific policy on the future prison population size (in this case – off the size of the prison population in 2024).
- They are drafts that will continue to change as the policies are refined.
- They can change when combined with other policies. When multiple policies are combined, they can either negate a portion of each other (i.e. two different policies can overlap in impact), or they can multiply the impacts of each other.

Related Policy Options – Previous ACJC Recommendations:

- **End Practice of Converting CWS into Jail Time:** In a vote on March 31, 2015, the Alaska Criminal Justice Commission RECOMMENDED that the Alaska Legislature amend AS 12.55.055, the Community Work Service (CWS) statute. Each year, hundreds of misdemeanor petitions to revoke probation are filed for failure to comply with the CWS portion of a judgment. (There were 494 such petitions in FY 2014.) In many of these PTR cases, the court ultimately converts unperformed CWS hours into jail. The specific statutory changes proposed by the Commission would direct courts to convert any unperformed CWS directed in a judgment to a fine – and not to jail time - once the deadline set and announced at the time of sentencing has elapsed.

Related Policy Options for Discussion (Proposed by Judge Rhoades):

- **Policy Option: End Practice of Incarcerating Indigent Offenders for Failing to Seek Treatment When No Affordable Treatment Options Exist**

Currently, if an offender is ordered to seek treatment following a referral from ASAP and does not seek or complete that treatment, he or she can be remanded to prison. In many cases, however, the offender is indigent and no affordable treatment options exist. To eliminate the use of incarceration as a sanction for an offender who is unable to afford treatment:

- Stipulate that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment.
- This recommendation would mimic the current statutory restriction on imprisoning an indigent offender for failing to pay restitution.

- **Policy Option: End Practice of Issuing Repeated Jail Sanctions for Failing to Participate in Programming**

The Anchorage court system has adopted an adjudication disposition model that precludes the use of repeated jail sanctions for failing to participate in programming. If an offender fails to participate in programming as directed, a PTRP is filed. If a jail sanction is issued, the condition is deleted. As a result, there are no longer multiple round of PTRPs filed for continuing to fail to participate in programming. To extend this practice to the rest of the state:

- Require that if a court opts to use jail as a sanction for failing to participate in programming, that requirement is subsequently no longer a condition of probation that an offender can be punished for not completing.

POLICY OPTIONS NEEDING FINAL APPROVAL

Discretionary Parole

Relevant Alaska Data

- On any given month in 2014, an average of 462 inmates were eligible for discretionary parole, and an average of 14.8 parole hearings were held. (Every offender who applies is entitled to hearing).
- Of the 178 individuals seen by the Parole Board in 2014, approximately 56% received discretionary parole.

Current Practice in Alaska

- Inmates who are eligible have the option to apply for discretionary parole; the process is not automatic.
 - 8 weeks prior to eligibility date, the inmate is notified and either fills out the application or signs a waiver stating that they do not wish to apply for parole
- Filling out the application requires significant effort from the inmate and especially the correctional officer working with the inmate.
- The Parole Board holds hearings at each facility on a rotating basis, visiting each facility at least twice per year.

Policy Option: Increasing Use of Discretionary Parole

To streamline the discretionary parole process to eliminate bureaucratic barriers to the use of discretionary parole and, potentially, to provide incentives for inmates to complete treatment programs in the institution:

Option 1: Establish Individual Case Plan with Presumptive Parole upon completion.

- At intake, for inmates who are eligible for discretionary parole, DOC will be required to:
 - Develop an individual case plan based, on the results of a validated risk and needs tool, to establish educational and treatment program the individual must complete in order to be eligible for discretionary parole.
- If the inmate is free of disciplinary action while incarcerated, successfully completes their required programming and treatment, has agreed to supervision conditions, and has an approved reentry plan, then they will be released at their initial parole date.
 - No board hearing necessary.

- If DOC reports that an inmate has not substantively complied with their case plan and/or has been subject to disciplinary action, the board is required to hold a hearing.
 - The Parole Board can order release or deny release and set a time for a subsequent discretionary parole hearing
- Any inmate not released at the time of the inmate's initial parole date is required to have a discretionary parole hearing at least every two years.

Option 2: Parole Board approves Individual Case Plan with Presumptive Parole upon completion.

- At intake, for inmates who are eligible for discretionary parole, DOC will be required to:
 - Develop an individual case plan, based on the results of a validated risk and needs tool, to establish educational and treatment program the individual must complete in order to be eligible for discretionary parole.
- The parole board must review and approve the inmate's individual case plan.
 - At that time, the Parole board has the option to require a discretionary hearing before release.
- If the inmate is free of disciplinary action while incarcerated, successfully completes their required programming and treatment, has agreed to supervision conditions, and has an approved reentry plan, then they will be released at their initial parole date.
 - No board hearing necessary unless the Board has previously required a discretionary hearing
- If DOC reports an inmate has not substantively complied with their case plan and/or has been subject to disciplinary action, the board is required to hold a hearing.
 - Board can order release or deny release and set time for subsequent discretionary parole hearing
- Any inmate not released at the time of the inmate's initial parole date is required to have a discretionary parole hearing at least every two years.

Option 3: Inmates receive an automatic hearing with presumptive parole if Individual Case Plan is completed.

- At intake, for inmates who are eligible for discretionary parole, DOC will be required to:
 - Develop an individual case plan, based on the results of a validated risk and needs tool, to establish educational and treatment program the individual must complete in order to be eligible for discretionary parole.
- At least 90 days before their initial parole eligibility date, the inmate is required to receive a hearing before the parole board.
- If the inmate is free of disciplinary action while incarcerated, successfully completes their required programming and treatment, has agreed to supervision conditions, and has an approved reentry plan, there is a statutory presumption that parole will be granted.

- That presumption can be overcome with a finding that release would endanger public safety

Recommendation from Parole Board: Add “or diminish seriousness of crime.”

- The next 90 days are used to prepare for transition back to community.
- Any inmate not released at the time of the inmate's initial parole date has a discretionary parole hearing at least every two years.

Option 4: Automatic Parole hearings for all inmates eligible for discretionary parole.

- All inmates are required to receive a hearing before the Parole board at least 90 days before their initial parole eligibility date.
 - DOC/Parole Board is responsible for putting together packet for inmate.
- Any inmate not released at the time of the inmate's initial parole date has a discretionary parole hearing at least every two years.

Limiting Probation Term Lengths

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 severe 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) over past decade.

- 39% of probation/parole population are classified as low-risk.

- Failure on supervision most likely to occur in first three months.

- From an AJC study of Criminal Recidivism in Alaska (2011):

Figure 7: Months to first arrest, conviction and remand after returning to community felons 2008

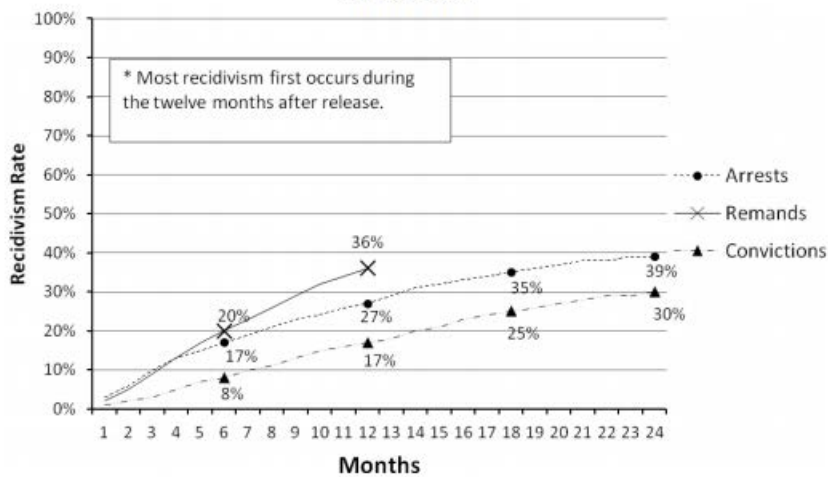
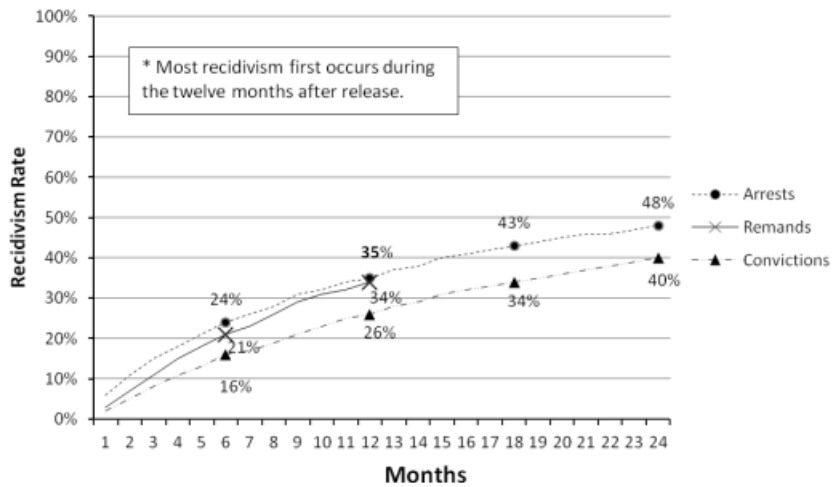


Figure 8: Months to first arrest, conviction and remand after returning to community misdemeanants 2008



- Re-arrest rates within one year following release, according to the type of underlying felony offense, were:
 - Violent offenses 36%
 - “Other” offenses 36%
 - Property offenses 34%
 - Drug offenses 24%
 - Felony driving and other alcohol-related offenses 21%
 - Sexual offenses 18%

➤ From court file sample:¹

- Felons sentenced to average of 3.69 years (44.28 months) probation.
- Misdemeanants sentenced to average of 2.96 years (35.52 months) probation.

Seventeen percent of misdemeanants sentenced to five or more years (60 months) of probation.

Current Practice in Alaska

Probation terms in Alaska are statutorily limited to:²

¹ 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.

² A.S. 12.55.09

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

Policy Option: Limiting Probation Term Lengths

To better focus scarce probation and parole resources on offenders at the time they are most likely to re-offend or fail, cap probation term limits at:

Option 1:

- Felony Sex Offenders: 3 years
- Other Felonies: 2 years
- Higher level-misdemeanor (2nd DUI, DV assault): 2 years
- Other Misdemeanors: 1 year

Option 2:

- Felony Sex Offenders: 5 years
- Other Felonies: 3 years
- Higher level-misdemeanor (2nd DUI, DV assault): 2 years
- Other Misdemeanors: 1 year

Focusing ASAP Resources

Relevant Data

From July 2014 – June 2015, ASAP received 7243 referrals, 57% (4132) of which were statutorily-mandated referrals (DUI/OUI, Refusal, MCA).

The remaining 3111 were referrals that were not mandated by statute, for changes include:

Alcohol to Dry area	False Info
Assault + DV Assault	Forgery
Family Violence	Furnish liquor to minor
Child Neglect/Abuse	Harassment
Control Substance	Import alcohol
Conceal Merchandise	Indecent Exposure
Criminal Misch./Trespass	Leaving scene of crash
Disorderly Conduct	Malicious Dest. Of Property
DWLS/DWLR etc.	MIW
Drunk Person on License Premises	MICS
Destroy Communication Equip.	Under 21 on Lic. premises
Discharge of Firearm	Resisting
Eluding	Theft
Endanger Welfare of Child	Trespass
Escape/attempted	Vio. Cond. of Release
Fail to Obey Citation	
Fail to register as sex offender	

➤ Policy Option: Focus ASAP Referrals on Highest Risk Offenders

To focus ASAP resources on offenders at the highest risk of taking up future prison resources and to increase the effectiveness of the ASAP program:

Option 1:

- Statutorily limit the conviction types that courts can refer to ASAP for assessment as a condition of sentencing to those for which referral is currently mandated (DUI, Refusal, MCA).
- Require ASAP to expand the services it provides to include:
 - Use of a validated risk assessment screening tool for criminogenic risk
 - Performing a brief behavioral health screening
 - Referrals to treatment programs designed to addressing high priority criminogenic needs beyond just substance abuse (e.g. criminal thinking)

- Require ASAP to provide increased case supervision for a limited number of moderate to high risk offenders, including:
 - Tracking attendance/completion of court-mandated treatment
 - Working with local law enforcement to expedite warrant/arrest process for probationers not in compliance with treatment orders
 - Highest risk offenders would be prioritized for case supervision
- The number of offenders who could be supervised would be limited by resource availability. Assuming no additional resources, more intensive case supervision would only be available in Anchorage and would be limited to approximately 250 offenders.

Option 2:

- Require that an offender receive a risk and needs screening from ASAP before the court orders a referral to ASAP for treatment as a condition of sentencing
 - ASAP could perform a brief screening (e.g. LSI-Screening Version) for risk as well as for need for substance abuse treatment
- Statutorily limit which offenders can be referred to ASAP for treatment as a condition of sentencing:
 - Convicted of DUI, Refusal and/or MCA; and
 - Screened by ASAP as being moderate to high risk and in need of treatment
- Offenders who are screened out by ASAP could still be referred to an alcohol education course.
 - Compliance with this would be monitored by the prosecutor, not ASAP
- Require ASAP to expand the services it provides to include:
 - Use of a validated risk assessment screening tool for criminogenic risk
 - Performing a brief behavioral health screening
 - Referrals to treatment programs designed to addressing high priority criminogenic needs beyond just substance abuse (e.g. criminal thinking)
- Require ASAP to provide increased case supervision for a limited number of moderate to high risk offenders, including:
 - Tracking attendance/completion of court-mandated treatment
 - Working with local law enforcement to expedite warrant/arrest process for probationers not in compliance with treatment orders
 - Highest risk offenders would be prioritized for case supervision

- The number of offenders who could be supervised would be limited by resource availability. Assuming no additional resources, more intensive case supervision would only be available in Anchorage and would be limited to approximately 250 offenders.
- **Policy Option: Expand Funding to Provide Substance Abuse Treatment for Indigent Offenders**

To reduce the likelihood that high-risk misdemeanants in need of substance abuse treatment will re-offend:

- Expand funding to provide substance abuse treatment for indigent offenders who are:
 - Referred to ASAP by the court
 - At a moderate to high risk of re-offending and in need of substance abuse treatment, as determined by a validated risk and needs assessment