

When Offenders Break the Rules

Smart Responses to Parole and Probation Violations

Public Safety Policy Brief

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Executive Summary

The incarceration of offenders who break the rules of their probation or parole is one of the chief reasons for the rapid growth of prison and jail populations and costs. Over 230,000 parole violators were admitted to prison in 2005, accounting for more than one-third of all admissions.¹ Half the U.S. jail population is the consequence of failure under community supervision.²

Some of these offenders are returning to lock-ups for committing new criminal acts. Others are revoked to prison for violations of their parole and probation conditions, non-criminal offenses such as missing appointments or failing drug tests. A growing body of analysis and experience suggests a strategy that can boost the success of people on parole and probation, keeping them crime- and drug-free and thereby saving more prison beds for violent, serious and chronic offenders.

Some states return a high percentage of probationers and parolees to prison for breaking the rules of their release; others do not. The decision to seek revocation of community supervision can be inconsistent, the result of wide variability in staff members' interpretation of when revocation is appropriate. Revocation rates also vary widely within a single state—high in one region, much lower in another—and even among judges and parole officers in the same district. This raises questions about even-handedness and fundamental fairness. It also suggests a significant opportunity to be more strategic in using the power to revoke release.

A Shifting Perspective. Most offenders occasionally violate some condition of their community supervision. A common violation involves the use of illicit drugs or alcohol, since the standard conditions of parole or probation usually require addicted offenders to stay clean and sober, or to participate in treatment that may be unavailable or difficult to access. Unskilled and uneducated offenders must be continually employed, seeking

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The Pew Charitable Trusts
1025 F Street, NW Suite 900
Washington, DC 20004-1409
www.pewtrusts.org

ABOUT THE PROJECT

Launched in 2006 as a project of Pew's Center on the States, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. Our Pew Center on the States identifies and advances effective policy approaches to critical issues facing states.

ABOUT THIS BRIEF

This document is part of a series of primers for policy makers about the critical choices they face in developing strategies to improve the public safety return on taxpayer dollars. For more on this topic, see our companion publications—key questions for policy makers and a case study of parole violator reforms in Texas—and visit our website at www.pewpublicsafety.org.

ABOUT THE AUTHORS

This document was written by Peggy Burke in collaboration with Adam Gelb and Jake Horowitz. Ms. Burke is a Principal with the Center for Effective Public Policy where she directs projects in the areas of offender transition and reentry, responses to parole and probation violations, court innovation, offender classification, sentencing policy, and strategic planning. Mr. Gelb is Director of, and Mr. Horowitz is a Senior Associate on, the Public Safety Performance Project.

ABOUT THE REVIEWERS

This document was peer reviewed by Judith Sachwald and Dale Parent. Ms. Sachwald was most recently the Director of the Maryland Division of Probation and Parole. Mr. Parent recently retired from Abt Associates, Inc., where for the past 20 years he conducted research and planning on sentencing alternatives, performance-based standards in criminal justice, and prisoner reentry.

While these experts have screened the report for methodology and accuracy, neither they nor their current or former organizations necessarily endorse its findings or conclusions.

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employment or attending school. Indigent offenders must have a stable residence, pay court fees, fines and restitution, and support all dependents.

Innovative judges and correctional administrators believe that many individuals who have violated the conditions of their release can be managed safely and cost-effectively in the community rather than returned to expensive prison cells. They increasingly are relying on a strategic approach that includes incarceration of high-risk offenders who present an imminent danger of reoffending and a problem-solving combination of penalties, rewards and services to those who pose less risk to public safety. The strategy seeks to protect the community, to hold violators accountable with interventions that address the reasons for the violations, and to reduce reincarceration and the resulting costs to taxpayers. 

Defining the Issue

Federal and state governments over recent years have invested significant and growing funds in expanding corrections systems. From 1977 to 2003, state and local expenditures for corrections increased by 1,173 percent, far outstripping growth rates for education (505 percent), hospital and health care (572 percent), interest on debt (577 percent), and public welfare (766 percent).³ Between 1982 and 2003, state correctional expenditures increased 550 percent from \$6 billion to \$39 billion, far above the 184 percent increase that would have been expected from inflation alone.⁴ In 2005, the average annual operating cost per inmate nationwide was estimated to be \$23,876, although costs varied greatly by state, region, and security level of inmates.⁵ Some states have been able to reduce per capita costs in the very recent past while other states have experienced increases. In general, most analysts expect continuing increases in per capita corrections costs as the inmate population ages and as corrections administrators find it harder to

squeeze additional efficiencies out of their budgets.

Increasing costs primarily reflect the growth in prison and jail populations nationwide. Between 1980 and 2006, the prison population of the U.S. more than quadrupled to 1.55 million.⁶ Not only have the absolute numbers of inmates increased, but the rate of incarceration has risen dramatically as well. Between 1995 and 2006, the incarceration rate grew from 601 to 750 jail or prison inmates per 100,000 citizens—a 25 percent increase. At mid-year 2006, one in every 133 U.S. residents was in prison or jail.⁷

The population of individuals who are at risk of violating the terms of their release—and being sent to prison or jail—is large and growing. At year-end 2001, there were 312 state parolees per 100,000 adult U.S. residents, up from 271 in 1990 and 123 in 1980. In absolute terms, 656,320 releases from state and federal prison were reported in 2003.⁸ For state prison releases, this was a 50 percent increase since 1990.⁹ The probation population is even larger, and growing. In 2005, there were 4.2 million people on probation in the community, up from 3 million in 1995.¹⁰



Violators: A Leading Driver of Prison Population Growth

The chief cause of the growth in incarceration has not been higher crime rates, but rather stricter sentencing and release policies put in place by all three branches of government. Judges are more likely to sentence felons to prison for longer terms. Legislatures have passed more mandatory minimum sentences, especially for drug offenders. And parole boards have held inmates in prison longer before deciding to release them. They also are more likely than in the past to revoke individuals on parole and return them to prison.¹¹

An analysis of data over the past 25 years finds an important shift in the source of population growth. From 1980 to 1992, crime trends and the number of commitments to prison per arrest were most significant in driving prison populations. In contrast, data from 1992 to 2001 show a significantly greater influence from longer time served in prison, including time served as a result of recommitment for

parole violations.¹² In fact, leading criminal justice scholars observe that shifts in practices with respect to parole release and reincarceration for parole violations accounted for 60 percent of the increase in the nation's prison population between 1992 and 2001.¹³ The number of parolees revoked and sent to prison in 2005 was 232,000, up from 133,900 in 1990.¹⁴ The same is true among probationers: in 2004, 330,000 probationers were revoked and sent to jail, up from 222,000 in 1990.¹⁵

Many of those revoked to prison have been convicted of new crimes, either misdemeanors or felonies. And some cases that could have been handled as new criminal prosecutions are, instead, processed administratively as parole violations, often to avoid the delays and costs that attend new criminal court cases. A significant number of returns, however, are solely for violations of the conditions of probation or parole—acts, such as missing treatment sessions, which otherwise are not crimes. In some states, these so-called “technical” or “condition” violators account for more than half of all those returned to prison.¹⁶

Condition Violation or New Crime?

Sometimes the criminal justice system processes new arrests of people on probation or parole as condition violations rather than new crimes. By revoking an offender's release through the administrative violations process, prosecutors and judges avoid further clogging the courts with new criminal cases, while also achieving the goal of removing the offender from the community.

Some analysts suggest that if there is new criminal behavior it should be charged and prosecuted in all cases. Anything less holds the determination of guilt to a lower burden of proof, and could result in more time served for revocations than would result from prosecution and sentencing by a court. Others argue that revocation is a quicker and more appropriate way to sanction lower-level offenses without burdening court dockets.

Available statistics do not paint a clear picture of the degree to which returns to prison for probation and parole violations involve solely breaking the rules of supervision or also involve significant new criminal behavior. Many analysts believe that about half of the condition violators sent to prison were revoked for new criminal acts. But the actual figures can be determined only by studies within individual states.

Parole vs. Probation

Probation and parole are very similar in that they both involve supervision of offenders in the community and require them to comply with a set of rules or face incarceration. The key differences between the two are in how they are ordered and when they typically occur. **Probation** is ordered by a judge in court at the time of sentencing instead of a prison term. **Parole**, on the other hand, involves supervision in the community after serving time in prison. The timing of release is, in most cases, determined by the offender's original sentence and sometimes credit for satisfactory behavior (“good time credit”). In a small percentage of cases, parole boards determine the timing of release. Once on parole, however, parole boards set conditions and make decisions as to revocation of parole.

In some states, judges may order “split sentences,” a period of probation supervision to be served after release from prison or jail.

Much of this briefing is based on parole research because more is known nationally about this population than about probationers. There is only one parole board in each state, making parole data collection much more simple than gathering probation data, which in many states is kept by local courts. Although the impact of probation violators on prison populations is hard to quantify, these violations have some of the same effects on prison growth and public safety as do parole violations. Several jurisdictions across the nation have focused on developing a more structured and strategic approach to probation violations. Most of the analysis and many of the recommendations in this briefing can be applied to both populations.



Types of Violations

Offenders placed on probation by a court or on parole by a paroling authority must abide by a set of rules, or conditions of supervision, while they are in the community. There are two types of conditions:

- **General conditions** that apply to all offenders, such as obeying all laws, abstaining from alcohol and drug use, maintaining employment, and reporting regularly to the probation or parole officer. While these are common requirements, general conditions of supervision vary among the states and can differ among court districts within a state.
- **Special conditions** that are directed toward individual offenders and the risks they pose, such as requirements to attend treatment, submit to drug testing, avoid certain places such as bars or areas where children congregate, or stay away from certain people such as prior victims. Courts and parole boards often add up to a dozen special conditions to an offender's list of requirements.

Taken together, the general and special conditions are intended to help monitor offenders, keep them away from risky situations, and link them with resources that will reduce the chances of recidivism. They also define a range of expectations that, should offenders fail to comply, can result in punishment in the community or return to prison. When an offender breaks the rules, it is often called a "technical" or condition violation.

If current trends continue, states are likely to see increasing numbers of parole and probation violators admitted to prison. Those violators who could be managed in the community tie up prison beds that could be used for more dangerous offenders, which risks public safety and hikes correctional costs.

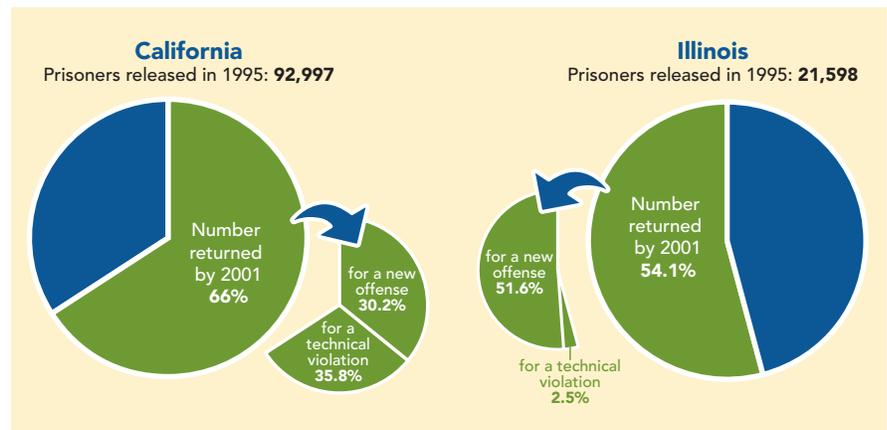
Revocation Rates Vary Widely Among States

Research on releases and recommitments to prison in California and Illinois shows that different policies and practices result in radically different rates at which violators are returned to prison.¹⁷

Based on a study of all prisoners in those states released in 1995 and tracked through 2001, the percent of released prisoners reincarcerated for new crimes ranges from 30 in California to 52 in Illinois. (See chart.) The percent of released prisoners who are reincarcerated for violations of parole during that same time period ranges from 2.5 percent in Illinois to 35.8 percent in California. Reccommitments for parole violations per 100 releases reached a high of 209

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in California, where more than half of all released prisoners are recommitted more than once during their parole period. Remember that paroling authorities have discretion about whether to reincarcerate an offender guilty of a technical violation, or to impose an intermediate sanction in the community. These statistics demonstrate that the choices states make in responding to violations of parole vary widely and those choices have enormous implications for prison populations, costs and public safety.





Current Practice: Three Approaches

Experience from work on violations by the National Institute of Corrections (NIC), an agency of the U.S. Department of Justice, indicates that it is typical for 75 to 80 percent of parolees to be, at one time or another, in violation of some condition of their supervision.¹⁸ But the prevalence of violations should not hide the fact that they vary widely in terms of severity and risk to the community.

States have developed three broad approaches to handling these violations. They can be characterized as unstructured, prescriptive and strategic.

◆ **Unstructured.** When NIC began studying probation and parole violation practices in the late 1980s,¹⁹ it became clear that there was very little policy, clear sense of purpose, or specific criteria that guided staff in decisions about how to respond to rule violations. Revocation rates varied dramatically among line officers, supervisors, and regions within the same state—the consequence of a diffuse network of unstructured decisions. While there has been no comprehensive research that catalogs the details of states' approaches to violations, experience on a range of national technical assistance efforts supported by NIC indicates that while a number of states are attempting to be more strategic in responding to violations, most practice remains relatively unstructured in this regard.

◆ **Prescriptive.** At the other extreme is an approach that prescribes in law or regulation which violators must or cannot be brought to revocation

hearings or actually revoked to prison. There is discussion in some states about prohibiting recommitment to prison as a result of a probation or parole violation. Such an approach can limit the ability to quickly remove offenders from the street when they present an imminent risk, in effect telling supervision agencies to wait until a crime is committed to take action to protect the community.

Overly-prescriptive limits on revocations also remove the ability to incarcerate violators who repeatedly and blatantly refuse to comply with requirements for treatment or other conditions designed to reduce their risk of reoffending. For example, an offender might be revoked if he had a history of domestic violence and is found contacting a victim he was prohibited from contacting as a condition of supervision. An offender who has been assessed as high risk, particularly because of his criminal associates, could be revoked for being in the company of gang members who were his former co-defendants.

◆ **Strategic.** As early as 1997, NIC-sponsored work found that revocation rates could be reduced without increases in new crime.²⁰ NIC's recent work in three states helped cut the percentage of total caseloads revoked to prison for parole violations and decreased the percentage of admissions to prison as a result of violations with no corresponding increase in new criminal behavior among those supervised.²¹ Encouraged by such results, parole and probation agencies are beginning to adopt similar strategies, developing tools and policies that help determine which violators should be taken off the street and which can be held accountable

through sanctions in the community.

This third approach to parole violations may be characterized as strategic because it includes a clear definition of desired outcomes, corresponding policies and tools, and measurement of performance. This approach has its roots in the work NIC conducted for many years on "structured decision making" for parole release and supervision.²²

The implications for public safety are promising. If violators are judged according to their risk of reoffending, with priority placed on quick reimprisonment in high-risk cases, then safety can be enhanced. At the same time, if violations by offenders having difficulty with substance abuse, mental health, and similar issues can be identified for problem-solving interventions that prevent future criminal behavior, then community safety can be even more effectively enhanced, and at lower cost than revocation and reincarceration.

Elements of a Strategic Approach

The critical first step for states interested in better handling of violations is a careful analysis of current policies and practices. These policies and practices can be designed to enhance the likelihood of successful completion of supervision, with violations becoming used as an opportunity to intervene with offenders and redirect their behavior.

Key elements of this strategic approach include the following:



Collaboration Between Releasing Authority and Supervision Agency.

Typically, the decision-maker with authority over release or revocation—the judge or the parole board—is separate from the agency responsible for actually supervising offenders on probation or parole. Yet because their responsibilities are so intertwined, it is difficult to conceive of a “strategic” approach to violations without the close collaboration of these two entities. In those states where such strategic approaches have been developed, there has been a conscious effort to involve the court or releasing authority and the supervision agency in defining and implementing changes.

Clarifying the Goals of

Supervision. Correctional policy over the past decade has increasingly recognized that the successful completion of community supervision—with no new offenses and no new victims—is in the best interests of public safety. The three most important goals of supervision are protecting the public, holding

offenders accountable for their actions, and helping them become productive, law-abiding citizens. This balanced mission differs markedly from the notion that the job of probation and parole officers is to monitor and revoke individuals who are not in compliance with the conditions of their release. Identifying agency goals, establishing clear policies, communicating expectations to staff, and providing options short of revocation to prison are the important elements of this strategy.

Good Risk Assessment

Tools. Supervision agencies need to understand offender risk to make strategic decisions about how to respond to specific violations. States that develop, implement, maintain and evaluate research-based risk assessment tools improve their ability to make sound decisions in individual cases and at the policy level. These tools should be so-called “third generation” instruments that include both “static” factors—things about the offender that can’t be changed, such as their prior criminal records and age at first arrest, and “dynamic” factors—characteristics

that can be changed and that research has identified as chief drivers of criminal behavior, such as low self-control and substance abuse.

Structured Discretion. Parole and probation supervision staff need discretion so they can respond appropriately to different situations. On the other hand, clear policies that guide staff, particularly as to when revocation should be pursued, help agencies pursue their public safety and fiscal goals. Many agencies are requiring higher levels of approval to issue a warrant or begin the revocation process. These include supervisory approval and the use of centralized “warrant units” that review requests and assure consistency and adherence to policy.

Graduated Responses. Violations vary in terms of severity and the risk they represent to the community. Supervision agencies are beginning to craft policy and garner resources that support front-line officers with a continuum of practical, community-based sanctions. Missing a meeting with the probation officer might result in imposition of community service hours, and repeated failures to comply with rules could lead to placement of the offender in a day reporting center.

Swiftness and Certainty. In addition to being scaled according to the severity of the offense and the risk of the offender, sanctions for probation and parole violations should be delivered as certainly and swiftly as possible. Sanctions lose their deterrent impact if they happen arbitrarily or too long after the violation has occurred. Courts and parole boards need to construct procedures that minimize paperwork and speed the imposition of

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sanctions. Some mechanisms, such as granting sanctioning authority to agency officials or hearing officers, require legislative permission.

Positive Reinforcement. One of the critical lessons emerging from research is that the motivation of offenders to change is a critically important factor in their likelihood of avoiding return to crime. Parole and probation staff have many opportunities to affect motivation, and one of the significant tools that staff have is positive feedback.²³ Agencies have focused on the use of incentives for positive behavior, such as certificates of completion when offenders complete programs, reductions in restrictions, and early termination of supervision.

Condition and Supervision Strategies. A violation may be an indication of substantial risk and trigger a decision to remove an offender quickly from the community. Or it may be an opportunity to reinforce expectations, hold offenders accountable through community-based sanctions, and to connect offenders with needed services and treatment. Supervision should be targeted by risk, reserving interventions and monitoring for higher risk offenders. Lower risk offenders can be managed with a limited set of conditions and considered for early discharge. The alignment of judicial and parole board practices on setting conditions with this overall strategic approach to violations also is critical. The supervision of higher risk offenders must incorporate treatment programs that have been demonstrated to reduce recidivism.²⁴

Community Resources. Many violations of parole and probation involve relapses into drug abuse,

difficulties finding or keeping a job, and the like. Agencies without a continuum of sanctions and services to address these situations will deliver either a slap on the wrist or revocation to prison, neither of which provides a level of accountability proportionate to the violation.

Action Steps for Policymakers

As growing numbers of probation and parole failures push prison populations beyond capacity, communities and policy makers are beginning to explore remedies. Research and experience suggest some key steps that policy makers in all three branches of government can take to ensure their state's parole and probation violations process is working effectively.

First, they can determine if their state has adopted an unstructured, prescriptive, or strategic approach to violations. If it is not a strategic approach, diagnose the statutory, funding or managerial obstacles that stand in the way of reform. A strategic framework will:

- ▶ Promote tailored responses to violations that improve public safety, offender accountability, and prudent use of resources.
- ▶ Mandate and fund sound, research-based assessments of risk that inform decision making; and
- ▶ Mandate, fund and organize community-based sanctions and resources that ensure a continuum of sanctions short of incarceration.

Policymakers should expect correctional agencies to:

- ▶ Articulate successful completion of supervision as a goal in service of community safety;
- ▶ Advance an agency culture that supports a strategic approach to parole violations;
- ▶ Routinely measure and report rates of successful completion of supervision; and
- ▶ Design and implement a policy framework for revocations that includes graduated responses based on offender risk and violation severity and allows probation and parole agencies to impose those responses as quickly as possible.

By adopting more strategic approaches to probation and parole violations, states will better protect public safety by reducing recidivism, hold offenders accountable to the victims and communities they have harmed, and control the costs of their corrections systems. 

Additional information and guidance on these issues can be found at

www.paroleviolationsrevisited.org, a resource developed by the Center for Effective Public Policy with the support of the National Institute of Corrections. This web site guides policy makers through a process of assessing and reshaping their approach to violations in collaboration with other key stakeholders.



Notes

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