THE JOURNAL OF THE AMERICAN PROBATION AND PAROLE ASSOCIATION

PERSPECTIVES

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FIRST STEP ACT

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president's message

I would like to introduce myself. I'm Tim Hardy from Yuma, AZ. I have been with the Yuma County Juvenile Court since 1991 and have been the Director/Chief for the past 22 years. I have been a member of APPA since 1997. I was sworn in as President of APPA this past August in San Francisco.

I would like to briefly discuss my vision for the future of APPA. First and foremost, I think I am a "people person" and look forward to working with all members. I believe everyone has something to offer APPA, no matter what your level of experience is in the field. Our association has come a long way over the last 44 years. I'm excited to be your president as we celebrate our 45th birthday next summer in New York City. We continue to offer more and more training that can be applied to all levels of probation and parole and to those who work in the field with adults, as well as youth. We will continue to improve to be a more transparent organization on decisions as we move forward. We have been diligently working on a Strategic Plan to help guide us through the next five years. This will help us to be more effective in what we do. I'm proud to be part of an Executive Committee that has already rolled their sleeves up and are hard at work.

TIM HARDY
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I truly believe in community justice and safety for all. I believe in and follow the guidelines of **Kids at Hope**. For those of you who don't already know, Kids at Hope is a philosophy that has a simple belief that "All children are capable of success, no exceptions." I see that philosophy applying to each one of us believing in those we work with, no matter if we work with youth or adults. I'd like you to join me in my belief that says, "We will never give up on anyone we work with, and we won't tolerate anyone who does."

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president's message

I'd like to discuss some projects I plan to continue working on and hopefully complete within the next two years:

- Complete our Strategic Plan
- Review the current make-up of our Board of Directors to streamline to be as effective as possible
- Provide additional juvenile related training at our conferences
- Develop APPA Standards for Probation and Parole
- Utilize the expertise of our members
- Increase our membership to 4,500 as we reach our 45th year
- Be part of a nationwide **COMMITMENT** to "immunize" our youth against HOPELESSNESS; we need to ensure they know adults BELIEVE in them

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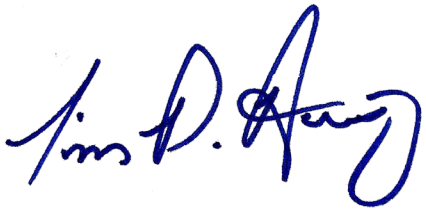

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editor's notes

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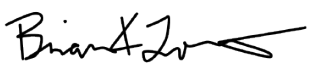
FIRST STEP ACT

The First Step Act of 2018 ("Act," hereafter) is a federal law that makes wholesale changes to the federal sentencing and correctional system. This is the first law that is geared towards reforming federal sentencing and the Federal Bureau of Prison (BOP). The BOP controls nearly 178,000 inmates and runs reentry centers. The value of the law lies in the way in which it reforms the system: 1) by implementation and use of a new risk and need assessment tool; 2) incentives for earn time credits for participation in recidivism reduction programs; 3) location of individuals closer to their residence; 4) enhanced procedures to reform programs and services; 5) reduction of mandatory minimums and retroactive Act application; and 6) performance measures to monitor implementation. This bipartisan legislation is lauded as a major effort to reform federal sentencing and corrections.

Even with these key features, concerns about the Act exist. Much has to do with the potential implementation of the Act across the country. The new instrument was developed in a few weeks and is being revised based on statistical procedures. The number of programs that will be eligible to be part of the earn time credits is still being debated, as is the criteria for assessing whether a program meets the criteria for a recidivism reduction program. And, how the BOP incorporates these legislative reforms is of great concern.

The U.S. Department of Justice (DOJ) is overseeing the implementation of the BOP reforms. DOJ has established an Internal Review Committee, which is an external advisory body. BOP is working on plans to implement the Act. Some 3,000 individuals have already been released with more planned over the next few years. The new risk and needs assessment tools are in a developmental stage with plans to develop additional needs scales.

The three articles in this issue of *Perspectives* give an outlook of the unique qualities of the Act. They provide a balanced assessment of the strengths and weaknesses of the Act. Many have commented the Act is too limiting—it does not cover reentry or federal supervision. It does not change most of federal sentencing and the guidelines. Many have commented that the next major federal legislative reform act should focus on supervision, and improvements in reentry with attention to the residential centers and federal supervision under the Administrative Office of the Courts. It does appear that there is an interest in expanding reforms throughout the federal sentencing and correctional system, an opportunity for the federal system to catch up to many states.



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Perspectives disseminates information to the American Probation and Parole Association's members on relevant policy and program issues and provides updates on activities of the Association. The membership represents adult and juvenile probation, parole, and community corrections agencies throughout the United States and abroad. Articles submitted for publication are screened by an editorial committee and, on occasion, selected reviewers, to determine acceptability based on relevance to the field of criminal justice, clarity of presentation, or research methodology. *Perspectives* does not reflect unsupported personal opinions. Articles must be emailed to perspectives@csg.org in accordance with the following deadlines:

Unless previously discussed with the editors, submissions should not exceed 12 typed pages, numbered consecutively, and double-spaced. All charts, graphs, tables, and photographs must be of reproduction quality. Optional titles may be submitted and selected after review with the editors.

All submissions must be in English and in American Psychological Association (APA) Style. Authors should provide a one-paragraph biography, along with contact information. Notes should be used only for clarification or substantive comments, and should appear at the end of the text. References to source documents should appear in the body of the text with the author's surname and the year of publication in parentheses, e.g., to (Mattson, 2015, p. 73). Alphabetize each reference at the end of the text using the following format:

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IMPLICATIONS FOR COMMUNITY CORRECTIONS

BY VERONICA CUNNINGHAM

The First Step Act ("Act," hereafter) was a long time coming. The impact of some of its provisions will be immediate, making a real difference in individual lives that should not be discounted. These include the expanded release program for older inmates, restrictions on solitary confinement for juveniles, and sentencing reforms – albeit moderate.

Other provisions are more incremental, and their overall impact can be anticipated but not immediately observed. We must be aware that the Act's implementation timeline and "fine print" involve carrying out pilot programs. They involve developing and providing access to recidivism reduction courses. And they involve decisions and actions on the part of the Attorney General that are hard to predict. Michelle Phelps gives an excellent overview of these issues.

Of course, the Act only involves those adjudicated for federal offenses, a number small in comparison to those under the jurisdiction of the states, and the actual number of those whose sentences will be altered may be in the low thousands. Nonetheless, the extent to which these reforms are successful may well have an outsized impact on

public perceptions. The Act in part mirrors various reforms already undertaken at the state level, as Horowitz and Velasquez explain, but the coverage of – and interest in – the legislation has been significant, creating the potential for a considerable ripple effect.

Given that the Act only covers those in, or being released from federal prisons, it's difficult to determine what it means for others released from facilities. At APPA we will be watching to see whether and how these changes affect supervising officers and those on their caseloads. Will it perhaps encourage more widespread reforms in states that have been holding back?

It is worth noting that the Act calls for expanded recidivism reduction programs. Participating in such programming will allow inmates to earn credit worth up to one-third of their sentences. Those in the front line of community supervision, whether at the county, state, or federal level, have long had a keen interest in developing and maximizing the effectiveness of such programs, so this is familiar territory. Will we see some productive sharing and overlap/crossover in program development? I'm also interested in the issue of continuity between programs for the incarcerated and post-release.

Another area of particular interest to me is the fact that the Act recognizes the need to provide additional reentry resources – resources that can increase the chance of success upon release. To the extent that these can provide a meaningful second chance, they are another step in the right direction. Such efforts are once again familiar territory for APPA members at all levels.

While these reforms begin their slow march forward, it's tempting to have a wait and see approach. But wait and see is not enough. As has been said by many others, the Act is just a first step, and it only provides incremental changes, not a complete solution to the problem of mass incarceration. Incremental changes can snowball, but only if we work to make that happen.

ABOUT THE AUTHOR

VERONICA CUNNINGHAM is the current Executive Director for the American Probation and Parole Association. She was a justice system practitioner and reentry professional for more than 25 years – holding leadership positions as the Director of the Texas Department of Criminal Justice-Parole Division and Chief of the Cook County Adult Probation Department in Chicago. She can be reached at vcunningham@csg.org.

*CONGRESS' FIRST STEP ACT REFLECTS A NEW CRIMINAL JUSTICE CONSENSUS, BUT WILL IT REDUCE MASS INCARCERATION?

BY MICHELLE PHELPS, PH.D.

*Reprinted with permission from the author. Original article was published online with The Conversation and can be accessed at https://theconversation.com/congresss-first-step-act-reflects-a-new-criminal-justice-consensus-but-will-it-reduce-mass-incarceration-109937.

When Donald Trump was elected president, many people feared his "law and order" campaign rhetoric would mean the end of criminal justice reform. Trump confirmed this impression by appointing Jeff Sessions, an aggressive supporter of the "wars" on crime and drugs, to lead the Justice Department. Sessions quickly reversed a number of the progressive reforms introduced under President Barack Obama, including reducing penalties for drug offenses, ending private prison contracts, and investigating conduct of local police departments.

Yet by December 2018, Jeff Sessions had resigned and the federal government passed a criminal justice reform bill, the "First Step Act." The law reduces prison sentences, by changing the sentencing guidelines and facilitating early release, and supports education and treatment programs in prison. The bill was supported by the White House, Republican and Democratic leaders, and an unlikely set of advocates from progressive non-profits like the Brennan Center and American Civil Liberties Union to the conservative Koch Brothers.

The following month, Trump seemingly reversed course again, appointing William Barr – another staunch supporter of the "tough on crime" approach – to replace Sessions. How do we make sense of these seemingly contradictory developments and alliances? I have found in my research that criminal justice policies and practices in the United States have often followed complex trajectories. Reforms often receive support from unlikely coalitions. But, by focusing on these strange bedfellows, commentators and advocates sometimes paper over the deeper disagreements in ideas about who, how and how much to punish. Fights over these differences ultimately shape how policies get put into practice – and whether the bill ultimately achieves its intended outcomes. While the First Step Act's passage may look like a clear victory for more moderate punishment, its implementation and impact under the Trump administration is likely to be quite limited.

BIPARTISAN AGREEMENT ON "REFORM"

Criminal justice is often described by academics and journalists as a pendulum that swings wildly between harsh punishment focused on retribution, and more lenient treatment focused on redemption or reformation. In this metaphor, some people saw Trump's election as a swing of the pendulum away from progressive punishment and back toward punitive policies.

In our book *Breaking the Pendulum*, my colleagues Joshua Page and Philip Goodman and I argue that a better metaphor is the constant, low-level grinding of tectonic plates

that continually produce friction and occasionally erupt in earthquakes. This friction manifests in traditional political combat, mass demonstrations, prison rebellions, and academic and policy work. Periodically, major changes in conditions like crime rates and the economy provide support and opportunities to one side or another. These changes often bring together unlikely allies.

People typically associate the "law and order" approach to criminal justice with Republicans. However, new research shows how liberals laid the ground for these policies. It was the Democratic administration of President Lyndon Johnson during the 1960s that first launched the "war on crime" by expanding federal funding to build up the capacity of local law enforcement agencies. In the following decades, the crime rate spiked, due in part to better reporting by police departments, and crime became a hot political issue.

By the 1990s, Republicans and Democrats had all but converged on attitudes toward law enforcement. Not wanting to lose to Republicans by being portrayed as "soft on crime," Democrats took increasingly "tough" criminal justice stances. President Bill Clinton's wildly popular 1994 Violent Crime Control and Law Enforcement Act was the apex of this bipartisan enthusiasm for aggressive policing, prosecution and punishment. The bill made federal sentencing guidelines more severe, increasing both life sentences and the death penalty, and built up funding streams to increase local police forces and state prison capacity.

Despite the rhetoric of the crime bill, the best evidence suggests that it played little role in the explosion of the national prison population – or what scholars term "mass imprisonment." This is because policies focused on harsh punishment had already peaked by 1994. In addition, it only applied to the federal system, which represents only 10 percent of all people locked up. Finally, even though there was wide support for the crime bill, activists, politicians, judges and others continued to fight against "tough" punishment, eventually building the momentum for the First Step Act.

FIRST STEP ACT

What does this history tell us about the First Step Act? First, it's not surprising that Republicans and Democrats, conservatives and liberals came together on the bill. Both camps have moved away from the "tough on crime" mantra. Democrats now talk of "smart on crime" policies while some Republicans support the "right on crime" initiative. Both agree that aggressive policing and heavy criminal penalties for low-level offenses, particularly drug crimes, do more harm than good.

The rise of a new approach to criminal justice can be tied to a number of changes since the 1990s, including historically low crime rates, strained

state and federal budgets and a growing awareness of the negative consequences of mass incarceration. Critically, a cadre of conservative leaders spent the past two decades working to change Republican orthodoxy on this issue. They frame mass incarceration as a fiscal and moral failure that wastes tax dollars and violates the Christian principles of "second chances" and redemption.

As a result, criminal justice reforms have been spreading to red and blue states alike since the 2000s. After the 2016 election, advocates including Jared Kushner, and a slew of celebrities like Kim Kardashian West, have urged the President to embrace reform. These pressures ultimately succeeded in prompting the White House to support the First Step Act. However, bipartisan consensus is not as seamless as it is sometimes portrayed. A group of Republican leaders remain aggressively opposed to these criminal justice reforms. And at the last hour, they nearly killed the First Step Act.

That takes us back to Barr – Trump's recent selection to replace Sessions at the Department of Justice. Barr was President George H.W. Bush's Attorney General. He is perhaps best known for endorsing a Justice Department memo arguing for "More Incarceration" in 1992. As recently as 2015, he vocally opposed federal sentencing reform. During his confirmation hearing last week, Barr promised to "diligently implement" the First Step Act, but then backtracked to support Session's policies at the Justice Department, adding, "we must keep up the pressure on chronic, violent criminals."

Like the '94 bill before it, this indicates that the First Step Act will likely be more bark than bite. The First Step Act might provide relief to several thousand current federal prisoners. But Barr will likely follow Sessions and direct his prosecutors to seek the maximum criminal penalties against current defendants, including for drug offenses, limiting the impact of the First Step Act's sentencing reform. And the bill will have no practical effect on state prison systems, which in some cases have already embraced much more radical reforms. While the First Step Act is a move in the direction of more humane and moderate criminal justice practices, I think it will likely be a very small first step indeed.

ABOUT THE AUTHOR

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STATE COMMUNITY SUPERVISION REFORMS CAN INFORM A FEDERAL "SECOND STEP"

BY JAKE HOROWITZ AND TRACY VELÁZQUEZ

The FIRST STEP Act, passed with bipartisan support in Congress and signed into law by President Donald Trump late last year, includes provisions designed to safely reduce the federal prison population. It reforms mandatory minimum sentences for "three strikes" drug offenses, applies Fair Sentencing Act sanctioning for crack cocaine to convictions occurring before 2010, and directs the Bureau of Prisons to calculate at 15% of the total sentence the time that can be taken off for good behavior.

The measure, which is officially called the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act, was passed against a backdrop of increasing congressional and public scrutiny of the federal correctional system over the past decade. While down 16% from its peak in 2012 (Bronson & Carson, 2019), the federal prison population in 2019 is still over seven times what it was in 1980. As the prison population has grown, so too has annual federal prison spending, climbing from less than $1 billion to more than $7 billion in 2018 in inflation-adjusted dollars (The Pew Charitable Trusts, 2016b), an increase of nearly 600%.

Improvements to the federal prison system have been built upon state efforts. More than two dozen states have already adopted wide-ranging corrections reforms, often with overwhelming bipartisan support (The Pew Charitable Trusts, 2018), and those reforms have reduced prison populations while helping to hold people accountable, increase public safety, and save taxpayers billions of dollars. Many states have also recognized the need to improve success rates for people on probation and parole–collectively, community supervision–in order to safely shrink prison populations. To help achieve that, those states have adopted policies to make community supervision systems more effective, including developing intermediate sanctions as a response to violations of conditions, creating pathways for people to earn their way off supervision, and investing in evidence-based supervision practices (Parks et al., 2016). These steps promote the use of supervision as an effective community-based alternative that holds people accountable yet at the same time makes treatment more readily available and allows individuals on probation and parole to maintain ties with work and family while building stable lives, overall resulting in more safety for those in the community. These steps additionally allow prison resources to be increasingly focused on people with the most serious and chronic offense histories.

Much as the FIRST STEP Act came on the heels of state prison reforms, the federal system could again follow the lead of the states and take the "second step" of making community supervision a primary focus and implementing policy changes such as those outlined below.

BETTER UTILIZATION OF PROBATION

In 2009, approximately four people were in federal prison for every person on probation. By 2016, the prison-to-probation ratio had risen to 12-to-1, with a 56% drop in probation entrances over the past 20 years (The Pew Charitable Trusts, 2016b). These diminished probation numbers were due partly to laws passed in the 1980s and 1990s that mandated prison time for many offenses that previously had often resulted in probation. Congress should revise sentencing policy to expand the use of probation as an alternative to incarceration for people assessed as low risk for reoffending. Such a move could improve outcomes for both public safety and individuals on supervision.

Instituting this change could also save taxpayer dollars. The average annual cost of federal incarceration after sentencing for the 2016 fiscal year was $34,770, compared to $4,392 for supervision in the community after sentencing (United States Courts, 2017). Per 2016 cost figures, increasing by one-third the number of people who are placed on probation instead of going to prison (an additional 2,294 people, as extrapolated from 2018 probation statistics) would save approximately $69.7 million per year–funds that could be used to improve supervision services, further reducing recidivism.

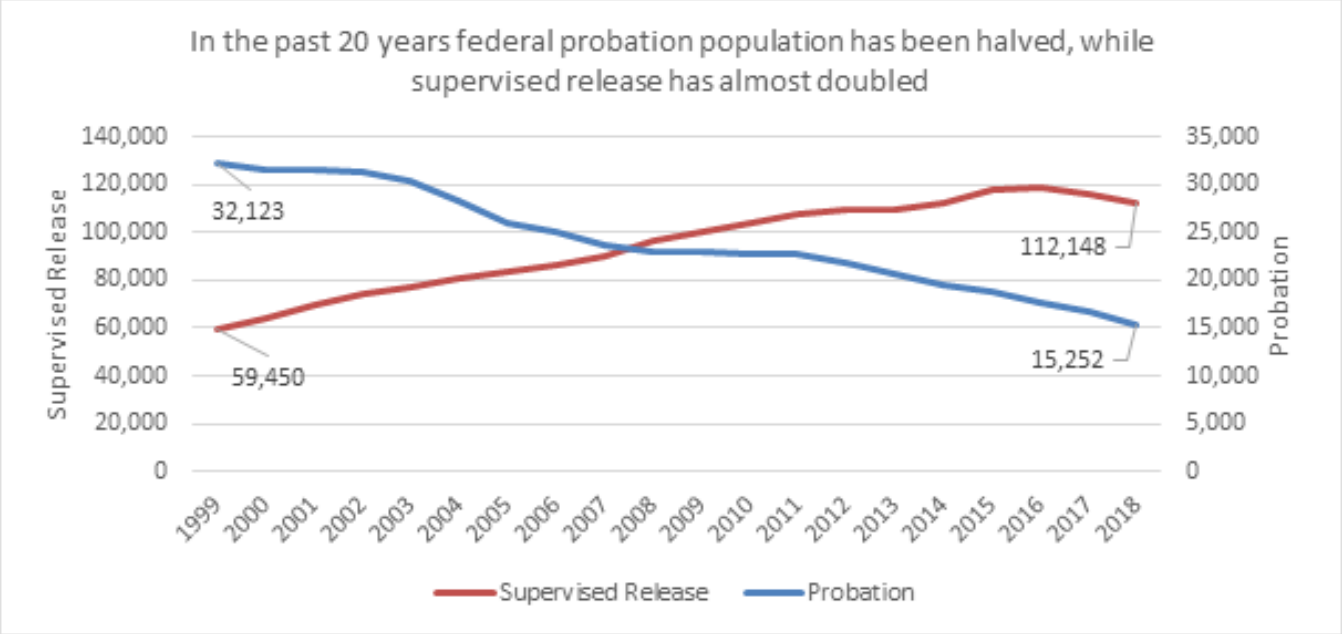


Figure 1 Source: https://www.uscourts.gov/statistics-reports/analysis-reports/judicial-business-united-states-courts; Form E-2

The U.S. Sentencing Commission (USSC) recently took a step toward better utilization of probation by amending sentencing guidelines to state that federal courts should consider a sentence other than prison for low-level "nonviolent first offenders" (USSC, 2018b). The impact of this action is difficult to predict, as the USSC did not provide an estimate of how many individuals might fall into this category and, of course, following the revised guidelines is discretionary, not mandatory for the courts. Nevertheless, this change signals progress toward limiting the use of federal prison beds for those who pose a higher risk.

USE POST-PRISON SUPERVISED RELEASE MORE EFFICIENTLY AND EFFECTIVELY

Because parole was eliminated for federal offenses committed on or after November 1987 (Hoffman, 2003), the number of people on federal parole is small and shrinking. However, the number of people on supervised release, which replaced parole as the system of supervision following the completion of a prison sentence, increased 89% from 1999 to 2018 (United States Courts, 2019a). A report by the USSC on people sentenced from 2005 to 2009 indicated that 95% of people given a prison term were also given a term of supervised release. From 2005 to 2009, the average supervised release term was 41 months, and of those cases where a prison term was imposed, 43% received more supervision time than incarceration time (USSC, 2010).

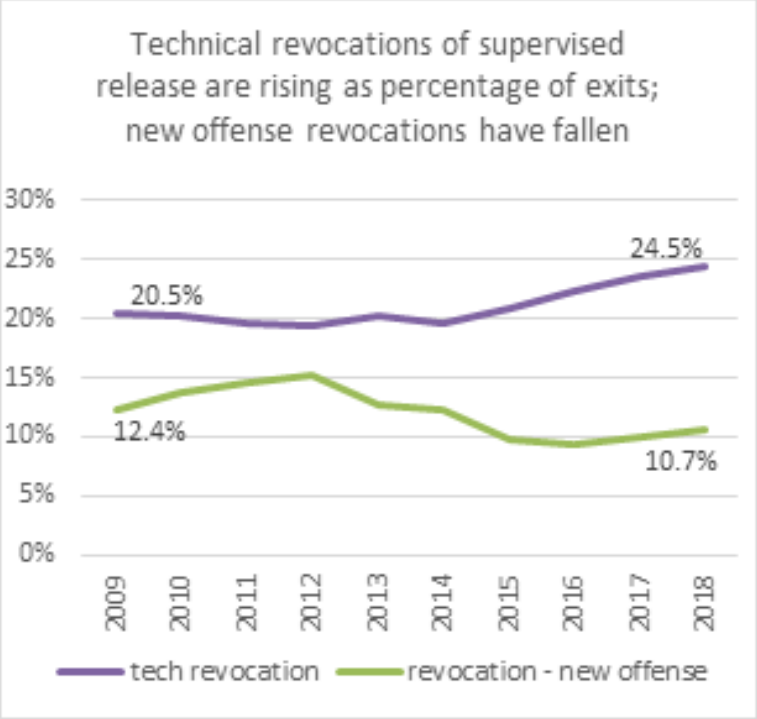
Reducing the length of supervision would allow resources to be focused on the highest-risk people, places, and times. A 2017 analysis indicated the average time spent under federal supervision rose 12% from 1995 to 2015 (The Pew Charitable Trusts, 2017). However, the value of these long terms of supervision is questionable. One study of people on federal probation or supervised release from 2005 to 2009 showed that 70% of revocations during the five-year study period occurred within the first two years (Rhodes, Dyous, Kling, Hunt, & Luallen, 2012). In addition, the five-year recidivism rate for people sentenced to two years of supervision was almost the same as those sentenced to three years of supervision (37.8% compared to 41.0%). Nonetheless, 72% of those on supervised release had supervision terms of three years or longer.

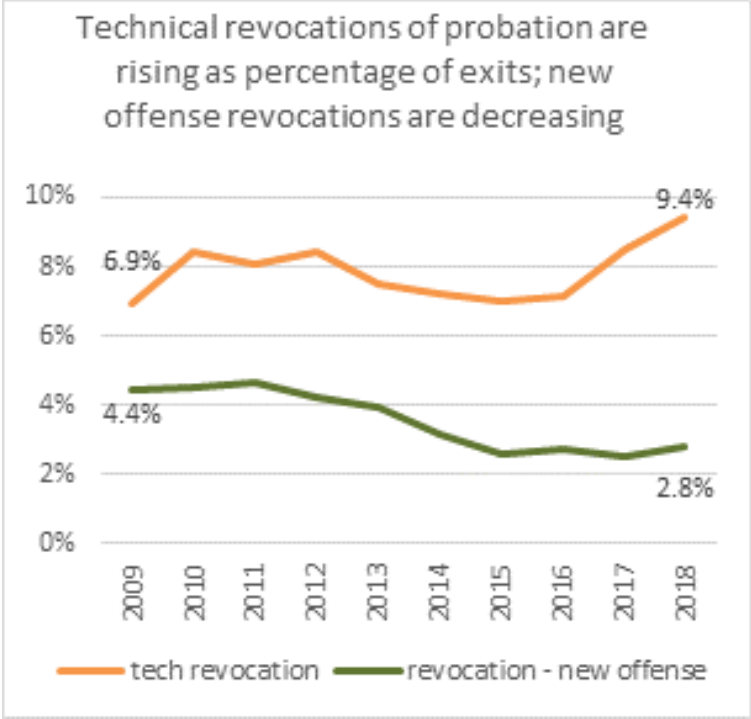
Congress could take a page from the states' playbook and institute a system of earned compliance credits in which abiding by conditions of supervision reduces the time on supervision. Federal courts already have the authority to terminate supervised release at any time after one year, but they do so infrequently, with only about one in five successful exits accomplished through an early release (United States Courts, 2019d). A study conducted by the Administrative Office of the U.S. Courts provides evidence that releasing inmates earlier based on

earned compliance credits can be done without compromising public safety. The study showed that 10.2% of those released early from federal supervision were rearrested, as compared to 19.2% of a comparable group released after completing their full sentences (U. S. Courts, 2013). Similarly, an evaluation of Missouri's earned compliance credit policy found no difference in subsequent new crime conviction rates between those who earned credits and those discharged from supervision before the policy went into effect. In the first three years, more than 36,000 people on probation and parole reduced their supervision terms by an average of 14 months, resulting in an 18% drop in the supervised population (The Pew Charitable Trusts, 2016a).

REDUCE TECHNICAL REVOCATIONS

The Administrative Office of the U.S. Courts reported that 69% of the 17,503 revocations of post-conviction supervision in 2018 were due to "technical revocations" such as failing a drug test, missing a meeting with a supervision officer, or traveling without permission (Administrative Office of the United States Courts, 2016), as opposed to new crimes (United States Courts, 2019c). While revocations for new offenses are down over the past 10 years for both federal probation and supervised release, technical revocations are up, accounting for 24.5% of supervised release exits in 2018, which is up from 20.5% in 2009, and 9.4% of probation exits, up from





Figures 2 and 3: Source: https://www.uscourts.gov/statistics-reports/analysis-reports/judicial-business-united-states-courts; Form E-7a

6.9% (United States Courts, 2019b). One reason for the large numbers is that revocation is statutorily mandated for violations related to drug use, including failing three or more drug tests in a year, refusing to take a drug test, and illegal possession of a controlled substance (USSC, 2018a).

A survey of U.S. District Court judges (USSC, 2015) revealed that over 60% of judges said revocation should not be mandatory for these violations. Two-thirds of judges wanted the option to shorten minimum revocation sentences for less serious violations. Moreover, 94% of judges said they should have the option of shortening the period of incarceration by modifying the conditions of supervision.

Revoking a term of post-conviction supervision in the federal system for a technical violation can also add time to a future sentence. A USSC study (Kyckelhahn & Maisel, 2019) found that over half (57.5%) of the convicted individuals in the sample who had a revocation for a technical violation received an additional criminal history point, which can increase the period of incarceration under the commission's sentencing guidelines. In almost half of these instances (48.3%) the revocation bumped the convicted individuals to a higher criminal history category with a longer recommended sentence. In addition, 2.3% of those with drug trafficking convictions were rendered ineligible for the federal "safety valve" provision of the Sentencing Reform Act that authorizes a sentence below the statutory minimum when the conviction score changes as a result of a revocation.

The federal government can look to the states that have policies aimed at reducing technical revocations (The Pew Charitable Trusts, 2018). For example, South Carolina's 2010 Justice Reinvestment Initiative reform package allows supervision officers to address violations through administrative sanctions in lieu of using the court revocation process. A 2017 evaluation by the Urban Institute concluded that those who began supervision under South Carolina's policy were 33% less likely to be incarcerated or reincarcerated after one year than those who began supervision in 2010 (Pelletier, Peterson, & King, 2017). The state estimated that during this period it saved over $50 million by revoking 1,943 fewer people from supervision (South Carolina Department of Probation, 2018). Creating statutory pathways to permit administrative sanctions instead of revocations, reducing the number of violations for which revocation is mandatory, and allowing judges more discretion to impose shorter periods of revocation would all help reduce the number of people on supervision who cycle back through the Bureau of Prisons.

Federal policymakers should borrow from the laboratories of democracy and their colleagues at the state level by taking a second step that moves beyond the

walls of the Bureau of Prisons to address probation and supervised release. As the experiences of states have shown, reforming community supervision can have a positive effect across the entire criminal justice system, from rearrests to reincarceration. This, in turn, can save federal correctional dollars and improve public safety.

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POLICY BRIEF: BAIL REFORM, PRETRIAL ASSESSMENT AND SUPERVISION IN CALIFORNIA

BY DEYANIRA NEVÁREZ MARTÍNEZ, MATT BARNO, AND KIRK R. WILLIAMS

Problematic issues plague pretrial detention in California, including prohibitively high bail amounts that disproportionately burden people of color and women, detention facility overcrowding, and the criminalization of poverty. In California, 64% of jail beds are currently filled by inmates who have yet to be sentenced (Tafoya et al., 2017). The median bail amount in California is $50,000, more than five times higher than the rest of the country (Tafoya, 2015). In a recent decision, *In re Humphrey*, the California Court of Appeal for the First Appellate District concluded that lower courts must consider a defendant's ability to pay when setting bail. This decision has reignited an examination of the need for statewide bail reform. The *Humphrey* court noted that "[a] defendant may not be imprisoned solely due to poverty" and that "[l]egislation is desperately needed…to correct a deformity in our criminal justice system" (*In re Humphrey*, 2018, pp. 35, 46).

These issues prompted a movement to reform the cash bail system statewide. Senate Bill 10 (S.B. 10), the California Money Bail Reform Act of 2017, was introduced in the State Senate in December of 2016, passed, and was signed into law by Governor Brown on August 28, 2018. However, the implementation of S.B. 10 was placed on hold because the bail bonds industry gathered enough signatures to initiate a public referendum on the matter. The issue will appear on the November 2020 ballot (Ulloa, 2018). The sponsors of this legislation argue that the bill provides equal opportunity for release to all individuals while considering flight risk and impact on public safety (Hertzberg, 2017). Initially, the bill garnered the support of the ACLU, the Anti-Recidivism Coalition, Californians for Safety & Justice, California Public Defenders Association, Ella Baker Center for Human Rights, and the Western Center on Law & Poverty. However, most withdrew their support after last-minute amendments made mandatory the use of risk assessment tools which they identify as inherently racially biased (Koseff, 2018).

In 2016, before the passage of S.B. 10, the Orange County Superior Court commenced a pilot pretrial risk assessment and release supervision (PARS) program. By integrating a validated risk assessment tool into the pretrial decision-making process, the Orange County PARS program serves as a model for the type of program that counties across California will be required to implement if S.B. 10 were to go into effect. Since June 2017, University of California-Irvine researchers in conjunction with the Orange County (OC) Pretrial Services Unit have worked together to gather relevant and available data for evaluating the pretrial release recommendations. Initial evaluations were completed, and the research team is now coordinating with Orange County Superior Court Pretrial Services to develop a uniquely tailored risk assessment instrument for the Orange County defendant population.

The findings, therefore, suggest that among those recommended for pretrial release by probation, release onto the PARS program appears to be a better option for addressing pretrial failure than setting cash bail.

THE PARS STUDY

The PARS pilot program was initiated on February 3, 2016, with the stated purpose to assist and inform judicial pretrial release decision-making. This effort included the use of a risk assessment instrument, the Virginia Pretrial Risk Assessment Instrument (VPRAI), by Pretrial Service Officers to assess eligible defendants' risk of failure to appear for subsequent court proceedings. The VPRAI was chosen primarily because it has been validated by several studies, with the most recent validation completed in 2015 (Kleiman, Ostrom, & Cheesman, 2007; VanNostrand & Rose, 2009; Danner, VanNostrand, & Spruance, 2015).

The probation department uses defendants' VPRAI scores in making recommendations to the court concerning granting or denying PARS participation. The court then uses the VPRAI scores and corresponding probation recommendations to inform its ultimate decision about whether to grant or deny PARS at arraignment. Defendants placed on the PARS program receive pretrial release without having to post a cash bond. However, they are subject to varying levels of pretrial supervision depending on their VPRAI risk scores.

The data collection process included obtaining de-identified information on PARS participants and PARS-eligible nonparticipants consisting of their assessment scores, demographic information (race, gender, employment status, military status, and homelessness), and failure to appear. Initial analyses of the data were designed to address three questions:

- Are more PARS-eligible defendants being released prior to or at arraignment without having to post cash bond since the PARS program was implemented in February 2016?
- What factors are associated with the court's decision to grant or deny PARS participation after the probation department recommends defendants for this participation?

- Does PARS participation reduce the likelihood of pretrial failure relative to cash bond?

STUDY FINDINGS

The findings indicate that the PARS program significantly increased the number of felony defendants released without having to post cash bond. When comparing a sample of PARS-eligible defendants from 2015 with a sample of PARS-eligible defendants from 2016 and 2017, after PARS was implemented, the latter sample showed significantly higher rates of own recognizance release and release at arraignment without cash bail.

Despite the increase in pretrial releases, only 206 of the 558 defendants recommended to the PARS program by probation were granted PARS release when they appeared before the court at arraignment. The results indicate that the judicial decision to grant PARS after a probation recommendation was associated with the defendant's VPRAI assessment score and employment status. Defendants with higher VPRAI scores were significantly less likely to be granted PARS even though probation recommended this placement, while defendants who were employed were significantly more likely to be granted PARS after a probation recommendation.

The results also revealed that among all defendants recommended for PARS participation by probation, defendants placed on PARS were significantly less likely to fail to appear compared to those who were denied participation by the court and subsequently released on cash bond. The findings, therefore, suggest that among those recommended for pretrial release by probation, release onto the PARS program appears to be a better option for addressing pretrial failure than setting cash bail. Moreover, when VPRAI scores and PARS participation were controlled in the model, the effect of employment status on failure to appear was statistically insignificant, undermining

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the notion that employment status should play a determinative role in pretrial release determinations.

POLICY RECOMMENDATIONS

This study assessed the pilot program of a single superior court that chose to use a risk assessment tool to assess pretrial release of felony criminal defendants. The research shows that the Orange County PARS program significantly increased the number of felony defendants released without having to post cash bond. Based on these findings, it is recommended that trial courts engage in education efforts with all court staff. Specifically, judicial buy-in is important in the implementation and success of pretrial risk assessment programs. Additionally, the courts should prepare for a robust data collection effort as part of successful implementation. This will allow the courts and outside researchers to be able to evaluate objectively the outcomes of the program to determine whether objectives have been met.

The Pretrial Justice Institute has warned against simply "borrowing a pretrial risk assessment from one jurisdiction and expecting it to work in another" (2009, p. 4). This is reflected in the current study's finding that the effect of employment status on failure to appear was statistically insignificant. Therefore, it is recommended that a court utilizing a risk assessment tool go through the process of validating it by individually examining the items to ascertain the best predictors of pretrial failure for their populations. Appropriate and robust data collection efforts will play a big role in making such determinations.

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PRE-EMPLOYMENT INTEGRITY TESTING: THE MISSING PIECE IN THE CORRECTIONAL OFFICER HIRING PROCESS

BY ANTHONY W. TATMAN, PH.D.

While topics such as risk assessment, case planning, re-entry, and core correctional practices justifiably receive a considerable amount of attention in academic writing, professional guides, and staff training, far less notice has been given to research and education on best practices for hiring high performing correctional employees—the valuable probation, parole, and prison officers who perform so much front-line work. This gap in both knowledge and literature is unfortunate, given the considerable power, authority, and trust bestowed on such correctional officers. They are expected to be models of character, integrity, and moral fortitude. Those correctional employees who stray from this expectation can cause considerable damage and harm to their organization, the clients they serve, and the community at large. Therefore, this article will briefly summarize recent studies and articles on best practices related to hiring correctional officers. It will also discuss some additional methods that correctional agencies can use to further increase their odds at hiring top performers.

BRIEF REVIEW

Literature on hiring correctional applicants has primarily revolved around two areas of the hiring process: (a) the interview and (b) psychological evaluations conducted subsequent to a conditional offer. In regard to interviewing techniques, Wells, Johnson, and Sundt (2018) provided the field with guidance on, and justification for, basing behavioral interview questions on core competencies. Through their research using focus groups of probation officers, assistant chiefs, and judges, they identified three primary areas of competency (interpersonal, technical, and self-management), with various subfactors related to each of these (e.g., empathetic, organizational skills, and strong ethics), that are deemed essential for successful correctional officers. Anchoring interview questions around such core competencies helps hiring agencies assess the attitudes, behaviors, and values that are key characteristics of a good correctional officer and that have also been found to be predictive of future training performance (Schmidt & Hunter, 1998).

In regard to post-conditional offer psychological evaluations (PPEs), Tatman and colleagues have explored and verified the value of using psychological instruments as a component of a comprehensive hiring process for probation and parole officers (Tatman, Kreamer, & Dix, 2014; Tatman, Kreamer, & Reynoldson, 2014). By integrating psychological instruments, such as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) or NEO Personality Inventory-3, into the hiring, onboarding, and coaching process for correctional officers, Tatman and colleagues were able to significantly reduce turnover, resulting in considerable financial savings. Other extensive research on the use of psychological instruments in the hiring process has found them to be effective

This means that psychological tests must be delayed until after a conditional offer of employment has been given, and thus their potentially useful information only becomes available after completion of the lengthy process of interviews, reference checks, and collateral contacts.

in predicting various counterproductive work behaviors (Detrick & Chibnall, 2006; Dilchert, 2018; Garbarino, Chiorri, Magnavita, Piattino, & Cuomo, 2012; Sellbom, Fischler, & Ben-Porath, 2007; Stewart, 2008), again confirming that they can make a substantial contribution to the hiring process for high-risk, high-trust occupations such as corrections. One limitation, however, in using psychological assessments in the hiring process is that the information obtained, albeit valuable and informative, comes relatively late in the hiring process. In cases such as *Griffin v. Steeltek, Inc.* (1997) and *Karraker v. Rent-A-Center, Inc.* (2003), courts have ruled that psychological assessments are medical examinations under the Americans with Disabilities Act (ADA), placing certain limitations on the circumstances under which they can appropriately administered (Americans With Disabilities Act, 1991). This means that psychological tests must be delayed until after a conditional offer of employment has been given, and thus their potentially useful information only becomes available after completion of the lengthy process of interviews, reference checks, and collateral contacts.

PRE-INTERVIEW TESTING – THE MISSING STEP

The Equal Employment Opportunity Commission (EEOC) states that "psychological tests that are designed to identify a mental disorder or impairment qualify as medical examinations, but psychological tests that measure personality traits such as honesty, preferences, and habits do not" (*Karraker v. Rent-A-Center Inc.*, 2005). Assessments measuring traits such as honesty, integrity, and personal habits (otherwise referred to as integrity tests) have become widely used during the hiring process in non-correctional work environments to measure behaviors that would negatively impact work performance, such as illegal drug use, stealing from an employer, fighting, problems with authority, or excessive absenteeism outside of the

corrections field. In fact, integrity tests have become the most widely used assessments for predicting problematic behaviors among job applicants and employees (Fine, Horowitz, Weigler, & Basis, 2010). Their popularity stems from the growing empirical evidence supporting the reliability and validity of integrity tests in predicting job performance and counterproductive work behaviors (Berry, Sackett, & Wiemann, 2007; Cunningham & Jones, 2008; Fine, 2013; Fine et al., 2010; Jones, Cunningham, & Dages, 2010; Marcus, Ashton, & Lee, 2013; Ones, Viswesvaran, & Schmidt, 1993; Schmidt & Hunter, 1998; Wanek, 1999). Since integrity tests are not considered medical exams, and when used as intended do not violate ADA or EEOC guidelines (ADA Enforcement Guidance, 2000), they are applicable and lawful to use during the pre-conditional offer phase of the hiring process.

INTEGRITY TESTS AND THE INTERVIEW

Wells, Johnson, and Sundt (2018) provide readers with a valuable foundation for incorporating an examination of core competencies for correctional officers into a structured behavioral interviewing process. Integrity tests are best used in conjunction with, as opposed to serving as a replacement for, a sound behavioral interview (Wells et al., 2018). When used in conjunction with structured interviews, integrity tests can add to the hiring process by identifying areas of possible concern (e.g., poor attitudes toward management, attitudes supportive of theft in the workplace and manipulating others) early in the hiring process. This early identification enables the development of follow-up interview questions that are specific to the candidate and can also highlight areas for further inquiry when checking past employers and references.

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PUTTING IT ALL TOGETHER

Adding steps and procedures to the hiring process can be time consuming and expensive. However, strategically adding elements known to add incremental validity to the overall process cannot only improve a hiring agency's odds in hiring top performers but also can result in significant cost savings. For example, one business saw a 50% reduction in terminations historically caused by employee misconduct such as theft, illegal drug use, and violence over a five-year period after implementing integrity tests into its application and hiring process (Brown, Jones, Terris, & Steffy, 1987). This reduction in turnover through terminations has implications for considerable cost savings for correctional agencies. The cost of replacing a poor performer could be approximately 30% of that employee's first-year earnings (Fatemi, 2016). With the average annual salary for probation and correctional officers ranging between $43,540 and $56,630 (United States Department of Labor, Bureau of Labor Statistics, 2017), that cost is significant. Moreover, these figures do not include direct costs such as potential legal fees and settlement costs or indirect costs such as lost productivity, strained morale, and fractured public trust often associated with turnover and terminations.

The above financial considerations underscore the value of taking extra care in hiring decisions. Enhancing an existing hiring process by including an integrity test that has been validated for use with correctional officers makes sense. Doing so can significantly add to the ability to predict high performers, reduce the odds for costly mis-hire expenses, and help increase an agency's odds at hiring that "one in a million" employee.

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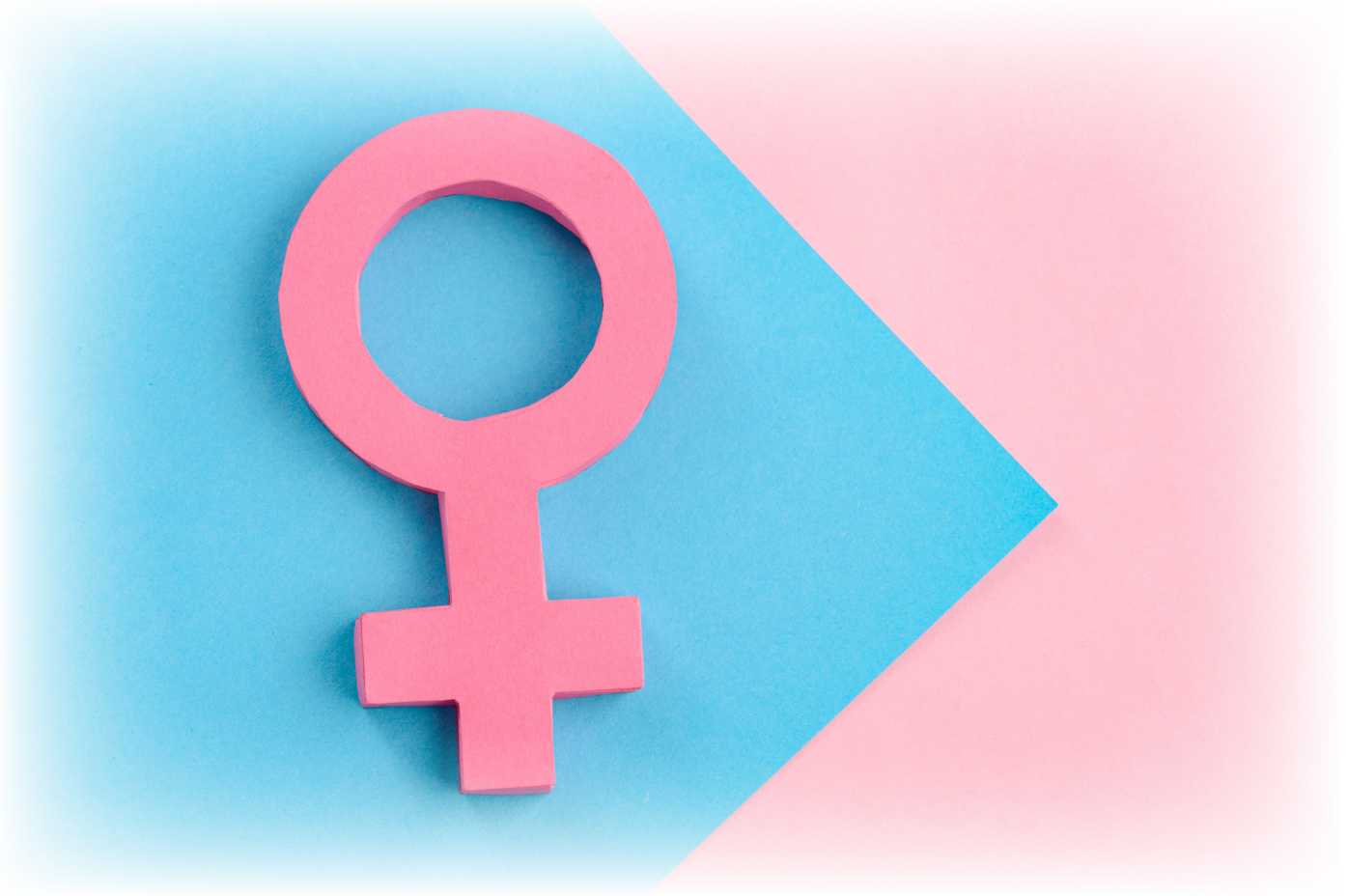
women and girls committee update

BY DEANNE BENOS AND ALYSSA BENEDICT



GENDER-RESPONSIVE POLICIES AND PRACTICES IMPROVE OUTCOMES

Over the past 30 years, there has been a profound change in women's criminal justice system involvement. Women represent the fastest growing correctional population nationwide, and the vast majority of these women are under community supervision. In fact, the number of women on parole or probation has almost doubled since 1990 to more than 1 million. Unfortunately, most supervision models were designed for men and do not address women's unique risks, strengths and needs. They are less effective with women, create unnecessary stress for staff, limit positive outcomes, and waste precious human and fiscal resources.

Research on women has provided critically important information on the types of strategies that promote women's successful outcomes, increase their rates of supervision completion, and reduce their revocations, re-arrests and re-

incarceration. For example, most justice-involved women and girls are trauma survivors. This information has not sufficiently impacted supervision practices and agencies are missing opportunities to improve outcomes and save limited resources.

Research demonstrates that gender responsive and trauma-informed approaches with women improve outcomes, increase their rates of supervision completion, and reduce their revocations, re-arrests and re-incarceration. The Women and Girls Committee is focused on transforming justice practices and outcomes with women and emphasizing the steps that individual members, agencies and systems can take to build their capacity to meet the needs of women and girls, including the development of gender-responsive and trauma-informed policies and the effective engagement of justice system stakeholders, directly impacted women and their families, and community leaders.

THE COMMITTEE'S PIONEERING AGENDA

The work of the Committee represents a robust response and a national call to improve policies, practices and programs with women and girls on community supervision. Implementing gender-responsive and trauma-informed approaches across community corrections agencies offers opportunities to improve supervision outcomes among women, enhance public safety, reduce incarceration, and ensure responsible use of precious and increasingly limited human and fiscal resources. The pioneering work of the Committee is helping APPA to become an influencer regarding the effective approaches with women and girls involved with the justice system.

RECENT COMMITTEE ACTIVITIES AND ACCOMPLISHMENTS

At APPA's 44th Annual Training Institute in San Francisco, the Committee celebrated the success of its ambitious and timely project to assess field readiness and capacity to address the dramatic rise in the number of women involved in the justice systems across the nation. Building from an APPA policy statement endorsing the use of evidence-based, gender-responsive practices, the Committee launched a survey of probation and parole professionals across the country to determine the greatest challenges and opportunities they face in implementing practices proven to be more effective with impacted women and girls. The survey results were compelling and demonstrated that the field is looking for support and guidance in their efforts to better address the risks, strengths, and needs of women and girls.

With the consultation and support of the APPA Research and Review Committee, we collected a total of 355 surveys from association members representing urban, rural,

and suburban areas around the country between 12/3/18 and 1/22/19. Forty-four states were represented, and respondents included a mix of agents/officers, supervisors and directors.

While 70% of respondents reported that they believe community corrections staff who work with women/girls should use a gender-responsive approach, the survey revealed that:

- Only 43% of probation/parole agencies reported using programs designed to address the needs of women and girls.
- Only 23% of agencies seek input from women and girls with lived experience in building policies/programs.
- Only 41% of agencies provide training to staff on gender-responsive approaches with women and girls.
- Only 25% of agencies use an assessment that has been specifically designed for women and girls.

Respondents identified the following barriers to implementation of gender-responsive policies, practices and programs:

- Lack of funding
- Lack of training and information
- Small size of the female population
- Lack of buy-in from leadership and staff
- Limited resources such as gender-specific programming, housing and transportation

Respondents requested the following supports:

- Training and consultation on working with women and girls
- A compendium of best practices for working with women and girls
- Ways to expand partnerships with other agencies and with community resources

Survey results and committee-led conversations with association members around the country demonstrate that the field wants and needs support in their efforts to

implement and expand gender-responsive policies, practices and programs so they can improve supervision outcomes among their female clients.

As a follow up to the survey, the Committee hosted a dynamic, multi-media session at the training institute in San Francisco. Committee co-chairs, Deanne Benos and Alyssa Benedict, shared the results of the survey. Dynamic panelists helped shape and influence the success of the session including Topeka Sam, Founder of Ladies of Hope Ministries and The Probation & Parole Accountability Project, National Dignity Campaign Director, #cut50; and Katie Roller, Parole and Probation Supervisor, Multnomah County Community Justice.

The session featured the cutting edge work these women are doing with their colleagues, featured the experiences of impacted women using video and storytelling, discussed the implications of the survey, and ended with a powerful dialogue among attendees where association members from around the country shared critical actions they have taken to implement evidence-based, gender-responsive, and trauma-informed interventions for women, including cutting-edge training, assessment, housing and community service network development and more.

The session was followed by an engaging committee meeting where members solidified a plan to respond to the results of the survey by working with association members and women with lived experiences to develop concrete tools for the field that will assist community corrections professionals, administrators and agencies in their efforts to implement evidence-based approaches with women and girls.

EXCITING NEXT STEPS

Through an innovative partnership with the Women's Justice Institute, the Committee will inform the development of field guidance to association members across the nation to reduce technical violations and improve outcomes among women on probation and parole supervision by including the voices of women who are on supervision, as well as those who work with them directly. To learn more about this exciting new initiative, members are welcome to join the committee at the 2020 APPA Winter Training Institute in New Orleans.

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SUPERVISION AROUND THE WORLD (SAW) PROJECT

The community corrections field is ready for transformational changes brought about by sharing ideas, learning what is working for others, and considering new options for service delivery. This requires understanding what others are doing in the arena of community supervision. Globally, we know some countries provide supervision programs and some do not, but there is no international system that collects information and documents current practices and outcomes. The American Probation and Parole Association (APPA) and Community Supervision Solutions (CSS) began exploring this issue at the 2nd *World Congress on Community Corrections* by interviewing administrators from various countries about local supervision practices. Their interesting comments were presented in the Winter 2017 issue of *Perspectives*.

To continue this effort of tracking correctional practices in other countries, the Supervision Around the World (SAW) Project began in the spring of 2017 as a collaboration between the APPA and CSS. The intent of the SAW Project is to document global community supervision practices and provide that information via a user-friendly website. We will glean from other countries what is working for them so that we may further promote research-informed practices and share those details to support the continuation and growth of successful programs. The website will contain examples of existing services and will present program data with measurable outcomes. It will also share administrator contact information in order to encourage collaborative efforts.

The Advisory Committee to the SAW Project includes members from the United States, the European Union, and international agencies. This group is in the process of collecting information from different countries via interviews and designing the website for data reporting.

Information regarding the SAW Project has been presented to conference audiences hosted by:

- American Corrections Association
- American Probation and Parole Association
- International Corrections and Prisons Association
- UN Crime Congress Kyoto 2020, Planning Committee

Letters of support have been received from:

- Association of Paroling Authorities International
- International Community Corrections Association
- Penal Reform International

If you would also like to support this exciting project, please contact Julie Truschel, President of Community Supervision Solutions and SAW Project Director at julie@css360.ne.org.

American Probation and Parole Association

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