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Federal PROBATION

*a journal of correctional
philosophy and practice*

Conditions of Supervision in Federal Criminal Sentencing: A Review of Recent Changes

By Stephen E. Vance

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

Conditions of Supervision in Federal Criminal Sentencing: A Review of Recent Changes

*Stephen E. Vance, Senior Attorney¹
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I. Introduction

IN LATE 2016, several changes related to the conditions of probation and supervised release in federal criminal sentencing went into effect. These were (1) revisions to the national judgment forms that list the conditions imposed by the sentencing court; (2) the release of a public document on the conditions of supervision as a resource for the courts, criminal justice practitioners, and defendants; and (3) changes to policy guidance for probation officers on the recommendation and implementation of the conditions.

These changes were the result of the most exhaustive review of the conditions since the Sentencing Reform Act of 1984 went into effect, which was prompted by several developments. First, in recent years there have been an increasing number of appellate court opinions raising concerns about the conditions. Additionally, individual federal judicial districts have reacted to these opinions by adopting a wide variety of practices for the conditions' wording and procedures. Finally, national stakeholders have expressed interest in re-examining the conditions and providing more information to assist the courts and parties with applying conditions that satisfy legal requirements. This article describes the developments that led to the recent review and changes, provides an overview of the review process, and summarizes the specific changes.

II. General Legal Framework

Defendants sentenced to federal probation or supervised release are required by statute to be supervised by a probation officer "to the degree warranted by the conditions specified by the sentencing court."² The conditions of supervision set the parameters of supervision by the probation officer and establish behavioral expectations for defendants. They also assist in satisfying the probation officer's statutory duty to keep informed of, report to the court about, and bring about improvements in the defendant's conduct and condition.³

² 18 U.S.C. § 3601. United States probation officers also supervise persons released on parole or mandatory release by the U.S. Parole Commission or military authorities. The Parole Commission has a direct policy and decision-making role in the supervision of those under its jurisdiction. Probation officers are required to follow the Parole Commission's rules relating to supervision, and the Parole Commission has the responsibility and authority for all decisions relating to the imposition and modification of conditions of release and for the revocation of parole supervision.

³ See 18 U.S.C. § 3603 (directing a probation officer to, among other requirements, "instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions"; "keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court"; and "use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition.").

Violations of conditions may lead to a variety of court responses, including modification of the conditions and revocation of probation or supervised release.⁴

When imposing a sentence of probation or supervised release, the court is statutorily required to impose certain "mandatory conditions."⁵ The court may also impose additional "discretionary conditions" when certain requirements are met.⁶ Specifically, the court may impose discretionary conditions to the extent that they: (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and applicable statutory sentencing purposes⁷; (2) involve only such deprivations of liberty or property as reasonably necessary for the applicable statutory sentencing purposes⁸; and (3) are consistent with any

⁴ See 18 U.S.C. §§ 3563, 3565, and 3583.

⁵ 18 U.S.C. §§ 3563(a) and 3583(d). Depending on the nature of the conviction, these conditions include not committing another crime, not unlawfully possessing a controlled substance, submitting to drug testing, sex offender registration, cooperating with collection of DNA samples, and domestic violence counseling.

⁶ 18 U.S.C. §§ 3563(b) and 3583(d).

⁷ For supervised release cases, these sentencing purposes are: (1) deterrence, (2) protection of the public, and (3) providing needed correctional treatment to the defendant. 18 U.S.C. §§ 3583(d)(1) and § 3553(a)(2)(B)-(D). For probation cases, these sentencing purposes are the same as in supervised release cases and also include reflecting the seriousness of the offense, promoting respect for the law, and providing just punishment for the offense. 18 U.S.C. §§ 3563(b) and 3553(a)(2).

⁸ For supervised release cases, conditions must involve "no greater deprivation of liberty than is

¹ The author would like to thank John Fitzgerald and Carrie Kent for their comments and suggestions when developing this article.

pertinent policy statements issued by the Sentencing Commission.⁹

Discretionary conditions of supervision are further divided into “standard” and “special” conditions. Standard conditions are those that have been established by policy of the Judicial Conference of the United States or policy statements of the United States Sentencing Commission as applicable to all sentenced defendants.¹⁰ Most of the standard conditions imposed in federal criminal sentencing are similar to those in state jurisdictions.¹¹ Special conditions provide for additional restrictions, correctional interventions, monitoring tools, or sanctions as necessary to achieve the

reasonably necessary” for the purposes of deterrence, protection of the public, and providing needed correctional treatment to the defendant. 18 U.S.C. §§ 3583(d)(2) and 3553(a)(2)(B)-(D). For probation cases, they must “involve only such deprivations of liberty or property as are reasonably necessary” for the purposes of deterrence, protection of the public, providing needed correctional treatment to the defendant, and promoting respect for the law, and providing just punishment for the offense. 18 U.S.C. §§ 3563(b) and 3553(a)(2).

⁹ 18 U.S.C. § 3583(d)(3).

¹⁰ Standard conditions are basic behavioral expectations for the defendant and minimum tools required by probation officers to adequately monitor the conduct and condition of all defendants under supervision. The expectations set by these conditions include avoidance of risk-related factors and the strengthening of prosocial factors. The standard conditions allow officers to employ basic supervision strategies such as requiring the defendant to report to the probation officer as directed, to provide notification of changes in residence or employment, and to seek permission to travel outside of the federal judicial district.

¹¹ See Travis, L. and Stacey, J. “A half Century of Parole Rules: Conditions of Parole in the United States, 2008.” *Journal of Criminal Justice*, at 604 (2010) (“The most common conditions . . . imposed in at least forty jurisdictions were: comply with the law, restrictions on changing residence, prohibition on weapons possession, requirement of regular reporting, restrictions on out of state travel, allowing home and work visits by the parole officer, and restrictions on possession/use of controlled substances. . . . Other conditions imposed in at least three-quarters of the jurisdictions . . . require parolees to maintain employment or educational program participation, report any arrest, comply with medical/drug testing, make a ‘first arrival’ report (making contact with the supervising officer soon after release from prison), and pay fees and restitution, and prohibitions against contact with undesirable associates. The remaining conditions imposed in over half of the jurisdictions included obeying the instructions/directions of the supervising officer, controls on the consumption of alcohol, and avoidance of undesirable associates or locations.”).

purposes of sentencing in the individual case.¹²

III. Roles of Federal Judiciary Entities in Developing and Implementing Conditions

The federal judiciary, including the probation and pretrial services system, has a highly decentralized structure involving numerous entities at the district and national levels. Each district court in the 94 federal judicial districts has the authority to issue local judgment forms and policies. The judgment forms include both mandatory and standard conditions of supervision as well as space for the sentencing court to list any special conditions. Each probation or pretrial services office, with the approval of the chief judge of the district, is responsible for developing local probation office policies, including those related to the recommendation and implementation of conditions by probation officers.

Within this decentralized structure, there are four national judiciary entities with policy and/or administrative responsibility related to the conditions of probation and supervised release. First, the Judicial Conference of the United States was created by Congress in 1922 to make policy for the administration of the federal courts, including the probation and pretrial services system.¹³ It operates through a network of policy advisory committees. One of the committees, the Criminal Law Committee, reviews issues relating to the administration of the criminal law and oversees the federal probation and pretrial services system.¹⁴ Among the national committees, it has primary jurisdiction over the content of the national judgment forms used in criminal proceedings. It has had an active and ongoing role in developing, monitoring, and

¹² The most common special conditions impose restrictions on location, movement, and/or associations (e.g., community confinement, home confinement); interventions (e.g., substance abuse or mental health treatment, financial counseling); additional monitoring tools (e.g., substance abuse testing, financial disclosure); or sanctions (e.g., community service). Other specifically crafted conditions may be imposed to address particular types of risks or needs in the individual case.

¹³ The Judicial Conference is directed by statute to “submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business.” 28 U.S.C. § 331.

¹⁴ The meetings of the Criminal Law Committee are attended by representatives from the Sentencing Commission, the Department of Justice, the Bureau of Prisons, the Federal Defenders, and the U.S. probation and pretrial services system.

recommending revisions of the conditions of supervision in the national judgment forms for decades. The Criminal Law Committee also has primary jurisdiction over program policies regarding the recommendation and implementation of conditions by probation officers; these policies are contained in the *Guide to Judiciary Policy*.

Second, the Administrative Office of the U.S. Courts (“the Administrative Office”) is responsible for developing national judgment forms and program policies for consideration by the Judicial Conference and its Criminal Law Committee.¹⁵ The process for the development of judgment forms and policies normally involves consultation with experts from individual districts, such as judges and probation officers, and providing “exposure drafts” to the districts and national stakeholders for their feedback. Policies endorsed by the Criminal Law Committee are then forwarded to the Judicial Conference for final approval.

Third, the United States Sentencing Commission is directed by statute to promulgate general policy statements regarding application of the federal sentencing guidelines or any other aspect of sentencing that in the view of the Sentencing Commission would further the statutory purposes of sentencing, including the appropriate use of the conditions of probation and supervised release.¹⁶ It has implemented this directive in Section 5B1.3 (Conditions of Probation) and Section 5D1.3 (Conditions of Supervised Release) of its *Guidelines Manual*. Finally, the Federal Judicial Center provides education, training, and research services to the federal judiciary, including judges and probation officers.¹⁷

IV. Developments Prompting Review of Conditions

The recent review of the conditions of probation and supervised release was prompted in large part by a series of opinions from the United States Court of Appeals for the Seventh Circuit questioning the wording of certain standard and special conditions and

¹⁵ Congress established the Administrative Office of the U.S. Courts in 1939 to provide administrative support to federal courts. See 28 U.S.C. §§ 601-613.

¹⁶ 28 U.S.C. 994(a)(2)(B). Established by the Sentencing Reform Act of 1984, the United States Sentencing Commission is an independent agency in the judicial branch of government. See 28 U.S.C. §§ 994 and 995.

¹⁷ The Federal Judicial Center was established by Congress in 1967 on the recommendation of the Judicial Conference of the United States. See 28 U.S.C. §§ 620-629.

the manner in which they are imposed.¹⁸ To be sure, defendants in all of the circuits have increasingly challenged conditions of supervision, particularly special conditions, for several decades.¹⁹ Moreover, not all of the circuits have expressed a similar level of concern about the language of and procedures regarding the conditions.²⁰

In 2014, however, the Seventh Circuit

¹⁸ For an overview of the developments leading to the review of conditions and a description of the review process from the perspective of the Criminal Law Committee, see *Public Hearing on Compassionate Release and Conditions of Supervision*, U.S. Sentencing Commission (February 17, 2016) [hereinafter *Conditions Public Hearing*] (statement of Judge Ricardo S. Martinez, Member, Judicial Conference Criminal Law Committee), available at: <http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/CLC.pdf>.

¹⁹ U.S. Sentencing Commission, *Case Law Update: Recent Supreme Court and Circuit Courts of Appeals Decisions* (2016) (listing circuit court opinions in 2015 and 2016 upholding or vacating conditions of supervision), available at: http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2016/backgrounder_case-law.pdf; U.S. Sentencing Commission, *Supervised Release Primer 6* (2014) (“A number of supervised release conditions have been challenged on appeal. Although circuit courts often uphold the conditions imposed, there are a number of reported cases in which circuit courts have reversed conditions. In those cases, circuit courts have provided a variety of reasons for reversing conditions imposed by sentencing courts. For example, circuit courts have reversed certain conditions, among other reasons, as vague and overbroad, insufficiently explained, not reasonably related to relevant statutory sentencing factors, and a greater deprivation of liberty than reasonably necessary.”); U.S. Sentencing Commission, *Federal Defendants Sentenced to Supervised Release 11* (2010) (“Defendants often challenge conditions of supervised release as not ‘reasonably related’ to the relevant factors in 18 U.S.C. § 3553(a), as required by 18 U.S.C. § 3583(d)(1), or as unconstitutional under the First, Fourth, or Fifth Amendments to the United States Constitution. Defendants also challenge procedural aspects of supervised release, such as lack of presentence notice of special conditions of supervised release and allegedly improper implementation of conditions by a probation officer.”).

²⁰ The Tenth Circuit has rejected challenges to the wording of the standard conditions of supervision based on vagueness and other grounds. *United States v. Llantada*, 815 F.3d 679, 682 (10th Cir. 2016) (applying a “common sense approach to interpreting the conditions” and noting that “[n] either a [defendant] or [probation] officer would have trouble understanding and applying these conditions in a real world setting.”); *United States v. Muñoz*, 812 F.3d 809, 815 (10th Cir. 2016) (“In our view, the district court did not err, for we use common sense to guide our interpretation of supervised release conditions.”).

began issuing an unusually large number of opinions discussing problems with the standard and special conditions, including that they are too vague; are overbroad; do not include a knowledge requirement for violation of a condition; implicate the Fifth Amendment privilege against self-incrimination; implicate the Fourth Amendment right against unreasonable searches and seizures; are not disclosed to the parties in advance of sentencing to allow for informed objections and judicial determinations; and do not have an adequate justification for how the conditions are reasonably related to the individual defendant/offense characteristics, how they are reasonably related to the relevant statutory sentencing factors, and how they involve a minimal deprivation of liberty.²¹

In the most noteworthy Seventh Circuit opinion, *United States v. Siegel*, 753 F.3d 705

²¹ See, e.g., *United States v. Hollins*, 847 F.3d 535 (7th Cir. 2017); *United States v. Anglin*, 846 F.3d 954 (7th Cir. 2017); *United States v. Warren*, 843 F.3d 275 (7th Cir. 2016); *United States v. Flournoy*, 842 F.3d 524 (7th Cir. 2016); *United States v. Thomas*, 840 F.3d 920 (7th Cir. 2016); *United States v. Miranda-Sotolongo*, 827 F.3d 663 (7th Cir. 2016); *United States v. Sainz*, 827 F.3d 602 (7th Cir. 2016); *United States v. Bickart*, 825 F.3d 832 (7th Cir. 2016); *United States v. Gill*, 824 F.3d 653 (7th Cir. 2016); *United States v. Sweeney*, 821 F.3d 893 (7th Cir. 2016); *United States v. Hernandez*, 633 Fed.Appx. 868 (7th Cir. 2016); *United States v. Hill*, 818 F.3d 342 (7th Cir. 2016); *United States v. Guidry*, 817 F.3d 997 (7th Cir. 2016); *United States v. Taylor*, 633 Fed.Appx. 348 (7th Cir. March 21, 2016); *United States v. Miller*, 641 Fed.Appx. 563 (7th Cir. 2016); *United States v. Liles*, 640 Fed.Appx. 513 (7th Cir. Feb 22, 2016); *United States v. Campbell*, 813 F.3d 1016 (7th Cir. 2016); *United States v. Henry*, 813 F.3d 681 (7th Cir. 2016); *United States v. Hall*, 634 Fed.Appx. 593 (7th Cir. 2016); *United States v. Evans*, 630 Fed.Appx. 635 (7th Cir. 2016); *United States v. Armand*, 638 Fed.Appx. 504 (7th Cir. Jan. 29, 2016); *United States v. Boros*, 636 Fed.Appx. 688 (7th Cir. Jan 20, 2016); *United States v. Speed*, 811 F.3d 854 (7th Cir. 2016); *United States v. Brown*, 628 Fed.Appx. 447 (7th Cir. 2016); *United States v. Plada*, 628 Fed.Appx. 443 (7th Cir. 2016); *United States v. Poulin*, 809 F.3d 924 (7th Cir. 2015); *United States v. Sandidge*, 784 F.3d 1055 (7th Cir. 2015); *United States v. Kappes*, 782 F.3d 828 (7th Cir. 2015); *United States v. Sewell*, 780 F.3d 839 (7th Cir. 2015); *United States v. McMillan*, 777 F.3d 444 (7th Cir. 2015); *United States v. Thomson*, 777 F.3d 368 (7th Cir. 2015); *United States v. Cary*, 775 F.3d 919 (7th Cir. 2014); *United States v. Hinds*, 770 F.3d 658 (7th Cir. 2014); *United States v. Johnson*, 765 F.3d 702 (7th Cir. 2014); *United States v. Johnson*, 756 F.3d 532 (7th Cir. 2014); *United States v. Farmer*, 755 F.3d 849 (7th Cir. 2014); *United States v. Benhoff*, 755 F.3d 504 (7th Cir. 2014); *United States v. Baker*, 755 F.3d 515 (7th Cir. 2014); *United States v. Bryant*, 754 F.3d 443 (7th Cir. 2014); *United States v. Siegel*, 753 F.3d 705 (7th Cir. 2014).

(7th Cir. 2014), the court described “common but largely unresolved problems in the imposition of . . . conditions . . . as a part of federal criminal sentencing.” One of the most serious problems identified by the court is that the conditions are often too vague and inadequately defined to place the defendant on notice of what conduct is prohibited and may lead to revocation of supervision. A second problem is that the probation office’s presentence report or sentencing recommendation generally suggests conditions to the sentencing judge with only brief justifications. Judges then often merely repeat the recommendations and do not explain how they comport with the applicable sentencing factors, which, the court notes, is an independent determination judges are required to make. Furthermore, according to the court, judges are limited in their ability to look behind the probation office’s recommendations because the academic studies of recidivism are unfamiliar to most judges, and it can be difficult for a judge who lacks a social-scientific background to evaluate them. Finally, because conditions are imposed at the time of sentencing, the sentencing judge has to guess what conditions are likely to make sense when the defendant is released from prison. The longer the sentence, the less likely that guess is to be accurate. Conditions that may seem sensible at sentencing may not be sensible many years or decades later.²²

After listing these concerns with the conditions of supervision generally, the *Siegel* court vacated a number of the conditions imposed by the sentencing court that were “inappropriate, inadequately defined, or imposed without the sentencing judge’s having justified them by reference to the sentencing factors.” For instance, it held that the standard condition prohibiting the “excessive use of alcohol” was too vague and in need of further definition because it was not clear whether the term “excessive” is defined by number of drinks consumed or by another measure. Similarly, it found the special condition prohibiting the

²² While conditions of supervised release can be modified at any time under 18 U.S.C. § 3583(e)(2), modification is, according to the court, a bother for the judge, especially when, as must be common in cases involving very long sentences, modification becomes the responsibility of the sentencing judge’s successor because the sentencing judge has retired in the meantime. The court emphasized that noting the problems with imposing conditions of supervision at the time of sentencing is not a criticism that can be made of the sentencing judge. Rather, it is a flaw in the Sentencing Reform Act.

purchase, possession, or use of any “mood altering substances” to be vague because the term could include coffee, cigarettes, sugar, and chocolate, among many other substances that are not causal factors of recidivist behavior. The court also vacated the special condition prohibiting the possession of any material that “contains nudity,” reasoning that the term “contains” is vague because, unless “contains” only means “provides a visual depiction of,” the prohibition would forbid reading the Bible. It further reasoned that the term “nudity” is overbroad because it would apply to nudity or partial nudity that is in no respect prurient such as an adult wearing a bathing suit, and the district court did not explain why the condition should not be limited to visual depictions of material that depicts nudity in a prurient or sexually arousing manner.²³

Finally, the *Siegel* court recommended a series of “best practices” for the imposition of conditions of supervised release within the Seventh Circuit. First, the probation office should be required to provide notice to defense counsel about the conditions it will recommend to the sentencing court at least two weeks before the sentencing hearing. Second, the sentencing judge should make an independent judgment of the appropriateness of the recommended conditions—independent, that is, of agreement between prosecutor and defense counsel (and defendant) on the conditions, or of the failure of defense counsel to object to the conditions recommended by the probation office.

Third, the sentencing judge should determine the appropriateness of the conditions with reference to the particular conduct and character of the defendant, rather than on the basis of loose generalizations about the defendant’s crime of conviction and criminal

history, and, where possible, with reference also to the relevant criminological literature. Fourth, the sentencing judge should make sure that each condition imposed is simply worded, bearing in mind that, with rare exceptions, neither the defendant nor the probation officer is a lawyer and that when released from prison the defendant will not have a lawyer to consult. Finally, the sentencing judge should require that just prior to release from prison, the defendant attend a brief hearing before the sentencing judge (or his or her successor) in order to be reminded of the conditions. That would also be a proper occasion for the judge to consider whether to modify one or more of the conditions in light of any changed circumstances brought about by the defendant’s experiences in prison.

In another significant opinion, *United States v. Thomson*, 777 F.3d 368 (7th Cir. 2015), the Seventh Circuit reiterated and expanded upon the concerns introduced in *Siegel*. For instance, it noted the defendant is often given no notice in advance of the sentencing hearing of the conditions that the judge is considering imposing, “which can make it difficult for his lawyer to prepare arguments in opposition.” Furthermore, it questioned whether most of the standard conditions were required in every case.²⁴ The court also rejected on vagueness grounds the standard conditions requiring the defendant to “support his or her dependents and meet other family responsibilities,” forbidding the defendant to “associate with any person convicted of a felony, unless granted permission to do so by the probation officer,” requiring the defendant to “notify third parties of risks that may be occasioned by the defendant’s criminal record or personal history or characteristics,” mandating notification of any “change in . . . employment,” and prohibiting the defendant from “frequent[ing] places where controlled substances are illegally sold, used, distributed, or administered.” Finally, the court noted that the standard conditions requiring the defendant to “answer truthfully all inquiries by the probation officer” might implicate the Fifth Amendment privilege against self-incrimination and that the standard condition requiring

the defendant to “permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contra-band observed in plain view of the probation officer” might implicate the Fourth Amendment right against unreasonable searches and seizures.²⁵

A final opinion worth noting is *United States v. Kappes*, 782 F.3d 828 (7th Cir. 2015), where the Seventh Circuit rejected as vague the standard condition that “the defendant shall not leave the judicial district without . . . permission,” noting the condition would be improved by explicitly adding a requirement of intent or knowledge of wrongdoing, particularly in a case where it is foreseeable that a defendant will reside near the boundary of two judicial districts within the same state. With regard to providing advance notice of conditions, the *Kappes* court clarified: “In most instances, this principle fits into the category of recommended ‘best practice’ rather than mandatory requirement. Advance notice is only *required* of . . . conditions that are not listed in a statute or the guidelines.” This, according to the court, is because defendants and defense counsel are charged with knowledge of the sentencing guidelines, which list the standard conditions along with a number of special ones.

Despite this charged knowledge, the court continued, the Seventh Circuit has suggested that sentencing judges require the probation office to include any recommended conditions of supervised release—and the reasons for the recommendations—in the presentence report that is disclosed to the parties prior to the sentencing hearing.²⁶ The court concluded, “It is our hope that the combination of advance notice, timely objections, and appropriate judicial response to the objections will result in conditions better tailored to fulfill the purposes of supervised release, less confusion and uncertainty, and perhaps . . . fewer appeals.”

In July 2014, the Department of Justice recommended that the Sentencing Commission remedy vagueness problems with the language of the conditions in the *Guidelines Manual* and that it be amended to direct sentencing courts

²³ The court also expressed concern about three conditions—substance abuse treatment; installation of computer filtering software in order to block access to sexually oriented websites; and the sex offender treatment program, including physiological testing—because they required the defendant to bear the expense of complying with those conditions, without explicitly stating that supervised release would not be revoked if the defendant could not pay the entire cost. Additionally, the court pointed out an “oddy” in the condition requiring the defendant to undergo substance abuse treatment that includes tests to determine whether alcohol was used. Yet, the defendant was allowed to consume alcohol. Presumably the purpose of the tests was to see how much he has consumed, but the court wrote that the condition should explicitly state this.

²⁴ The court listed four standard conditions as examples of administrative requirement in every case: that the defendant report to his or her probation officer; that the defendant answer the probation officer’s questions; that the defendant follow the probation officer’s instructions; and that the defendant not leave the judicial district without permission.

²⁵ The court held that, regardless of any possible constitutional concern, both of these conditions were “too broad in the absence of any effort by the district court to explain why they are needed.”

²⁶ An exception to this suggestion would be conditions of supervised release that are “administrative requirements applicable whenever a term of supervised release is imposed.”

to specifically address the need for the conditions.²⁷ In July 2015, it again requested that the Sentencing Commission amend the *Guidelines Manual* to address the concerns expressed by the Seventh Circuit and to ensure that sentencing courts have the necessary guidance.²⁸ The Department of Justice reasoned that “[c]ourts and litigants within the [Seventh] Circuit are addressing those concerns . . . in a variety of ways. They are spending a great deal of time and effort proposing and reviewing responses to conditions prior to sentencing and justifying those conditions at sentencing case-by-case, often struggling to find the appropriate support and justifications for various conditions of release.”²⁹ In August 2015, as part of its ongoing multi-year review of sentencing practices pertaining to probation and supervised release, the Sentencing Commission included as a policy priority the consideration of amendments to the provisions of its *Guidelines Manual* relating to the imposition of conditions of supervision.³⁰

In late 2014 and early 2015, judicial districts in the Seventh Circuit and other circuits began to adopt a wide variety of practices concerning the recommendation and imposition of standard and special conditions. Some districts changed the wording of the conditions, reduced the number of standard conditions, and included the recommended conditions along with a comprehensive justification in the presentence report. In late 2014 and early 2015, the Criminal Law Committee discussed the importance of some level of national uniformity in the practices surrounding the conditions, particularly the standard conditions, of probation and supervised release. First, standard conditions represent core supervision practices required in every case. Second, approximately 20 percent of defendants under supervision were sentenced in districts other than the district of supervision. Finally, some level of uniformity ensures efficient policy development and training at the national level.³¹

In February 2015, the Criminal Law

Committee requested that the Administrative Office, with the assistance of a group of probation officers from throughout the country, conduct a comprehensive review of the standard and most common special conditions. The goals were to determine whether: (1) all of the standard conditions were required for supervision in all cases; (2) the language for some of the standard and common special conditions could be refined; and (3) additional information could be provided concerning the appropriate language and the legal and/or criminological purposes of the standard and most common special conditions to assist courts with providing the necessary support or justification for the conditions. The review included an exhaustive analysis of national case law and numerous discussions between Administrative Office staff and probation officers concerning the legal, policy, and practical issues surrounding the recommendation, imposition, and execution of conditions of supervision. As discussed below, the Administrative Office also collaborated with and sought feedback from other stakeholders at the national and district levels.

V. Changes Related to Conditions of Supervision

In September 2016, on recommendation of the Criminal Law Committee, the Judicial Conference of the United States approved: (1) revisions to the national judgment forms including amendments to the standard conditions that were endorsed by the Criminal Law Committee and approved by the Sentencing Commission; (2) the release of a public document on the conditions of supervision as a resource for defendants, the courts, and other criminal justice practitioners; and (3) amendments to the policy guidance for probation officers concerning the disclosure of recommended special conditions in or with the presentence report, the timing for recommendations of special conditions, and the privilege against self-incrimination during interviews of defendants by probation officers.³²

1. Revisions to National Judgment Forms

The first component of the review of conditions was to assess whether all of the standard conditions are required for supervision in all cases and whether the language for the standard conditions could be refined. The Criminal Law Committee and Administrative Office staff, with the assistance of a group of probation officers from throughout the country, collaborated closely with the Sentencing Commission and its staff with the intent of harmonizing the standard conditions listed on the national judgment forms with those in the *Guidelines Manual*.³³ In November 2015, the Administrative Office distributed exposure drafts of proposed revisions to the national judgment forms to judges, probation offices, the Department of Justice, and the federal defenders for feedback. At its December 2015 meeting, the Criminal Law Committee considered the stakeholder comments, finalized proposed changes to the national judgment forms including the standard conditions, and shared the proposed amendments to the standard conditions with the Sentencing Commission for it to consider whether to include in its *Guidelines Manual*.³⁴

In January 2016, the Sentencing Commission issued a public notice of and a request for comment regarding proposed amendments to revise, clarify, and rearrange the conditions of probation and supervised

²⁷ Letter from Jonathan J. Wroblewski, U.S. Department of Justice, to Hon. Patti B. Saris, Chair, U.S. Sentencing Commission (July 29, 2014).

²⁸ Letter from Jonathan J. Wroblewski, U.S. Department of Justice, to Hon. Patti B. Saris, Chair, U.S. Sentencing Commission (July 24, 2015).

²⁹ *Id.*

³⁰ See U.S. Sentencing Commission, “Notice of Final Priorities” (Aug. 14, 2015).

³¹ See *Conditions Public Hearing*, *supra* note 18, at 5 (statement of Judge Ricardo S. Martinez).

³² JCUS-SEP 16, p. 14-15. The Judicial Conference of the United States meets each March and September. A Report of the Proceedings is issued after each meeting that details the actions taken. Reports dating back to the beginning of the Judicial Conference are available at <http://www.uscourts.gov/about-federal-courts/reports-proceedings-judicial-conference-us>.

³³ Statements by Chief Judge Patti B. Saris of the District of Massachusetts, then-Chair of the U.S. Sentencing Commission, describe the collaboration between the Sentencing Commission and the Criminal Law Committee, which was then chaired by Judge Irene M. Keeley of the Northern District of West Virginia. At a February 17, 2016, public hearing (transcript available at: http://www.usc.gov/sites/default/files/Transcript_6.pdf), Judge Saris stated that “the Commission’s proposed amendment[s] . . . on supervised release [were] a result . . . of collaboration with the Criminal Law Committee, which has studied the current conditions in light of recent court precedent, as well as the Commission’s own multi-year review.” Similarly, at an April 15, 2016, public meeting (transcript available at <http://www.usc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160415/Chairs-Remarks.pdf>), Judge Saris remarked that “both the Commission and the Criminal Law Committee reviewed the conditions of supervision. . . . [O]ur staff worked closely with the Criminal Law Committee’s staff to obtain helpful input from all of the stakeholders in the federal criminal justice system.”

³⁴ As stated above, the meetings of the Criminal Law Committee are attended by representatives from various agencies including the Sentencing Commission.

release in the *Guidelines Manual*.³⁵ As explained in the Sentencing Commission's public notice, the proposed amendments were a result of the Commission's multi-year review of federal sentencing practices relating to the conditions of probation and supervised release and were also informed by a series of opinions issued by the Seventh Circuit.³⁶ In February 2016, the Sentencing Commission held a public hearing to receive testimony from invited witnesses on the proposed amendments.³⁷ The witnesses included Judge Ricardo S. Martinez, chief judge of the United States District Court for the Western District of Washington and current chair of the Criminal Law Committee.³⁸ At the hearing, Judge Martinez expressed the Criminal Law Committee's support for the proposed amendments, which were consistent with the conditions previously endorsed by the Criminal Law Committee.³⁹

In April 2016, the Sentencing Commission submitted its proposed amendments to its *Guidelines Manual* to Congress.⁴⁰ Absent congressional action to the contrary, the amendments went into effect on November 1, 2016. As explained in the Sentencing Commission's public notice, these amendments responded to many of the legal concerns raised in the case law and were consistent with the proposed changes to the conditions in the national judgment forms.⁴¹ At its September 2016 meeting, upon recommendation of the Criminal Law Committee, the Judicial Conference approved the revisions to the national judgment forms including the standard conditions.⁴² The revised judgment forms became available to courts on November 1, 2016 to coincide with the effectiveness date of

the amendments to the *Guidelines Manual*.⁴³

While individual judicial districts have been free to adopt local judgment forms with different standard conditions, the Administrative Office has emphasized the policy benefits for adopting the standard conditions in the national judgment forms. First, the revised conditions were the result of collaboration and were based on feedback from numerous national and district-level stakeholders. Second, approximately 20 percent of defendants are sentenced in one judicial district but supervised in another district, and differences in standard conditions between districts can create confusion for supervisees and administrative burdens for courts and probation offices. Third, national uniformity aids in the development of national policies and training curricula. Fourth, the standard conditions in the revised national judgment forms track the amended standard conditions in the *Guidelines Manual* and in the new public document on the conditions of supervision. Finally, as discussed further below, the new public document on the conditions of supervision contains information clarifying and defining wording used in the revised standard conditions.

The most significant changes to the national judgment forms are described below.⁴⁴

1. Clarifying and Structural Changes

- The standard conditions in the revised national judgment forms use the terminology "you must" in lieu of "the defendant shall" to use more plainly worded language and because judgment forms are directed toward defendants.⁴⁵

- The revised national judgment forms include an introductory paragraph prior to the list of standard conditions explaining the role of the standard conditions in satisfying the probation officer's statutory duties under 18 U.S.C. § 3603.⁴⁶
- The standard conditions in the revised national judgment forms are reordered to be consistent with the supervision timeline (i.e., the list of conditions begins with initial requirements to report to the probation office and probation officer and then describes subsequent obligations such as not leaving the judicial district without permission, allowing visits from the probation officer, maintaining employment, etc.).
- The revised national judgment forms include a reference to the new public document on conditions after the list of standard conditions to provide the defendant with further information regarding the conditions' scope, purposes, and method of implementation.⁴⁷
- The revised national judgment forms clarify whether certain requirements are mandatory conditions or standard conditions. First, it specifically labels and lists the mandatory conditions for probation and supervised release, which are described in 18 U.S.C. §§ 3563(a) and 3583(d), respectively. Next, the requirement that the defendant report to the probation office within 72 hours of release from the Bureau of Prisons or of the date of sentencing for probation cases (formerly listed in an undesignated paragraph on the national

³⁵ U.S. Sentencing Commission, "Notice of Proposed Amendments" (Jan. 15, 2016).

³⁶ *Id.*

³⁷ See *supra* note 18.

³⁸ The other witnesses represented the views of the Department of Justice, the Federal Public and Community Defenders, and the Victims Advisory Group to the Sentencing Commission.

³⁹ See also USSG App. C, amend. 803 (effective Nov. 1, 2016) ("The changes in the amendment are consistent with proposed changes to the national judgment form recently endorsed by the CLC and Administrative Office of the U.S. Courts, after an exhaustive review of those conditions aided by probation officers from throughout the country").

⁴⁰ See U.S. Sentencing Commission, "Notice of Submission of 2016 Amendments to Congress" (April 28, 2016).

⁴¹ *Id.*

⁴² JCUS-SEP 16, p. 14-15.

⁴³ USSG App. C, amend. 803 (effective Nov. 1, 2016).

⁴⁴ The national judgment forms are available at: <http://www.uscourts.gov/forms/criminal-judgment-forms>. For the official description of the recent amendments to the *Guidelines Manual* related to the conditions of probation and supervised release, see USSG App. C, amend. 803 (effective Nov. 1, 2016).

⁴⁵ The revised standard conditions in the national judgment forms and in the *Guidelines Manual* are identical in all but one respect. Specifically, the *Guidelines Manual* continues to use the terminology "the defendant shall" when listing the standard conditions that may be imposed by judges or recommended by the parties or probation officers. The national judgment forms, which are directed toward defendants, now use the terminology "you must" when describing the conditions. See also 18 U.S.C. § 3603(1) (requiring that a probation officer "instruct a probationer or a person on supervised release . . . as to the conditions specified by the sentencing court, and provide him with a written

statement clearly setting forth all such conditions."); 18 U.S.C. §§ 3563(d) and 3583(f) (requiring the court to direct that the probation officer provide the defendant with a written statement that sets forth all the conditions of probation and supervised release and is "sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required").

⁴⁶ The new paragraph states: "[Y]ou must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition."

⁴⁷ Specifically, the revised judgment forms state: "A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov."

judgment forms) is explicitly classified as a standard condition. Finally, the requirement that the defendant not “possess a firearm, ammunition, destructive device, or other dangerous weapon” (formerly listed in an undesignated paragraph in the national judgment forms) is explicitly classified as a standard condition.⁴⁸

2. Elimination of Standard Conditions Not Applicable in Every Case

- The conditions that the defendant shall “support his or her dependents” and “meet other family responsibilities” have been removed as standard conditions because they may not be reasonably related to the nature and circumstances of the offense or the history and characteristics of the defendant in every case. If a probation officer or court determines that these types of conditions are necessary, they may recommend and impose them as special conditions.⁴⁹

⁴⁸ See also *Conditions Public Hearing*, *supra* note 18, at 8 (statement of Judge Ricardo S. Martinez) (“[T]he [Criminal Law] Committee agrees with the proposal to add as a standard condition the requirement that the defendant ‘not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon.’ This condition promotes the public safety and reduces safety risks posed to the probation officer. To the extent that the nature and circumstances of the offense or the history and characteristics of the defendant indicate that a prohibition on possessing other types of weapons is necessary, probation officers may recommend a special condition.”).

⁴⁹ See also *id.* at 7 (statement of Judge Ricardo S. Martinez) (“[T]he [Criminal Law] Committee supports the proposal to remove the current standard condition requiring that the defendant ‘support his or her dependents and meet other family responsibilities.’ This condition would not be reasonably related to the history and characteristics of the defendant if the defendant had no dependents or family obligations. Additionally, the scope of the term ‘meet other family responsibilities’ is unclear. In fact, the group of probation officers that assisted with the review of standard conditions unanimously agreed that the term is vague and leads to uncertain and inconsistent enforcement. Of course, if a probation officer or court determines that a condition requiring support of dependents or the satisfaction of other family responsibilities is necessary, the probation officer and court may recommend and impose such a requirement as a special condition.”); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“These changes address concerns expressed by the Seventh Circuit that the current condition—which requires a defendant to ‘support his or her dependents and meet other family responsibilities’—is vague and does not apply to defendants who have no dependents. . . . The amendment uses plainer language to provide better notice to the defendant about what is required. The

- The condition prohibiting the “excessive use of alcohol” has been removed as a standard condition because it may not be reasonably related to the nature and circumstances of the offense or the history and characteristics of the defendant in every case. If a probation officer or court determines that this type of condition is necessary, they may recommend and impose it as a special condition.⁵⁰

3. Elimination of Standard Conditions Addressed by Other Conditions

- The condition that the defendant “shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician” is removed as a standard condition. A review of national case law revealed that

Commission determined that this condition need not apply to all defendants but only to those with dependents.”).

⁵⁰ See also *Conditions Public Hearing*, *supra* note 18, at 7 (statement of Judge Ricardo S. Martinez) (“[T]he [Criminal Law] Committee is in favor of the proposal to remove the current standard condition requiring that the defendant ‘shall refrain from excessive use of alcohol.’ The Senate report accompanying the Sentencing Reform Act made clear that ‘[i]t is not intended that this condition . . . be imposed on a person with no history of excessive use of alcohol,’ and that ‘[t]o do so would be an unwarranted departure from the principle that conditions . . . should be reasonably related to the general sentencing [factors].’ To be sure, alcohol use may in individual cases have a criminogenic effect or inhibit the satisfaction of other conditions such as maintaining employment or supporting families. If a probation officer or court determines that an alcohol restriction condition is necessary, the probation officer and court may recommend and impose such a requirement as a special condition in the individual case. It is also noteworthy that the probation officers that assisted with the review of standard conditions unanimously agreed that the current standard condition prohibiting excessive use of alcohol is vague, difficult to enforce, and not valuable as a supervision tool. In fact, the officers opined that it is more common and effective to request alcohol treatment and a complete alcohol ban if it is determined in the individual case that such a condition is reasonably related to the nature and circumstances of the offense and the history and characteristics of the defendant.”); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“[T]he standard condition[] requiring that the defendant refrain from excessive use of alcohol ha[s] been deleted. The Commission determined that th[is] condition[] [is] . . . best dealt with as special conditions or are redundant with other conditions. Specifically, to account for the supervision needs of defendants with alcohol abuse problems, a new special condition that the defendant ‘must not use or possess alcohol’ has been added.”).

this condition does not serve a distinct supervision purpose and is addressed by the mandatory condition prohibiting the defendant from unlawfully possessing or using a controlled substance. If a probation officer or court determines that these types of conditions are necessary, the probation officer and court may recommend and impose them as special conditions.⁵¹

- The condition that the defendant “shall not frequent places where controlled substances are illegally sold, used, distributed, or administered” has been removed as a standard condition. A review of national case law revealed that this condition does not serve a distinct supervision purpose and is addressed by other conditions including the mandatory condition prohibiting unlawful possession/use of a controlled substance, the mandatory drug testing condition, and the standard condition prohibiting association with those involved in criminal activity. If a probation officer or court determines that these types of conditions are necessary, the probation officer and court may recommend and impose them as special conditions.⁵²

4. Adding a Knowledge Requirement for Violating Certain Standard Conditions

- The condition requiring that the defendant not leave the federal judicial district without permission of the court or probation officer now requires that the defendant not knowingly leave the judicial district.⁵³

⁵¹ See also USSG App. C, amend. 803 (effective Nov. 1, 2016) (“[T]he standard conditions requiring that the defendant . . . not possess or distribute controlled substances or paraphernalia . . . ha[s] been deleted. The Commission determined that th[is] condition[] [is] either best dealt with as special condition[] or [is] redundant with other conditions. Specifically, . . . [t]he requirement that the defendant abstain from the illegal use of controlled substances is covered by the ‘mandatory’ conditions prohibiting commission of additional crimes and requiring substance abuse testing.”).

⁵² See also USSG App. C, amend. 803 (effective Nov. 1, 2016) (“[T]he standard condition[] requiring that the defendant . . . not frequent places where controlled substances are illegally sold . . . ha[s] been deleted. The Commission determined that th[is] condition[] is either best dealt with as [a] special condition[] or [is] redundant with other conditions. Specifically, . . . the . . . [condition] is encompassed by the ‘standard’ condition that defendants not associate with those they know to be criminals or who are engaged in criminal activity.”).

⁵³ See also USSG App. C, amend. 803 (effective Nov. 1, 2016). (“Testimony received by the

- The condition prohibiting communication or interaction with those engaged in criminal activity or those with felony convictions now requires that the defendant know the person is engaged in criminal activity or that the defendant know that the person has a felony conviction. For interactions and communications with those convicted of a felony, the condition now requires that the defendant's communication or interaction be with knowledge.⁵⁴

5. Ensuring that Standard Conditions do not Contain Multiple Requirements

- The requirements that the defendant follow the instructions of the probation officer and answer truthfully the officer's inquiries, which were combined in one standard condition, are now divided into two separate standard conditions individually requiring the defendant to answer truthfully the inquiries of officers and following the instructions of officers related to the conditions of supervision.

6. Making Standard Condition Language more Clear and Precise

- The requirement that the defendant "report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons" is amended to provide clearer instructions to the defendant about where and when to report to the probation office and to ensure that the defendant is assigned to a probation office for supervision. The revised condition states: "You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame."⁵⁵

[Sentencing] Commission has observed that a rule prohibiting a defendant from leaving the district without permission of the court or probation officer may be unfairly applied to a defendant who unknowingly moves between districts.”)

⁵⁴ See also USSG App. C, amend. 803 (effective Nov. 1, 2016) (“These revisions address concerns expressed by the Seventh Circuit that the condition is vague and lacks a mens rea requirement. . . . The revision adds an express mental state requirement and replaces the term “associate” with more definite language.”).

⁵⁵ For defendants sentenced to probation, the revised condition states: “You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the

- The condition requiring the defendant to “report to the probation officer in a manner and frequency directed by the court or probation officer” has been amended to use clearer language. The new condition states: “After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.”
- The condition requiring the defendant to notify the probation officer at least ten days prior to any “change in residence” is clarified. The new condition states: “You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least ten days before the change.”⁵⁶ The condition also now clarifies what the defendant must do if there is an unanticipated change of residence (e.g., due to eviction). The new condition states: “If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.”
- The condition requiring the defendant to “work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons” is amended to use clearer language and to specify that a defendant does not violate the condition if there is an attempt to find employment. The new condition states: “You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless

time you were sentenced, unless the probation officer instructs you to report to a different probation office or within a different time frame.”

⁵⁶ While the primary purpose of amending this and other conditions was to make the condition language less vague, it is noteworthy that many stakeholders, including the group of probation officers from throughout the country assisting with the review of the conditions, opined that many of the clarifying changes also improved the effectiveness of supervision. For instance, they opined that the supervision process is improved if defendants inform the probation officer about, not just changes in place of residence, but changes in other living arrangements such as cohabitants.

the probation officer excuses you from doing so.”⁵⁷

- The condition requiring the defendant to notify the probation officer at least ten days prior to any “change in employment” is clarified. The new condition states: “If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change.” The condition also now clarifies what the defendant must do if there is an unanticipated change in employment (e.g., due to termination by the employer). The new condition states: “If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.”
- The condition requiring the defendant to permit the probation officer to visit him or her at any time at home or elsewhere and to permit confiscation of any “contraband” observed in plain view is clarified. The new condition states that the defendant is required to permit the probation officer to take any “items prohibited by the conditions of your supervision” observed in plain view.⁵⁸

⁵⁷ See also *Conditions Overview*, *infra* note 64, at 30 (defining full-time employment to be consistent with benchmarks set by federal regulations and providing examples of reasons for excusing a defendant from attempting to find full-time employment); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“The Commission determined that these changes are appropriate to ensure that defendants are made aware of what will be required of them while under supervision. These requirements and associated benchmarks (e.g., 30 hours per week) are supported by testimony from the [Criminal Law Committee] as appropriate to meet supervision needs.”).

⁵⁸ Some stakeholders recommended to the Criminal Law Committee that the scope of this condition should be narrowed to allow probation officer visits during certain daytime hours or only “at a reasonable time.” The Criminal Law Committee determined that effective supervision required visits by probation officers at a broader range of times and that limiting visits to “reasonable” times posed vagueness concerns. For a detailed description of the purpose and method of implementation of the condition allowing probation officer visits, including a description of the importance of visiting defendants during a wide range of hours, see *Conditions Overview*, *infra* note 64, at 25. See also USSG App. C, amend. 803 (effective Nov. 1, 2016) (“[T]he Commission has determined that, in some circumstance, adequate supervision of defendants may require probation

- The condition stating that the defendant “shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer” is amended to clarify what type of association is prohibited. The new condition states: “You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.”⁵⁹
- The requirement that the defendant not “possess a firearm, ammunition, destructive device, or other dangerous weapon” is amended to clarify the scope of “possession” and to define “dangerous weapon.” The revised condition states: “You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).”⁶⁰
- The former standard condition regarding risk posed by the defendant to other persons stated: “As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant’s criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant’s compliance with such notification requirement.” This condition is revised to use clearer language. The new condition states: “If the probation officer determines that

officers to have the flexibility to visit defendants at off-hours, at their workplaces, and without advance notice to the supervisee. For example, some supervisees work overnight shifts and, in order to verify that they are in compliance with the condition of supervision requiring employment, a probation officer might have to visit them at their workplace very late in the evening.”)

⁵⁹ See also USSG App. C, amend. 803 (effective Nov. 1, 2016) (“These revisions replace[] the term ‘associate’ with more definite language.”).

⁶⁰ See also *Conditions Overview*, *infra* note 64, at 35 (defining “firearm,” “ammunition,” and “destructive device”); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“The amendment . . . defines ‘dangerous weapon’ as ‘anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers.’”).

you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.”⁶¹

- The condition requiring the defendant to “follow the instructions of the probation officer” is amended to clarify that the defendant is required to follow the instructions of the probation officer “related to the conditions of supervision.”⁶²

2. New Public Document on Conditions of Supervision

An additional component of the review of conditions was to determine whether the language for the most commonly imposed special conditions could be refined and whether additional information could be provided concerning the legal and/or criminological purposes of the standard and most common special conditions. Between February 2015 and November 2015, Administrative Office staff, with the assistance of a group of probation officers from throughout the country, developed a document titled *Overview of Probation and Supervised Release Conditions* (“*Conditions Overview*”). In November 2015, an exposure draft of the *Conditions Overview* was distributed to judges, probation offices, the Department of Justice, and Federal Defenders for feedback, which was considered when making revisions. At its June 2016 meeting, the Criminal Law Committee revised, finalized, and endorsed the document. In September 2016, upon recommendation of the Criminal Law Committee, the Judicial

⁶¹ See also *Conditions Overview*, *infra* note 64, at 39 (describing specific guidelines regarding when disclosure of risk by a probation officer is necessary); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“The Commission determined that this revision is appropriate to address criticism by the Seventh Circuit regarding potential ambiguity in how the condition is currently phrased.”).

⁶² See also *Conditions Overview*, *infra* note 64, at 41 (describing instances when the probation officer may instruct the defendant to abide by rules that are required to satisfy other conditions of supervision. These may include, for example, instructing the defendant to provide tax returns or other documentation to ensure that the defendant is complying with the condition to not commit another crime; enforcing the condition restricting travel by instructing a defendant permitted to travel outside of the district to call the probation officer upon his or her return; and enforcing the condition requiring lawful employment by instructing defendants to report daily or weekly on their job search activities).

Conference approved the public release of the *Conditions Overview*.⁶³

The *Conditions Overview* is intended to serve several primary purposes. First, it may assist the courts and parties in recommending or imposing conditions that are tailored to the individual case, that address the relevant statutory factors, and that are accompanied by adequate support or justification. Second, it may help with recommending and imposing special conditions with wording that is clear and legally sound. Third, it may assist in providing advance notice to defendants of the conditions of supervision that may be imposed. The document may also serve other secondary purposes, including describing the purposes and method of implementation of the conditions for appellate courts and serving as a training document for probation offices at the national and district levels.

The *Conditions Overview* comprises three chapters. Chapter 1 provides an overview of the relevant legal framework concerning the imposition of conditions and describes the social science research, theories, and perspectives underlying many of the conditions. Chapter 2 lists and describes the revised standard conditions approved by the Judicial Conference and Sentencing Commission. Chapter 3 lists and describes the most commonly imposed special conditions. For each condition in Chapter 2 and Chapter 3, the document discusses the: (1) statutory authority for imposing the condition; (2) standard condition language or sample special condition language; (3) purpose; and (4) method of implementation.

With regard to the statutory authority, the document lists the subsection from 18 U.S.C. § 3563 authorizing the court to impose the condition.⁶⁴ As to the condition language, the sample special condition language is based

⁶³ The *Conditions Overview* is available at: <http://www.uscourts.gov/services-forms/overview-probation-supervised-release-conditions>.

⁶⁴ The statutory authority for imposing discretionary conditions of probation is set forth at 18 U.S.C. § 3563(b). The statutory authority for imposing discretionary conditions of supervised release is set forth at 18 U.S.C. § 3583(d), which incorporates section 3563(b) by reference. While section 3563(b) lists optional conditions that may be imposed, section 3563(b)(22) also states that the court may provide that the defendant “satisfy such other conditions as the court may impose.” This catchall provision “makes clear that the enumeration [in section 3563(b)] is suggestive only, and not intended as a limitation on the court’s authority to consider and impose any other appropriate conditions.” S. Rep. No. 98-225, at 93 (1983).

on a review of the most common conditions currently being used by individual districts and an analysis of national case law. While the sample language for special conditions is intended to be clear and legally sound, there may be cases where the court or the parties determine that different condition language is necessary to account for the individual circumstances of the case. There may also be circuit-specific case law requiring variations from the sample special condition language. Each judicial district, therefore, should fashion special conditions that comport with circuit case law requirements.

Next, to assist the courts and the parties with applying the conditions in the individual cases and providing the necessary support or justification, the document describes the purposes of the condition, including satisfying relevant statutory purposes of sentencing under 18 U.S.C. § 3553 and fulfilling the statutory duties of probation officers under 18 U.S.C. § 3603. In addition to describing the statutory purposes of the conditions, the document identifies the social science basis for the individual standard and special conditions.⁶⁵ Finally, to assist the courts and the parties with applying the conditions in the individual cases and providing the necessary support or justification, the *Conditions Overview* provides the courts and the parties with a specific description of how the conditions are implemented by probation officers after they are imposed by sentencing courts.

3. Related Policy Changes

In September 2016, upon recommendation of the Criminal Law Committee, the Judicial Conference approved changes to the policy guidance developed for probation officers in the *Guide to Judiciary Policy* concerning the recommendation and implementation of conditions of probation and supervised release. Specifically, it approved changes related to the (a) disclosure of recommended special

conditions; (b) the timing for recommending special conditions; and (c) the privilege against self-incrimination during interviews of persons on supervision.

A. Disclosure of Special Conditions

As discussed above, courts have recently suggested that defendants be provided notice of conditions that may be imposed prior to sentencing.⁶⁶ The goals of advance notice include allowing the parties to object and present an informed response to the recommended conditions at the sentencing stage rather than after remand from the appellate court.⁶⁷ This process is ultimately intended to result in conditions that are tailored to the individual case, satisfy the relevant statutory sentencing factors, produce less confusion and uncertainty, and perhaps, fewer appeals.⁶⁸ The amendment to the *Guide to Judiciary Policy* recently approved by the Judicial Conference recommends that the probation officer attach any recommended special conditions and the reasons for them when the presentence report is initially disclosed and when the final report

⁶⁶ See, e.g., *United States v. Kappes*, 782 F.3d 828, 842 (7th Cir. 2015) (“The first general principle sentencing judges should consider when imposing conditions of supervised release is that it is important to give advance notice of the conditions being considered.”). An exception to this “best practice” suggestion would be conditions of supervised release that are “administrative requirements applicable whenever a term of supervised release is imposed” such as “requiring the defendant to report to his probation officer, answer the officer’s questions, follow his instructions, and not leave the judicial district without permission.” *United States v. Thompson*, 777 F.3d 368, 378 (7th Cir. 2015).

⁶⁷ See, e.g., *United States v. Siegel*, 753 F.3d 705, 710 (7th Cir. 2014) (“[T]he sentencing hearing may be the first occasion on which defense counsel learns of the probation service’s recommendation for conditions of supervised release. With no advance notice, counsel may have nothing to say about the conditions. . . . With therefore no adversary challenge to the conditions of supervised release, the judge, being habituated to adversary procedure, is unlikely to question the conditions recommended by the probation service.”); *United States v. Bryant*, 754 F.3d 443, 446 (7th Cir. 2014) (“[I]t is difficult to prepare to respond to every possible condition of supervised release that the judge may impose without any advance notice, given that the judge is empowered to impose special conditions that are not listed in the [sentencing] guidelines, or anywhere else for that matter.”); *United States v. Scott*, 316 F.3d 733, 735 (7th Cir. 2003) (“Knowledge that a condition of this kind was in prospect would have enabled the parties to discuss such options intelligently.”).

⁶⁸ *United States v. Kappes*, 782 F.3d 828, 843 (7th Cir. 2015).

is disclosed, unless such disclosures are limited by the court.⁶⁹

B. Timing for Recommending Special Conditions

The Seventh Circuit has recently suggested as a “best practice” that a court hearing be held prior to the defendant’s release to the community to assess the appropriateness of conditions that were imposed at the time of sentencing in light of any changed circumstances during the period of imprisonment.⁷⁰ It has also suggested that any uncertainty about the appropriateness of conditions at the time of reentry to the community may be accommodated by 18 U.S.C. § 3583(e)(2), which allows a sentencing court to modify conditions of supervised release at any time.⁷¹

An illustration of the use of 18 U.S.C. § 3583(e)(2) to modify conditions is in the rapidly changing area of computer-related restrictions. In recent years, courts in several circuits have suggested that, where technological considerations prevent specifying at the time of sentencing how a computer-related condition is to be implemented following years of imprisonment, a modification of conditions after sentencing or a postponement in imposing conditions should be considered to ensure that they remain both narrowly tailored and effective as technology and other

⁶⁹ Rule 32 of the Federal Rules of Criminal Procedure provides for the disclosure of the presentence report and the sentencing recommendation. Under the rule, the report is initially disclosed to the parties at least 35 days before sentencing (unless the defendant waives this minimum period). The final report is provided to the court and the parties at least 7 days before sentencing. Additionally, under Rule 32, the court may, by local rule or by order in a case, direct the probation officer not to disclose the probation officer’s sentencing recommendation to anyone other than the court.

⁷⁰ *United States v. Siegel*, 753 F.3d 705, 717 (7th Cir. 2014).

⁷¹ See, e.g., *United States v. Neal*, 810 F.3d 512, 519 (7th Cir. 2016) (“[P]redictions about appropriate conditions of supervised release are imperfect . . . Section 3583(e)(2) accommodates these uncertainties by allowing changes to a defendant’s conditions of supervised release at any time.”); Under Federal Rule of Criminal Procedure 32.1(c)(2), the court may modify the conditions of probation or supervised release without a hearing if (1) the defendant waives the hearing, or (2) the modification is “favorable to the [defendant]” and does not extend the term of probation or of supervised release, and the U.S. Attorney has received notice of the modification sought and has had a reasonable opportunity to object and has not done so.

⁶⁵ There has been little discussion in the criminological literature regarding the purposes of conditions. See e.g., Edward J. Latessa and Harry E. Allen, *Corrections in the Community*, at 481 (2003) (noting there is little empirical or theoretical discussion in the criminological literature of the purposes of supervision conditions); Sarah Turnbull and Kelly Hannah-Moffat, “Under these Conditions: Gender, Parole, and Governance of Reintegration,” *British Journal of Criminology*, at 523 (2009) (“Despite the widespread use of conditions in various phases of the criminal justice system (e.g. bail, probation, parole), there has been little theoretical examination of their purposes or the implications associated with their use.”).

circumstances change.⁷²

Prior to the September 2016 amendments, the *Guide to Judiciary Policy* recommended that in some cases it might be appropriate for probation officers to avoid recommending special conditions to the court until the defendant is preparing to re-enter the community from prison.⁷³ It has further recommended that, for defendants facing lengthy terms of imprisonment, probation officers should consider whether the risks and needs present at the time of sentencing will be present when the defendant returns to the community.⁷⁴ The recently approved amendments add two examples to illustrate when it may be appropriate for probation officers to defer recommending conditions.⁷⁵ In the first example, if a defendant begins contacting the victim of

the crime for which the defendant was convicted during the period of supervision, the probation officer may consider recommending a special condition prohibiting contact with the victim.⁷⁶ In the second example, if the probation officer is considering recommending a special condition limiting, filtering, or monitoring the defendant's use of computers and the internet, it may be appropriate to avoid recommending such a condition until the defendant is preparing to re-enter the community, because monitoring and filtering technology may change or become obsolete during the period of imprisonment.⁷⁷

C. Privilege against Self-Incrimination

In January 2016, when it requested public comment on proposed amendments to the standard conditions in its *Guidelines Manual*, the Sentencing Commission sought feedback on whether the standard condition requiring that the defendant “answer truthfully” the probation officer's questions should be retained or, instead, whether the defendant should be required to “be truthful when responding to” the questions of the probation officer.⁷⁸ In the February 2016 public hearing before the Sentencing Commission, Judge Ricardo S. Martinez testified on behalf of the Criminal Law Committee and noted that the purpose of the current “answer truthfully” condition is to build positive rapport and facilitate an open and honest discussion between the probation officer and the person on supervision.⁷⁹ As he explained, accurate and complete information about the nature and circumstances of the offense and the history and characteristics of the defendant is necessary to implement effective supervision practices. Judge Martinez expressed the Criminal Law Committee's belief that a condition requiring that the defendant “answer truthfully” the questions of probation officer, along with policy guidance directing the officer how to ensure that Fifth Amendment rights are not violated, satisfies constitutional requirements without negatively affecting the ability to effectively supervise defendants.⁸⁰

In its January 2016 request for public comment, the Sentencing Commission also asked whether it should clarify in the commentary to the *Guidelines Manual* (rather than in the language of the standard condition itself) that a defendant's legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of the condition requiring the defendant to “answer truthfully” questions of the probation officer.⁸¹ At the February 2016 hearing, Judge Martinez conveyed the Criminal Law Committee's support for including such a clarification, and he noted that the Criminal Law Committee intended to recommend to the Judicial Conference that similar guidance be added to the *Guide to Judiciary Policy* and the new public document on the conditions of supervision.

Indeed, as Judge Martinez testified, the Criminal Law Committee already supported this type of guidance in 2011 for defendants convicted of sex offenses when it endorsed a new sex offender management procedures manual for probation officers. Under that guidance, if the defendant refuses to answer a specific question during an interview on the grounds that it is incriminating, the probation officer is instructed not to compel (e.g., through threat of revocation) the defendant to answer the question. If there is uncertainty about whether the invocation of the privilege against self-incrimination is valid (i.e., whether the specific question may lead to a realistic chance of incrimination), the probation officer is instructed to refer the matter to the court to make this determination.⁸² In his testimony before the Sentencing Commission, Judge Martinez expressed the Criminal Law Committee's belief that adding this guidance to policies concerning all types of offenses rather than just sex offenses would address any Fifth Amendment concerns without having unintended consequences on the ability of probation officers to effectively supervise defendants.

The revised guidance to probation

⁷² See, e.g., *United States v. Kent*, 554 Fed.Appx 611 (9th Cir. 2014) (noting that if technology has changed by the time the defendant is released from prison, and the defendant believes that the probation office has not met its continuing obligation to ensure not only the efficacy of the computer monitoring methods, but also that they remain reasonably tailored so as not to be unnecessarily intrusive, he may seek relief from the district court at that time); *United States v. Quinzon*, 643 F.3d 1266, 1273 (9th Cir. 2011) (“[A]s new technologies emerge or circumstances otherwise change, either party is free to request that the court modify the condition of supervised release . . . In situations like this one, where technological considerations prevent specifying in detail years in advance how a condition is to be effectuated, district courts should be flexible in revisiting conditions imposed to ensure they remain tailored and effective.”); *United States v. Balon*, 384 F.3d 38, 47 (2d Cir. 2004) (stating that changing technology “is an appropriate factor to authorize a modification of supervised release conditions under Section 3583(e).”); *United States v. Lifshitz*, 369 F.3d 173, 193, n.11 (2d Cir. 2004) (“Because [the defendant] is being sentenced to probation, it seems necessary to determine, at this time, the conditions of that probation and to base that determination, in the first instance, on the state of technology and other practical constraints as they currently exist. Were this, however, a case involving supervised release, or if there were any reasons why the commencement of the defendant's term of probation would be substantially delayed, it might well be prudent for the district court to postpone the determination of the supervised release or probation conditions until an appropriate later time, when the district court's decision could be based on then-existing technological and other considerations.”). See also Stephen E. Vance, *Supervising Cybercrime Offenders Through Computer-Related Conditions: A Guide for Judges* (Federal Judicial Center 2015).

⁷³ *Guide to Judiciary Policy*, Vol. 8D, § 530.20.30(b) (3).

⁷⁴ *Id.* at Vol. 8D, § 530.20.30(b)(2).

⁷⁵ *Id.* at Vol. 8D, § 530.20.30(b)(4).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ U.S. Sentencing Commission, “Notice of Proposed Amendments” (Jan. 15, 2016).

⁷⁹ *Conditions Public Hearing*, *supra* note 18, at 8 (statement of Judge Ricardo S. Martinez).

⁸⁰ For an overview of Fifth Amendment issues in the context of federal supervision, including an analysis of the seminal Supreme Court case—*Mimmesota v. Murphy*, 465 U.S. 420 (1984)—see David N.

Adair, *The Privilege against Self-Incrimination and Supervision*, 63 Fed. Probation 73 (June 1999).

⁸¹ U.S. Sentencing Commission, “Notice of Proposed Amendments,” (Jan. 15, 2016).

⁸² For a more thorough description of the guidance in the Sex Offender Management Procedures Manual, see Stephen E. Vance, *Looking at the Law: An Updated Look at the Privilege Against Self-Incrimination in Post-Conviction Supervision*, 75 Fed. Probation 33, 37 (June 2011).

officers approved by the Judicial Conference in September 2016 states that “[i]f the defendant refuses to answer a specific question on the grounds that it is incriminating, the officer should not compel (e.g., through threat of revocation) the defendant to answer the question. If there is uncertainty about whether the invocation of the privilege against self-incrimination is valid (i.e., whether the specific question may lead to a realistic chance of incrimination), the probation officer should refer the matter to the court to make this determination.”⁸³

⁸³ *Guide to Judiciary Policy*, Vol. 8E, § 190.45. This new section also states: “This guidance applies to interviews or interactions between officers and defendants in a ‘non-custodial’ setting (i.e., a setting where someone in the defendant’s position would not feel like he or she is restrained, prohibited from leaving the interview, or otherwise in an ‘arrest-like’ situation). In ‘custodial’ settings, additional safeguards such as *Miranda* warnings may be required. In these situations, it is recommended that officers consult with their court to determine the appropriate procedures.” *Id.* See also *Conditions Overview*, *supra* note 64, at 23 (describing recently approved guidance in *Guide to Judiciary Policy* regarding the privilege against self-incrimination); USSG App. C, amend. 803 (effective Nov. 1, 2016) (“The amendment [to the *Guidelines Manual*] also adds commentary to clarify that a defendant’s legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer’s question shall not be considered a violation of the ‘answer truthfully’ condition. The [Sentencing] Commission determined that this approach adequately addresses Fifth Amendment concerns raised by some courts, . . . while preserving the probation officer’s ability to adequately supervise the defendant.”).

Judge-Involved Supervision Programs in the Federal System: Background and Research

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I. Background

IN RECENT YEARS there has been a growing recognition among policy-makers, practitioners, and researchers of the importance of using the highest quality scientific evidence when developing, implementing, and evaluating criminal justice programs. Since 2006 the Committee on Criminal Law of the Judicial Conference of the United States has supported evidence-based practices as a means to evaluate and implement those supervision practices that best enable federal offenders to function as law-abiding members of society. Additionally, since 2007 the Committee has endorsed strategic resourcing; that is, use of the most cost-effective techniques to achieve the greatest reductions in recidivism.

In 2008, as part of its continuing exploration of evidence-based practices, the Committee began discussing programs in the federal system modeled on state problem-solving courts used by state and local governments since the 1980s.² At that time, post-conviction reentry court programs had been implemented by 21

federal districts and were under development in another 31 districts. As the Committee stated in its September 2009 report to the Judicial Conference, these initiatives “reveal an energetic commitment to the betterment of federal offenders and an enthusiasm that should be commended.”³

While it considered research demonstrating the effectiveness of some of these programs, particularly pre-conviction or pre-sentence drug courts, the Committee also noted several reasons for further study before endorsing programs modeled on these courts in the federal system. First, a 2006 Department of Justice (DOJ) report did not support federal drug courts.⁴ Second, in many states drug courts operate prior to the imposition of sentence, pursuant to state laws that allow judges to reduce (or even waive) an offender’s sentence

³ Summary of the Report of the Judicial Conference Committee on Criminal Law 5 (September 2009).

⁴ See U.S. Department of Justice, Report to Congress on the Feasibility of Federal Drug Courts (June 2006). In this report, the DOJ encouraged the use of “drug courts” in the state criminal justice system, but it said that such programs were “inappropriate and unnecessary” and a poor use of resources in the federal system. The report used the term “drug courts” to refer to both the “front end” diversion programs that represent alternatives to incarceration, as well as the post-conviction/supervised release type of program that existed in many federal districts. U.S. Department of Justice, Reentry Toolkit for United States Attorneys’ Offices (August 2011). On January 19, 2011, the Deputy Attorney General issued a memorandum encouraging United States Attorneys’ Offices to participate in reentry courts. This memorandum formally reversed the DOJ’s previously stated policy that “drug courts” were generally inappropriate and unnecessary in the federal system. *Id.*

upon completion of the program. By comparison, no such authority exists in the federal system, and any diversion authority resides with the prosecutor.⁵ Consequently, federal drug courts would necessarily operate after an individual had served his sentence and while on supervised release. Finally, the disparate ways in which these programs were implemented presented a substantial challenge for studying and identifying effective practices.⁶

Due to these and other factors, it was unclear to what extent the reductions in recidivism reported by some state programs could be replicated in the federal system. While the Committee endorsed evidence-based

⁵ While diversion authority rests with the prosecutor, the court may sentence certain defendants convicted of simple possession of a controlled substance to a term of probation without entering a judgment of conviction. 18 U.S.C. § 3607.

⁶ For example, the selection procedures of the court programs did not appear consistent. Some courts addressed only those offenders with drug issues, whereas others did not. Some court programs accepted only those offenders who chose to participate, while others required participation. Some focused on high-risk offenders, but others did not. Some programs involved informal monthly meetings with a judge, while others included regular status hearings in a courtroom before a district or magistrate judge, with the full panoply of relevant courtroom personnel. Judges in such proceedings function differently, with some performing in a traditional judicial manner, by sitting at the bench, in a robe, and receiving status reports. Other judges, however, performed in a more informal and interactive manner, forgoing a robe, sitting at a table with the offender, and taking on a role more like a supervising probation officer, such as offering advice and counsel to the offender on the conduct of his daily life.

¹ The author would like to thank John Fitzgerald and Carrie Kent for their comments and suggestions when developing this article.

² Problem-solving courts seek to reduce recidivism and improve outcomes for individuals, families, and communities by using methods that involve ongoing judicial leadership; a collaborative or team-based approach among criminal justice professionals including the prosecutor, defense attorney, probation officer, and treatment provider; the integration of treatment and/or social services with judicial case processing; close monitoring of and immediate response to behavior; multidisciplinary involvement; and collaboration with community-based and government organizations.

practices and using empirical data in making programmatic resource decisions, federal programs diverged from state programs. The Committee concluded, therefore, that the success of these programs in the federal system was as yet undetermined, and that the development of a national model program required significantly more research.⁷ Further, the Committee recognized that programs of this kind are very resource intensive and, because these programs typically involve a relatively small number of offenders, some assessment of cost-effectiveness might be prudent.⁸

As the Committee explained in its September 2009 report to the Judicial Conference, “The proliferation of these programs around the country could have budgetary and other resource impact. Given the varied iterations of these programs, an assessment of their operational aspects and their effectiveness is necessary in order for the Committee . . . to fulfill its obligation of identifying those techniques that are most likely to produce positive results and those that are not successful.”⁹ Therefore, “[a] study of these programs will hopefully reveal those approaches that work so that these techniques can be shared with other courts and so that current and future resource implications can be identified.”¹⁰ Upon the Committee’s recommendation, the Judicial Conference endorsed the Committee’s commissioning of a study “to assess the efficacy and cost-effectiveness of reentry court programs,” and it asked the Committee “to consider the results of this study in recommending any appropriate model programs.”¹¹

The Criminal Law Committee subsequently asked the Federal Judicial Center (FJC) to design and conduct a formal study of reentry court programs in the federal courts. Specifically, the Committee asked for a study that assesses the operational aspects, outcomes, and cost effectiveness of reentry court programs, including an evaluation of the effectiveness of these programs compared to that of other less costly offender supervision techniques.

In June 2016, the final report of the FJC’s

study was released. This paper provides a brief overview of relevant research regarding problem-solving courts to assist the courts and other stakeholders as they consider the study’s findings and implications. Section II describes the background and major research findings of drug courts and reentry courts in the states. Section III reviews the major features and findings of the FJC’s study of federal reentry courts and describes a series of studies of federal reentry courts in individual districts. Finally, section IV discusses the recent emergence of pretrial diversion court programs in the federal system.

II. Drug Courts and Reentry Courts in the States

A. Drug Courts in the States

First implemented in Florida during the late 1980s, drug courts have become widespread in local and state jurisdictions. They arose out of necessity due to overcrowded dockets and high recidivism rates.¹² Drug courts provide a judicially supervised regimen of drug abuse treatment and case management services to offenders who are typically nonviolent and who abuse drugs. Depending on the structure of the drug court, successful completion may be accompanied by dropping the charges (pre-plea/diversionary court) or expunging the offense from the record (post-plea court).

Studies of the effectiveness of drug courts in the states have concluded that they offer a promising strategy for reducing recidivism if implemented with key components and if certain implementation challenges are adequately addressed. The Bureau of Justice Statistics (BJA), National Association of Drug Court Professionals (NADCP), Government Accountability Office (GAO), and the National Academy of Sciences (NAS) recently reviewed

a large number of evaluations of drug court programs to assess their effectiveness.¹³ The BJA concluded: “When these courts are implemented in an evidence-based manner, they have reduced recidivism and substance abuse among high-risk substance-abusing offenders and increased their likelihood of successful rehabilitation. . . . Drug court programs . . . are required to have certain key components.”¹⁴ Similarly, the NADCP concluded: “Five independent meta-analyses—advanced statistical procedures conducted by rigorous scientific teams—have concluded that drug courts reduce crime and substance abuse.”¹⁵ The NADCP also found, however, that “[r]esearch now confirms that how well drug courts accomplish their goals depends upon how faithfully they adhere to the Ten Key Components.”¹⁶ The GAO determined that drug courts were generally associated with lower recidivism and relapse rates for program participants.¹⁷ Finally, the NAS concluded that “[s]tudies suggest that recidivism rates are lower for drug court participants . . . although the recidivism statistics

¹³ For readers interested in reviewing the individual evaluations, the names of the evaluations are listed in these reports.

¹⁴ U.S. Department of Justice Bureau of Justice Assistance, *Evaluation & Research Literature: The State of Knowledge on BJA-Funded Programs 28* (March 2015) (<https://www.bja.gov/Publications/Eval-Research-BJA-Programs.pdf>). Page 20 of this evaluation includes a list and brief description of hundreds of studies regarding drug courts.

¹⁵ National Association of Drug Court Professionals, *supra* note 11, at 1.

¹⁶ *Id.* at 2. The “Ten Key Components” are: (1) the integration of treatment services with justice system case processing; (2) a non-adversarial approach to promote public safety while protecting participants’ due process rights; (3) early identification and placement of eligible participants; (4) access to a continuum of treatment and rehabilitation services; (5) frequent alcohol and other drug testing; (6) a coordinated strategy for responses to participants’ compliance; (7) ongoing judicial interaction with each participant; (8) monitoring and evaluation to measure the achievement of program goals and gauge effectiveness; (9) continuing interdisciplinary education; and (10) partnerships among drug courts, public agencies, and community-based organizations.

¹⁷ U.S. Government Accountability Office, *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revisions Efforts* (December 2011). The GAO’s analysis of evaluations reporting recidivism data for 32 programs showed that drug-court program participants were generally less likely to be rearrested than comparison group members, with differences in likelihood reported to be statistically significant for 18 of the programs.

⁷ September 2009 Criminal Law Committee Report, *supra* note 2, at 7.

⁸ Most programs had approximately 10-20 participants.

⁹ September 2009 Criminal Law Committee Report, *supra* note 2, at 8.

¹⁰ *Id.*

¹¹ JCUS-SEP 09, p. 13.

¹² National Association of Drug Court Professionals, National Drug Court Institute, *The Drug Court Judicial Benchbook 1* (February 2011) (“Drug courts sprung out of necessity, not fashion or vogue. Just over twenty years ago when drug courts were born, the court system was in crisis. Dockets were overwhelmed with drug-related cases that rarely seemed to be resolved. Judges would sentence drug offenders to probation or incarceration, only to quickly see them back again on a revocation or new charge. The oft-cited statistics spoke loudly then and continue to speak deafeningly today: two out of three prison inmates arrested for a new offense; fifty to seventy percent of inmates reincarcerated for a new offense or parole revocation; forty to fifty percent of probationers revoked; ninety-five percent of drug offenders continuing to abuse alcohol, other drugs, or both.”).

vary by the characteristics of the specific drug court and its target population.¹⁸

Despite research finding that drug courts are generally effective, particularly when implemented with certain components, variations in how they determine eligibility, provide substance abuse treatment, supervise participants, and enforce compliance complicate evaluations of their effectiveness.¹⁹ As the CRS explained, “[O]ver the years, numerous program evaluations have been conducted, and the findings have been as varied as the drug courts themselves. Questions remain about the extent to which drug courts reduce substance abuse among participants and lower recidivism, criminal victimization, and costs related to criminal adjudication and incarceration.”²⁰ The CRS provided the following summary of challenges related to evaluating drug court effectiveness:

Drug court evaluations have been widely criticized for methodological weaknesses and data inconsistencies. Some criticisms stem from the fact that the majority of drug court program evaluations (1) have either no comparison group or a biased comparison group, such as offenders who refused or failed the drug court program; (2) report outcomes only for participants who complete the program (graduates), while excluding participants who did not complete the program (dropouts); and (3) use flawed data-collection methods, such as drug court participants’ self-reported surveys. The variations in the types of drug courts, disparities in the data collected, varied methods used to evaluate drug courts, and limited follow-up of participants are among the data limitations and knowledge gaps that complicate efforts to quantify the effectiveness of the intervention. Nonetheless, many researchers believe that drug courts represent one of the more promising strategies for intervening with drug-abusing offenders, and that these programs outperform virtually all other strategies that have been

attempted for drug offenders.²¹

Related to the issue of evaluation of drug court effectiveness are the implementation challenges that must be addressed for drug courts to be successful. One challenge is the “necessity of taking drug courts to scale.”²² As the NADCP wrote, “[o]nly by treating sufficient numbers of offenders can drug courts take advantage of the economies of scale that will make their programs not only effective, but cost-effective. . . . Many drug courts have been able to successfully work with a small percentage of offenders with serious substance abuse problems. However, because of the limited number of participants, those programs have not had a substantial or meaningful impact on their community’s substance abuse problem.”²³ An additional challenge is that successful drug courts are often dependent upon the presence of individual “innovator judges.” The NADCP has explained that “dynamic judicial leadership at the inception of a drug court is desirable, even critical, to the program’s initial success. However, while a powerful judicial presence sustains most drug courts for an initial period, when that innovator judge moves on, the drug court may have great difficulty maintaining its focus, structure, and viability.”²⁴ A final challenge is to provide the continuing training to the drug court team, because “[r]esearch tells us that outcomes are as much as five times better for drug courts that provide training for all of their team members.”²⁵

B. Reentry Courts in the States

Due to the perceived success of drug courts, judges have become more receptive to new

problem-solving approaches to adjudication, and the drug court model has been extended to a variety of court programs, including domestic violence courts, mental health courts, DWI courts, veteran courts, and reentry courts.²⁶ The reentry court concept, first introduced in 1999 by Attorney General Janet Reno and Jeremy Travis, then-director of the National Institute of Justice, applies drug court principles to the back end of the system to facilitate offender reintegration. The NAS describes the background regarding their development:

As with drug courts, [Jeremy] Travis proposed that active judicial authority could be applied to a “reentry court” to provide graduated sanction and positive reinforcement and to marshal resources for offender support. Drug courts usually operate *prior* to a prison sentence (e.g., as a diversion program); reentry courts would operate *after* prison. . . . In his book, *But They All Come Back*, Travis (2005) noted several benefits to reentry courts, saying that they cut across organizational boundaries, making it more likely that offenders are held accountable and supported in their reentry attempts. Reentry courts can also involve family members, friends, and others in a reentry plan. He also noted that judges command the public’s confidence while, in contrast, the parole system is held in low public esteem. Moreover, judges carry out their business in open courtrooms, not closed offices, so the public, former prisoners, and family members and others can benefit from the open articulation of reasons for a government decision. Travis also believes that a judge is in a unique position, given the prestige of the office, to confer public and official validation on an offender’s reform efforts.²⁷

With regard to research on the effectiveness of reentry courts in the states, the BJA reviewed the available research literature, and it concluded that there was not sufficient evidence to determine whether they are effective.²⁸ Similarly, the NADCP concluded that

¹⁸ National Academy of Sciences, *Parole, Desistance from Crime, and Community Integration* 64 (2007).

¹⁹ Congressional Research Service, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress* 12 (2010).

²⁰ *Id.*

²¹ Congressional Research Service, *supra* note 18, at 13. See also Fred Osher, Director of Health Systems and Service Policy, Council of State Governments Justice Center, *Do Problem Solving Courts Achieve Their Stated Goals: Research Findings and Open Questions* (on file with Administrative Office of U.S. Courts) (“While the current base of research for these programs is promising, additional, more rigorous research is needed to confirm these results and to determine what factors make problem-solving courts work, for whom, and under what circumstances. These future studies need to be stronger methodologically, with larger sample sizes across multiple sites, and with appropriate control groups.”).

²² National Association of Drug Court Professionals, *supra* note 11, at 15.

²³ *Id.*

²⁴ *Id.* at 14.

²⁵ *Id.* at xi.

²⁶ National Academy of Sciences, *supra* note 17, at 65.

²⁷ *Id.*

²⁸ Bureau of Justice Assistance, *supra* note 13, at

drug courts “simply have far more research on them than other types of problem-solving courts. When a sufficient body of research has identified best practices for other problem-solving court programs, NADCP will release best practice standards for those programs as well.”²⁹ Finally, the NAS discussed the early state of the research and described the following unanswered questions:

At present, reentry courts are largely experimental, and neither their impact nor their costs and benefits have been rigorously evaluated. . . . Given the importance of the reentry problem and the success of handling other offender populations through the problem-solving court model, the costs and benefits of reentry courts is a subject that begs for more rigorous research. It is critical to understand the impact of reentry courts on reoffending in comparison with traditional services. . . . As is the case for other specialized courts, it is necessary to determine whether it is the charismatic leadership of a judge and the interaction with the client that leads to desistance and other positive outcomes or a strict adherence to a sanctioning protocol. Another possibility is simply that clients are getting more substance abuse treatment and other services than they would have otherwise had. If the last situation is the case, then couldn't those enhanced services be provided by traditional parole agents rather than sitting court judges? These are all important questions in need of more rigorous research.³⁰

134. Page 104 of this evaluation includes a list and brief description of dozens of studies regarding reentry courts.

²⁹ National Association of Drug Court Professionals, *Adult Drug Court Best Practice Standards*, Volume I 2 (2013). See also Caitlin J. Taylor, *Tolerance of Minor Setbacks in a Challenging Reentry Experience: An Evaluation of a Federal Reentry Court*, 24 *Criminal Justice Policy Review* 49, 54 (2013) (“[R]eentry court programs have generally not yet been subject to definitive program standards to the same extent as drug courts.”).

³⁰ National Academy of Sciences, *supra* note 25, at 68. See also Taylor, *supra* note 28, at 53 (noting the “relative lack of research on reentry courts and the mixed results found in their existing research”).

III. Studies of Federal Reentry Court Programs

A. Federal Judicial Center Studies³¹

In response to the Committee's request that it assess the operational aspects, outcomes, and cost effectiveness of reentry court programs, the FJC designed and conducted a comprehensive two-pronged study. One prong involved a process-descriptive assessment of existing programs.³² It did not focus on reentry programs per se, but examined the broader range of judge-involved supervision programs. It was not an evaluation of these programs overall, but described the variety of programs, the populations served, the services provided, and how the participants have fared. The final report was presented to the Committee at its December 2012 meeting.

A second prong involved a multi-year randomized experimental study in five districts with new or relatively new reentry court programs.³³ The FJC chose a randomized experimental design to provide the Committee with the most definitive answer to the question of whether reentry court programs can reduce recidivism in a cost-effective manner.³⁴ The final report was presented to the Committee at its June 2016 meeting.

1. FJC Process-Descriptive Study

This study analyzes the experiences of offenders across 20 judge-involved supervision programs in 19 federal districts. A description of some of its major features and findings is presented below:

- No two of the study programs were exactly alike because each was customized to accommodate the program's purpose, the

³¹ Readers interested in more information about these and related FJC studies on judge-involved supervision programs are encouraged to review the full studies, which are available on the FJC's internal website at: <http://fjconline.fjc.dcn/content/309723/overview>.

³² Federal Judicial Center, *Process-Descriptive Study of Judge-Involved Supervision Programs in the Federal System* (February 2013).

³³ Federal Judicial Center, *Evaluation of a Federal Reentry Program Model* (May 2016).

³⁴ As the FJC study explained, “Random assignment eliminates the selection process as a factor affecting program and supervision outcomes. For example, if there was a propensity on the part of reentry teams to select certain individuals for the reentry programs, perhaps because they were thought to be more amenable to the intervention or, conversely, had demonstrated a resistance to prior interventions, that is eliminated with random assignment.” *Id.* at 4.

district's local conditions, and agreements worked out among the partner agencies participating on the program teams.

- Although the term “reentry,” which has been defined as the process of leaving prison and returning to society, has been used widely in the judge-involved supervision context, most of the federal supervision programs that feature the active involvement of a judicial officer are modeled on drug court programs rather than limited to offenders returning from prison.
- At the time of the survey:
 - the majority of the programs—11—followed a general “drug court” model, available only to probationers and supervised releasees with a documented history of substance abuse;
 - two were reentry programs targeting higher risk offenders released from prison regardless of their substance abuse history;
 - two were limited to returning prisoners, but only if they had a history of substance abuse (“reentry drug” programs);
 - five targeted any higher risk probationer or supervised releasee who met the risk parameters set by the program, including risk level as measured by the Risk Prediction Index and substance abuse history (“risk management” programs).
- Overall, when compared with a group of similar offenders, offenders being served by judge-involved supervision programs were supervised more closely, were referred for services more often, had their supervision revoked for technical violations more frequently, and were arrested for criminal offenses slightly less often. This “look more, see more” finding is consistent with studies of other intensive supervision programs. These overall findings mask variations across programs, however. There were, for example, three programs for which closer supervision of participants was associated with lower rates of supervision revocation for technical violations, the result of a team commitment to early identification of problems, followed by swift, proactive, community-based responses. This finding suggests that reliance on supervision revocation as the usual response to “looking more” and “seeing more” is more an issue of program implementation and local

culture than of program design.

- Among the key data not available on a consistent basis were the number of drug tests, referrals for services that were not provided under government contract, and instances of and responses to noncompliance that did not result in revocation of the supervision term.
- The experiences of the program participants were compared to the experiences of a comparable group of offenders who did not participate in the programs (i.e., “the comparison group”). Program participants were more likely to have been referred to treatment services such as substance abuse and mental health treatment. According to the study, the “most striking difference was for substance abuse treatment: program participants were more likely to have been referred than the comparison group offenders (61.5% versus 38%).”
- The study compared the participants and the comparison group after 12 months and 18 months of the start of the supervision term. The study found very little difference between the groups in supervision status at 12 months; the revocation rate for both groups was 13 percent. Technical violations were the basis for the majority of revocations in both groups, but the percentage was slightly higher for the participant group. Although revocations for new major criminal conduct were rare during the first year, the comparison group’s revocations were double the number of those of the participant group, 2.8 percent vs. 1.4 percent. After 18 months, more of the participant group than the comparison group had terminated their terms of supervision. This was due to higher proportions of both early terminations (9 percent vs. 1 percent) and revocations (23 percent vs. 19 percent).
- The higher overall revocation rate for participants resulted from more revocations for technical violations (18 percent vs. 13 percent) that were not offset by the slightly higher rate of revocation for new criminal conduct among the comparison group (6 percent vs. 4 percent).
- The study presented the number and percentage of program participants and comparison group offenders who were arrested for new criminal conduct 12 and 18 months from the date they began supervision. Fewer of the program participants than the comparison group offenders—16 percent vs. 19 percent—were arrested for

new criminal conduct during the first 12 months of supervision, and more of the comparison group offenders were arrested for each of the substantive crime types except firearms offenses (for which three offenders in each group were rearrested). After 18 months, the gap between the groups had narrowed to 1.4 percentage points, and participants by then had outpaced the comparison group offenders in the number of arrests for drug crimes, firearms offenses, and public order offenses.

- According to the study, “the takeaway from both analyses [of revocation and arrest rates] is the same: Within 12 or 18 months of starting their sentences of community supervision, program participants were arrested and/or had their supervision revoked for new criminal conduct slightly less frequently—by 1.5 to 3 percentage points—than similarly situated offenders in the comparison group.”
- The study concluded: “The analyses comparing offenders who participated in judge-involved supervision programs with similarly situated offenders indicate that, in the aggregate, the programs generated more intensive supervision. Since the two groups of offenders are matched on many of the risk and need factors for which current federal supervision policy dictates the level and type of supervision, it may be that the value added by judge-involved supervision programs is the enhanced delivery of supervision interventions. This finding is not unexpected.”

2. FJC Randomized Experimental Study

The FJC conducted a multi-year randomized experimental study in five districts with new or relatively new reentry court programs. These districts were the Central District of California, the Middle District of Florida, the Southern District of Iowa, the Southern District of New York, and the Eastern District of Wisconsin. Below is a description of some of the major features and findings of the study.

- The study began in September 2011 and followed randomly selected offenders throughout their terms of supervision, and beyond, to compare their experiences and outcomes.
- The FJC designed an experimental study with random assignment to treatment (reentry program) and control groups (standard post-conviction supervision) that tested a reentry court program model

developed by the AO.³⁵ The findings of the study are limited to the implementation of the reentry court model in the study districts. This model “is comprehensive, outlining the duties of each member of the reentry team, the length and phases of the program for participants, and the responsibilities of participants. The policy draws upon evidence-based practices and principles and best practices outlined by the National Association of Drug Court Professionals.”

- As the study explained, the AO prepared the model at the request of the FJC for two reasons. First, existing reentry programs have “taken a variety of forms. Many of these programs shared common features, . . . but there was not enough common ground upon which to conduct a formal study. These programmatic differences could create competing explanations for any study results and make interpretation of any positive or negative effects difficult if not impossible.” Second, when the Committee requested the study, it expressed the need for a national model for federal reentry programs. This study “would test a model policy whose elements could provide the framework for an eventual national policy.”
- The study design called for two treatment groups and a control group. Group A would be a reentry program administered by a reentry team, led by a district or magistrate judge, and composed of a U.S. probation officer, a federal defender, an assistant U.S. attorney, and a service provider such as a drug treatment or mental health counselor. Group B’s reentry program would have a reentry team identical to Group A except without the judge, led by a U.S. probation officer. Finally, Group C would be standard post-conviction supervision.
- This configuration of groups would enable several comparisons. The comparison of Groups A and B to Group C would give an estimate of the impact of the reentry team approach on recidivism relative to standard supervision. The comparison of Group A to Group B would give an estimate of the impact of having a district or magistrate judge on the reentry team. As the study explained, “[b]y examining the impact of

³⁵ See Probation and Pretrial Services Office, Administrative Office of the U.S. Courts, *Experimental Reentry Court Model* (Mar. 2010) (<http://fjconline.fjc.dcn/content/opps-model-policy-experimental-reentry-programs>).

judge participation, in isolation, we may be able to estimate whether or to what degree judge participation is critical to the success of the reentry program in reducing recidivism. From the beginning, this study was intended to be a true experiment with random assignment to treatment (reentry program) and control (standard supervision) groups.”

- According to the study, “[t]he difficulties of implementing such a design in a real setting, such as a federal court, often center around the selection process. Program officials may change the random assignment with good (wanting to help deserving candidates) or bad (wanting the program to appear successful) intentions. There may be changes to the program or intervention midway through the study, perhaps in an effort to implement ‘lessons learned.’ Finally, there may be a failure to follow the research protocols and deliver the treatment as designed. In short, fidelity to the experimental design is more difficult to maintain in the real world.”
- According to the study, “[t]he participating districts had difficulty fully implementing the program model. . . . Among the issues observed with the study sites’ efforts to maintain [adherence to the model] were the ability of probation officers to provide the level of supervision called for in the model program policy, changes in the length of the program phases, changes in the requirements for advancement from one phase to another, and the level of involvement of team members such as representatives from the federal defenders and the U.S. attorney’s office.”
- The model program called for voluntary participation in the reentry program. Among those study individuals assigned randomly to a reentry program, the refusal rate for participation in the assigned program was approximately 60 percent.
- Among participants in the reentry programs, completion or graduation rates averaged between 50 and 60 percent. Almost half of all participants left the program or were terminated for failure to adhere to program rules.
- A comparison of supervision revocation rates after 24 months post-release from prison showed no statistically significant difference between reentry program participants and those individuals assigned to standard supervision.
- A comparison of recidivism rates after 30

months post-release from prison showed no statistically significant difference between reentry program participants and those individuals assigned to standard supervision.³⁶

- The cost of operating the reentry programs for this study varied from district to district. These cost estimates reflect the time judges, probation officers, federal defenders, and other reentry program team members devoted to experimental program operations, expressed in monetary terms, over the period in which the program participated in this study.
- Probation officers spent far more time on program operations than any other team members. This difference persists when probation-specific activities, such as drug testing, field contacts, and other supervision activities, are factored out of the time estimates.
- According to the study, “[t]he task of estimating the cost-effectiveness of the . . . model reentry program is made simple by the fact that, compared to [its] control group, we found no reductions in revocations nor in felony arrests for those offenders who participated in a reentry program. Participants who were in a judge-led reentry program fared no better than those in a probation-led reentry program, and neither group did better than participants who received standard probation supervision. Given the program costs outlined in [its] cost reports . . . , we conclude that the . . . reentry program model was not cost effective as a means of reducing revocations and rearrests among newly released offenders. The . . . model was comprehensive, covering virtually all aspects of a reentry program operation, but it was never fully implemented in the districts participating in this study.”
- With regard to the question of whether full implementation of the model would have produced better outcomes, the FJC study stated: “Although speculative, that result is doubtful, at least with respect to revocations. Among the challenges the reentry programs faced was meeting the supervision goals set forth by the program model. A full implementation would mean supervision of participants at even greater levels

than the districts were able to achieve. This in turn could result in more violations of program rules and fewer graduations, or at least longer times to graduation. It could also result in more revocations as more violations of supervised release conditions were uncovered. Many of the other implementation issues were more peripheral to the central concept of a judge-led reentry team working collaboratively as team members guide participants through different phases of the participants’ reintegration into society. That the control group and those who refused to participate fared about as well as the reentry groups on [its] measures of revocation and recidivism could indicate that the efforts of federal probation are a baseline upon which it is difficult to improve.”

- The study concluded that, given the findings of no impact on revocation and recidivism rates, and in light of the cost studies, the model policy “cannot be said to be a cost-effective method for reducing revocation and recidivism.” Furthermore, “[r]evocation and recidivism are not the only measures of program effectiveness—employment, sobriety, and quality of life are other possible indicators of a program’s effectiveness at reintegrating former prisoners into society. However, for [its] purposes, revocation and recidivism can be readily measured, compared across supervision populations within and between districts, and have financial consequences for the operation of the federal criminal justice system.”

B. Studies of Federal Reentry Court Programs in Individual Districts

In 2005, the District of Oregon established a reentry court program, and it subsequently initiated an evaluation of its effectiveness.³⁷ The study included 114 people. There were 28 people in a “Comparison group” (comprising individuals under traditional supervision), 25 people in the “Current Reentry Court Participants group,” 31 people in the “Reentry Court Graduates group,” and 30 people in the “Reentry Court Terminators group.” According to the study, “significant differences were found among the Comparison, Current Reentry Court Participants, Reentry Court

³⁶ Recidivism was defined as a felony-level arrest. Arrests for infractions (e.g., minor traffic violations), misdemeanor violations, and technical violations of supervised release conditions were not included.

³⁷ Close, D., Aubin, M., Alltucker, K., *The District of Oregon Reentry Court: Evaluation, Policy Recommendations, and Replication Strategies* (2009) (<http://www.orp.uscourts.gov/documents/ReentryCourtDoc.pdf>).

Graduates and Reentry Court Terminators on three outcome variables: total sanctions, number of urinalyses, and the number of support services used.³⁸ The study concluded that “it appears that the comparison group outperformed the treatment groups on multiple, important dimensions. For example, the comparison group underwent less monitoring and supervision and had fewer drug and mental health services and yet had more employment and fewer sanctions.”³⁹ The study warned that it “has several limitations that restrict interpretation and generalizability of findings,” including the relatively small sample size.⁴⁰

In 2005, the Western District of Michigan established a reentry court named the Accelerated Community Entry Program

³⁸ The Comparison group had the lowest average total sanctions compared with other groups. The Comparison group had the fewest number of urinalyses, while the Graduated group had the highest number of urinalyses. Finally, the Comparison group participated in support services at the lowest level compared with the other three groups. Support services included agencies that address housing, workforce development, substance abuse treatment, mental health services, children and family supports, educational opportunities, and health care.

³⁹ *Id.* at 94.

⁴⁰ *Id.* See also Taylor *supra* note 28, at 53 (“There were several notable limitations of the Oregon court study. In addition to using a fairly small sample size . . . [the comparison] groups were not comparable on several key predictors of success on supervision.”); Melissa Aubin, *The District of Oregon Reentry Court: An Evidence-Based Model*, 22 Federal Sentencing Reporter 39, 41 (2009) (“Due in part to a limited sample size, there were no statistically significant differences between reentry court completers and a comparison group that underwent conventional supervision. The quantitative study did, however, demonstrate that those currently participating in reentry court, those who graduated from it, and those in the comparison group under conventional supervision were more likely to be employed than those who were terminated from reentry court. Those results comport with the more general and uncontroversial point that sustained employment contributes to success upon reentry. The practices in use at the District of Oregon reentry court are evidence-based and guided by the conclusions of experimental and quasi-experimental studies of effective interventions in reentry, treatment, and problem-solving courts. As the data set grows, further research will assist in identifying effective interventions or variables linked to successful completion or termination. Longitudinal study is required to compare recidivism rates for reentry court participants and those under conventional supervision. Because reentry courts in general are relatively new, few such studies are available, but early findings suggest that the model can be effective at reducing recidivism.”).

(ACE).⁴¹ The district initiated an evaluation of the program, which was completed in 2010. The purpose was to “provide some initial outcome results” related to the program participants. The sample size for the preliminary analysis consisted of 36 ACE participants. The researchers used a comparison group of 121 offenders that did not participate in the ACE program. The study concluded that program participants had lower recidivism rates than the offenders that did not participate in the program. It also warned that the sample sizes were “rather small and this serves as a limitation for the statistical analysis as well as the reliability and generalizability of the results.”

In 2006, the District of Massachusetts established the Court Assisted Recovery Effort (C.A.R.E.), a program where offenders who have a significant drug abuse history and are serving terms of supervised release or probation voluntarily enroll in the program. The District of Massachusetts initiated an evaluation of the program, which was completed in 2009.⁴² In total, 46 offenders participated in C.A.R.E. between May 2006 and May 2009. Sixty-eight comparison group members were selected for inclusion in the study during this period.

The study found that program participants were “at least marginally more successful at avoiding new charges, securing employment and remaining drug-free than a comparable group of offenders under traditional supervision.” It warned, however, that the study has “important limitations,” including small sample size. Because the number of participants in the treatment and control groups was small, the study findings were “not particularly strong,” and “a few cases in one direction or another might change outcomes of our analysis, for example rendering a statistically

⁴¹ For a description and evaluation of this program, see Lowenkamp, C., and Bechtel, K., *An Evaluation of the Accelerated Community Entry Court Program* (2010) (on file with the Administrative Office of the U.S. Courts). For a summary of this evaluation, see Stephen E. Vance, *Federal Reentry Court Programs: A Summary of Recent Evaluations*, 75 Federal Probation 64 (2011) (<http://www.uscourts.gov/statistics-reports/publications/federal-probation-journal/federal-probation-journal-september-2011>).

⁴² For a description and evaluation of this program, see Farrell, A., and Wunderlich, K., *Evaluation of the Court Assisted Recovery Effort (C.A.R.E.) Program—United States District Court for the District of Massachusetts* (2009) (on file with the Administrative Office of the U.S. Courts). For a summary of this evaluation, see Stephen E. Vance, *supra* note 40.

significant result to be non-significant.”

In 2007, the Eastern District of Pennsylvania established the Supervision to Aid Reentry (STAR) program, a reentry court for residents of Philadelphia. In 2014, an outcome evaluation of the STAR program was completed on the first 164 reentry court participants.⁴³ The evaluation assessed the success of the program “by comparing the first 164 Reentry Court participants to a group of similarly situated individuals under supervised release. Comparisons between the two groups [were] analyzed in services offered or received, sanctions imposed, employment status, supervision revocation and new arrests in the 18 months following prison release.”

According to the study, STAR program participants were “significantly more likely to receive employment, housing, education, healthcare, mentoring and legal services.” They were “also more likely to participate in community service activities and receive intermediate sanctions of curfew restrictions and confinement.” Moreover, “[a]lthough no significant differences were found for new arrests, Reentry Court participants were statistically less likely to have their supervision revoked and much more likely to be employed at the end of the eighteen month study period.” Finally, “Reentry Court graduates were found to be particularly successful and were less likely than non-graduates and comparison group individuals to have a new arrest.”⁴⁴

The evaluation then used multivariate regression analysis to isolate the unique effect of STAR participation on recidivism and supervision revocation.⁴⁵ It concluded that

⁴³ Caitlin J. Taylor, *Program Evaluation of the Federal Reentry Court in the Eastern District of Pennsylvania: Report on Program Effectiveness for the First 164 Reentry Court Participants* (November 2014) (http://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1000&context=soc_crj_faculty). In 2013, an outcome evaluation of the first 60 program participants was published. See Taylor, *supra* note 28.

⁴⁴ The study did not analyze whether there were other explanatory variables besides reentry court graduation that differentiate graduates from non-graduates and from members of the comparison group and that may account for the difference in arrest rates.

⁴⁵ As the study explains, “multivariate analyses can measure the relationship between Reentry Court participation and an outcome of interest while holding constant other variables that may also be associated with that outcome. In other words, multivariate analyses can isolate the unique effect of Reentry Court participation on recidivism or supervision revocation.” Specifically, the evaluation

“the multivariate analyses reveal that Reentry Court participation does not have a unique effect on the likelihood of a new arrest or a new violent arrest.” Additionally, “participation is significantly related to the likelihood of supervision revocation. Even after controlling for other factors related to the likelihood of supervision revocation, participation in the Reentry Court program was still associated with a decrease in the odds of supervision revocation.” Finally, the evaluation warned that a limitation of the study is that “the relatively small pool of eligible comparison group members” prevented the creation of a comparison group that matched the group of STAR participants on certain variables that may be related to recidivism and other relevant outcomes.⁴⁶

In 2010, the Northern District of Florida established the Robert A. Dennis Reentry Court. That district is in the midst of a randomized experimental study of the program and is awaiting final permission from the FBI to access rearrest records of program

controlled for age; risk score as measured by the Risk Prediction Index; length of original incarceration; whether they received employment assistance, substance abuse treatment, education, legal services; whether they engaged in community service; and whether they received confinement as an intermediate sanction.

⁴⁶ As the evaluation explained, “the comparison group closely matches the Reentry Court group in terms of age and RPI. Although it would have been ideal to select comparison group members that also matched Reentry Court participants in terms of the type of offense for which they were originally sentenced and the length of incarceration sentence they most recently served, the relatively small pool of eligible comparison group members prevented such matching.” See also Taylor, *supra* note 28, at 64 (“Several limitations of this study should be noted. . . . The construction of an appropriate comparison group was limited by the relatively small number of individuals returning to Philadelphia on supervised release. . . . [T]he comparison group included more white collar and drug offenders and the STAR group included more violent offenders. Additionally, one-third of the comparison group were individuals who had been offered participation in the STAR program, but declined to participate. Although one third is a small portion of the comparison group, it is possible that individuals who agreed to participate in the STAR program were more motivated to change. Thus, differences in individuals’ readiness to change may have accounted for some of the findings. While it would have been ideal to match STAR participants and comparison group individuals on additional characteristics, such as offense type and readiness to change, the small pool of eligible comparison group individuals prohibited the inclusion of such criteria. Priority was given to matching the groups on age, gender, date of release, and risk prediction index score.”).

participants.⁴⁷ In 2011, the Northern District of California started a reentry court for high-risk offenders with a documented history of substance abuse. According to a description of preliminary analyses of the program, “participants performed better on three of four outcomes compared to control groups (fewer violation reports, arrests, and revocations in the post intervention period).”⁴⁸ That description also warned that “[i]t is important to note that the sample sizes are small, and long-term persistency has not been evaluated yet. The resources required to run these programs is not insubstantial. Moreover, given the upfront nature of these costs, they are not always easily empirically linked to the future savings from reduced recidivism.”⁴⁹

IV. Emergence of Federal Pretrial Diversion Court Programs

In the federal system, pretrial diversion programs modeled on state drug courts are in their infancy, but the number of such programs has increased rapidly in recent years. According to a survey conducted by the Administrative Office, there are approximately 25 initiatives in the federal courts that provide alternatives to incarceration or

reduced sentences for certain defendants.⁵⁰

While there has been a significant amount of promising research about the effectiveness of front-end drug courts in the states, there is not a significant amount of research about their effectiveness in the federal system. Pretrial diversion court programs would arguably cost the same as reentry court programs, but the potential cost savings (in the form of avoidance of incarceration in the Bureau of Prisons) is significantly greater than the savings in reentry programs (i.e., a reduction in the term of supervised release).⁵¹

The Judicial Conference has not specifically considered pretrial diversion court programs. It has, however, supported alternatives to criminal prosecution for several decades.⁵² Pretrial diversion in the federal system is an alternative to prosecution that diverts certain persons from traditional criminal justice processing into a program of supervision and services administered by the probation and pretrial services system. Under Judicial Conference policy, the program’s focus is on (1) diverting the person from traditional prosecution, (2) providing community supervision that allows for the diveree’s needs to be identified and addressed, and (3) if applicable, for the diveree to make reparation. A review of data on court filings reveals that pretrial diversion is an underutilized program in the federal criminal justice system. In fiscal year 2015, only 737 of 94,276 activated cases (less than one percent) were pretrial diversions.

The DOJ has expressed support for greater

⁴⁷ See M. Casey Rodgers, *Evidence-Based Supervision in the Northern District of Florida: Risk Assessment, Behavior Modification, and Prosocial Support—Promising Ingredients for Lowering Recidivism of Federal Offenders*, 28 Federal Sentencing Reporter 239, 243 (April 2016) (“We also have committed to a long-term research study of our program by the University of West Florida . . . to include the random assignment of participants. The decision to undergo a long-term study was based on our firm belief that reentry programs of any nature should be evidence based, supported by the latest corrections and community supervision research, and evaluated based on outcomes. It is our hope this study will provide sound evidence of the effectiveness of reentry efforts in general and, more specifically, reentry courts. By participating in a research study, we have gained invaluable insight from the researchers’ observations of our program. Their input has helped to improve the quality and effectiveness of our Reentry Court through specifically designed phases and benchmarks and by frequently reminding us of the importance of fidelity to program design, assessment, and evaluation. The researchers’ ongoing involvement ensures that our Reentry Court program and services adhere to the principles of evidence-based intervention. In the end, the results of our research study will provide the much-needed data to tell us whether our efforts are paying off.”).

⁴⁸ Laurel Beeler, *Federal Reentry Courts and Other New Models*, 60 Federal Lawyer 55, 58 (2013).

⁴⁹ *Id.*

⁵⁰ See also United States District Court, Eastern District of New York, *Alternatives to Incarceration in the Eastern District of New York*, Second Report to the Board of Judges (August 2015) (cataloguing some of the existing diversion programs and describing the different methods of diversion from traditional criminal justice processing including by: (1) dismissal of charges, (2) reduction in charge to a lesser offense, (3) the vacatur of convictions, (4) avoiding prison through probationary sentences (agreed upon under Federal Rule of Criminal Procedure 11(c)(1)(C)), and (5) receiving a reduced sentence (e.g., a downward departure (or a variance) from the applicable Guidelines range based on post-conviction rehabilitation)).

⁵¹ See *id.* (cataloguing presentence diversion court programs in the federal system and listing the estimated cost savings for each program in the form of avoidance of incarceration).

⁵² In March 1980, the Judicial Conference agreed to support a bill to establish alternatives to criminal prosecution for certain persons and procedures for judicial involvement in pretrial diversion proceedings designed to standardize practices and to require equal treatment of similarly situated persons. JCUS-MAR 80, p. 43.

use of pretrial diversion court programs. Among the components of the DOJ's "Smart on Crime" initiative is the expanded use of alternatives to incarceration prior to sentencing. In particular, the DOJ has encouraged federal prosecutors to consider interventions "such as drug courts, specialty courts, or other diversion programs" to reduce unnecessary incarceration.⁵³ In a recent report, the DOJ's Inspector General found that the use of pretrial diversion "varied significantly among the different districts."⁵⁴ Moreover, the IG found that "there is substantial potential for pretrial diversion and diversion-based court programs to reduce both prosecution and incarceration costs."⁵⁵ Finally, the IG report urged the DOJ to evaluate the potential for pretrial diversion and diversion-based court programs to reduce recidivism.⁵⁶

⁵³ U.S. Department of Justice, Office of Inspector General, *Audit of the Department's Use of Pretrial Diversion and Diversion-Based Court Programs as Alternatives to Incarceration* 45 (July 2016).

⁵⁴ *Id.* at 9.

⁵⁵ *Id.*

⁵⁶ *Id.*

Understanding Resistance in Correctional Therapy: Why Some Clients Don't Do What They Should, and What to Do About It

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AT A RECENT federal reentry court session held in the District of New Jersey, five program participants were provided with an introduction to financial literacy. As a homework assignment, the participants were each instructed to call or visit three local banks and ask a series of brief questions related to opening checking accounts. The participants were given two weeks to complete the task, which would earn them “credits” that could be applied to an early termination of supervised release. When the reentry court reconvened two weeks later, none of the participants had completed the assignment.

We've all been there. A probation officer gives a client instructions designed to help the client. The client then fails to perform the assigned task. The probation officer considers the client to be behaving in a difficult manner and becomes frustrated. Rather than simply regarding clients as being obstinate, however, practitioners would do well to recognize that any number of scientific explanations could adequately explain why clients resist treatment directives. Understanding the dynamics of resistance may provide us with clues to effectively managing it.

Assigning clients tasks to complete (i.e., “homework”) is a key component of cognitive-behavioral therapy and effective correctional treatment generally (Andrews & Bonta, 2010; Beck, 1995). In fact, research has demonstrated that therapy programs which make use of homework are more effective than those which do not (Morgan, Kroner, & Mills,

2006; Morgan et al., 2011). As such, probation officers, therapists, and other professionals who work with clients in a correctional setting would do well to employ therapeutic approaches that incorporate homework assignments.

However, whenever therapy involves the use of homework, there exists the possibility that the client will resist completing it (Goldfried, 1982). Understanding and appropriately addressing resistance is an important yet frequently overlooked component of effective therapy. In recent years in the field of correctional treatment, researchers have developed specific conceptualizations of how services are most effectively applied; often missing from these approaches, however, are techniques designed to recognize and address resistance to treatment on the part of those under supervision. One example is the formulation of the Risk-Needs-Responsivity (R-N-R) model, which outlines three central components of offender treatment. Whereas risk assessment is concerned with ascertaining which offenders are most likely to recidivate in the future (and are therefore more likely to benefit from treatment specific to their individual risk factors) and needs assessment focuses on determining a given individual's particular criminogenic needs, responsivity is concerned with making use of the most effective treatment approaches and matching treatment to a given offender's particular circumstances (Andrews & Bonta, 2010). Offender willingness to comply

with treatment directives would conceptually appear to be directly related to responsivity; understanding the etiology of resistance and effectively dealing with it would logically increase offender responsivity.

It is noteworthy, though, that some scholars have argued that the R-N-R model inadequately conceptualizes responsivity. They state that the model overemphasizes the importance of risk and needs while paying too little attention to responsivity, thereby potentially leading practitioners to focus on assessing risk and addressing needs while giving minimal regard to appreciating the ability and motivation of offenders to engage in treatment (Ward, 2002; Ward & Stewart, 2003). In light of such criticism and in an effort to bring greater awareness of the issue of resistance in probation officer/offender relationships, in this article I review what is known about why clients in such relationships may fail to adhere to instructions to perform prosocial tasks and offer suggestions as to how probation officers can increase compliance with homework assigned as part of correctional therapy. Understanding resistance and effective ways to address it is particularly important given the current emphasis on the development of reentry and other problem-solving courts.

In this article, reasons for resistance are categorized as falling into four broad categories. First, I discuss possible reasons for resistance based in *social* explanations. For our purposes, these are defined as explanations rooted in the nature of interactions with others and include,

for example, how living in certain social environments may impact decision-making and behaviors at the individual level. *Psychological* explanations are those which, although possibly shaped through social experiences, are considered to be micro-level, client-centered factors. These include explanations for behavior based on personal characteristics, such as how one's financial circumstances may affect decision-making and perspectives of time. Next, I discuss *biological* explanations for resistance; these are explanations for resistant behavior grounded in physical abnormalities, such as problems in brain functioning or chemical imbalances. Finally, I briefly treat the hybrid category of *bio-social* explanations. These are based on the complex interplay between biological and social factors, which may act upon each other to culminate in non-compliant behavior.

Up to this point, there has been little examination of resistance in therapeutic relationships from these perspectives. In fact, in the psychological literature, researchers on resistance have thus far given little attention to the reasons for it, instead being concerned primarily with strategies for addressing resistance. Where people have attempted to explain the etiology of client resistance, those of various psychological perspectives have disagreed as to its causes, with psychodynamic, behavioral, and cognitive schools of thought all offering their own distinct explanations (Beutler, Moleiro, & Talebi, 2002). Clearly, considerable disagreement exists within the psychological community as to the causes of resistance. Given this, a detailed examination of these varying perspectives is outside the scope of this article. Rather, I offer some explanations for resistance not widely considered in the traditional psychological literature but grounded in research and holding the promise of explaining a variety of (frequently dysfunctional and sometimes criminal) human behaviors. In some cases, the connections to particular schools of psychological thought will be obvious to readers with training in psychology and counseling; in other cases, less so. When needed, I will suggest specifically how many of these explanations for assorted behaviors also have utility in explaining resistance to treatment.

Social explanations

Many explanations for human behavior may be found in social influences. In fact, a substantial body of literature has suggested that not only behaviors but also beliefs and

attitudes may be learned from others. Much of this work has been criminological in nature.

In proposing his theory of differential association, for example, Sutherland (1939) suggested that competing cultures—criminal and conventional—vie for people's attention and whether an individual succumbs to criminal or conventional influences depends on which culture exerts a greater influence in his or her life. Sutherland's theory grew out of earlier work done by Clifford Shaw and Henry McKay, who contended that criminal activity would be more prevalent in areas of a city in which social disorganization led to the formation of antisocial values. Akers (1977) subsequently expanded on Sutherland's work to develop a theory of social learning. In doing so, he explained specific processes by which people may learn criminal behaviors and attitudes. Akers proposed that people may, for instance, learn criminal behavior by imitating conduct which is modeled for them. Once this is done, they may continue to engage in such conduct if it is rewarded in some way. Similarly, people may continue to participate in criminal activity if they see others rewarded for doing so, a process psychologists refer to as vicarious reinforcement.

How might resistance to treatment interventions be shaped by one's social environment? Several possible explanations are offered. For one, distrust of authority figures may be an attitude learned in certain communities and this distrust may lead some people under supervision to view treatment directives with skepticism. Second, a depressed sense of self-efficacy may develop in people who live in communities where examples of efficacious behavior are limited. Each of these concepts is examined in this section.

In some cases, resistance may be rooted in a client's mistrust of the therapist and his or her motives, especially when treatment is being applied in a correctional setting (Morgan et al., 2007). Some explanations for why clients may distrust practitioners are socially-based. A growing body of research, for instance, suggests that in dealing with authority figures, people largely form their views of the authorities based on their perceptions of whether or not they believe the authorities act in a fair manner. These perceptions of fairness shape views on the legitimacy of authority; people are more likely to comply with directives if they view the authority as being legitimate (Mazerolle et al., 2013; McCluskey, 2003; Sunshine & Tyler, 2003; Tyler, 1990; Tyler, 2004). Perceptions of the legitimacy of law

enforcement officials may form even in the absence of direct contact with such officials (Tyler, 1990; Tyler & Huo, 2002). Views of the criminal justice system may be shaped, for example, by witnessing the imprisonment of a family member or being exposed to media accounts of alleged police brutality. Weakened views of the legitimacy of law enforcement may lead people under supervision to distrust the motives of probation officers, thereby creating apprehension about complying with treatment directives (DaGrossa, 2014).

It is not difficult to see why some people under supervision are reluctant to trust authority figures, especially if they have grown up in neighborhoods that have historically embraced views of law enforcement which are less than positive. But distrust also extends into relationships with other private citizens, especially among residents of low-income, high-crime neighborhoods. Sociologists have identified a concept known as *collective efficacy*, defined as "social cohesion combined with shared expectations for social control" (Sampson, 2012, p. 27). One element of collective efficacy is trust among the people who live in a neighborhood. Low levels of collective efficacy have been found not only to result from—but also to cause—increased rates of crime (Sampson, 2012; Sampson, Raudenbush, & Earls, 1997). Relatedly, I am reminded of a conversation that took place while teaching a job readiness class several years ago for a group of ex-offenders under supervision. In the course of discussion, one participant in the group stated, "I have friends, but they don't know where I live. I don't let them come over to my house because they may not be my friends someday." The notion that even friends are kept at a safe distance because they may one day turn into violent foes may be foreign to many probation officers, but feelings of distrust are all too palpable among residents in many poor, crime-ridden communities.

Distrust of others may therefore result not only from direct and indirect interactions with authority figures but also from simply residing in areas that are low in social cohesion and collective efficacy. This distrust affects relationships not only with law enforcement but with other private citizens, as well. A client's difficulty trusting others may create an unseen barrier between the treatment provider and client, leading to resistance, especially if the treatment is being "coerced," such as in a correctional setting.

Additionally, treatment efforts may be

impeded when clients do not believe they have the ability to change their situation. Martin Seligman and colleagues developed the concept of *learned helplessness* in a series of famous psychological experiments in the 1960s. Simply stated, learned helplessness is a perception of powerlessness people develop, often following a traumatic event or repeated exposure to aversive stimuli which one cannot escape (Seligman & Maier, 1967). Those experiencing learned helplessness believe that they cannot control their circumstances, are likely to avoid or withdraw from treatment, and are prone to becoming depressed.

Much like distrust of others, learned helplessness may not be a function of one's particular circumstances alone, but also those of the larger, surrounding environment. Upon analyzing national-level surveys and census data, Boardman and Robert (2000) found that high rates of neighborhood unemployment and public assistance were associated with low levels of *self-efficacy* reported by individuals, where self-efficacy was characterized according to Bandura's (1986) definition: "people's judgments of their capabilities to organize and execute courses of action required to attain designated types of performances" (p. 391). The authors suggested that neighborhood socioeconomic status may influence individual-level self-efficacy in two ways. First, spatial constraints may affect the flow of resources into a community. As such, someone living in an area of low socioeconomic status may have fewer institutional resources on which to rely, which could degrade the person's perception of his or her ability to complete tasks. Second, someone who lives in an area of low socio-economic status may report a lower level of self-efficacy simply because he or she has less exposure to other individuals engaged in efficacious activities. The result is that people with low levels of self-efficacy may not fully engage in treatment directives if they believe that their efforts will have little effect on ultimately changing their circumstances.

Psychological explanations

For our purposes, psychological explanations of resistance to treatment are considered to be those that originate and operate at a much more individual level than the social explanations presented above. Discussed are ways in which clients' perspectives on finances and orientation toward time may affect their compliance with treatment directives, as well as personality traits, the importance of

personally-held perceptions about the value of treatment, religious beliefs, and even potential embarrassment about engaging in assigned therapeutic tasks.

A growing body of research suggests that views of one's personal financial circumstances may influence how decisions are made. In particular, experiencing poverty may adversely impact cognitive functioning through a process known as *attentional capture*; in other words, being poor may cause people to become preoccupied with budgetary concerns, interfering with their ability to make decisions and focus on tasks at hand (Mullainathan & Shafir, 2013). Mani et al. (2013) demonstrated this in an experiment in which fairly wealthy and poor subjects were presented with scenarios designed to induce varying degrees of financially-related pressure. After being presented with scenarios describing "low" financial pressures, the poor subjects did not perform any differently than the wealthy subjects on a test of cognitive abilities. However, after being presented with scenarios detailing "high-cost" financial problems, the poor subjects performed much worse on the tasks than the wealthy subjects. The authors suggest that the high-cost financial scenarios served to distract the poor subjects from the task at hand. They add that the demands on attention and cognitive abilities generally which are created by poverty may help to explain why poor citizens are less likely to engage in preventive health care practices (Katz & Hofer, 1994), are less productive workers (Kim, Sorhaindo, & Garman, 2006), and even tend to be more likely to show up late for and miss scheduled appointments (Neal et al., 2001).

Additionally, people who live in poverty may find themselves choosing to engage in activities that bring immediate, short-term reward instead of those that may result in more beneficial, long-term gains, but gains that are not immediately realized. For instance, in the book *Evicted: Poverty and Profit in the American City*, Matthew Desmond (2016) recounts the story of a poor, recently-evicted woman searching for a new place to live who spends virtually her entire allotment of food stamps on a single, extravagant lobster dinner. Throughout the book she displays a tendency to make sizable purchases whenever she has a little extra money, rather than putting the money aside for when she may eventually need it. Her friends and family regard her behavior as irresponsible. To her, however, these decisions are guided by a certain logic;

viewing digging herself out of poverty as a long-term and seemingly insurmountable task, she opts to enjoy more immediate, short-term luxuries in life now and again.

This example illustrates what we know about the link between socioeconomic status and *time perspective*. Time perspective is a measure of how one's thinking is motivated by considerations of the past, present, and future (Guthrie, Butler, & Ward, 2009; Zimbardo & Boyd, 1999). People who are present-oriented are more likely to engage in behaviors that have immediate, short-term benefits, even if those behaviors may be disadvantageous in the long-term. A present-oriented time perspective has been found among drug abusers (Petry, Bickel, & Arnett, 1998), compulsive gamblers (Hodgins & Engel, 2002), risky drivers (Zimbardo, Keough, & Boyd, 1997), homeless people (Pluck et al., 2008), and people of lower socioeconomic status (Guthrie, Butler, & Ward, 2009; D'Alessio, Guarino, DePascalis, & Zimbardo, 2003; Epel, Bandura, & Zimbardo, 1999).

Additionally, in a 2009 study, Guthrie, Butler, and Ward asked participants to answer a series of questions, drawn from the Zimbardo Stanford Time Perspective Inventory, that were specifically designed to measure fatalistic perspectives of time. In the words of Guthrie et al., these items are designed to "reflect a lack of personal influence and a feeling that other forces are more powerful in determining events" (p. 2146). Examples are statements such as "Since whatever will be will be, it does not really matter what I do," and "Fate determines much in my life." Subjects with less formal education and those who held non-professional positions were more likely to endorse these statements than those who enjoyed higher socioeconomic status.

The literature is replete with qualitative work that points to the prevalence of the fatalistic time perspective among the offending population. For instance, in his seminal work *Code of the Street*, Anderson (1999) documents the existence of this fatalistic view by recounting conversations with several young, inner-city men who state, "life is bound to be short for the way I'm living," and "when my time is here, it's here, and there's nothing I can do about it" (pp. 136-137). Similar stories have been recounted in work by Matza (1964), Bush (1995), Larson (2000), and Maruna (2001), among others.

Not only may the research on the relationship between poverty and decision-making and time perspectives help explain why some

people choose to engage in criminal conduct, it may also help explain resistance to treatment. Clients experiencing poverty may be particularly prone to choosing to engage in pleasurable tasks that provide immediate gratification rather than devoting time to homework assignments, the benefits of which are often less tangible and not immediately obvious. Those who embrace a fatalistic time perspective may resist treatment directives if they feel powerless to eventually change their circumstances. As such, when encountering client resistance, treatment providers would benefit from considering these possible explanations.

Some previous work has attempted to identify personality traits of clients likely to resist treatment. Upon studying a sample of college undergraduates, Dowd and Wallbrown (1993) found resistant clients more likely to be “aggressive, dominant, defensive and quick to take offense, and autonomous. They also tend not to affiliate with others and neither seek support from others nor support them... Thus, a picture emerges of a person who is dominant and individualistic, a loner who lacks strong relations with others” (p. 537). Of course, resistance to treatment might be rooted in a variety of factors that may more easily be addressed than personality traits. Clients may, for instance, resist treatment because they are not personally invested in the task at hand. In the case of the banking example, one participant told program administrators that he simply didn’t see the need for a bank, explaining that for years he used check-cashing agencies to cash his paychecks and kept whatever cash available on hand (this despite the fees charged by such businesses). He added that everyone he knew in his community did the same thing, despite the fact that there are several local banks in the area. As such, clients may resist treatment if they simply don’t see the value in it. Proper use of cognitive therapy to educate the client on the potential benefits of the homework assignment may alleviate this obstacle.

Additionally, cultural or religious beliefs may interfere with clients’ willingness to engage in treatment. One of the reentry court participants, a devout Muslim, explained to the program administrators that various features of the traditional banking system (e.g., interest payments and certain loan practices) are contrary to Shari’ah, the Islamic teachings. He stated that after consulting with a religious leader, he was advised to avoid activity at conventional banks and that he should limit banking activity to banks that operate in

accordance with the teachings. In these types of scenarios, therapists would do well to be mindful of potential religious conflicts and work with the client to fashion an acceptable treatment plan.

Finally, clients may be resistant to treatment simply because they either are too embarrassed to follow directives or just don’t understand the instructions provided. Although none of the reentry court participants specifically stated that they were too embarrassed to go into a bank and ask questions about the terms and benefits of having a checking account, this possibility must be considered. Accordingly, it is advisable that when developing homework tasks, practitioners ask clients about any anxiety or concerns they may have about homework assignments. Similarly, when working with clients to develop homework tasks, practitioners will want to avoid assigning tasks that are too complex and will want to check with clients about their perceived ability to complete assignments. If clients feel overwhelmed or unsure of exactly what they need to do, they may become easily discouraged and fail to perform the assigned tasks. To avoid this problem, the therapist may work with the client to break an assignment down into a series of smaller, more-easily accomplished tasks, an approach known by learning theorists as “chunking” (Domjan, 1993). For example, rather than simply directing a client to go to the local Department of Motor Vehicles and obtain a re-issued driver’s license to replace one that was misplaced while the client was incarcerated, the client may be tasked with gathering each of the required documents, one step at a time. The client may begin by going to the local municipal offices to obtain a replacement birth certificate and bringing it to the therapist the following week. During the second week, he may be instructed to file an application for a replacement Social Security card. The seemingly complex task of obtaining a replacement driver’s license is therefore accomplished in a series of smaller, more manageable goals with specific deadlines. Of note, each of these intermediate steps may need to be broken down into even smaller tasks; for example, if the client is unsure of where to obtain or how to fill out the paperwork needed for a birth certificate, the therapist may need to provide assistance.

Biological explanations

Biological explanations for noncompliant conduct are generally given much less attention

by criminal justice professionals than social explanations. In recent years, however, a quickly-growing body of scientific research has focused on how one’s brain functioning and chemical make-up may contribute to criminal activity. In 2005, Terrie Moffitt identified over 100 studies that examined the link between genetics and antisocial behavior, and meta-analyses have concluded that approximately 50 percent of the variation in the population’s involvement in such conduct may be accounted for by genetic influences alone (Miles & Carey, 1997; Rhee & Waldman, 2002). A genetic basis for criminal behavior may help explain why fewer than 10 percent of the families in a given community have been found to account for approximately 50 percent of the community’s criminal activity (Rowe & Farrington, 1997).

A lack of impulse control rooted in brain functioning is perhaps the most widely-cited biological explanation for criminal and other noncompliant activity. Much of this work (Dalley & Roiser, 2012; Krakowski, 2003; Stanley et al., 2000; Walsh, 2012) has specifically linked a lack of the brain chemical serotonin to impulsive behavior. Similarly, imbalances in the amount of dopamine or gamma aminobutyric acid as well as improper functioning in the prefrontal lobes of the brain have also been implicated in impulsiveness (Boy et al., 2011; Dalley & Roiser, 2012). Much in the way that poverty affects attentional capture, impulsivity rooted in bio-chemical factors may interfere with clients’ ability to complete homework assignments by distracting them from the tasks at hand.

Additionally, recent research has suggested that abnormal electrical activity in the brain may be characteristic of people with antisocial personality traits (Bauer & Hesselbrock, 2003; Peskin et al., 2013). In particular, research into the event related potential P300 (simply, electrical activity in the brain) indicates that lower amplitudes of P300 and greater delays in the time between a stimulus and P300 response as measured by electrocardiograms are common among non-psychopathic people with antisocial personality traits (Gao & Raine, 2009; Stanford et al., 2007). These findings may indicate impaired attention in people with antisocial tendencies. Again, the implication is that a reduced ability to concentrate and focus on tasks at hand may interfere with the completion of homework.

Biological conditions may also cause an assortment of mental health problems that could interfere with a client’s ability to

complete tasks, such as various psychotic disorders including schizophrenia and related syndromes, impulse-control disorders such as attention deficit/hyperactivity disorder, and mood disorders such as bipolar disorder. Depression may also, of course, affect one's ability to make decisions and take affirmative steps toward improving one's lot in life. Many psychologists consider depression to be frequently undiagnosed; in fact, as much as 25 percent of the U.S. population may suffer from a depressive episode that warrants a clinical diagnosis at some point in their lives (American Psychiatric Association, 2013). It is important to note that people may suffer from depression to varying degrees; while some people may experience debilitating episodes of major depression and may exhibit symptoms that are relatively noticeable (such as depressed speech and facial expressions, decreased appetite or a disheveled appearance), others may experience *dysthymic disorder*, a low-grade but long-lasting period of depression. In such cases, practitioners may not easily notice that the client is depressed and mistake resistance to treatment efforts as being due to some other cause, when in reality the client lacks the physical and/or mental energy required to complete tasks.

Bio-social explanations

Bio-social explanations for human activity essentially hold that biological and environmental factors interact with and upon each other to influence behavior. These types of explanations have recently been used to account for criminal behavior. Perhaps the strongest evidence in support of this view with regard to criminal conduct is found in adoption studies, the most famous of which is that published by Mednick et al. (1984). Upon collecting data on over 14,000 adoptions in Denmark, the researchers noted that 14 percent of the adopted children who had neither biological nor adoptive parents with criminal records went on to be convicted of crimes. However, this percentage increased to 15 percent when only the adoptive parents had a criminal record, 20 percent when only biological parents had a criminal record and 25 percent when both adoptive and biological parents had a criminal record. The implication is that children who are exposed to both inherited biological and environmental criminogenic influences are more likely to engage in criminal conduct than children who have neither or only one type of criminal influence.

Gajos, Fagan, and Beaver (2016) explain

that two different models have been proposed to explain gene-environment interaction: the *diathesis-stress* and *differential-susceptibility* models. The diathesis-stress model suggests that a negative environment facilitates antisocial behavior in people who have a psychological or genetic predisposition to such behavior (Belsky & Pluess, 2009; Zuckerman, 1999). The differential-susceptibility model, on the other hand, suggests that genetic polymorphisms which have previously been identified as "risk alleles" are better characterized as "plasticity genes," and increase vulnerability to environmental factors. As such, while some people may, on one hand, respond more poorly to harsh environmental conditions, they may also be more likely to respond affirmatively to treatment efforts (Belsky & Pluess, 2009). As Gajos, Fagan, and Beaver (2016) have suggested, this model comports with what we know about the usefulness of matching treatment to offender risk levels. Individuals who present greater risk of reoffending are more likely to benefit from rehabilitative efforts compared to individuals who present lower levels of risk (Lowenkamp & Latessa, 2006). According to the differential-susceptibility model, this may be because the behavior of higher-risk individuals is more "malleable" and more easily shaped by environmental influences.

For a specific example of how environmental stressors may have physiological impact, we can consider studies examining the effect of poverty on brain functioning. For instance, upon analyzing a series of magnetic resonance imaging scans taken on over 300 children, Hair et al. (2015) found that children in low-income families displayed systematic structural differences in the frontal (an area responsible for impulse control) and temporal lobes of their brains as well as the hippocampus (responsible for learning and memory) and less grey matter generally. Not surprisingly, these children performed less well than their financially-stable counterparts on a series of academic tests. The authors attribute this finding to the adverse impacts of growing up in poverty; children who grow up in poor families experience disproportionate amounts of stress owed to overcrowded homes, family strife, and neighborhood violence. They are also more likely to subsist on diets of poor nutritional value, further affecting brain development (Gomez-Pinilla, 2008; Kruman et al., 2005; Stangl & Thuret, 2009). When viewed within the context of this research, resistance to treatment efforts

may be the result of decreased cognitive ability, which in turn is a result of the impact of environmental stressors on brain development and functioning.

Suggestions for dealing with resistance

This article has provided a brief overview of some of the many possible explanations for why clients in correctional treatment relationships may resist interventions. These explanations have included: 1) distrust of practitioners stemming from negative views of authority figures either rooted in personal experiences or shaped by one's community; 2) lack of self-efficacy, also possibly formed through influences exerted by the larger social environment; 3) the impact of poverty on decision-making; 4) present and fatalistic-oriented perspectives of time; 5) a client's lack of personal investment in assigned tasks; 6) cultural or religious views that conflict with treatment objectives; 7) embarrassment about performing assigned tasks; 8) lack of knowledge about how to complete tasks; 9) biochemical explanations including chemical imbalances, faulty brain functioning, and mental health disorders ranging from psychotic disorders to mild depression; and 10) bio-social explanations including exposure to a combination of biological and environmental influences that may act upon each other to influence decision-making and resultant behaviors. This list is not intended to be exhaustive; there may be any number of other factors that inhibit a client's ability to complete homework tasks and fully participate in therapy. However, these particular considerations may be especially relevant in explaining treatment noncompliance in the course of correctional therapy, and many of them are also useful in explaining criminal behavior. With this modest list in mind, the following suggestions are offered for enhancing compliance with homework tasks:

1) Perhaps first and foremost, practitioners should remain mindful of the importance of developing a collaborative therapeutic relationship with the client. While this seems obvious, practitioners (especially probation officers and others in positions of authority) may find it difficult to resist the urge to give directions rather than engage the client's input and participation in treatment planning (Clark, 2005). Clients, however, are more likely to comply with directives if they play a role in the correctional process by formulating goals and the treatment agenda. Additionally,

they are more likely to complete tasks if they realize the benefit to them in doing so, rather than simply being told what to do (Christy et al., 2005; Pratt et al., 2013; Skeem et al., 2007). To this end, treatment efforts are enhanced when therapists query clients to ascertain their views of what they consider to be needs important to them and things they believe will lead them to desist from crime.

Probation officers and other service providers may make any number of mistakes in applying treatment; these can include not recognizing a lack of skill on the part of the client, failing to consider the client's fears or inadequacies, or moving treatment along too quickly (Beck, 1995; Freeman et al., 1990). Practitioners can avoid many of these pitfalls by engaging the client in a collaborative relationship. This includes taking inventory of clients' perceptions of their ability to complete tasks as well as potential barriers to completing tasks, whether psychological, physical, financial, or otherwise. Helpful initiatives in this area may include work currently being done at the Center for Advancing Correctional Excellence at George Mason University, which, with funding provided by the Bureau of Justice Assistance, is creating a program called Your Own Reentry System (YOURS). YOURS contains materials designed to encourage clients to identify their personal needs and goals and the steps necessary to achieve them as they collaborate with probation officers and service providers throughout the reentry process.

2) Relatedly, efforts should be made to develop assessment instruments that assist probation officers in determining the source and nature of resistance on the part of offenders. As previously noted, in recent years, substantial gains have been made in developing theoretical models designed to guide treatment application; most notably, the Risk-Needs-Responsivity model. At the same time, progress has been made in developing instruments designed to assess offenders' risks and needs. In the federal probation system, the most notable advancement in this area has been the creation of the Post-Conviction Risk Assessment (PCRA). Unlike previous instruments, the PCRA considers both static and dynamic risk factors for recidivism as well as offender needs. The PCRA also takes account of responsivity factors such as educational and language barriers that may present barriers to treatment. This is an important development, as research has suggested that many offenders are confronted with significant barriers that hinder success under supervision.

Examination of a sample of federal offenders by Cohen and Whetzel (2014), for instance, found that nearly one-third had some obstacle to treatment, such as an inability to secure adequate transportation, mental health issues, or lack of a stable residence.

While the PCRA's strengths appear to lie in risk and needs assessment, it is somewhat limited in its ability to gauge offender responsivity to treatment. The presence of barriers such as lack of education or housing may be fairly obvious to ascertain. Less obvious, however, is the offender's perception of the importance of those barriers, what is needed to address them, and how easy (or difficult) they may be to overcome. In short, the instrument is not designed to assist officers in understanding offenders' perceptions of those obstacles and therefore provides a somewhat incomplete accounting of responsivity factors. Moreover, while the PCRA contains a single question that asks if the offender is "motivated" or not (an item lacking a clear indicator), the tool does not provide guidance in determining exactly *why* offenders are not motivated. As this article has suggested, offenders may be resistant to treatment interventions for a variety of reasons. The efforts of probation officials would be greatly enhanced if they had at their disposal an instrument (or battery of instruments) designed to assist in determining which—if any—of these factors are contributing to resistance, as well as guidance in formulating appropriate strategies for addressing them.

3) Probation officers should make appropriate use of cognitive-based treatments such as Staff Training Aimed at Reducing Rearrest (STARR). Utilizing the STARR method, officers can work with offenders to identify faulty and antisocial thinking patterns that may interfere with homework compliance and facilitate unhealthy behaviors generally (Alexander, Whitley, & Bersch, 2014).

However, I advise "appropriate" use of cognitive-behavioral treatments because I caution against over-reliance on them. While there is much evidence to suggest that cognitive therapies can be very useful in working with an offender population, they should not be regarded as a panacea or used in a vacuum. Cognitive-behavioral techniques are most effective when paired with other services designed to address criminogenic needs, such as educational and vocational training or substance abuse counseling. While assisting offenders to change the way they think is undoubtedly of value, we must be mindful

of the fact that very real structural barriers exist in society that inhibit individual change. These barriers include—but are not necessarily limited to—a lack of opportunities for employment, education, and health care as well as the assorted civil disabilities that attach to a criminal conviction and the harmful effects of living in high-crime, poverty-ridden areas riddled with decay and disorder. Along these lines, Hannah-Moffat (2005) has offered a thoughtful critique of cognitive therapies, stating that such treatments recast broad social problems as individual inadequacies, thereby relieving government of any responsibility to address large social issues. In her words, "This process is a reframing of social problems as individual problems. Manageable criminogenic problems are those that can be resolved through behavioural or lifestyle changes that are seen achievable with a positive attitude...structural barriers conveniently disappear" (p. 43). Mindful of this view, cognitive therapies should be regarded as one of many instruments in a probation officer's toolbox and something to be used in conjunction with—not in place of—other effective programs.

4) Practitioners would do well to make use of strategies that have been shown to be effective in enhancing compliance with assigned tasks. McDonald and Morgan (2013), for instance, studied various homework compliance strategies in a sample of offenders enrolled in a six-month correctional treatment program in Texas. They concluded that participants were more likely to complete assigned tasks when group leaders modeled the tasks and when they were required to publicly affirm a commitment to completing the task. Therapists may therefore find it useful to incorporate some of these strategies when assigning homework, rather than simply providing clients with instructions on what to do.

5) Finally, probation officers and related treatment providers should be aware of the assorted biological factors that may interfere with the ability of clients to complete tasks. While easy detection of abnormalities in brain structure and electrical activity remains currently out of reach, practitioners should be mindful that undiagnosed mental health disorders may be impeding clients from fully engaging in treatment. To this extent, mental (and physical) health evaluations conducted by qualified professionals should be sought when encountering resistant clients, especially if efforts to address resistance through traditional cognitive techniques have been tried

without success. The research into possible biological causes of noncompliance is relatively new but holds much promise for informing our understanding of why people do the things they do. Currently, if nothing else, this work underscores the rich complexity of human behavior and the many challenges inherent in working with people. As this brief article has suggested, the first step toward managing these challenges is to be aware of them.

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A Longitudinal Survey of Newly-Released Prisoners: Methods and Design of the Boston Reentry Study¹

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GROWTH IN AMERICAN prison and jail populations over the last 40 years has propelled the U.S. incarceration rate to the highest in the world and made incarceration commonplace for residents of poor inner-city communities. The U.S. penal system now houses around 2.2 million people in state and federal prisons and local jails, and incarceration rates are highest among racial and ethnic minorities and the poor (Glaze & Kaeble 2014; Western, 2006).

Historically high rates of incarceration produced large cohorts of prison releases—over 600,000 annually—who entered a relatively small number of mostly poor neighborhoods, often equipped with few social policy supports. Large numbers of prison releases motivated research on the effects of incarceration on crime and other social and economic outcomes, including employment, health, and the well-being of children with incarcerated parents (Travis, Western, & Redburn

2014; Wakefield & Uggen, 2010; Wildeman & Muller, 2012).

Despite a large body of research studying the effects of incarceration, relatively few studies have examined in detail the process of leaving prison and entering a community. Specialized data collections of post-incarceration experiences have mostly been ethnographic, making field observations on relatively small groups of men and women, often networks of research subjects in a few neighborhoods (e.g., Harding et al., 2014; Fader, 2013; Leverenz, 2014). While qualitative research has been invaluable in its account of life in poor communities under conditions of high incarceration, it often struggles to represent the heterogeneity of prison releases. Panel surveys have collected data on relatively large samples of released prisoners. In some cases, like the Fragile Families Study of Child Well-Being, formerly incarcerated men were interviewed in a general population survey design (Teitler et al., 2003). In other cases, like the Urban Institute's *Returning Home* study, specialized samples of newly-released prison and jail inmates were interviewed over a one or two year follow-up period (LaVigne & Kachnowski, 2003). With both general population and specialized data collections, formerly-incarcerated respondents showed

high rates of study attrition and other kinds of nonresponse.

A longitudinal data collection from a sample making the transition from prison to community offers at least three contributions to research on the effects of incarceration. First, a major challenge for research is the problem of under-enumeration. The formerly-incarcerated are a significantly under-counted population that resists observation with traditional methods of social science data collection. Pettit (2012) describes the incarcerated as “invisible men” whose under-enumeration distorts conventional measures of poverty and inequality. After release, they may be “on the run,” as Goffman (2014) describes, evading both researchers and social control agencies. Large-scale data collections are typically built around close attachment to mainstream social institutions like stable households, steady employment, and, among the poor, enrollment in social programs. Men and women released from prison are a large, hard-to-reach population that are often only weakly attached to households, often residing with family and friends or in homeless shelters, and revolving in and out of institutional settings (Travis, 2005; Goffman, 2014; Metraux, Roman, & Cho, 2007). Employment is often unstable and undocumented, and social programs are

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under-used. As a result, the formerly-incarcerated are so weakly connected to mainstream social institutions that they are often inaccessible in standard data collections using surveys or administrative records (Harding et al., 2011; Kornfeld & Bloom, 1999). Those that are observed in the usual data sources are likely to be relatively advantaged compared to the general population of those with prison records.

Second, people who go to prison are acutely disadvantaged in many ways that are often difficult to observe. Life histories of violence and other trauma, cognitive impairment, poor mental and physical health, addiction, and weak family and community supports may all be sources of social and economic hardship after prison. The effects of these frequently unobserved confounding factors may be mistakenly attributed to incarceration. The problem of unobserved heterogeneity is a key focus of research on the effects of incarceration and has motivated analysis with randomized trials, natural experiments, and panel designs (e.g., Pager, 2003; Kling, 2006; Western, 2002). With detailed data collection on a hard-to-reach population, the multiple disadvantages of the formerly-incarcerated become a problem for explanation and analysis instead of just a threat to causal inference.

Third, a detailed data collection from people entering communities after incarceration can improve understanding of the content of administrative and general-purpose survey data. Incarceration effects have often been studied by linking correctional data on imprisonment and prison release to administrative data on outcomes, such as police arrest records or unemployment insurance records on earnings (Grogger, 1995; Kling, 2006; Cho & Lalonde, 2008; Pettit & Lyons, 2009). Alternatively, incarceration has also been measured in population surveys, where respondents are asked about their criminal histories. The interpretation of both kinds of data could be assisted by a specialized data collection that can provide information about the context in which administrative or general survey data are collected. Arrest records, for example, are often interpreted to reflect new criminal conduct but may also be produced by the efforts at supervision by parole and probation authorities. Similarly, surveys asking about the family involvement of prison releasees may have difficulty capturing the full complexity of family relationships in a context of unstable residence and multiple partner fertility (cf., Wakefield & Wildeman, 2013). In

short, for a population that is often embedded in a complex web of social relationships and weakly attached to mainstream social roles as workers, citizens, and householders, conventional data collections—even in the absence of under-enumeration—may face serious problems of measurement.

This paper describes the Boston Reentry Study (BRS), a collaboration between researchers at Harvard University and the Massachusetts Department of Correction (DOC). The study provides a mixed-methods, longitudinal data collection from men and women released from state prisons in Massachusetts and returning to neighborhoods in the Boston area. The BRS is tailored to the problem of studying release from incarceration in two main ways. First, the survey instruments are designed to measure special features of the experience of release from incarceration. Survey modules, for example, obtain detailed information on housing and family relationships to reflect the fluid living arrangements and patterns of residence in the period immediately after incarceration. Second, a wide variety of strategies are adopted to maximize response rates and retain study participation for a hard-to-reach population who in many cases have no independent housing and are living with extreme financial insecurity. The BRS is thus designed to fill the current gaps in our understanding of the prison-to-community transition, to address the problems of under-enumeration, measure quantitatively and qualitatively the kinds of characteristics and contexts that distinguish a uniquely disadvantaged population, and capture the complexity of householding, family life, employment, and criminal involvement that is missed in conventional data collections.

We begin by describing the basic design of the study from sample recruitment through the one-year follow-up period. We then describe our main data sources and instruments. This is followed by a discussion of characteristics of the sample in comparison to the population of prison releasees to Boston. Finally, we examine the pattern of study retention.

Study Design

The Boston Reentry Study aimed to sample all releasees from Massachusetts state prisons returning to the Boston area. Respondents were scheduled for five interviews over a one-year follow-up period and again if they were re-incarcerated. Family members were also interviewed to supplement respondents'

reports. The BRS survey instruments asked a series of core questions to measure the household structure, family life, and employment of those released from prison. A series of topical modules were also fielded to obtain more detailed information about the process of transition out of prison, employment, children and romantic partners, and life history. To ensure a full accounting of the heterogeneity of the prison population, a variety of measures were taken to maximize study retention.

Sample Selection and the Baseline Interview

The core sample of the BRS consists of 122 Massachusetts state prison inmates who were recruited between May 2012 and February 2013.² Study eligibility required that inmates (a) were within one month of their scheduled prison release, and (b) provided a post-release address in the Boston area.

Recruitment into the study was led by the DOC research unit, working with staff contacts in each of the state correctional facilities. Before the initial data collection began, DOC and Harvard researchers met with prison staff to introduce the project and describe the research protocols. DOC research staff then generated a list of inmates who were scheduled to be released from each of the state prisons to the Boston area. Staff contacts at each DOC facility were given letters to be distributed among prison inmates eligible for the study. The letter described the study and invited respondents to participate. The letter identified Harvard University as the institutional base for the research, emphasized that interviews were only for research purposes, and described the compensation that was provided for each interview. Recruitment of respondents to the study varied across institutions. Staff at some facilities had strong interests in reentry programming, took a keen interest in the research, and actively recruited subjects to the study. Perhaps because of respondents' unwillingness to participate at some institutions or the implementation of the study protocol, recruitment proceeded more slowly at other institutions, producing under-representation from medium security facilities. Table 1 (next page) shows the distribution of respondents across Massachusetts state correctional facilities, and the total

² We conducted 124 interviews in prison, though two respondents later became ineligible and were not included in main data analysis. One was released out of state to New Jersey, and the second was not released within the time frame of the study.

TABLE 1.
Boston Reentry Study releases and other prison releases to
Boston by DOC facility, May 2012 to February 2013.

	BRS	Total releases	Recruitment rate (%)
Women			
South Middlesex	1	12	8.3
MCI-Framingham	14	44	31.8
Pre-release/minimum			
Boston Pre-Release	13	45	28.9
Pondville Correctional Center	18	33	54.5
MCI-Plymouth	1	15	6.7
Northeastern Correctional Center	14	23	60.9
Massachusetts Alcohol and Substance Abuse Center	3	6	50.0
Minimum/medium			
Old Colony Correctional Center	11	51	21.6
MCI-Shirley	4	36	11.1
North Central Correctional Institution at Gardner	0	16	0.0
Medium			
MCI-Concord	13	53	24.5
MCI-Norfolk	9	46	19.6
Bay State Correctional Center	0	14	0.0
Massachusetts Treatment Center	3	5	60.0
Bridgewater State Hospital	1	2	50.0
Maximum			
MCI-Cedar Junction	9	29	31.0
Souza-Baranowski Correctional Center	9	29	31.0
Total (N)	123	459	26.8

Note: One respondent was recruited in the community immediately after prison release. Though eligible and interested in study participation, the respondent was unable to make himself available for an interview until the first few days after release. Two respondents were recruited into the study and are counted here, though they became ineligible for our main sample after release and are not included in follow-up analysis.

number of releases to Boston over the study period. The table indicates particularly high levels of study recruitment from Pondville and Northeastern Correctional Centers, both minimum-security pre-release centers. A small number of recruits to the study also declined to continue to participate after meeting at the baseline interview.

The Massachusetts Department of Correction operates 18 facilities throughout the state. The system includes a state psychiatric hospital, a medical care unit, two women's facilities, and 15 other facilities for men that vary in their custody level from pre-release to maximum security. Prison inmates are released from all security levels to the street following the expiration of sentences or, conditionally, under the supervision of a parole officer. In addition, about one-third of

the release population in Massachusetts subsequently serves probation. Whereas recent reentry studies have focused on parolees (LaVigne & Kachnowski, 2003; Harding et al., 2014), the Boston Reentry Study broadly samples from the whole release population. Nearly 40 percent of the BRS participants are not under any form of supervision. These unsupervised releases now account for nearly half of all Massachusetts prisoners (and about a quarter nationwide), providing a valuable contrast with parolees in their conditions of study retention and community reentry.

Respondents were drawn from 15 of the 18 DOC correctional facilities. We deliberately did not recruit respondents from the state's hospital correctional unit, and two other facilities did not provide eligible respondents who would be released to the Boston area during

the study time frame. Recruiting participants from a variety of state correctional facilities produced a highly heterogeneous sample. By recruiting from the range of security levels, we obtained respondents who vary widely on length of prison stay, criminal histories, offense severity, and age groups. The survey also includes Massachusetts' main women's prison (MCI-Framingham), and the full sample includes 15 female respondents. Women have not been a key focus of earlier reentry studies (see Leverentz, 2014), though the rapid increase in female incarceration offers strong motivation for studying patterns of household attachment and kin relations among formerly-incarcerated women (Kruttschnitt, 2011).

With a respondent selected and a baseline interview scheduled, two interviewers—one from Harvard and one from the Department of Correction research unit—would visit the prison. Typically the facility contact (usually a correctional program officer) would meet the interviewers and escort them inside. Most interviews were conducted in offices or classrooms and were completed by the interviewers with paper and pencil. A handful of interviews were conducted in more secure settings, either in noncontact units where respondents were behind plexiglass or in locked booths called therapeutic modules.

The baseline interviews began with introductions where the interviewers identified themselves and their affiliations and administered a consent form. The consent form described the research, reassured respondents of the voluntary character of the interviews, and separately obtained signed consent for the interview, DOC administrative records, unemployment insurance records, and MassHealth records. Respondents were also asked for a list of secondary contacts that we could call to help stay in touch after prison release. The interview concluded with making plans for contact in the community approximately one week after prison release. Respondents received a form with a phone number and address for the Harvard study team, and a checklist describing their participation in the consent, the provision of secondary contacts, and the survey interview. The baseline interview typically lasted about an hour, and collected information on demographics and social background, dates for the current incarceration, and information about the conditions of penal confinement. In nearly all cases, the baseline interview was completed, but a few times respondents were called from the interview for a count of the

prison population. In these cases, the baseline interview was completed at the first follow-up interview in the community a few weeks later.

At the baseline interview, respondents provided their expected release date, though it was not always exact, particularly if they were waiting to be released on parole. After respondents were released from DOC custody, the DOC research staff notified Harvard researchers. Upon release, we called respondents using the contact information they provided at baseline, typically the phone number of a close family member or friend. In some instances, we had no contact information for respondents, and they called us upon their release or we located them at residential or transitional housing programs.

Follow-up and Supplementary Interviews

The baseline interview was generally scheduled about one week before prison release. We then conducted four planned follow-up interviews: (1) at one week after release, (2) at two months, (3) at six months, and (4) at twelve months. Each of the follow-up interviews included a core interview and a topical module. The core interview included questions about the respondent's current household, current employment, contact with family, relationships with children, program participation, criminal activity, contact with the criminal justice system, and drug use. To try and capture the process of transition from prison to community, respondents were asked at the one-week interview to complete a time-use module. For each day since release, respondents were asked to describe their main activity, whom they were with, and in which neighborhood they spent most of their time. The module yields a very detailed picture of the first week after prison and indicates, for example, a high level of family contact early in the week that gradually declines over the following seven days (Western et al., 2014). The topical module for the two-month interview asks about respondents' romantic relationships after prison release. At the six-month interview respondents provide an employment history, and additional questions are asked about job seeking and earnings. The twelve-month interview includes a module asking about childhood exposure to violence and other trauma, collects information about the respondent's attitude to criminal justice institutions, and asks about the experience of violence and crime in the year post-release.

Post-release interviews were held in the

community, or in a prison or jail facility if the respondent was back in custody (see below). A typical interview setting was a coffee shop in the respondent's neighborhood or near the probation office. Many later interviews took place in respondents' homes or residential programs. To improve data quality, we conducted nearly all interviews in pairs of two Harvard researchers, though several interviews early in the study were conducted one-on-one due to limited research capacity.

The survey interviews yielded quantitative and qualitative data. Each follow-up interview consisted of a few hundred closed-ended questions and generally took one to two hours to complete. In addition to the closed-ended questions, respondents frequently engaged in more informal conversation or elaborated on their answers. All interviews in the community were audio-taped,³ and extensive notes were taken on the paper-and-pencil interview scripts. Each interviewer also recorded a set of field notes at the end of each interview, which typically described noteworthy responses, features of the interview setting, and the demeanor of the respondent.

In addition to the scheduled interviews, we also conducted interviews with family members and in the event of re-incarceration. Several protocols were developed for re-incarceration, with the general aim of continuing data collection through returns to custody. Rather than using re-incarceration as a censoring point in the design, we used re-incarceration interviews to yield comparisons both to the pre-release interviews and to non-recidivists in the rest of the sample. During the data collection period, the Department of Correction would send the Harvard research team a list describing the criminal justice status of all respondents.⁴ Obtained from a query of the Massachusetts criminal justice information system, the weekly update would include a list of new arrests, charges, parole or probation violations, court appearances and re-incarcerations. Family members and close friends were also a key source of information on respondents' custody status and sometimes were able to provide information that did not appear on the official DOC records. If respondents had returned to state prison, we would

³ A few interviews were not audio-taped due to the respondent's preference or an audio recorder malfunction.

⁴ Three respondents did not provide consent for Harvard researchers to access their criminal records and were excluded from these lists provided by the DOC.

arrange with the Department of Correction for a re-incarceration interview. If respondents were held in county custody—awaiting trial, re-incarcerated on a violation, or serving a new sentence—we would, with the assistance of the Department of Correction, arrange for a new interview in county facilities. All re-incarceration interviews were conducted in MA prisons or county jails, except for two interviews that took place in Maine county jails.

Follow-up interviews in correctional facilities were completed by two Harvard researchers. The survey instrument asked about the incident that led to the respondent's return to incarceration. It also collected information on respondents' housing, employment and other financial support, family, peer networks, and substance use prior to the recent arrest or violation. The re-incarceration interview included a set of open-ended questions that asked the respondent for an account of the circumstances surrounding his or her return to prison. If respondents were in custody for two (or three) consecutive interview periods, we administered the standard survey instrument at the later interview(s). For example, if a respondent was re-incarcerated near the 6-month date, we administered the re-incarceration instrument. If that respondent was still in custody at the 12-month date, we administered an adapted version of the 12-month survey instrument. Respondents who were re-incarcerated close to their 12-month interview date were given adapted versions of the re-incarceration and 12-month interviews.

We also conducted a round of proxy interviews with key informants whom we expect to be more stably attached to households. At the baseline interview in prison, we asked respondents to provide contact information for close family or friends who might reliably connect us to the respondent after prison release. We expected that maintaining contact with friends and family members might raise the likelihood of retention during the follow-up period. We also asked the focal respondents for permission to conduct interviews with one of the contacts they provided. Throughout the follow-up period, respondents typically gave us additional contact information for family members or close friends as they developed trust in the researchers and gained understanding of the purpose of the study.

The proxy interviews were usually conducted about eight to twelve months after

the focal respondents' prison release.⁵ The majority of proxy respondents were female family members—mothers and sisters—though we also interviewed partners, grandmothers, aunts, cousins, brothers, fathers, and adult children.

While proxy interviews with friends and family members were initially conceived as a retention strategy, they emerged as a key area of substantive interest. In addition to collecting information about the proxy respondents themselves, interviews with family and friends provided another source of information about the focal respondents' childhood, their experience of incarceration, and their household and family relationships. The proxy interviews also aimed to collect data on the focal respondents' children and gain a better understanding of their well-being before, during, and after their parents' incarceration. These interviews thus provided further context for the outcomes of an acutely disadvantaged population after release from prison.

Sample Characteristics

Approximately one-fourth of all prison releases to the Boston area in the recruitment period participated in the Boston Reentry Study. Table 2 compares the demographic composition and the recidivism risk of the BRS sample and of other DOC releasees to the Boston area in the study period. Table 2 shows that the BRS sample is demographically similar to the population of Boston releasees. The risk of violent recidivism, assessed by an instrument administered by the DOC, is somewhat higher in the BRS sample, though the general recidivism risk of sample respondents is almost equal to that of the population of releasees.

The criminal justice characteristics of the BRS sample are compared to the general population of DOC releasees to Boston in Table 3. There are two significant discrepancies between the study sample and the release population. Prison releases at lower levels of custody are over-represented in

⁵ Several proxy interviews were also conducted after the focal respondents' 12-month interview date. We sometimes found it easier to schedule an interview with a family member or close friend soon after contact with the focal respondent at the 12-month interview. Because proxy interviews are a later phase of data collection, they are still ongoing at the time of this paper.

TABLE 2.
Percentage distribution of demographic characteristics and risk assessment scores of BRS respondents compared to other DOC releasees to Boston.

	BRS	DOC	Total	P-value of Difference
Female	12.3%	12.2%	12.2%	.49
Age				
Under 30	31.2	28.0	28.8	.26
30 to 39	27.9	34.2	32.5	.10
40 or over	41.0	37.8	38.6	.27
Race/Ethnicity				
White/Other	30.3	28.9	29.3	.38
Black	50.8	45.8	47.2	.17
Hispanic	18.9	25.3	23.6	.08
Recidivism Risk				
High general risk	61.8	58.9	59.6	.29
High violent risk	68.0	59.8	61.9	.05
Total (N)	122	336	458	

Note: The comparison group consists of all DOC releasees to the Boston area (minus the BRS sample) during the BRS recruitment period, May 2012 to February 2013. The percentages in high general risk and high violent risk categories are taken from DOC classification with a risk assessment instrument. The percentage of those in the high general risk category is calculated from a sample size of 110 for the BRS, and 316 releasees for the non-BRS group. The percentage of those in the high violent risk category is calculated from a sample size of 100 for the BRS, and 291 releasees for the non-BRS group.

TABLE 3.
Percentage distribution of incarceration characteristics of BRS respondents compared to other DOC releasees to Boston.

	BRS	DOC	Total	P-value of Difference
Security Level				
Min/Pre-Release	44.3	33.3	36.2	.02
Medium	41.8	55.4	51.7	.00
Maximum	13.9	11.3	12.0	.23
Governing Offense				
Violent	41.0	27.7	31.2	.00
Drug	21.3	50.3	42.6	.00
Property	16.4	12.8	13.8	.17
Sex	3.3	3.3	3.3	.50
Other	18.0	6.0	9.2	.00
Time Served				
Less than 1 year	21.3	23.2	22.7	.33
1 to 3 years	46.7	47.3	47.2	.45
3 to 10 years	29.5	27.1	27.7	.31
10 or more years	2.5	2.4	2.4	.48
Supervision Status				
Unsupervised	38.5	-	-	-
Supervised	61.5	-	-	-
Total (N)	122	336	458	

Note: The comparison group consists of all DOC releasees to the Boston area (minus the BRS sample) during the BRS recruitment period, May 2012 to February 2013. Supervision data not available for other DOC releasees during this time period.

the sample, and releases from medium security facilities are under-represented. Drug offenders are also under-represented in the study sample (21.3 percent of respondents compared to 50.3 percent of other releases).

The discrepancies of custody level and offense type may be due to a large-scale court review of drug evidence during the time of the data collection. Fabricated drug evidence from one forensic laboratory caused a large number of court-ordered prison releases at short notice before inmates could be recruited to the reentry study. Despite the releases, the sample respondents are representative of the population of releases in terms of length of stay in prison and may be more representative of released prisoners in a typical year, in the absence of the crime lab scandal. Indeed, when the releases from the crime lab scandal are removed from the comparison sample, the BRS sample closely resembles the general release population in their offense characteristics.

Study Retention

Panel surveys have collected data on relatively large samples of released prisoners, but these studies have faced high rates of sample attrition. The Urban Institute's *Returning Home* study interviewed large samples of men and women released from prison and jails in Maryland, Illinois, Ohio, and Texas (La Vigne & Kachnowski, 2003; La Vigne & Mamalian, 2003; La Vigne & Thomson, 2003; Watson, Solomon, La Vigne & Travis, 2004). The Urban Institute researchers examined the employment prospects, health, housing opportunities, and family support for those leaving correctional institutions. Although the *Returning Home* study was pioneering, investigating the process of prisoner reentry at scale in a relatively large number of sites, like other data collections with subjects involved in crime and the criminal justice system, it encountered a high rate of study attrition. In the pilot study in Maryland, from an original sample of 324 pre-release interview respondents, 53 percent were lost by the first post-release interview, and at the second interview the nonresponse rate had climbed to 68 percent. The investigators intentionally reduced their sample size to roughly half of their original sample, and at the second post-release interview to one third, due to the high cost of survey retention. The *Returning Home* study experienced high rates of attrition at all of their study sites. Over the course of a year,

attrition varied from 39 to 68 percent.⁶

General-purpose population surveys have also been used to study the effects of incarceration. These surveys include the Fragile Families Study of Child Well-Being and the 1979 and 1997 cohorts of the National Longitudinal Surveys. Fragile Families is a child-based survey that includes interviews with mothers and fathers (Reichman, Teitler, Garfinkel, & McLanahan, 2001). Histories of incarceration are obtained from fathers, who are also interviewed if incarcerated in a year of the scheduled survey. Survey nonresponse rates are relatively high among incarcerated fathers. For example, in the third-year follow-up interviews, the survey nonresponse rate for formerly-incarcerated fathers was 36 percent compared to 18 percent for all others. The NLSY79 and NLSY97 also interview respondents who are incarcerated at the time of their scheduled interviews. Both National Longitudinal Surveys sustain a high rate of retention for formerly-incarcerated respondents. However, the NLSY79 only asked about incarceration in the 1980 round, and information about later prison or jail stays is provided by an item recording the respondent's residence. This measure thus underestimates the prevalence of short periods of imprisonment. The NLSY97 provides perhaps the most detailed information about incarceration among the general population surveys but was not specifically designed to study the social and economic life of former prisoners, and information on the substantive problem of prison reentry is scarce.

Retention Strategies

A major goal for the Boston Reentry Study was to maintain a high level of retention for a diverse group of study participants in the year after their release from prison. We consider the problem of study retention in greater detail elsewhere, but analysis indicates that the risk of survey nonresponse is closely related to risk factors for social and economic insecurity after incarceration (Western et al., 2016). Thus a history of substance abuse, mental illness, and homelessness prior to incarceration is associated with the risk of attrition from the study. These factors are also associated with a range of post-release measures of housing, employment, and relapse to addiction. Under

these conditions, nonresponse is described as nonignorable, and is a source of bias in data analysis. Maintaining a high rate of study retention is thus important, particularly for understanding social and economic insecurity after incarceration.

An extremely high response rate was sustained through the 29-month field period, from May 2012 to October 2014. The follow-up interview response rate was 96 percent at one week post-release, 93 percent at 2 months, 93 percent at 6 months, and 91 percent at 12 months (Table 4). This represents a high level of retention compared to previous studies on prisoner reentry, particularly so given that nearly 40 percent of the study sample is not under correctional supervision.

Even in cases of missed interviews, the completeness of the panel data could often be repaired. In some cases, researchers were unable to schedule an interview due to, for example, loss of contact or incarceration, but were able to arrange the next scheduled interview. In these instances respondents were often asked time-insensitive questions that they had missed from the previous interview, such as the module on prior work history. The number of missing respondents remained fluid throughout the study period, as researchers would regain contact with respondents after months without communication. All eligible respondents participated in at least one follow-up interview after prison release.

Table 4 (next page) also reports the timing of the follow-up interviews. For the most part, interviews were successfully conducted in line with the follow-up schedule. The one- and two-month interviews were conducted almost exactly as designed, with a median time to follow-up of 7 and 64 days. The standard deviations around these follow-up times (6 and 15 days) indicate that most of the first two follow-up interviews were conducted within a short period of their scheduled time. The six-month and twelve-month interviews were, on average, conducted on schedule, but variation around the median follow-up time increased as the year-long follow-up period unfolded.

Overcoming high rates of survey nonresponse and study attrition required a wide variety of specialized measures that have often been used with other poor and hard-to-reach populations. Typical of areas undercounted in the Census, the main reentry neighborhoods in Dorchester, Roxbury, Mattapan, and Hyde Park contain both pockets of acute poverty and large black and Latino populations.

Four specific strategies were employed to

⁶ The Vera Institute of Justice also conducted a study aimed to follow people in New York City for their first 30 days after release from prison or jail. Only 56 percent of the initial sample completed the study (Nelson, Deess, & Allen 1999).

TABLE 4.
Number of completed interviews and response rates, BRS, April 2015.

	Time Since Release				
	Baseline	1 week	2 months	6 months	12 months
Number of interviews	122	117	113	113	111
Unable to schedule/contact	-	4	8	9	11
Response rate (%)	-	95.9	92.6	92.6	91.0
Median days from release	8	7	64	186	373
S.D. of days from release	40.2	5.9	14.8	20.5	62.6
IQR of days from release	11	3	8	17	29

Note: Release date is respondents' release into the community, which in a few cases was later than release from DOC custody due to a required civil commitment or jail sentence. Does not include two respondents interviewed at baseline who later became ineligible due to a late release date and out-of-state residence. Survey nonresponse includes all those who are un-contacted or unscheduled plus those unreachable through incarceration or hospitalization as a percentage of those eligible to be interviewed. The interview count for two months includes one respondent who was administered a re-incarceration interview in prison. The interview count at six months includes six respondents who were given re-incarceration interviews in prison. S.D. is the standard deviation around the average follow-up time. IQR is the interquartile range between the 25th and 75th percentiles for days from release.

maintain coverage and participation of the respondents. Each data collection strategy aimed to increase coverage and study participation, to be informative about nonresponse and attrition when it did occur, and to provide insight on scaling up the study.

1. *Interview incentives.* Previous studies found that incentives can increase participation among parolees, and increase retention among low-income respondents (Martin et al., 2001). In a University of Michigan study, parolees were given cash payments for interviews, which the investigators reported as more effective than checks (Harding et al., 2014). Respondents in the BRS were paid for each completed interview. Because respondents at baseline were so close to release, we deferred the first payment until the first follow-up interview. At the one-week interview in the community, respondents thus received two payments, for baseline and follow-up, a strategy that was effective in the Michigan study. Respondents received the \$50 incentive at the time of all subsequent interviews, at two months, six months, and one year. Proxy respondents were also paid \$50 for their interview. For respondents who were re-incarcerated at the time of a follow-up interview, we deposited \$50 into their prison commissary account.

2. *Phone check-ins.* We also conducted regular phone check-ins with study respondents throughout the year after prison release. Between the baseline, 1-week, 2-month, and 6-month interviews, we phoned respondents every one to two weeks. We checked in by phone about once a month between the 6-month and 12-month interviews. Phone

check-ins were used to update the respondents' residential information and to maintain constant contact with respondents to improve study retention. We also asked a few questions at each check-in relating to residential stability, employment, drug and alcohol use, and subjective well-being. Responses to these questions were recorded and form part of the quantitative data collection.

3. *Proxy interviews.* We expected survey non-response and study attrition to be concentrated among those who moved between residential addresses and group quarters. The Fragile Families study demonstrated the value of proxy interviews with related women who are more strongly attached to households. In particular, women's interviews significantly compensated for high rates of survey non-response among formerly-incarcerated men (Lopoo & Western, 2005). We elaborated this approach by conducting proxy interviews with close family and friends who could also help us locate hard-to-find respondents. The baseline interview in prison obtained a list of contacts to be used to help locate respondents after prison release. Because we expected proxy respondents to provide interesting information about the respondent's family contacts and well-being, we also aimed to conduct at least one substantive interview with a family member or close friend for each focal respondent. At the baseline interview, respondents were fully informed of the retention strategies, and we contacted friends or family members only with respondents' permission.

4. *Enlisting community contacts.* When conventional retention strategies were exhausted, a professional network of legal

agencies and community partners was mobilized to re-establish and maintain contact with the study subjects. For subjects under criminal justice supervision in the community, the Massachusetts Office of the Commissioner of Probation, and in a few cases the Boston Police Department, assisted the research team in locating subjects in the community for interviews. For those who were not under official supervision, we tried to reestablish contact through our connections with a variety of street and community workers operating in the inner-city neighborhoods where study respondents resided.

Finally, although it is not formally a retention strategy, we assess attrition and greatly expand the utility of the survey data by linking to administrative records from the DOC. DOC records provide three kinds of information. First, the records provide complete adult criminal histories of the study participants. Criminal history data was periodically updated throughout the follow-up period after prison release as part of the usual recidivism analysis conducted by the DOC research division. Second, we also obtain information on prison conduct and programming, including participation in treatment programs and 12-step and related programs. This will contribute significantly to data on the conditions of confinement and allow analysis of the association between program participation and post-release health outcomes. Finally, the DOC administers a risk assessment instrument that provides detailed information about the participants' criminal history, education, employment, economic status, family and marriage ties, housing and neighborhood characteristics, and history of alcohol and drug use. These data supplement the survey data as well as indicate the risks—like drug use, crime, and housing insecurity—that are associated with study attrition and criminal recidivism. The availability of social security numbers through the DOC also opens the possibility of linking interview records to an array of social service agencies, in particular to Unemployment Insurance and MassHealth, the state health program for low-income individuals. These records will provide additional evidence on employment and earnings, as well as health care utilization.

Study Content

High rates of study retention combined with a wide array of survey data and linked administrative data yield an exceedingly rich data set for analysis. Survey interviews included

TABLE 5.
Descriptive statistics for measures of childhood experience, crime and criminal justice contact, and official criminal record data, Boston Reentry Study.

	Percentage	Data Source	N
Childhood experiences			
Lived with someone depressed or suicidal	22.7	12 month	110
Parents hit, slapped, beat each other	32.4	12 month	111
Saw someone killed	41.2	12 month	108
Family member with drug problems	56.8	12 month	111
In fights at age 14	91.7	12 month	109
Self-Reported Crime and Criminal Justice Contact after Prison Release			
Any illegal drug use	29.8	All waves	94
Criminal activity	35.9	6 and 12 month	103
Stopped by police after release	61.5	6 and 12 month	104
Parole or probation supervision	61.5	Baseline	122
Criminal Record Data after Prison Release			
Charged for an offense	33.6	BOP	122
Notice of parole/probation violation	24.6	BOP	122
Prison or jail custody after release	22.1	BOP	122

Note: BOP=Board of Probation, the main source of court-based criminal record data in Massachusetts.

new questions and adapted modules from earlier interview studies, notably the Urban Institute Returning Home Study and the Fragile Families Survey of Child Well-Being (LaVigne & Kachnowski, 2003; Reichmann et al., 2001). The data provide detailed information about the experience of community return after incarceration, including high-frequency records on employment, residence, and contact with families and children. To help shed light on the life histories of former prisoners that are unobserved in many other studies, the data include a detailed set of questions on childhood experiences. In addition, post-release surveys ask questions about criminal involvement and criminal justice contact. With data from the Massachusetts Board of Probation, we can also construct official criminal histories for each respondent, and the pattern of re-offending reflected in arrests and new convictions. Such data are useful for the analysis of recidivism and its correlates, and allow researchers to distinguish self-reported offending from official contact through arrests, parole and probation violations, and re-incarceration.

To illustrate the richness of the BRS data, Table 5 reports descriptive statistics on childhood experiences, self-reported crime and criminal justice involvement, and official

criminal records. The questions on childhood experiences reveal a deep and sustained exposure to trauma experienced by former prison inmates. Just over a fifth of respondents lived with someone who was depressed or suicidal while growing up. Over 40 percent witnessed someone being killed, and nearly all respondents regularly reported getting into fights in childhood. Respondents were also asked extensively about criminal involvement and drug and alcohol use. Pooling data across all waves, 30 percent of respondents reported using illegal drugs at some point in the twelve months from prison release. Just over 60 percent of the sample reported being stopped by police in the year after release. Finally, linking the survey responses to official criminal records allows a comparison between self-reports and administrative crime data. Questions on criminal activity included items on illegal income, drug use, stealing, assaults, and public disturbances. By these self-report measures, 36 percent of the sample was criminally involved in the year from prison release. A similar proportion of respondents were arrested in the 12 months after release. The official and the self-report measures correlate modestly at .3.

Conclusion

Under conditions of historically high incarceration rates, the Boston Reentry Study provides a unique longitudinal data collection of a cohort of released state prisoners returning to the Boston area. Through four follow-up interviews conducted over a period of a year, the BRS also aimed to provide information not just about recidivism and social reintegration after incarceration; it aimed also to systematically describe the complex and fluid patterns of householding, employment, and family relations that characterize very poor populations who are often tenuously connected to mainstream social roles around which conventional data collections are typically designed.

Because released prisoners are a hard-to-reach population usually under-enumerated in conventional social surveys, a variety of strategies were adopted to improve coverage and sustain a high rate of study participation over the one-year follow-up period. These measures produced extremely high rates of survey response, around 90 percent over four follow-up interviews. The high level of study participation combined with a unique set of survey instruments provide a rich source of information on the experience of leaving incarceration and the life histories of the formerly incarcerated. The surveys, oriented to measuring complex patterns of employment, family ties, and householding, promise an original contribution to our understanding of the process of prison release under the historically novel conditions of very high rates of incarceration in poor communities.

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Fugitives from Justice: An Examination of Felony and Misdemeanor Probation Absconders in a Large Jurisdiction

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PROBATION IS THE most widely used alternative to incarceration (Phelps, 2013); therefore, the majority of the responsibility of monitoring criminal offenders in the community falls on probation officials. One of many concerns for probation officers is offenders who abscond from supervision—that is, avoid contact with correctional supervisory agencies. According to the state oversight agency for community supervision in Texas, the term *absconder(s)* is defined as:

persons who are known to have left the jurisdiction without authorization or who have not personally contacted their community supervision officer within three months or 90 days, and either: (a) have an active Motion to Revoke (MTR) or Motion to Adjudicate (MTA) filed and an unserved *capias* for his or her arrest; or (b) have been arrested on an MTR or MTA, but have failed to appear for the MTR or the MTA hearing and bond forfeiture warrant has been issued by the court. (TDCJ-CJAD Standards, 2015, p. 25)

Absconders pose a potential threat to community safety because their behaviors, including drug and alcohol abuse, cannot be monitored by the courts. It is unknown what types of criminal activities they engage in unless otherwise apprehended for a new

crime, and generally absconders are located by accident (Parent et al., 1994), through a random traffic stop where law enforcement officers discover there is an active warrant for the person's arrest.

Findings from an earlier research project in the jurisdiction pertaining to felony technical probation revocations were the impetus for this current study, and revealed that 51 percent of revoked felony technical offenders were absconders (Stevens-Martin, Oyewole, & Hipolito, 2014). After comparing a sample of 359 revoked felony technical offenders to a sample of 359 felons who completed supervision successfully, Stevens et al. found that outcomes revealed “no significant associations between absconding supervision and race, gender, marital status, employment, income level, prior criminal record, prior supervision, prior revocations, or age at first arrest” (Stevens-Martin et al., 2014, p. 19). Furthermore, it was hypothesized that those with substance use/abuse issues would be more likely to abscond than those without these issues for fear of going to jail; however, this was not the case. “Those with substance use/abuse issues were 59 percent less likely to abscond than those with no substance/use issues, and those identified with mental health issues were 56 percent less likely to abscond than those without mental health issues” (Stevens-Martin et al., 2014, p. 19). Last, the previous study in the jurisdiction found that

employed felony offenders are 10 times more likely to complete supervision successfully. Further exploration of the absconder population in the jurisdiction was warranted.

A dearth of literature exists pertaining to adult probation absconders and we could not find any research pertaining to adult misdemeanor probation absconders. There have been very few research studies on absconders since the late 1990s and early 2000s. These earlier studies focused on examining factors associated with felony absconders, including criminal history variables and predicting and locating probation (Taxman & Byrne, 1994) and parole absconders (Williams, McShane & Dolny, 2000), mainly felony offenders. Some studies posited that the increased punitiveness of the criminal justice system at that time may have led to an increase in probation absconders (Byrne, Lurigio, & Baird, 1989; Byrne & Pattavina, 1993; Clear & Cole, 1990). Schwaner (1997) analyzed a group of parole absconders in Ohio and found that the common predictive variables for absconding were mainly criminal history factors such as prior adult and juvenile arrests and convictions and probation and parole supervision revocations.

Following Schwaner's lead, Williams et al. (2000) examined the issue of predicting parole absconders in California. They wanted to determine if there were any significant differences in results based on geographic area of study and to create a prediction instrument

for absconders using data from both studies. Findings revealed that (lack of) stable housing and employment were the best predictors of absconding. Furthermore, in 2012, a study by Pyrooz involved developing a risk assessment tool designed to predict absconding for juvenile parolees. Results of this study showed that gender differences matter in predicting absconding with this population and that “absconding can be modeled empirically.”

In reviewing the extant literature, we could not find any studies that examined both felony and misdemeanor offenders, the length of time offenders were on supervision prior to absconding, or the duration of absconding, nor could we find any research that specifically reviewed any differences between misdemeanor and felony absconders and which group was more likely to abscond based on a variety of variables. Because probation is the most widely used sanction in the criminal justice system, with nearly 4 million people on supervision at year-end 2014 in the U.S. (Kaeble, Maruschak, & Bonzcar, 2015), this research is crucial to understanding the probation population, including those that fail to report to probation authorities as directed.

This study addresses the gap in the literature by investigating the entire adult probation absconder population, both felons and misdemeanants, in a large urban Texas jurisdiction to develop a profile of absconders and to determine what factors, demographic and offense-related, if any, may be associated with absconding from supervision by examining comparison groups of offenders who completed supervision successfully. Additionally, the study sought to answer the following questions: (1) Are there any differences between felony and misdemeanor absconders? (2) Which group is more likely to abscond, felons or misdemeanants? (3) What is the average amount of time an offender was under supervision prior to absconding? and (4) How long had offenders been fugitives? Investigating these issues could provide useful information to correctional officials to assist in devising strategies to reduce the incidences of absconding and help law enforcement officials understand absconders that may still be in the jurisdiction.

Methodology

A case-control design was used to compare felony and misdemeanor absconders with groups of felony and misdemeanor offenders who had successfully completed their community supervision term in fiscal year 2013.

In October 2014 a complete list of *all* active felony and misdemeanor absconders was compiled from department data to develop a profile of absconders and to determine what factors, demographic and offense-related, might be associated with absconding supervision. Next, a sample of 354 offenders was randomly drawn from the total population of felony absconders (N=764), and a comparison sample of 353 felony offenders was drawn from those who successfully completed supervision in fiscal year 2013 (N=1,416). For misdemeanor offenders, a sample of 401 absconders and a sample of 570 successful completers were randomly drawn from their respective populations (N=1,260 and N=4,663).

Variables

All felony and misdemeanor offenders classified as absconders were identified and basic demographic and offense information was extracted from the probation department's system in order to create a profile of absconders based on the total population.

Three types of variables were collected for samples from the absconder population and those who completed probation successfully during the time frame of interest: demographic, probation supervision, and criminal justice variables (prior criminal record information). New offense arrests were not examined because if absconded offenders had been arrested for a new offense, they would typically no longer be classified as absconders in the department's case management system. Demographic variables examined included age, gender, race, ethnicity, marital status, education level, employment status, and annual income and were used to create a profile of the typical absconder for both groups. Age was categorized into four groups: 17 to 25; 26 to 35; 36 to 45; and 46 or older. Employment status was classified into four groups: unemployed; student/disabled/retired/homemaker¹; part-time employment; and full-time employment. Annual income was categorized into five groups: income less than \$10,000; \$10,000, but less than \$20,000; \$20,000, but less than \$30,000; \$30,000, but less than \$40,000; and more than \$40,000. Supervision variables included offense type (drug, alcohol, theft/property/fraud, violent, sex offense, and “other”), offense level, court of jurisdiction, length of time under

supervision before absconding, and length of time absconded from supervision. In the regression model the outcome variable was categorized as “absconding supervision” or “completing supervision.”

Data Analysis

The general landscape of the department's population was examined in order to get a sense of the number of individuals being supervised in this jurisdiction, including absconders. Around 9 percent of the total adult probation population in the jurisdiction was classified as absconders as of the end of September 2014. (See Table 1, next page.)

Based on study objectives, comparative analyses involved identifying factors related to absconding supervision for various groups and comparing demographic characteristics of felony and misdemeanor absconders to determine if there were any significant differences. The main outcome of interest was absconder status, and our study groups were identified as either absconded supervision or completed supervision within the two main populations of felony and misdemeanor offenders. Techniques of logistic regression analysis were used to determine factors associated with absconding supervision.

Techniques of univariate analysis were performed to determine which factors have effects on absconding without adjusting for other covariates. Those factors were included in a multiple logistic regression model to examine factors that would significantly affect absconding, controlling for other covariates for both felony and misdemeanor offenders. Furthermore, in order to compare the differences of demographic characteristics and offense information between felony and misdemeanor absconders, we performed Chi-square tests and two independent sample t-tests.

We used the Statistical Package for Social Sciences (SPSS) 21 version to analyze data. Descriptive results were presented as means, \pm standard deviations for quantitative variables and as percentages (%) for categorical variables. For each statistical analysis, a significance level of 0.05 was set.

Results

Descriptive Analyses

Table 2 (page 44) describes the demographic characteristics and offense information for the entire population of felony and misdemeanor. The average felony absconder is a single,

¹ These categories are set forth by the state oversight agency.

TABLE 1.
Monthly Community Supervision & Corrections Report¹ – September, 2014

Description	Felony	Misdemeanor	Total
Adult Receiving Direct Supervision	9,630	5,451	15,081
Maximum Level Supervision	1,860	1,019	2,879
Medium Level Supervision	4,026	2,297	6,323
Minimum Level Supervision	3,744	2,135	5,879
Adults on Indirect Status	3,067	3,112	6,179
Intrastate Transfers	1,110	645	1,755
Interstate Transfers	132	23	155
Absconders	764	1,260	2,024
Report by Mail	16	128	144
Pretrial Services	47	160	207
Pretrial Supervision	26	2	28
Pretrial Diversion	21	158	179
Supervision Placements	275	479	754
Supervision Terminations	395	613	1,008
Early Termination	33	17	50
Expired Term	103	356	459
Total Revocations	145	110	255

¹ Not all figures from the report are presented in the table.

white, non-Hispanic, unemployed male with no high school diploma (HSD) and an average monthly income of less than \$1,000; 56 percent of felons made less than \$10,000 a year. The typical misdemeanor absconder was a single, white, non-Hispanic male, but only 28 percent were unemployed compared to 54 percent of felons. While felony absconders were typically on probation for drug or property crimes, 40 percent of misdemeanor absconders were on probation for an alcohol-related offense (driving while intoxicated). Close to one-third of absconders for both groups were Hispanic.

For felons, the average time on supervision before absconding was 24 months (+ S.D. 34.84), while the average duration of *having been* a fugitive from felony supervision was 38 months (+ S.D. 49.36). For misdemeanors, the average time an offender was on community supervision before absconding was 8 months (+ S.D. 14.06), and the average duration of having absconded from supervision was 55 months (+ S.D. 54). The high standard deviations for average duration of absconding for both groups are due to some offenders having been fugitives since the late 1980s.

Statistical Analyses

Two logistic regression models were generated to investigate the association between a series of factors and the probability of absconding

from supervision for both felony and misdemeanor offenders.

Felonies

The results of the univariate analysis for felony offenders indicated that the following factors were significantly related to the probability of absconding from felony supervision without controlling for other covariates: age, education level, employment status, income level, and marital status. These factors were included in the subsequent logistic regression model to analyze their effects on the probability of absconding from supervision, adjusting for other covariates. (See Table 3, page 45.)

Multiple logistic regression analyses revealed that education level, current employment status, annual income less than \$10,000, and annual income between \$10,000 but less than \$20,000 were highly associated with the probability of absconding from felony supervision. Offenders with an annual income of less than \$10,000 were at the highest risk of absconding. Compared to probationers with more than \$40,000 annual income, probationers with less than \$10,000 annual income had 4 times greater odds of absconding, and probationers with an annual income between \$10,000 but less than \$20,000 had 3 times greater odds of absconding, controlling for age, current employment status, marital status, and education level.

In the area of education, probationers with no high school diploma had 2 times higher odds of absconding from community supervision, adjusting for age, current employment status, annual income levels, and marital status. However, various employment statuses—full-time, part-time, student/disabled/retired—served as a protective factor against absconding from felony supervision. There was no evidence that age and marital status affected the probability of absconding from felony supervision after controlling for education level, employment status, and annual income levels. (See Table 4, page 46.)

Misdemeanants

The results of univariate analysis revealed that the following factors were significantly related to the probability of absconding from misdemeanor supervision: gender, education level, employment status, annual income level, and offense category. These factors were then included in a logistic regression model to estimate their influences on the probability of absconding from misdemeanor supervision. (See Table 5, page 50.)

We found that education level, employment status, annual income of less than \$10,000, annual income between \$10,000 but less than \$20,000, annual income of \$20,000 but less than \$30,000, and offense categories were statistically significant regarding the probability of absconding from misdemeanor supervision ($p < 0.05$). With regard to gender and offense level there was no statistically significant effect on the probability of absconding from misdemeanor supervision ($p > 0.05$).

Offense categories showed some significance associated with the probability of absconding from misdemeanor supervision. The violent offense group has 4 times higher odds of absconding when controlling for gender, education level, employment status, offense level, and annual income. Moreover, the drug offense category had 2 times greater odds and both the alcohol and theft/property fraud groups had 3 times greater odds of absconding when compared to the “other” offense category for misdemeanor offenders and controlling for gender, education level, employment status, offense level, and annual income.

Different annual income levels were the second highest predictor of absconding from misdemeanor supervision. Misdemeanor offenders with an annual income level between \$10,000, but less than \$20,000 showed the highest risk, 8 times greater than misdemeanants with an annual income level higher than

TABLE 2.
Descriptive Statistics for Felony and Misdemeanor Populations (N=2,024)

Felony Variables	Mean ± Standard Deviation/Percentage %	Misdemeanor Variables	Mean ± Standard Deviation/Percentage %
Age (N=764)	36.3 ± 12.2	Age (N = 1,260)	36.9 ± 12.2
Monthly Income (N=737)	942.6 ± 1789.8	Monthly Income (N = 1,052)	1185.7 ± 2372.6
Race (N=764)		Race (N = 1,260)	
White	68.9	White	73.9
Black	30.0	Black	25.1
Asian	1.1	Asian	0.6
		Native American Indian	0.4
Ethnicity (N=764)		Ethnicity (N = 1,260)	
Non-Hispanic	67.5	Non-Hispanic	73.2
Hispanic	32.5	Hispanic	26.7
		Unknown	0.1
Gender (N=764)		Gender (N = 1,260)	
Male	68.8	Male	73.7
Female	31.2	Female	26.3
Marital Status (N=764)		Marital Status (N = 1,260)	
Married	20.3	Married	22.0
Divorced	8.0	Divorced	8.6
Single	70.1	Single	65.4
Separated	1.5	Separated	0.5
Widowed	0.1	Widowed	3.5
Highest Education Level (N=764)		Highest Education Level (N = 1,260)	
6th grade & below	4.3	6th grade & below	8.3
7th-11th grade (no HSD)	46.5	7th-11th grade (no HSD)	35.2
HSD or GED	38.6	HSD or GED	42.0
Some college	4.7	Some college	10.0
College Degree & above	5.9	College Degree & above	4.5
Employment Status (N=764)		Employment Status (N = 1,260)	
Unemployed	54.2	Unemployed	28.0
Student/Disabled/Retired/Homemaker	4.5	Student/Disabled/Retired/Homemaker	4.3
Employed PT	9.7	Employed PT	10.9
Employed FT	31.5	Employed FT	40.2
Unknown	0.1	Unknown	16.6
Offense Category (N=764)		Offense Category (N = 1,203)	
Drug Defined	31.2	Drug Defined	12.4
Alcohol Defined	8.5	Alcohol Defined	41.8
Theft/Property/Fraud	35.9	Theft/Property/Fraud	22.6
Violent	12.3	Violent	15.5
Sex Offense	6.4	Sex Offense	1.1
Other	5.7	Other	6.6
Offense Level (N=764)		Offense Level (N = 1,260)	
1st Degree Felony	6.0	Class A misd	33.5
2nd Degree Felony	20.5	Class B misd	66.4
3rd Degree Felony	28.5	Class C misd	0.1
State Jail Felony	45.0		

\$40,000 after controlling for gender, education level, employment status, offense category, and offense level. Compared to those with an annual income higher than \$40,000, misdemeanor offenders with an annual income level of \$20,000, but less than \$30,000 had 3 times higher odds of absconding when holding gender, education level, employment status, offense category, and offense level constant.

Compared to misdemeanor offenders who have a high school diploma, those without a high school diploma or general equivalency diploma (GED) are twice as likely to abscond after controlling for gender, employment status, offense categories, offense level, and annual income. Similar to the finding with felony absconders, employment is a protective factor against absconding from misdemeanor

supervision, after controlling for gender, high school status, categories of offense, offense level, and annual income level. (See Table 6, page 48.)

Statistical analysis was conducted to compare differences of demographic characteristics and offense information between felony and misdemeanor absconders. Education level, employment status, annual income level, offense categories, number of months before absconding, and numbers of months absconded were statistically significantly different for felony absconders and misdemeanor absconders ($p < 0.05$). However, factors of age, race, ethnicity, gender, and marital status did not show any significant difference between felony absconders and misdemeanor absconders ($p > 0.05$). (See Table 7, page 49.)

We performed multiple logistic regression analysis to investigate whether the probability of absconding from supervision differed for felony and misdemeanor offenders, but no significant difference was found ($p > 0.05$) when accounting for the other covariates. (See Table 8, page 50.)

Discussion

A previous study in the jurisdiction pertaining to felony technical revocations of probation revealed that 51 percent were absconders, employed felony offenders were 10 times more likely to complete supervision successfully, and felons assessed with substance abuse issues were 59 percent less likely to abscond from supervision, which was a surprising finding (Stevens-Martin, et al., 2014). Thus,

TABLE 3.
Univariate Analysis of the Association between Potential Risk Factors and the Probability of Absconding Felony Supervision

Variables	Coef.	p-value	Crude OR	95% C.I. for Odds Ratio
Current Age	-0.024	*<0.001	0.976	(0.96, 0.99)
Age Group (Reference=46+)				
17-25	0.945	*<0.001	2.572	(1.60, 4.15)
26-35	0.492	*<0.014	1.635	(1.106, 2.417)
36-45	0.171	0.439	1.187	(0.769, 1.832)
Race (Reference=Asian)				
White	-1.472	0.189	0.229	(0.025, 2.067)
Black	-1.234	0.274	0.291	(0.032, 2.65)
Ethnicity				
Hispanic v. Non-Hispanic	-0.93	0.589	0.911	(0.649, 1.278)
Gender				
Female v. Male	0.271	0.09	1.312	(0.959, 1.794)
High School Diploma (No v. Yes)	0.888	*<0.001	2.431	(1.79, 3.29)
Highest Education Level (References=College Degree & above)				
6th grade and below	2.42	*<0.001	11.25	(2.88, 43.947)
7th-11th grade	1.75	*0.002	5.76	(1.864, 17.783)
HSD or GED	1.00	0.082	2.71	(0.88, 8.351)
Some college	0.75	0.24	2.11	(0.607, 7.325)
Employment Status (Reference=Unemployed)				
Student/Disabled/Retired/Homemaker	-2.43	*<0.001	0.09	(0.05, 0.17)
Employed PT	-1.62	*<0.001	0.20	(0.12, 0.33)
Employed FT	-1.99	*<0.001	0.14	(0.09, 0.20)
Annual Income (Reference=>\$40,000)				
<\$10,000	2.23	*<0.001	9.31	(4.88, 17.75)
\$10,000>\$20,000	1.30	*<0.001	3.68	(1.93, 7.01)
\$20,000>\$30,000	0.14	0.71	1.15	(0.54, 2.45)
\$30,000≥\$40,000	-0.58	0.31	0.56	(0.19, 1.71)
Marital Status (Single v. Married)	0.65	*<0.001	1.91	(1.34, 2.71)
Offense (Reference=Other)				
Drug	-03.73	0.25	0.70	(0.37, 1.30)
Alcohol	-0.72	0.06	0.49	(0.23, 1.03)
Theft/Property/Fraud	-0.18	0.57	0.83	(0.45, 1.55)
Violent	-0.82	0.03	0.44	(0.22, 0.90)
Sex Offense	0.71	0.21	2.02	(0.68, 6.04)
Offense Level (Reference=State Jail Felony)				
1st Degree Felony	0.21	0.60	1.23	(0.57, 2.67)
2nd Degree Felony	0.27	0.18	1.31	(0.88, 1.96)
3rd Degree Felony	-0.02	0.90	0.98	(0.69, 1.39)

* $p < 0.05$ level of significance

TABLE 4.
Multiple Logistic Regression Analysis of the Association between Potential Risk Factors and the Probability of Absconding Felony Supervision

Variables	Coef.	p-value	Adjusted OR	95% C.I. Odds Ratio
Current Age	-0.01	0.42	.99	(0.98, 1.01)
High School Diploma (No v. Yes)	0.71	*<0.001	2.03	(1.43, 2.89)
Employment Status (Reference=Unemployed)				
Student/Disabled/Retired/ Homemaker	-1.98	*<0.001	0.14	(0.07, 0.29)
Employed PT	-1.38	*<0.001	0.25	(0.14, 0.44)
Employed FT	-1.43	*<0.001	0.24	(0.15, 0.38)
Annual Income (>\$40,000)				
<\$10,000	1.46	*<0.001	*4.29	(2.11, 8.71)
\$10,000>\$20,000	1.24	*<0.001	*3.44	(1.74, 6.80)
\$20,000>\$30,000	0.11	0.79	1.12	(0.51, 2.46)
\$30,000≥\$40,000	-0.50	0.40	0.61	(0.19, 1.93)
Marital Status (Single v. Married)	0.26	0.23	1.30	(0.85, 1.99)

*p<0.05 level of significance

further investigating fugitives from probation was merited.

Employment, education level, and annual income statuses were all significant in relation to the probability of absconding from either felony or misdemeanor supervision. It stands to reason that the more education a person has, the higher the likelihood of having better employment and a higher income (Federal Reserve Bank of St. Louis, 2016). Felony offenders with less than \$10,000 annual income have 4 times greater odds of absconding compared to felony offenders with more than \$40,000 annual income, while misdemeanor offenders with less than \$10,000 annual income have 8 times greater odds of absconding compared to those with annual incomes greater than \$40,000. From a simplistic point of view, employed offenders have “more to lose” than unemployed offenders (e.g. their jobs, cars, residences, reputations, etc.), but they are also more likely to have the ability to pay their probation fees, fines, and other court-ordered costs.

Probation generally places on offenders the responsibility for paying for their supervision. Offenders may be required to pay a monthly probation administration fee, fines, court costs, court-appointed attorneys’ fees, drug-testing fees, counseling/education programming costs, restitution, and so on (Reynolds et al., 2009). A 2014 poll conducted by National Public Radio in conjunction with New York University’s Brennan Center for Justice and the National Center for State Courts investigated the most common types

of fees courts charge defendants and offenders. An overwhelming majority of states charge offenders electronic monitoring fees, probation supervision fees, public defender or legal costs, and room and board (for those offenders employed inside or outside of a residential facility). All but three states have increased their fees since 2010 (Retrieved from <http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees> on August 25, 2016).

An American Probation and Parole Association (APPA) report pertaining to the collection of probation fees questioned whether the fees and fines increase or decrease the effectiveness of community supervision (Duffie & Hughes, 1986), and found there is little evidence to support either conclusion. The authors of the report went on to outline two general viewpoints with respect to collection of probation fees. Proponents argue that revenues from probation fees help supplement department budgets and place financial responsibility for supervision on offenders rather than taxpayers (Duffie & Hughes, 1986). Those opposed argue that fees place an undue burden on offenders. And, “...even those who do not commit new crimes may abscond as a result of their real or perceived inability to pay. Revocations for new crimes or for failure to report may simply mask fee overload” (Parent, 1990).

Contrary to growing concerns by advocacy groups that the criminal justice system, especially community supervision, is creating “debtors’ prisons,” offenders are not routinely revoked merely for being impoverished (Ring,

1988). A 1983 Supreme Court ruling, *Bearden v. Georgia*, states that probationers cannot be incarcerated solely for the inability to pay financial obligations. In the case of offenders in the jurisdiction of this study who are revoked for technical violations, they have other violations of community supervision in addition to failure to pay fee violations, including failure to report as directed, positive drug tests, failure to perform community service restitution, failure to attend treatment and/or education programs, and so on (Stevens-Martin et al., 2014), with positive drug tests being the most common violation. If offenders cannot afford to pay court-ordered fees, how can they afford to buy illegal drugs and alcohol? Community corrections officials, defense counsel, and other criminal justice actors must relay the message to offenders to report to their supervision officers even if they do not have the money to pay court-ordered fees and fines. They should also openly discuss their financial situation with their probation officers, who can make referrals for assistance or, in some cases, ask the court to reduce or waive fees, which may help reduce the incidences of absconding.

In this particular jurisdiction, budgeting classes, fee dockets, reduced fees for some individuals, and special payment plans are offered for offenders struggling to meet financial obligations. In some cases, officers can request that supervision fees be waived if they are indigent. In addition, there are a variety of other resources to help offenders with employment issues. One special project that includes programming and classes for offenders seeking employment, Project Key, was developed by an ex-offender to assist offenders with how to discuss their background with prospective employers. Another community resource, called the Offender First-Stop Reentry Center, is an initiative designed to help offenders returning to the community from jail or prison and those released on probation. Offenders attend orientation classes and are given access to “a myriad of free resources spanning the continuum of related services such as obtaining proper identifications and critical documents, housing, education, employment and health-care.” In addition, navigation sessions are held on each of these topics (www.tcreentry.org). The program also incorporates use of successfully reintegrated former offenders, referred to as neighbors, who serve as mentors for newly released offenders. The overall unemployment rate in the jurisdiction is only 4.0

TABLE 5.
Univariate Analysis of the Association between Potential Risk Factors and the Probability of Absconding Misdemeanor Supervision

Variables	Coef.	p-value	Crude OR	95% C.I. for Odds Ratio
Current Age	0.01	0.18	1.01	(0.99, 1.02)
Age Group (Reference=46+)				
17-25	-0.22	0.26	0.08	(0.54, 1.18)
26-35	-0.24	0.20	0.79	(0.55, 1.14)
36-45	0.08	0.71	1.08	(0.72, 1.64)
Race (Reference=Asian and Native American Indian)				
White	-4.52	0.44	0.64	(0.20, 1.99)
Black	-0.02	0.97	0.98	(0.31, 3.14)
Ethnicity				
Hispanic v. Non-Hispanic	0.23	0.14	1.26	(0.93, 1.70)
Gender				
Female v. Male	-0.33	*0.02	0.72	(0.54, 0.95)
High School Diploma No v. Yes	0.81	*<0.01	2.24	(1.69, 2.97)
Highest Education Level (References=College Degree & above)	0.81	*<0.01	2.24	(1.69, 2.97)
6th grade and below	2.52	*<0.01	12.38	(4.90, 31.28)
7th-11th grade	1.43	*<0.01	4.19	(2.44, 7.20)
HSD or GED	0.85	*<0.01	2.33	(1.39, 3.91)
Some college	0.86	0.01	2.37	(1.29, 4.34)
Employment Status (Reference = Unemployed)				
Student/Disabled/Retired/Homemaker	-1.47	*<0.01	0.23	(0.12, 0.45)
Employed PT	-0.92	*<0.01	0.40	(0.25, 0.62)
Employed FT	-0.64	*<0.01	0.53	(0.39, 0.72)
Annual Income (Reference≥\$40,000)				
<\$10,000	1.23	*<0.01	3.41	(1.94, 6.00)
\$10,000>\$20,000	2.25	*<0.01	9.49	(5.26, 17.14)
\$20,000>\$30,000	1.13	0.001	3.08	(1.60, 5.93)
\$30,000≥\$40,000	0.91	0.03	2.47	(1.12, 5.47)
Marital Status				
Single v. Married	-0.10	0.53	0.90	(0.65, 1.25)
Offense (Reference=Other)				
Drug	0.87	*0.002	2.39	(1.39, 4.12)
Alcohol	1.30	*<0.01	3.68	(2.29, 5.91)
Theft/Property/Fraud	1.15	*<0.01	3.17	(1.92, 5.24)
Violent	1.58	*<0.01	4.86	(2.70, 8.75)
Sex Offense	2.13	0.02	8.39	(1.46, 48.27)
Offense Level				
Class A v. Class B	0.15	0.28	1.17	(0.89, 1.53)

*p<0.05 level of significance

TABLE 6.
Multiple Logistic Regression Analysis of the Association between Potential Risk Factors and the Probability of Absconding Misdemeanor Supervision

Variables	Coef.	p-value	Adjusted OR	95% C.I. Odds Ratio
Gender Females v. Males	0.25	0.13	0.78	(0.56, 1.08)
High School Diploma (No v. Yes)	0.59	*<0.001	1.81	(1.32, 2.48)
Employment Status (Reference=Unemployed)				
Student/Disabled/Retired/ Homemaker	-1.38	*<0.001	0.25	(0.13, 0.50)
Employed PT	-1.05	*<0.001	0.35	(0.21, 0.57)
Employed FT	-0.94	*<0.001	0.39	(0.27, 0.57)
Annual Income (≥\$40,000)				
<\$10,000	0.96	*<0.002	2.60	(1.42, 4.77)
\$10,000>\$20,000	2.09	*<0.01	8.04	(4.36, 14.84)
\$20,000>\$30,000	0.99	*<0.01	2.71	(1.38, 5.33)
\$30,000≥\$40,000	0.67	0.12	1.93	(0.85, 4.40)
Offense (Reference=Other)				
Drug	0.66	*0.03	1.93	(1.07, 3.45)
Alcohol	1.24	*<0.001	3.45	(2.06, 5.80)
Theft/Property/Fraud	1.06	*<0.001	2.88	(1.67, 4.97)
Violent	1.40	*<0.001	4.06	(2.14, 7.70)
Sex offense	2.14	*0.03	8.47	(1.30, 55.22)

*p<0.05

percent (Federal Reserve Bank of St. Louis, 2015); however, offender unemployment rates are much higher.

The federal government has invested millions of dollars in reentry initiatives for offenders, which include focus on employment and career training for those returning to the community, because much research supports the fact that employment is critical to reintegration (Duran et al., 2013; Hicks, 2004; Latessa, 2012; Pager & Western, 2009; Petersilia, 2003; Stafford, 2006; Travis, 2005). Morenoff and Harding found that higher risks of offenders absconding and returning to incarceration were associated with release back to more disadvantaged neighborhoods—and employment considerably reduced the risk of all recidivism outcomes (2014). Closely associated with employment is the level of education.

Both felony and misdemeanor offenders with no high school diplomas were twice as likely to abscond from supervision compared to those with a high school diploma. It is not a standard condition of supervision in this jurisdiction for either felony or misdemeanor offenders to obtain a high school diploma or GED if they do not have one. This would be considered a “special condition” of

supervision. However, probation officers may submit a request for an amendment to conditions of supervision to add this stipulation, or it may be recommended by the Assessment Unit once the offender is placed on supervision and undergoes all initial screening and testing. In Texas, offenders are only required to be referred to literacy classes if they have a below-sixth-grade level of education. Even if offenders obtained a high school diploma or GED, they would still face hardships in obtaining employment due to their criminal records (Burks, 2011).

As for the type of crime for which offenders were under supervision, there was no significant difference between felony groups, but there was for misdemeanor offenders. Those misdemeanants on supervision for an assaultive offense had 4 times higher odds of absconding, adjusting for gender, education level, employment status, offense level, and annual income. Those receiving probation for domestic violence or assault are required to undergo testing and/or attend anger management, batterer intervention programs, and a variety of other special conditions that may present a financial challenge for offenders. Moreover, the drug offense category has 2 times greater odds and both the alcohol and

theft/property fraud groups have 3 times greater odds of absconding when compared to the “other”² offense category for misdemeanor offenders, after controlling for gender, education level, employment status, offense level, and annual income.

Misdemeanor offenders receive short jail sentences upon revocation compared to felony offenders, as well as shorter periods of community supervision, due to the nature of these crimes. This does not explain why some misdemeanor offenders are more likely to abscond from supervision compared to those convicted of other offenses, but it does shed light on the fact that “doing the time” may be a shorter and less expensive alternative for the individual than probation. In a previous study on felony technical revocations, findings revealed that when faced with revocation and given options other than incarceration such as residential treatment or extension of the probation term with additional interventions and sanctions, 20 percent of offenders chose incarceration in lieu of continuing their community supervision sentence (Stevens-Martin et al., 2014). Close to half of the felony probation population in the jurisdiction are state jail felons, the lowest-level felony, and most receive an average of 8 months in a state jail facility upon revocation (Stevens-Martin et al., 2014). Short sentences provide little motivation (or may actually discourage offenders) for continuing on probation, where they are held accountable for their actions and are required to participate in programming designed to address their criminogenic needs.

Last, we consider analyses conducted to compare the differences among demographic characteristics and offense information between felony and misdemeanor absconders. In comparing felony and misdemeanor absconders, education level, employment status, annual income level, offense categories, number of months before absconding, and the duration (in months) of the absconding from supervision are statistically significant (p<.05). More misdemeanor offenders had a high school diploma compared to felons; more felons were unemployed and, therefore, had lower income levels compared to misdemeanants. However, there were no statistically significant differences between felons and misdemeanants regarding age, race, ethnicity, gender, and marital status. These findings

² Offenses in the “other” category included, but were not limited to, crimes such as unlawful carrying of a weapon, interfering with emergency call, and violation of a protective order.

TABLE 7.
Comparison Characteristics between Felony and Misdemeanor Absconders (N=1,793)

Variables	Categories of Absconders				Test values	p-value
	Felonies (N = 737)		Misdemeanors (N = 1056)			
	n	%	n	%		
Age Groups						
17-25	162	(22.0)	271	(25.7)	5.71	0.13
26-35	263	(35.7)	356	(33.7)		
36-45	152	(20.6)	234	(22.2)		
≥46	160	(21.7)	195	(18.5)		
Race						
White	503	(68.2)	765	(72.4)	6.59	0.09
Black	224	(30.4)	279	(26.4)		
Asian	9	(1.2)	7	(0.7)		
Native American Indian	1	(0.1)	5	(0.5)		
Ethnicity						
Hispanic	237	(31.9)	291	(27.5)	5.37	0.07
Non-Hispanic	500	(68.1)	765	(72.3)		
Gender						
Female	234	(31.9)	291	(27.6)	3.69	0.06
Male	503	(68.1)	765	(72.4)		
High School Diploma						
Yes	342	(46.4)	613	(58.0)	23.65	*<0.001
No	395	(53.6)	443	(42.0)		
Employment Status						
Unemployed	391	(53.1)	341	(32.3)	106.41	*<0.001
Student/Disabled/Retired/Homemaker	34	(4.6)	50	(4.7)		
Employed PT	74	(10.1)	129	(12.2)		
Employed FT	237	(32.2)	479	(45.4)		
Unknown/Missing	1		57			
Annual Income						
<\$10,000	415	(56.3)	479	(45.4)	21.27	*<0.001
\$10,000>\$20,000	219	(29.7)	387	(36.6)		
\$20,000>\$30,000	55	(7.5)	105	(9.9)		
\$30,000>\$40,000	18	(2.4)	36	(3.4)		
≥\$40,000	30	(4.1)	49	(4.6)		
Marital Status						
Single	583	(80.3)	848	(80.3)	0.0	1.00
Married	143	(19.7)	208	(19.7)		
Offense						
Drug	235	(31.9)	140	(13.3)	285.39	*<0.001
Alcohol	63	(8.5)	421	(39.9)		
Theft/Property/Fraud	264	(35.8)	253	(24.0)		
Violent	88	(11.9)	153	(14.5)		
Sex Offense	43	(5.8)	12	(1.1)		
Other	44	(6.0)	77	(7.3)		
Months on supervision before absconding					12.42	*<0.001
Months has been absconded					-7.93	*<0.001

*p<0.05 level of significance

TABLE 8.
Multiple Logistic Regression Analysis of Probability of Absconding Probation Supervision between Felony Absconders and Misdemeanor Absconders

Variables	Coef.	p-value	Adjusted OR	95% C.I. Odds Ratio
Categories of absconders				
Felony vs. Misdemeanor	0.21	0.09	1.24	(0.97, 1.58)

highlight the difficulty for some offenders of obtaining employment and successfully reintegrating into society, and it also provides insight for law enforcement officials tasked with tracking down and apprehending probation absconders. Considering that felony absconder offenders are unemployed and have little income, it is likely they have not fled the jurisdiction, but rather are remaining in the jurisdiction due to limited resources.

One factor not explored in this initial examination of the absconder population in the jurisdiction was supervision variables such as the number of officers offenders have had during their term(s) of supervision prior to absconding and officer supervision styles (Klockars, 1973); both of these may have an impact on successful completion of supervision. Officers with a more punitive approach to supervision may have a higher absconding rate for their caseloads compared to those with a more rehabilitative approach. Research on the officer-offender relationship is sparse, but some available research shows an impact on successful completions of supervision. For example, Clark-Miller and Stevens' study (2011) found that frequently switching probation officers during the term of supervision had a detrimental effect on supervision outcomes. Offenders who were supervised by only a few probation officers during their term were more likely to complete probation successfully than offenders who were supervised by many officers; the impact of officer continuity was dramatic, with chances of successful completion increasing by 58 percent for an offender with one officer during the entire term of supervision. The data also suggested that "offenders supervised by fewer officers were less likely to recidivate than offenders whose time on probation were spread out over a number of officers" (Clark-Miller & Stevens, 2011, p. 17).

Moreover, we did not collect data on the number and types of technical violations offenders had committed prior to absconding, due to incomplete electronic records for many offenders in the study who had been absconders for more than 10 years. Examining the types of technical violations offenders had

could provide more insight into absconding patterns. Future studies should take into account variables such as supervision officer styles, departmental policies, court policies, continuity and consistency in supervision practices, and types and frequency of technical violations in determining what role, if any, these play in contributing to absconding rates. An interesting field study might include interviewing apprehended fugitive probationers to obtain feedback regarding their reasoning for failing to report and basically "writing off" their probation stipulations. This might give insight into the cognitions of offenders to help those developing policies and practices to reduce the incidences of absconding, thereby increasing public safety and successful reentry for offenders. And, as mentioned previously, it is important for probation officers to discuss court-ordered financial obligations with offenders and to develop appropriate payment plans considering their level of income, employment situations, and other financial obligations. It may be that offenders agree to probation plea bargains in order to be released from jail with no intentions of actually abiding by the conditions of release or successfully completing supervision.

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Comparison of Recidivism Studies: AOUSC, USSC, and BJS

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RECIDIVISM IS ARGUABLY one of the greatest challenges facing the criminal justice system today. Reoffending not only has relevance for public safety, but has resource and cost implications related to incarceration and other criminal justice costs (Urban Institute, 2009).

For these and other reasons, recidivism rates are often used by those examining the effectiveness of criminal justice policies, evaluating program performance, and measuring the success of community supervision (Lowenkamp, VanNostrand, & Holsinger, 2015; Urban Institute, 2009). Detailed recidivism data can help distinguish which defendants/offenders have the most interactions with law enforcement and correctional agencies, which types of offenses are committed by those recidivating, and the timing of reoffending (Urban Institute, 2009). But in order to accomplish all these measurement and analytic objectives through recidivism data, we must first define recidivism in a manner that allows it to be effectively measured. Recidivism is commonly defined as reengaging in criminal behavior after receiving a sanction or undergoing an intervention for a previous crime (Elderbroom & King, 2014; National Institute of Justice, 2014). As a conceptual definition, this is relatively straightforward; however, as an operational definition—one that permits measurement—it is not so simple (National Advisory Commission, 1973: 512).

Recidivism can be measured in a variety of ways, with the various measures setting different criteria for labeling a person a recidivist. Recidivism is generally calculated as a rate or percentage of people in a specified group who meet certain criteria in a defined span of time.

How recidivism is defined can vary simply by changing the group, the criteria, or the amount of time for which recidivism is calculated (Ruggero, 2015). Most experts agree that rearrests, reconvictions, and returns to incarceration during a specified period of time are the primary ways to measure recidivism (Maltz, 2001; Armstrong, 2013; Elderbroom & King, 2014; Urban Institute, 2009). Because each measure captures a recidivist at a different point in the criminal justice system, they require different definitions. If we use rearrest as a measure, a person is defined as a recidivist if he or she has been arrested for a new crime after being released directly into the community on probation or after serving a term of imprisonment. Rearrests may also include arrests for alleged violations of supervised release, probation, or parole (Hunt & Dumville, 2016). The reconviction measure defines a person as a recidivist if an arrest resulted in a subsequent court conviction. Violations and revocations of supervision are not included in reconvictions, since no formal prosecution occurred. Returns to incarceration define a person as a recidivist if a conviction or revocation results in a prison or jail sentence (Hunt & Dumville, 2016). The various definitional differences can create discrepancies among reported recidivism statistics. For example, two agencies that use reconviction to measure recidivism will produce different recidivism rates if one agency includes only reconvictions for felony offenses and the other agency limits reconvictions to the same type of offense as the instant offense (Armstrong, 2013). Because varied measures are used to determine recidivism, it is difficult

to compare recidivism rates between agencies or amongst states.

Defining Recidivism

Since 2010, the Administrative Office of the U.S. Courts (AOUSC) has produced annual recidivism statistics on offenders placed on probation and supervised release. Consistent with AOUSC's systems strategy to measure and report on results of mission-critical work, AOUSC periodically publishes articles in *Federal Probation* that describe the most recent recidivism statistics and changes over time. Because *Federal Probation* is available to those outside the judiciary, the statistics published are available to both internal and external stakeholders.

Recently, other government agencies have reported on federal recidivism, describing recidivism rates higher than those reported by AOUSC in past *Federal Probation* articles. In 2016, both the United States Sentencing Commission (USSC) and the Bureau of Justice Statistics (BJS) released reports on federal recidivism that conveyed recidivism rates differing from those reported by AOUSC in *Federal Probation* articles. The USSC report examined the most serious post-release recidivistic event for a cohort of offenders released in 2005 (Hunt & Dumville, 2016). The BJS report examined the extent to which offenders placed on federal community supervision were arrested by federal and nonfederal (i.e., state and local) law enforcement agencies prior to and following their placement on community supervision for a cohort of persons released from prison in fiscal year 2005 (Markman, Durose, Rantala, & Tiedt, 2016).

In order to better compare the outcomes of the studies, each study must clearly state their definition of recidivism as well as the methods used to measure that definition (Ruggiero, 2015). AOUSC has routinely defined recidivism as a return to crime by those who have either served a term of supervised release or probation. The USSC has used the term recidivism to refer to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime (Hunt & Dumville, 2016). BJS did not provide a definition of recidivism for their study.

Measuring Recidivism

AOUSC measures recidivism by the first rearrest for new criminal activity that occurs during and after an offender's term of supervision. However, only the first rearrest for a serious criminal offense is counted as a recidivistic event in AOUSC's recidivism statistics. In other words, the focus is on whether the person who is or had been under supervision recidivated, rather than on the number of times a new rearrest occurred for a given person who was or had been under supervision.

In addition, because states vary in their practices regarding the extent to which misdemeanor and petty offenses are reported to their state repositories, AOUSC excludes offenses against public peace, invasion of privacy and prostitution, obstruction of justice, liquor law violations, and traffic offenses. By focusing on major offenses, AOUSC is able to compare recidivism rates across districts and over time, because the statistics are much less influenced by changes in state reporting practices. (AOUSC does tabulate recidivism rates for minor offenses and can report those statistics as well; however, excluding minor offenses does not materially understate its arrest statistics.)

In addition to minor offenses, arrests resulting from violations of the conditions of supervision are also excluded from AOUSC's recidivism statistics. Arrests for technical violations are *not* indicative of new criminal behavior, but rather reflect an offender's failure to comply with certain conditions of his or her supervision, such as testing positive for illegal drugs, failing to complete substance abuse treatment, or traveling outside of the area without prior permission. The USSC study, on the other hand, considered all recidivism events (including felonies, misdemeanors, and technical violations of the conditions of supervision) except minor traffic offenses when measuring

recidivism. The offenses were ranked in order of seriousness (Hunt & Dumville, 2016). The BJS study used the first arrest, including arrests for technical violations, as a recidivistic event, but also reported recidivism rates for multiple arrests. The most serious offense charge was used to characterize the arrest offense type (Markman et al., 2016).

Compared to offenders who began a term of supervision a decade ago, the current federal offender is at an increased risk to recidivate, as measured by federal risk assessment instruments. In an effort to account for changes in risk, AOUSC has begun to use statistical techniques to adjust for risk in their recidivism statistics. Statistics that adjust for risk provide standardized comparisons over time and among districts, thus making comparison analyses more meaningful. Moreover, recidivism rates that are adjusted for risk of the population demonstrate that, despite a steady increase in supervisee risk profile, recidivism defined by rearrest, revocation, or a combination of the two measures is decreasing. This result is highly encouraging for stakeholders and policymakers alike, as it suggests that recent advances in federal supervision practices are producing more favorable outcomes. AOUSC studies of recidivism statistics, unlike those of the other studies, report adjusted rates that control for person-level characteristics, including age, race, sex, risk level, and instant offense type.

Study Cohort and Follow-up Time

A major difference between the AOUSC study and the USSC and BJS studies is the size of the population being studied. AOUSC's study cohort included a total of 454,223 persons serving active supervision terms of probation and supervised release that commenced between October 1, 2004, and September 30, 2014. The USSC report only examined 25,431 offenders who were released from federal prison after serving a sentence of imprisonment or were placed on probation in calendar year 2005. Although larger than the USSC study, the BJS study, which is based on 42,977 offenders placed on federal community supervision during fiscal year 2005, is still relatively small in comparison to AOUSC's study. All three studies focused on U.S. citizens. An area AOUSC did not explore that the other two studies did explore was offender demographics. As part of its offender demographics, USSC examined race/ethnicity, gender, and education level. USSC also

looked at recidivism rates by criminal history score and sentence originally imposed. In addition to offender demographics (race/ethnicity, sex, and age), BJS examined recidivism rates by number of prior arrests.

Although AOUSC is capable of tracking its earliest cohort of offenders for 10 years or more, statistics published for external consumption focus on five-year rearrest rates while under supervision and three-year rearrest rates after completing supervision. The USSC study uses an 8-year follow-up period and the BJS study uses a five-year follow-up window. Neither the USSC nor the BJS studies distinguish between arrests that occur during supervision and those that occur after supervision. Not surprisingly, studies with longer follow-up periods tend to report higher rates of recidivism. In this case, one would expect the BJS study to yield the highest recidivism rates, and it does (43.0 percent compared to 42.1 percent for USSC and 27.7 percent for AOUSC).

Recidivism Rates

All three studies report cumulative rearrest rates over the follow-up periods. For example, if an offender who was sentenced to two years of supervision is rearrested after six months, that arrest will be included in both the one-year and two-year recidivism statistics. However, if an offender was sentenced to 12 months of supervision and was arrested after six months, the arrest is only included in the 12-month rearrest statistics but not in the two-year statistic. AOUSC reported that, within the first year of starting supervision, 9.3 percent of federal offenders were rearrested for a serious offense. In comparison, USSC reported a one-year recidivism rate of 16.6 percent and BJS reported a rate of 18.2 percent. All three studies indicate that the majority of reoffending occurs within the first two years of starting supervision (see Table 1). These findings suggest that offenders who have recently re-entered the community are the most vulnerable and the most likely to reoffend.

On average, most federal offenders receive between 36-60 months of community supervision. After three years of supervision, AOUSC reports a recidivism rate of 20.8 percent, which is 12.9 percentage points lower than USSC's reported rate (33.7 percent) and 14.2 percentage points lower than BJS's reported rate (35 percent). The five-year recidivism rate is arguably the most significant performance marker in these studies, because it represents the end of the average supervision term. Moreover, in terms of public safety, the expectation is that

community supervision will have a positive effect on reducing criminal behavior. AOUSC reports a five-year recidivism rate of 27.7 percent, while USSC reports a rate of 42.1 percent, and BJS reports 43 percent (see Table 1).

Among those who are only aware of the different recidivism rates reported by USSC and BJS, without any further context on variations in defining and measuring recidivism, the differences can arouse confusion and perhaps even doubts about the accuracy of AOUSC's published recidivism rates. In an effort to eliminate the confusion, outlined in Table 1 below is a summary of the major discrepancies among the three studies.

Conclusion

Recent recidivism studies by the AOUSC, USSC, and BJS have brought attention to the importance of understanding the scope of reoffending in the federal probation and pretrial services system. These studies have also brought to light how difficult it is to compare

recidivism rates across agencies. Even when using similar data, discrepancies can exist based on definitional and methodological differences. No study is without error, and any definition will underestimate the "true" recidivism rate, because rates are based on official criminal record data that only show crimes for which people have been arrested or convicted (Blumstein & Larson, 1971). However, when reviewing various recidivism studies, it is important to keep in mind how recidivism is measured and, more importantly, what is excluded or included in the analysis (e.g., technical violations and traffic offenses).

When examining recidivism it is also important to look at more than just the overall rate. One must also consider the risk associated with the offenders. Not all offenders share the same levels of risk and therefore do not reoffend at the same rate. Only the AOUSC study controls for risk; as a result, it provides a more accurate and nuanced reflection of recidivism among federal offenders.

TABLE 1.
Comparison of Key Findings

	AOUSC	USSC	BJS
Study cohort size	454,223	25,431	42,977
Study population			
Probation	Yes	Yes	Yes
Term of supervised release (TSR)	Yes	Yes	Yes
U.S. citizen	Yes	Yes	Yes
Recidivism rates (cumulative)			
1 year	9.3%	16.6%	18.2%
2 years	15.6%	27.1%	28.3%
3 years	20.8%	33.7%	35.0%
4 years	24.5%	38.4%	39.0%
5 years	27.7%	42.1%	43.0%
8 years	-	49.3%	-
Recidivism Rates by Most Serious Offense (5-yrs)			
Drug	29.4%	21.5%	16.1%
Violence	24.5%	32.3%	14.5%
Property	25.5%	18.2%	14.8%
Public Order	-	28.0%	54.5%
Length of follow-up period	5 years	8 years	5 years
Separate during and after supervision rates	Yes	No	No
Restricted to first arrest only	Yes	No	No
Minor offenses included	No	Yes	Yes
Technical violations included	No	Yes	Yes
Adjustment for risk	Yes	No	No
Explicit definition of recidivism	Yes	Yes	No

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JUVENILE FOCUS

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Criminal Victimization

The Bureau of Justice Statistics (BJS) has published *Criminal Victimization, 2015*, which presents national rates and levels of criminal victimization in 2015 and annual change from 2014. The report includes statistics on the characteristics of crimes and victims and consequences of victimization. It examines violent crimes (rape or sexual assault, robbery, aggravated assault, and simple assault) and property crimes (household burglary, motor vehicle theft, and theft). It also includes estimates of domestic violence, intimate partner violence, injury, and use of weapons in violent victimization. Data are from the National Crime Victimization Survey (NCVS), which collects information on nonfatal crimes, reported and not reported to the police, against persons age 12 or older from a nationally representative sample of U.S. households. During 2015, about 95,760 households and 163,880 persons were interviewed for the NCVS.

Highlights:

- No statistically significant change occurred in the rate of violent crime from 2014 (20.1 victimizations per 1,000) to 2015 (18.6 per 1,000).
- No statistically significant change was detected in the percentages of violent crime reported to police from 2014 (46%) to 2015 (47%).
- The rate of property crime decreased from 118.1 victimizations per 1,000 households in 2014 to 110.7 per 1,000 in 2015.
- In 2015, 0.98% of all persons age 12 or older (2.7 million persons) experienced at least one violent victimization.
- The prevalence rate of violent victimization declined from 1.11% of all persons age 12 or older in 2014 to 0.98% in 2015.

Model Indian Juvenile Code

The Bureau of Indian Affairs (BIA) has announced the publication of its 2016 Model Indian Juvenile Code. Since 2012, OJJDP

worked with BIA's Office of Justice Services Tribal Justice Support Directorate to update the 1988 Model Indian Juvenile Code. During development of the code, OJJDP worked with the Departments of Interior and Health and Human Services to gather information through listening sessions and tribal consultations. This final update serves as a framework to help federally recognized tribes interested in creating or enhancing their own codes to focus on juvenile issues, specifically alcohol- and/or drug-related offenses in Indian Country. The 2016 model code encourages the use of alternatives to detention and confinement while focusing on community-based multi-disciplinary responses to juvenile delinquency, truancy, and child-in-need services.

School Safety Programs

The National Institute of Justice (NIJ) has released "Find School Safety Programs on CrimeSolutions.gov." This short video discusses how school, social services, and agencies can use the CrimeSolutions.gov clearinghouse to find evidence-based programs and practices that can improve school safety. CrimeSolutions.gov includes almost 300 programs and practices on juvenile topics, including school safety, children exposed to violence, child protection and health, delinquency prevention, and risk and protective factors. The video also addresses the lack of strong evaluations of school safety programs that schools are implementing and investing in and how this presents an opportunity for research. Many of the programs were added to CrimeSolutions.gov under NIJ's Comprehensive School Safety Initiative

The Jude Effect

Matthew Desmond, Andrew V. Papachristos, and David S. Kirk's review of nearly seven years of Milwaukee residents' 911 calls shows that African Americans reduced their crime-reporting behavior in the wake of high-profile

cases of police brutality. In particular, press coverage of the police beating of Frank Jude in October 2004 was followed by a dramatic and durable reduction in 911 calls from black neighborhoods, in contrast to a small and brief drop in such calls from white neighborhoods. Moreover, homicides increased in the wake of residents' declined use of 911. The authors argue that reduced crime reporting diminished law enforcement's ability to suppress crime.

"If acts of excessive police force result in community-level consequences, then cities should implement community-level interventions in the aftermath of such acts," the authors write in an Op-Ed. Police Chief Edward Flynn of Milwaukee, who was not in office for the period studied, has dismissed the study's conclusions as the product of an administrative glitch in the tabulation of 911 calls. The journal article, "Police Violence and Citizen Crime Reporting in the Black Community" was published in the *American Sociological Review* and covered by outlets including *The New York Times* and *Atlantic*.

Policing Disparities

The Center for Policing Equity and the Urban Institute have released a report analyzing traffic stops and use of force by the Austin, Texas police department, reports *USA Today*. The study found that although there were racial and ethnic disparities in traffic stops and searches in 2014 and 2015, there were no disparities in the hit rate—the rate at which police found contraband during searches. "These findings suggest that racially disparate rates of vehicle stops may in fact be driven by differential rates of offending," the researchers note. By contrast, they found that blacks and Hispanics were more likely to experience police force even after controlling for community-level differences in crime and poverty.

An investigation by the Department of Justice's Community Oriented Policing Services (COPS) Office found that the San

Francisco Police Department (SFPD) does a poor job of tracking and investigating officers' use of force, has ineffective anti-bias training, and shields the disciplinary process from the public view, reports the *San Francisco Chronicle*. The investigation also uncovered racial disparities in traffic stops, searches, and use of deadly force, as well as "numerous indicators of implicit and institutionalized bias against minority groups." San Francisco Mayor Ed Lee and former Police Chief Greg Suhr had requested the study through the COPS Office's Collaborative Reform Initiative for Technical Assistance program.

Brad Heath of *USA Today* writes that a new report, which the Justice Department tried to have sealed when it was filed in federal court, reveals "strong, consistent and statistically significant" evidence that federal agents singled out people of color for drug stings in Chicago. The undercover stings, which attempted to enlist people suspected of crime to commit a new crime, had been a centerpiece of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) efforts to target violent crime. Of the 94 people that ATF agents arrested in these stings, 91 percent were either black or Hispanic. Jeffrey Fagan, author of the report, found that there was a less than 0.1 percent probability that these individuals could have been selected by chance.

Juvenile Residential Census

OJJDP has released "Juvenile Residential Facility Census, 2014: Selected Findings." This bulletin presents findings from OJJDP's Juvenile Residential Facility Census, a biennial survey that collects information about facilities in which youth charged with or adjudicated for law violations are held. Findings from the 2014 census show that the population of justice-involved youth dropped 11 percent from 2012 to 2014, and more of these youth were held in local facilities than were held in state-operated facilities. The data also describe the range of services that facilities provide to youth in their care, with almost all facilities (87 percent) reporting that a portion of residents attended some type of school. The data also indicate that most responding facilities routinely evaluated all residents for substance abuse (74 percent), mental health needs (58 percent), and suicide risk (90 percent).

Girls in Adult System

The National Institute of Corrections, in collaboration with the National Council on Crime and Delinquency, has released *No Place for Youth:*

Girls in the Adult Justice System—Gender-Responsive Strategies for Justice-Involved Women and Girls. The report summarizes current research, includes input from practitioners, and offers recommendations for improving conditions and outcomes for girls who are sentenced to adult facilities. The report also highlights challenges administrators and justice-involved girls face when youth are transferred to the adult criminal justice system.

Hispanic Youth

OJJDP has released "Delinquency Cases Involving Hispanic Youth, 2013." OJJDP asked the National Juvenile Court Data Archive to examine state and local juvenile court data to determine the characteristics and experiences of Hispanic youth who come into contact with the juvenile justice system. This bulletin includes data from more than 1,200 counties and represents 75 percent of the U.S. Hispanic youth population at risk of juvenile court involvement. Findings show that Hispanic youth were 20 percent more likely than white youth to be referred to juvenile court, and once adjudicated, 30 percent more likely to be ordered to out-of-home placement.

Jailing the Poor

According to a report by the Vera Institute for Justice, *Incarceration's Front Door: The Misuse of Jails in America*, there are more than 3,000 local jails in America, holding more than 730,000 people on any given day. Nancy Fishman, a project director at the Vera Institute, tells Terry Gross, host of NPR's program *Fresh Air*, that jails "have impacted a huge number of Americans ... many more than are impacted by state prisons." The Vera Institute's report documents that there are almost 12 million admissions to local jails each year, representing about 9 million people. Most of those jailed, she says, are being held for low-level offenses, such as drug misdemeanors, traffic offenses, or nonviolent property crimes. And, she adds, the majority are poor. Fishman notes that most of the people in jail are pretrial, which means that they have not yet been convicted of anything. "They are legally innocent," she says. "One of the great travesties, frankly, of jail admissions right now is that we have people sitting in jail for long periods simply because they can't afford to pay [bail]."

Juvenile Drug Courts

The University of Arizona Southwest Institute for Research on Women has published findings

from a 4-year cross-site evaluation of the Juvenile Drug Court and Reclaiming Futures project to improve juvenile drug courts. The Juvenile Drug Courts/Reclaiming Futures initiative integrates the Juvenile Drug Court: Strategies in Practice and the Reclaiming Futures models to rehabilitate nonviolent, substance-abusing youth. OJJDP funded this evaluation through an interagency agreement with the Library of Congress. A key finding of the evaluation: Youth with high levels of criminal behavior and substance use involved in the Juvenile Drug Courts/Reclaiming Futures programs had better outcomes than those in non-Reclaiming Futures juvenile drug courts and intensive outpatient treatment programs. The study also provides an economic and implementation analysis as important considerations for potential replication.

Tribal Facilities

A BJS study describes jails, confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs. This report presents trends in Indian country jails, including inmate characteristics and offense type; midyear, peak, and average daily population; and admissions and expected average length of stay at admission. It provides data on rated capacity, facility crowding, and jail staffing. Deaths in custody are also included. Findings were based on BJS's 2015 *Survey of Jails in Indian Country*.

Highlights:

- At midyear 2015, an estimated 2,510 inmates were confined in 76 Indian country jails, a 5.5 percent increase from the 2,380 inmates confined at midyear 2014 in 79 facilities.
- The number of inmates admitted into Indian country jails during June 2015 (9,810) was four times the size of the average daily population (2,390).
- For the 76 facilities operating in June 2015, the expected average length of stay at admission for inmates was about 7 days.
- Three in 10 inmates were held for violent offenses at midyear 2015, including domestic violence (13 percent), aggravated or simple assault (10 percent), unspecified violence (6 percent), and rape or sexual assault (2 percent).
- Similar to 2013 and 2014, at midyear 2015, 2 in 10 inmates were held for public intoxication.

Youth and Effective Defense Counsel

The National Juvenile Defender Center has released “Defend Children: A Blueprint for Effective Juvenile Defender Services.” This new report, supported by OJJDP, addresses the issue of youth being denied access to qualified defense counsel throughout the juvenile justice process. The report offers recommendations to ensure youth have access to effective juvenile defense, illustrates racial and ethnic disparities in juvenile court, and highlights successful programs and practices that are improving youth access to counsel.

Youth Harassment Victimization

OJJDP and the National Institute of Justice (NIJ) have released “The Role of Technology in Youth Harassment Victimization.” This bulletin summarizes the findings of the NIJ-sponsored Technology Harassment Victimization study, which is a follow-up study to the second National Survey of Children’s Exposure to Violence sponsored by OJJDP. The study examined technology-involved harassment within the context of other types of youth victimization and risk factors. The data reveal that mixed-peer harassment—involving both in-person and technology-based elements—is the most traumatic for victims, especially those who have been victimized in multiple ways in the past and are facing numerous stressors in their present lives. For more information, access OJJDP’s Model Programs Guide (MPG) I-Guide on school-based bullying prevention.

Juvenile Defender Services

The National Juvenile Defender Center (NJDC) has published *Defend Children: A Blueprint for Effective Juvenile Defender Services*, which details how children are arrested, prosecuted, and too often incarcerated without attorneys at their side. The Blueprint is informed by thousands of hours of juvenile court observation, assessments of state juvenile defense systems that measure access to and quality of children’s legal representation, and invaluable observations and expertise from the NJDC’s community of defenders, researchers, and advocates.

The Blueprint proposes solutions to the ongoing crisis in juvenile defense; illustrates its disparate impact on historically oppressed communities; and highlights innovative and replicable programs across the country that are improving children’s access to justice.

Americans Unnecessarily Behind Bars

Thirty-nine percent of prisoners are behind bars with no compelling public safety reason, according to a new report from the Brennan Center released earlier this month. Led by nationally renowned criminologist Dr. James Austin, three years of research culminated in this report, which includes a blueprint for how the country can significantly cut its prison population while still keeping crime rates near historic lows. Researchers found 25 percent of the country’s prisoners—who are nearly all non-violent, lower-level offenders—would be better served by alternatives to incarceration such as treatment, community service, or probation. Another 14 percent who have served sufficiently long sentences could be released with little to no risk to public safety. Releasing these 576,000 inmates would save \$20 billion annually.

The study offers recommendations to decrease the total prison population, while people who committed the most serious crimes remain behind bars. Recommendations include eliminating prison for lower-level crimes and reducing sentence minimums and maximums currently on the books. “If we do not take steps now, Americans of color will forever be relegated to a penal and permanent underclass, and mass incarceration will continue to cage the economic growth of our communities,” wrote report foreword author Cornell Brooks, president and CEO of the NAACP. “We have reached a crisis point, and we need solutions.”

Crime Data

The overall crime rate in 2016 is projected to remain the same as it was last year, according to a year-end analysis by the Brennan Center. The murder rate is projected to increase by 14 percent, driven largely by problems in Chicago. Nearly half the national increase in murders—43.7 percent—is attributable to Chicago alone. These findings were released by the Brennan Center as an update to its recent analysis of 2016 crime numbers in America’s 30 largest cities.

Probation and Parole Data

Probation and Parole In The United States, 2015, published by the Bureau of Justice Statistics (BJS), presents data on adult offenders under community supervision while on probation or parole in 2015. The report includes national data on trends for the overall community supervision population and

annual changes in the probation and parole populations. It describes statistics on the number of offenders entering and exiting probation or parole; offenders by sex, race, or Hispanic origin; most serious offense type and status of supervision; and outcomes of supervision, including the rate at which offenders completed their term of supervision. Appendix tables include jurisdiction-level information on the population counts and number of entries and exits for probation and parole and jurisdiction-level information on the types of entries and exits for probation and parole.

Highlights:

- At yearend 2015, an estimated 4,650,900 adults were under community supervision, down by 62,300 offenders from yearend 2014.
- Approximately 1 in 53 adults in the United States was under community supervision at yearend 2015.
- The adult probation population declined by 78,700 offenders from yearend 2014 to yearend 2015, falling to about 3,789,800.
- The adult parole population increased by 12,800 offenders from yearend 2014 to yearend 2015, to an estimated 870,500 offenders.

Juvenile Drug Treatment Courts

The Office of Juvenile Justice and Delinquency Prevention Programs (OJJDP) has released “Juvenile Drug Treatment Court Guidelines.” Juvenile drug treatment courts are designed for youth with substance use disorders who come into contact with the juvenile justice system. These courts offer a way to respond to the needs of substance-using youth and treat their complex disorders, which require specialized interventions. OJJDP partnered with a research team, experts in the field, and other federal agencies to develop evidence-based, treatment-oriented guidelines to support judges and professional court staff, youth with substance use disorders, and their families. OJJDP is also planning to support courts in the implementation and testing of these guidelines through training and technical assistance and programmatic initiatives.

Black Women in Solitary Confinement

Time-in-Cell: The Liman-ASCA 2014 National Survey of Administrative Segregation in Prison, is a new report co-authored by the Association of State Correctional Administrators and The Arthur Liman Program at Yale Law School reveals significant overrepresentation of black

women in solitary confinement across the United States. Among 40 jurisdictions providing data (38 states, the federal system, and the Virgin Islands), black women constituted 24 percent of the total female incarcerated population but comprised 41 percent of the female restricted housing population. The report documents smaller but substantial racial disparities in male isolation and estimates the disparities in each jurisdiction. Its authors define restricted housing as “the separation of prisoners from general population and in detention for 22 hours per day or more, for 15 or more continuous days, in single-cells or in double-cells.”

Compliance with Juvenile Justice and Delinquency Prevention Act

OJJDP has updated its “OJJDP Policy: Monitoring of State Compliance with the Juvenile Justice and Delinquency Prevention Act.” This revised policy, posted on the OJJDP website, describes the information that states must submit to demonstrate compliance with the four core requirements of the Juvenile Justice and Delinquency Prevention Act to receive Formula Grant awards administered by OJJDP. This policy also details the steps that OJJDP will undertake when conducting annual compliance determinations based on data the state submits and when assessing state monitoring systems. The policy changes include:

States must report data for 85 percent of their facilities—not 100 percent—but show how they would extrapolate and report data for the remaining 15 percent.

OJJDP will not require states to submit fiscal year 2016 compliance data reflective of the “detain or confine” guidance.

Teens in Adult Court

A new policy report from The Sentencing Project looks at the many pathways into adult courts for youth, even those arrested on drug charges. In *How Tough on Crime Became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, Josh Rovner reviews the existence and utilization of transfer methods such as judicial waivers, prosecutorial discretion, and automatic transfers. All but four states allow youth to be charged and tried as adults for drug charges. These include the nine states that treat all 16- or 17-year-olds as if they were adults as well as the states that give wide discretion to prosecutors to directly file adult charges specifically for drug crimes.

The ability of states to send teenagers into the adult system on nonviolent offenses, a relic of the war on drugs, threatens the futures of those teenagers who are arrested on drug charges, regardless of whether or not they are convicted (much less incarcerated) on those charges. *How Tough on Crime Became Tough on Kids* highlights successful reforms and offers recommendations for further progress.

Juvenile Prosecution Standards

The National District Attorneys Association (NDAA) and the National Juvenile Justice Prosecution Center (NJJPC) at Georgetown University, through a grant from OJJDP, have updated NDAA’s National Juvenile Prosecution Standards and corresponding Juvenile Prosecution Policy Positions and Guidelines. Both the updated standards and policy positions provide additional guidance for front-line juvenile prosecutors and supervisors to promote public safety, address the needs of victims, and hold youth accountable.

Jail Suicides

More people committed suicide in jail in 2014 than in any other year since at least the turn of the century, according to newly published federal statistics. One thousand fifty-three people died in local jails in 2014, according to *Mortality In Local Jails, 2000-2014*, a report released by the Justice Department’s Bureau of Justice Statistics. That’s an 8 percent jump in the number of jail deaths from 2013 to 2014, and the largest number of jail deaths counted since 2007. The jail death rate, 140 deaths for every 100,000 inmates, was also the highest it has been since 2007. Even more alarming is the rise in the number of suicides—which, as The Huffington Post reported in July, are largely preventable. There were 372 jail suicides in 2014, an average of more than one per day. That’s a 13 percent jump from 2013.

Bullying and Cyber-Bullying

The National Center for Education Statistics has released “Student Reports of Bullying: Results From the 2015 School Crime Supplement to the National Crime Victimization Survey.” Created as a supplement to the Bureau of Justice Statistics’ National Crime Victimization Survey, the School Crime Supplement (SCS) collects basic descriptive data related to bullying and cyberbullying by selected incident, student, and school or location characteristics. The web tables in this document also show the relationship between bullying victimization

and other crime-related variables, such as the presence of gangs, guns, and drugs/alcohol at school and school security measures.

Justice-Involved Youth Transition

The U.S. Department of Education announced the release of new guides and resources to help justice-involved youth successfully transition back to traditional school settings and avoid recidivism. The resources include a guide written for incarcerated youth, a newly updated transition toolkit and resource guide for practitioners in juvenile justice facilities, a document detailing education programs in juvenile justice facilities from the most recent Civil Rights Data Collection, and a website that provides technical assistance to support youth with disabilities transitioning out of juvenile justice facilities. The resources supplement the Department’s joint guidance with the U.S. Department of Justice to improve school climate and reduce the school-to-prison pipeline.

States Reform Sentencing

The Sentencing Project’s latest report, *State Advances in Criminal Justice Reform, 2016* by Nicole D. Porter, illustrates the progress achieved in the last year in laying a foundation for reform of the criminal justice system. The briefing paper highlights reforms in 16 states targeted at reducing prison populations, addressing collateral consequences for persons with criminal convictions, and improving juvenile justice policy.

Highlights include:

- **Sentencing:** Lawmakers scaled back mandatory sentencing policies in four states—Delaware, Florida, Iowa, and Maryland.
- **Collateral Consequences:** Alaska and Georgia reformed felony drug bans on access to food stamps and Georgia and Massachusetts will no longer automatically suspend driver’s licenses for people with drug convictions.
- **Juvenile Justice:** Officials in three states—Colorado, South Dakota, and Utah—banned the use of juvenile life without parole for individuals under the age of 18.
- **Racial Disparity:** Legislators in Illinois authorized use of racial impact statements to project the effect of sentencing legislation, and will require regular reports on racial effects of decision-making at various stages of the justice system.

Mortality in State Prisons, 2001-2014

BJS's report *Mortality in State Prisons, 2000-2014*, describes national- and state-level data on inmate deaths that occurred in state prisons from 2001 to 2014 and presents aggregate counts of inmate deaths in federal prisons. Mortality data include the number of deaths and mortality rates by year, cause of death, selected decedent characteristics, and the state where the death occurred. A preliminary count of prisoner deaths in 2015 is also provided. Data are from BJS's Deaths in Custody Reporting Program, which was initiated under the Death in Custody Reporting Act of 2000 (P.L. 106-297). Federal data are based on counts from the Federal Bureau of Prisons.

Highlights:

- Between 2001 and 2014, there were 50,785 prisoner deaths in state and federal prisons. The majority (45,640) of prisoner deaths occurred in state prisons.
- The number of suicides in state prisons increased 30% between 2013 and 2014 (from 192 to 249 deaths). Liver disease deaths, the third most common cause of death, declined 12 percent between 2013 and 2014 (from 354 to 313 deaths).
- More female state prisoners died in 2014 (154) than in any year since 2008 (163).
- Texas (409), Florida (346), and California (317) had the highest number of deaths in state prisons in 2014.
- The mortality rate of females for illness-related deaths increased to 238 per 100,000 state prisoners in 2014, up from 235 per 100,000 in 2013.

Aging of the State Prison Population, 1993-2013

This study discusses factors that have contributed to the growing number of older offenders in state prison, and examines changes in the sex, race, current offense, and sentencing characteristics of these offenders over time. It also describes how more prison admissions and longer lengths of stay contribute to the aging of the prison population and result in the growing numbers of offenders who are "aging in" to the older age cohorts. Data are from the Bureau of Justice Statistics' National Corrections Reporting Program, National Prisoner Statistics program, and Survey of Inmates in State Correctional Facilities (1991 and 2004) and from the FBI's Uniform Crime Reporting program.

Highlights:

- The number of prisoners age 55 or older

sentenced to more than 1 year in state prison increased 400 percent between 1993 and 2013, from 26,300 (3 percent of the total state prison population) in 1993 to 131,500 (10 percent of the total population) in 2013.

- The imprisonment rate for prisoners age 55 or older sentenced to more than 1 year in state prison increased from 49 per 100,000 U.S. residents of the same age in 1993 to 154 per 100,000 in 2013.
- Between 1993 and 2013, more than 65 percent of prisoners age 55 or older were serving time in state prison for violent offenses, compared to a maximum of 58 percent for other age groups sentenced for violent offenses.
- At yearend 1993, 2003, and 2013, at least 27 percent of state prisoners age 55 or older were sentenced for sexual assault, including rape.
- More than four times as many prisoners age 55 or older were admitted to state prisons in 2013 (25,700) than in 1993 (6,300).

Mortality in Local Jails, 2000-2014

This BJS report describes national and state-level data on inmate deaths that occurred in local jails from 2000 to 2014 and includes a preliminary count of inmate deaths in local jails in 2015. Mortality data include the number of deaths and mortality rates by year, cause of death, selected decedent characteristics, and the state where the death occurred. Data are from BJS's *Deaths in Custody Reporting Program*, which was initiated under the Death in Custody Reporting Act of 2000 (P.L. 106-297).

Highlights:

- Heart disease was the second leading cause of death in local jails, accounting for 23 percent of deaths between 2000 and 2014.
- The suicide rate in local jails in 2014 was 50 per 100,000 local jail inmates. This is the highest suicide rate observed in local jails since 2000.
- More than a third (425 of 1,053 deaths, or 40 percent) of inmate deaths occurred within the first 7 days of admission.
- More than a third of inmates who died of homicide (137 of 327) were being held for a violent offense in 2014.
- Almost half (47 percent) of suicides occurred in general housing within jails between 2000 and 2014.

Prisoners in 2015

This BJS report presents final counts of prisoners under the jurisdiction of state and federal correctional authorities at yearend 2015, including admissions, releases, noncitizen inmates, and inmates age 17 or younger. The report describes prisoner populations by jurisdiction, most serious offense, and demographic characteristics. Selected findings on prison capacity and prisoners held in private prisons, local jails, and the U.S. military and territories are also included. Findings are based on data from BJS's National Prisoner Statistics program, which collects data from state departments of correction and the Federal Bureau of Prisons.

Highlights:

- The total number of prisoners held under the jurisdiction of state and federal correctional authorities on December 31, 2015 (1,526,800) decreased by 35,500 (down more than 2 percent) from yearend 2014.
- The federal prison population decreased by 14,100 prisoners from 2014 to 2015 (down almost 7 percent), accounting for 40 percent of the total change in the U.S. prison population.
- After increasing during the previous 2 years, the number of state and federal female prisoners decreased by 1 percent in 2015.
- State and federal prisons held 1,476,800 persons sentenced to more than 1 year on December 31, 2015.
- The imprisonment rate in the United States decreased 3 percent, from 471 prisoners per 100,000 U.S. residents of all ages in 2014 to 458 prisoners per 100,000 in 2015.

Domestic and Sexual Violence

The Office of Violence against Women (OVW) announces the release of several documents that address emerging issues related to improving the law enforcement response to domestic violence, dating violence, sexual assault, and stalking. The documents reflect input from diverse stakeholders and were developed in conjunction with OVW's national technical assistance providers.

- Body Worn Cameras
- Open Police Data Initiatives
- Identifying and Preventing Gender Bias in Policing

OVW hopes that these documents and tools will be helpful for law enforcement and victim advocacy organizations across the country as they continue to work together to strengthen a coordinated community

response, improve policies to respond to emerging issues, and enhance services and support for victims of sexual assault, domestic violence, dating violence, and stalking.

Teen Dating Violence

Results of an NIJ-funded study, the National Survey of Teen Relationships and Intimate Violence (abbreviated “STRiV”) found that psychological abuse was the most common type of abuse victimization reported (over 60 percent), but there were also substantial rates of sexual abuse (18 percent) and physical abuse victimization (18 percent). Fewer adolescents admitted to perpetrating acts of physical abuse (12 percent) or sexual abuse (12 percent).

There were notable differences by age and gender. Compared to youth aged 15-18, those 12-14 reported lower rates of psychological and sexual victimization and perpetration. While there were no differences between boys and girls for victimization rates, girls reported higher physical perpetration rates. Girls aged 15 to 18 reported perpetrating moderate threats/physical violence at more than twice

the rate of younger girls and 3 times the rate compared with boys aged 15 to 18; girls aged 15 to 18 reported perpetrating more than 4 times the rate of serious psychological abuse than boys 15 to 18. Consistent with other adolescent relationship abuse research, there was significant overlap between victimization and perpetration; 84 percent of victims also perpetrated abuse. This finding has important implications for prevention and intervention; it serves as a reminder that programming should recognize the fluidity of these roles among youth in relationships.

Youth Development and Justice Policy

The MacArthur Foundation Research Network on Law and Neuroscience has released “How Should Justice Policy Treat Young Offenders?” This brief explores current research and justice policy advances related to adolescent and young adult brain development. The report examines the neuroscience of adolescents and young adults aged 18-21, discusses how adolescent development has impacted justice policies, and offers recommendations for

tailoring justice policies to youth who commit offenses—such as community-based alternatives—to help them reach their potential. Read the National Institute of Justice/OJJDP Justice Research bulletin “Young Offenders: What Happens and What Should Happen” that examines policies that affect youth who commit offenses

Age and Juvenile Court Jurisdiction

The Justice Policy Institute has released “Raising the Age: Shifting to a safer and more effective juvenile justice system.” This report highlights the experiences of states that have raised the age of criminal responsibility from 16 or 17 years of age to 18 years of age. The report shows how states implemented “raise the age” laws, reallocated resources to serve more youth in cost-effective ways, improved public safety, and cut the number of youth in the adult system by about half.

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