



Revoked

**How Probation and Parole Feed Mass Incarceration
in the United States**

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Summary

[Probation is] like a prison sentence outside of jail. You walk around with a rope tied around your leg to the prison door. Anything can lead to revocation.

—James Yancey, Georgia defense attorney

I asked for programs but . . . [probation] didn't want to hear that I need help; they just gave me time.

—Monique Taylor (pseudonym), who has served years on probation in Pennsylvania for conduct related to a long-standing drug dependence

Probation, parole, and other forms of supervision are marketed as alternatives to incarceration in the United States. Supervision, it is claimed, will keep people out of prison and help them get back on their feet.

Throughout the past 50 years, the use of probation (a sentence often imposed just after conviction) and parole (served after incarceration) has soared alongside jail and prison populations. As of 2016, the last year for which supervision data is available, 2.2 million people were incarcerated in United States jails and prisons, but more than twice as many, 4.5 million people—or one in every 55—were under supervision. Supervision rates vary vastly by state, from one in every 168 people in New Hampshire, to one in every 18 in Georgia.

Over the past several decades, arbitrary and overly harsh supervision regimes have led people back into US jails and prisons—feeding mass incarceration. According to the Bureau of Justice Statistics (BJS), in the late 1970s, 16 percent of US state and federal prison admissions stemmed from violations of parole and some types of probation. This number climbed to a high of 36 percent in 2008, and, in 2018, the last year for which data is available, was 28 percent. A different set of data for the previous year from the Council of State Governments, which includes all types of probation violations—but is limited to state prison populations—shows that 45 percent of all US state prison admissions stemmed from probation and parole violations. These figures do not include people locked up for supervision violations in jails, for which there is little nationwide data. Black and brown people are both disproportionately subjected to supervision and incarcerated for violations.

This report documents how and why supervision winds up landing many people in jail and prison—feeding mass incarceration rather than curtailing it. The extent of the problem varies among states, and in recent years multiple jurisdictions have enacted reforms to limit incarceration for supervision violations. This report focuses on three states where our initial research indicated that—despite some reforms—the issue remains particularly acute: Georgia, Pennsylvania, and Wisconsin.

Drawing on data provided by or obtained from these states, presented here for the first time, and interviews with 164 people incarcerated for supervision violations, family members, government officials, practitioners, advocates, and experts, we document the tripwires in these states leading to incarceration. These include burdensome conditions imposed without providing resources; violations for minor slip-ups; lengthy incarceration while alleged violations are adjudicated; flawed procedures; and disproportionately harsh sentences for violations.

The report shows that, nationwide, most people locked up for supervision violations were not convicted of new offenses—rather, they were incarcerated for breaking the rules of their supervision, such as for using drugs or alcohol, failing to report address changes, or not following the rules of supervision-mandated programs. Of those who were incarcerated for new offenses, in our focus states, many were for conduct like possessing drugs; public order offenses such as disorderly conduct or resisting arrest; misdemeanor assaultive conduct; or shoplifting. The distinction between “rule” and “new offense” violations is sometimes blurry, as some jurisdictions do not track whether people incarcerated for rule violations also had pending criminal charges, though some data that we obtained and analyzed for this report did not have this issue.

The root causes of these violations, the report documents, are often a lack of resources and services, unmet health needs, and racial bias. The report also draws attention to marked racial disparities in who is subjected to supervision and how authorities enforce it.

In practice, supervision in many parts of the US has become a system to control and warehouse people who are struggling with an array of economic and health-related challenges, without offering meaningful solutions to those underlying problems.

There is a better way forward. States around the country are enacting reforms to reduce the burdens of supervision, while investing in community-based services. Human Rights Watch and the ACLU urge governments to build on this momentum, and divest from arrests and incarceration

for supervision violations while investing in increasing access to jobs, housing, social services, and voluntary, community-based substance use disorder treatment and mental health services—services that have a record of improving public safety and that strengthen people and their communities.

Set Up to Fail

People under supervision, lawyers, and even some judges and former supervision officers recognize that supervision often sets people up to fail. People must comply with an array of wide-ranging, sometimes vague, and hard-to-follow rules, including rules requiring them to pay steep fines and fees, attend frequent meetings, abstain from drugs and alcohol, and report any time they change housing or employment.

People must follow these rules for a long period of time. While numerous experts agree that supervision terms should last only a couple of years, many states allow probation sentences of up to five years. In states including Wisconsin, Pennsylvania, and Georgia, probation terms can be as long as the maximum sentence for the underlying offense, in some cases 10 or 20 years, or even life—and consequences for failing are severe.

Navigating supervision is difficult and in many cases not possible without money, reliable transportation, stable housing, and access to health services. Yet few people under supervision have these resources—and supervision departments are in many cases failing to provide them. “They just gave us a sentence and put us on the street with nothing and expect us to follow rules and make stuff happen,” a man incarcerated for violations in Wisconsin told us. A young mother in Pennsylvania, who had long struggled with substance use disorder, explained, “I asked for programs but . . . [probation] didn’t want to hear that I need help; they just gave me time.”

Many supervision officers interviewed for this report said that they regularly connect people with services, and that re-entry resources have increased in recent years. Yet even more officers we spoke to, and several judges, said that they wished they had more resources. Some people under supervision that we interviewed did report that certain programs were helpful, but the vast majority did not feel that way.

Conduct Triggering Violations

Supervision officers say they generally give people multiple chances before pursuing revocation. But the root causes of the violations, discussed below, often go unaddressed. It is thus no surprise that many people continually engage in the same prohibited behavior, ultimately leading to incarceration—even for minor conduct.

According to our data analysis, the most common rule violations that trigger incarceration in Wisconsin are using drugs and consuming alcohol or entering bars. In Pennsylvania, state parole violations largely result from people failing to report address changes and using drugs. Anecdotal evidence from Georgia (state authorities in Georgia said they could not provide the data sought) suggests that failing to report address changes and drug use are likewise driving incarceration there.

Data from Wisconsin reveal that where new offenses, as opposed to rule violations, led to violation proceedings, the vast majority were for public order offenses like disorderly conduct or resisting arrest, misdemeanor assaultive conduct, shoplifting, and drug offenses. Anecdotal evidence from Georgia and Pennsylvania showed similar trends. If drug offense arrests in these states are consistent with national arrest data, then the overwhelming majority of such drug offenses are for nothing more than possessing drugs for personal use—conduct that Human Rights Watch and the ACLU believe should not be criminalized. Our report also raises concerns about the handling of supervision violations across the board, including those that stem from serious violent conduct.

Few Procedural Protections, Disproportionate Penalties

Basic rights in criminal proceedings, such as the exclusion of illegally obtained evidence and burden of proof beyond a reasonable doubt, generally do not apply during “revocation hearings,” which determine whether someone violated their supervision conditions and the appropriate punishment. Many jurisdictions also limit access to lawyers for revocation proceedings.

In states such as Pennsylvania, Wisconsin, and Georgia, people are generally incarcerated while they fight revocation, even for minor violations. Detention in parts of these states regularly lasts for months before any hearing, in violation of international human rights standards. Sometimes detention occurs in jails that are overcrowded, unsanitary, and lack adequate mental health services or access to effective drug treatment, and where staff have been accused of

mismanagement and violence. These circumstances place immense pressure on people to admit to the violations in the hope they can then get out of jail.

Violations often lead to harsh penalties. In our focus states, many people are sentenced to prison-based treatment programs or additional supervision, keeping them under correctional control—at risk of more imprisonment for any slip-up—for years or decades. Other people receive disproportionately severe incarceration terms.

Feeding Mass Incarceration

Currently, supervision is feeding mass incarceration in the United States. In 20 states, more than half of all state prison admissions in 2017 stemmed from supervision violations. In six states—Utah, Montana, Wisconsin, Idaho, Kansas, and South Dakota—violations made up more than two-thirds of state prison admissions.

In many states, admissions for supervision violations are rising even as prison populations are otherwise falling. For instance, from 2008 to 2018, Pennsylvania reduced prison admissions for conduct other than parole violations by 21 percent, while admissions from parole violations grew by 40 percent.

Nationwide, most people incarcerated for supervision violations were locked up for violating supervision rules, not new convictions—though, in the states where we focused our research, we document problems with how violations for new offenses are handled as well.

In Wisconsin from 2017 to 2019, rule violations accounted for more than 61 percent of all supervision sanctions. In Pennsylvania, rule violations comprised 41 percent of prison admissions for state parole violations and 78 percent of probation revocations from 2016 to 2019. We were only able to obtain limited data for Georgia.

Black, Latinx, and Indigenous people are disproportionately incarcerated for violations. For instance, in Wisconsin, the proportion of Native Americans sanctioned for violations is seven times higher than their proportion of the state population; for Black people, it is four times their proportion of the population.

Rooted in Disadvantage

Our research demonstrates that violations often stem from disadvantage. Many people cannot afford to pay their supervision fees or other court costs while supporting themselves and their families. As a result, people often do not make their required payments. While the US Supreme Court forbids courts from jailing people solely because they are poor, judges often fail to adequately assess whether someone can pay. Additionally, many people we interviewed said they stopped reporting to supervision because they did not have the money to pay their required fees for supervision or program requirements, eventually leading to violation proceedings for failure to report.

Many people we interviewed also said that the lack of stable housing impeded their ability to comply with supervision conditions. Housing instability and homelessness often contribute to physical and mental health issues, making it harder for people to hold down jobs, attend supervision-mandated meetings, and regularly update their supervision officer on where they live.

Further, people under correctional control are disproportionately likely to have mental health conditions, which can create added barriers to navigating supervision. Meanwhile, many communities lack accessible, voluntary mental health services and treatment options.

High numbers of people are incarcerated for using drugs, including people who are struggling with substance use disorder. Many judges and supervision officers we spoke to argue that jailing people is necessary to stop them from harming themselves or others. But incarceration is, per se, a disproportionate response to personal drug use. It's also ineffectual public health policy; health experts largely disagree that incarceration helps people recover from substance use disorder. Rather, they assert, governments should invest in voluntary, community-based, harm-reduction services and evidence-based treatment, such as Medication-Assisted Treatment and programs that do not mandate abstinence, since relapse is a normal and expected part of recovery.

Racial bias plays an outsized role in supervision violations. Generations of ongoing systemic discrimination throughout the United States have left Black and brown people less likely to have resources that make navigating supervision feasible, such as financial security, stable housing, reliable transportation, and access to drug treatment and mental health services, compared to their white counterparts. When Black people violate conditions, studies show they are more likely to face sanctions.

Meanwhile, studies show that police disproportionately stop, search, and arrest Black and brown people—making it more likely that they will be arrested in the first place and later be deemed in violation of supervision terms. Nationwide, Black drivers are more likely to be pulled over and searched than white drivers, but less likely to be found with contraband. While Black and white adults use drugs at similar rates, nationwide Black adults are two-and-a-half times as likely as whites to be arrested for possessing drugs for personal use. Disparities are even starker in some places Human Rights Watch studied. In Milwaukee, Wisconsin, vehicle and pedestrian stop rates for Black people are five times what they are for white people.

In addition, many states, including Pennsylvania, Wisconsin, and Georgia, use risk assessment tools (RATs) to set conditions and sanctions, which studies show can disproportionately label Black and brown people “high risk”—triggering tougher levels of supervision and enforcement.

A man who pled guilty to a probation term in Georgia in the hopes of avoiding prison time—only to wind up jailed, once for failure to pay and another time for using and possessing drugs—told us, “[Probation] took all my money, kept me incarcerated for simple little mistakes. It’s really been a lot of pain.”

The Path Forward

While judges and prosecutors often argue that supervision provides them with an alternative to incarceration, supervision is also imposed in cases that otherwise may have triggered less severe sanctions. Regardless, in too many cases it leads people right back into jail and prison, particularly those with limited resources. And supervision is not necessary to prevent serious crime: most violations stem from rule violations and relatively minor offenses for which there is little or no evidence that incarceration enhances public safety or reduces recidivism.

Where people on supervision engage in serious crime, moreover, law enforcement already has mechanisms in place to arrest those allegedly responsible and file charges. In the jurisdictions we examined, pursuing supervision violations in addition to criminal prosecutions for the same conduct often subjects people to lengthier detention and more sanctions, in proceedings that fail to adequately protect their fair trial rights.

Many aspects of the supervision systems we documented violate US and international law, which bar disproportionate punishment, discrimination based on race, poverty, and disability, and arbitrary detention, and which require governments to protect the right to life of people in their

custody, including by providing them with necessary medical care free of charge. Various practices we documented in revocation proceedings also raise serious fair trial concerns or are inconsistent with the rights under international law to an adequate standard of living, housing, food, health, and other basic needs.

Communities have an opportunity to choose a better path. In recent years, numerous states, including Georgia and Pennsylvania, have made positive reforms—shortening supervision terms, imposing less burdensome conditions, reducing incarceration for violations, and expanding community-based services.

Additionally, court systems are increasingly diverting people charged with certain crimes away from criminal prosecutions. Meanwhile, for certain behavior that causes harm, some communities are developing restorative justice processes, which aim to hold people accountable for their actions and support those who have been harmed but encourage measures like service in and for communities, restitution, and acknowledging and apologizing for wrongdoing, over incarceration as a solution.

Across the country, community-led organizations are helping to improve people’s access to re-entry supports and services. Many people on supervision credit these organizations—often which, unlike most supervision-mandated programs, use harm-reduction models and offer assistance without preconditions—with helping them get on the right path. But such programs are sorely underfunded, and non-existent in many, particularly rural, areas.

Human Rights Watch and the ACLU call on governments to build on existing reforms, and divest from supervision and incarceration while investing in jobs, housing, education, and voluntary, community-based substance use disorder treatment and harm reduction services and mental health services. Investing in communities will help to break the cycle of incarceration and facilitate access to the resources people want and need.

Supervision Amidst Covid-19

The research for this report was completed before the World Health Organization declared Covid-19 a global pandemic in March 2020.¹ Since then, the danger posed to those on supervision and in jails and prisons has become abundantly clear, making the findings of this report even more urgent.

As of July 2020, nine out of the ten largest clusters of Covid-19 in the United States are in jails and prisons.² Nearly 57,000 people incarcerated in US jails and prisons, including in some facilities examined for this report, have been infected with Covid-19, while at least 681 have died.³ Given limited Covid-19 testing in correctional facilities, the true number is likely higher.⁴ As explained in Section III, “Harsh Conditions,” US jails and prisons are at extreme risk of uncontrollable outbreaks of infectious diseases like Covid-19, given conditions of confinement including cramped quarters and a general lack of adequate sanitation and hygiene.⁵

¹ World Health Organization, “WHO Timeline – COVID-19,” updated April 27, 2020, <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

² “Coronavirus in the U.S.: Latest Map and Case Count,” updated July 17, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (accessed July 17, 2020).

³ American Civil Liberties Union and UCLA School of Law Prison Law and Policy Program, “Covid-19: Death by Incarceration,” https://docs.google.com/spreadsheets/d/1bTMdmt2lG2UrRDcDhKK2ws_ZS-sXqDsPMVC_2SDB3Lw/edit#gid=634242190 (accessed July 14, 2020); Katie Park, Tom Meagher, and Weihui Li, “Tracking the Spread of Coronavirus in Prisons,” *The Marshall Project*, April 24, 2020, <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons> (Latest numbers of Covid-19 cases in federal and state prisons are updated weekly here: <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>); see also “US: COVID-19 Threatens People Behind Bars,” Human Rights Watch news release, March 12, 2020, <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars>; Timothy Williams, Benjamin Weiser and William K. Rashbaum, “‘Jails are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars,” *New York Times*, March 30, 2020, <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>; “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’—Bachelet,” United Nations High Commissioner for Human Rights press release, March 25, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>; Martin Caste, “Prisons and Jails Worry About Becoming Coronavirus ‘Incubators,’” *NPR*, March 13, 2020, <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>; Allison Frankel, “Poor Conditions at Pennsylvania Jail Heighten Covid-19 Concerns,” Human Rights Watch dispatch, April 8, 2020, <https://www.hrw.org/news/2020/04/08/poor-conditions-pennsylvania-jail-heighten-covid-19-concerns>; Kathleen E. Carey, “64 People Have Been Infected with Coronavirus at County Prison,” *DelCo Times*, April 18, 2020, https://www.delcotimes.com/news/coronavirus/64-people-have-been-infected-with-coronavirus-at-county-prison/article_f7668db0-81af-11ea-b98d-838597af815d.html; “Chatham Co. Sheriff: 2 Employees, 2 Inmates Test Positive for COVID-19,” *WSAV*, April 14, 2020, <https://www.wsav.com/news/coronavirus/sheriff-chatham-county-inmate-tests-positive-for-covid-19/>; Jeremy Roebuck and Allison Steele, “Montgomery County’s Jail Tested Every Inmate for COVID-19—and Found 30 Times More Cases than Previously Known,” *The Philadelphia Inquirer*, April 28, 2020, <https://www.inquirer.com/news/coronavirus-testing-montgomery-county-jail-asymptomatic-philadelphia-prisons-20200428.html>.

⁴ Katie Park, Tom Meagher, and Weihui Li, “Tracking the Spread of Coronavirus in Prisons,” *The Marshall Project*.

⁵ American Civil Liberties Union, “Failing Grades: States’ Responses to Covid-19 in Jails & Prisons,” June 2020, <https://www.aclu.org/report/failing-grades-states-responses-covid-19-jails-prisons>; Human Rights Watch, *Averting an Imminent Catastrophe: Recommendations to US Local, State and Federal Officials on Covid-19 in Jails and Prisons*, April 2019, <https://www.hrw.org/news/2020/04/29/averting-imminent-catastrophe-recommendations-us-local-state-and-federal-officials>; Jake Harper, “Inmates, Relatives Say Indiana Prisons Lack COVID-19 Safeguards,” *WYFI*, April 10, 2020, <https://www.wfyi.org/news/articles/inmates-relatives-say-indiana-prisons-lack-covid-19-safeguards>; Katelyn Polantz, “Inmates Sue

Even when people on supervision are not incarcerated, frequent in-person reporting requirements put them at greater risk of exposure and infection.⁶

These concerns prompted 50 current and former supervision executives to issue a statement calling on supervision departments to limit reporting requirements, reduce probation and parole conditions and sentence lengths, and suspend or severely limit incarceration for rule violations during the pandemic.⁷ Human Rights Watch and the ACLU recently called on governments to facilitate reductions in jail and prison populations.⁸ Multiple jurisdictions have taken some of these steps, but high numbers of people still remain in US jails and prisons, or at risk of incarceration for any slip-up.⁹

for Soap and Paper Towels as Coronavirus Spreads in Jails,” *CNN*, March 31, 2020, <https://www.cnn.com/2020/03/31/politics/inmates-sue-coronavirus-jails/index.html>.

⁶ Exit: Executives Transforming Probation & Parole, “Statement from Community Supervision Executives on the Importance of Using Best Practices During the COVID-19 Crisis,” undated, <https://www.exitprobationparole.org/covid19statement>.

⁷ Ibid.; EXIT: Executives Transforming Probation & Parole, “COVID-19 Response,” undated, <https://www.exitprobationparole.org/covid-19-response>.

⁸ “US: Avoid Covid-19 Catastrophe in Jails, Prisons,” Human Rights Watch press release, April 29, 2020, <https://www.hrw.org/news/2020/04/29/us-avoid-covid-19-catastrophe-jails-prisons#>; American Civil Liberties Union, “New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us,” April 22, 2020, <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>.

⁹ EXIT, Executives Transforming Probation & Parole, “Covid-19 Response” (accessed May 20, 2020); Prison Policy Initiative, “Responses to the Covid-19 Pandemic,” updated July 14, 2020, <https://www.prisonpolicy.org/virus/virusresponse.html#releases>; American Civil Liberties Union, “Failing Grades: States’ Responses to Covid-19 in Jails & Prisons,” June 2020, <https://www.aclu.org/report/failing-grades-states-responses-covid-19-jails-prisons>.

Recommendations

The central recommendation of this report is that jurisdictions in the United States should divest resources from supervision and incarceration and invest in jobs, housing, education, evidence-based treatment for substance use disorder, and access to mental health services. Human Rights Watch and the ACLU offer the following recommendations to limit supervision, reduce incarceration for violations, and increase support for voluntary, community-based services.

These recommendations are informed by the experiences and perspectives of people who have been incarcerated for violations and their loved ones, current and former supervision officers, lawmakers, lawyers, judges, and local and national advocates.

To State and Local Supervision Departments:

- Do not impose or seek incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized at all, including possession of drugs for personal use or consensual sex work.¹⁰
 - In the case of non-compliance with rules, impose sanctions that are proportionate to the underlying conduct—such as proportionate, flexible community service requirements or deprivation of “good time” credits for a proportionate period of time (see recommendations to state lawmakers below) and make sure all efforts have been exhausted to grant rewards for compliance rather than sanctions for non-compliance, as well as to connect people with needed services and resources. Consider sanctions that restrict liberty in some form only as a last resort.
- Do not impose or seek any sanctions, up to and including incarceration, for conduct that is beyond an individual’s control or directly related to a person’s economic, housing, or other status, such as failure to pay court costs when someone is incapable of doing so, failure to report an address when homeless, or failure to attend required meetings when the person has no means of transportation.
- Do not impose or seek any sanctions, up to and including incarceration, for the use of drugs or alcohol. If, as a result of or in the context of that substance use, people engage in

¹⁰ Although Human Rights Watch did not interview anyone whose supervision was violated for reasons related to consensual sex work, such conduct should also be decriminalized for similar reasons. Human Rights Watch, “Why Sex Work Should be Decriminalized,” August 7, 2019, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#>.

actions that cause harm to others, defer to the criminal legal system. For those who are struggling with substance use disorder, refer people to voluntary harm reduction and evidence-based treatment programs and services in the community.

- Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
 - In cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work, incarceration is never appropriate.
 - In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.
- If criminal proceedings result in an acquittal or dismissal, do not pursue violation proceedings for the same underlying conduct.
- Significantly scale back the number and nature of supervision conditions imposed, including by:
 - Narrowly tailoring conditions to peoples’ needs, capabilities, and goals.
 - Ensuring conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
 - Not imposing conditions that ban personal drug use or alcohol use or that test for such substances. Where people have committed a serious offense in connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.
 - Not imposing vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”
- Develop guidelines that require supervision officers to inquire into why people failed to abide by conditions before imposing sanctions, including by affirmatively attempting to contact people who fail to report before deeming them to have violated their conditions of supervision for failure to report or “absconding.” Officers should not impose sanctions if the conduct can be addressed through connections to needed resources and services.
- Develop guidelines to reward positive behavior by people under supervision, including completing programming, graduating from high school or college, demonstrably seeking or

keeping a job, or caregiving for family members or others. Tie supervision officers' positive performance reviews to the extent to which they encouraged such conduct by those under their supervision.

- Wherever possible, locate supervision offices in communities where people are commonly under supervision so that people can more easily attend mandatory appointments.
- Develop guidelines that allow people to report remotely, rather than in person, wherever possible, and limit the frequency of required reporting as much as possible.

To State and Local Judges, Court Systems, and Parole Boards:

- Significantly limit or end the use of probation sentences, especially for cases that do not involve any intentional injury or threat of harm or other egregious conduct, and instead utilize true alternatives to incarceration, such as unconditional discharges, proportionate and flexible community service requirements, or proportionate fines.
- Where supervision is used, impose short terms. Where people are facing sentencing for multiple offenses, supervision sentences should run concurrently rather than consecutively.
- Eliminate split sentences for probation. Supervision should always be imposed in lieu of incarceration, not in addition to incarceration.
- Where supervision is used, sharply limit the number and nature of supervision conditions (for more concrete suggestions, see above recommendation to Supervision Departments).
- Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
 - In cases involving rule violations—aside from absconding willfully for the purpose of subverting supervision—or conduct that should not be criminalized at all, incarceration is never appropriate (see above recommendation to Supervision Departments).
 - In all other cases, only permit detention for a potential supervision violation following an individualized determination pursuant to a hearing by a neutral arbiter, within 48 hours of detention, that detention is reasonable and necessary for a legitimate purpose, for example because a person presents a known risk to deliberately flee the jurisdiction to avoid the charges. Ensure the right to counsel during such proceedings.
- Appoint counsel within 24 hours of arrest for a supervision violation or before the first appearance relating to the alleged violation, whichever is earlier, and ensure access to counsel before the first appearance relating to the alleged violation.

- Develop a system to ensure that detention, preliminary, and final revocation hearings are conducted expeditiously, and with due process and evidentiary protections in place, particularly where people are detained pending violation proceedings (see recommendation to State Lawmakers below).
- Allow people facing violation proceedings to attend all proceedings in person, as opposed to requiring videoconferencing.
- Enact the following reforms to eliminate or reduce court debt:¹¹
 - Refrain from imposing fees, including fees for any requirements of supervision, such as treatment programs, drug testing, and monthly fees for being on supervision. Instead, government entities should pay all costs related to court and/or parole board proceedings and supervision.
 - Where costs are imposed, develop a system to conduct thorough ability-to-pay hearings to determine whether fines and fees should be waived or reduced prior to sentencing, applying a standard that takes into account each individual’s economic needs and obligations, and their right to an adequate standard of living. Whenever capacity to pay is an issue, waive or reduce costs.
 - Where costs are imposed, do not make payment of costs a condition of supervision. Such conditions disproportionately harm people with limited financial means and put them at risk of incarceration or lengthier supervision terms for nonpayment.
 - Do not incarcerate people, extend their supervision terms, or suspend their driver’s licenses for failure to pay costs. Further, do not rely on civil debt collection enforcement mechanisms, which can lead to an abrupt loss of wages or benefits that are necessary for someone’s daily needs, and can result in harmful credit ratings which may impede access to housing, automobiles, or other needed loans either immediately or in the future. Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; waiving, reducing, or suspending costs based on inability to pay; and sending notifications reminding people of their obligations in a non-threatening manner that comports with due process.
- Where restitution is imposed, consider an individual’s ability to pay when setting the restitution amount and offer flexible payment plans. Consider implementing restorative

¹¹ Some of these recommendations were drawn from the following report, which contains detailed recommendations on how to implement proportionate financial sanctions: Sharon Brett and Mitali Nagrecha, “Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform,” *Harvard Law School Criminal Justice Policy Program*, September 2019, http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

alternatives to monetary restitution, such as proportionate and flexible community service, or finding other ways for individuals to compensate people for their losses.

- Prioritize collection of restitution over fines or fees.
- Do not incarcerate people, extend their supervision terms, or suspend their driver's licenses for failure to pay restitution. Further, do not rely on civil debt collection (see above). Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; deferring payments; and considering alternatives to monetary restitution (see above).
- Limit the use of mandated treatment or drug courts to cases involving serious offenses, based on a diagnosis of substance use disorder. Mandatory treatment should not apply to people based on mere possession of drugs for personal use, which should not be criminalized, or to people who may use drugs but are not struggling with substance use disorder. To the extent such mechanisms are used, ensure treatment programs are free, evidence-based, and include access to Medication-Assisted Treatment where appropriate, that officials ground their decisions on expert opinions on matters related to treatment, and that participants are not sanctioned with jail time or terminated solely due to behavior that is related to substance use.
- Create “safe surrender” days where people can voluntarily turn themselves in to the criminal legal system after they stop reporting or “abscond” in exchange for lighter sentences, where there is a presumption of a non-incarceration response to the self-surrender.

To State Lawmakers:

- Enact legislation that eliminates incarceration for any conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized, such as personal drug possession or use or consensual sex work (see above recommendation to Supervision Departments).
- Enact legislation that eliminates the imposition of sanctions for conduct that is beyond an individual's control or is directly related to a person's economic, housing, or other status, or for the use of drugs or alcohol (see above recommendations to Supervision Departments).
- Enact legislation that significantly limits the maximum lengths of supervision terms.
- Limit the number and nature of supervision conditions, including by enacting legislation that:

- Eliminates conditions mandated by law or policy, instead requiring officials to narrowly tailor them to the needs, capabilities, and goals of each individual.
- Ensures conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
- Eliminates conditions that ban personal drug or alcohol use or that test for such substances. Where people have committed a serious offense in connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.
- Eliminates vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”
- Prohibits the use of algorithmic risk assessment tools to determine conditions, the level of supervision required, or sanctions.
- Decriminalize the possession of all drugs for personal use.
- Decriminalize consensual sex work.
- Improve due process and evidentiary protections in violation proceedings, including by enacting legislation that:
 - Establishes time limits for conducting expeditious detention, preliminary, and final revocation hearings.
 - Permits all people to have an individualized detention hearing by a neutral arbiter within 48 hours of detention, during which they have a right to counsel (see above recommendation to Judges, Court Systems, and Parole Boards).
 - Given statutory schemes in many states that forfeit peoples’ preliminary hearing rights solely based on a probable cause finding, and the fact that people may spend months in detention waiting for their final revocation hearings, permits all people facing supervision revocation to have a prompt preliminary hearing where:
 - If probable cause has not been admitted or otherwise found in a criminal court of record, they can contest probable cause for the alleged violation, and;
 - Regardless of whether probable cause has been admitted or found, they can contest their detention (if they have not previously had a detention hearing) pending a final revocation hearing.
 - Establishes the right to counsel in all violation proceedings within 24 hours of arrest or before the first appearance relating to the violation proceedings, and ensures access to counsel before the first appearance relating to the violation

proceedings. This includes providing sufficient funding for court-appointed counsel.

- Prohibits the introduction of illegally obtained evidence in revocation proceedings.
- Raises the burden of proof to “beyond a reasonable doubt.”
- Repeal statutes that require people to serve “extended supervision” or other forms of mandatory supervision following their prison terms, while still allowing for supervision to substitute for reduced jail or prison sentences without adding to the length of their overall sentence.
- Enact legislation that provides incentives, such as “good time” credit for each day served on supervision, to end supervision early, and do so regardless of whether people have paid their court costs or completed restitution. In addition to credits for each day served on supervision, provide additional “good time” credit for achievement of certain goals, such as obtaining a high school diploma, demonstrably seeking or keeping a job, or completing a program.
- Provide “supervision time” credits for each day people serve under supervision, so that if they are incarcerated for a violation, each day served under supervision counts toward their total sentence.¹²
- Given research that supervision terms beyond a couple years have little safety or rehabilitative value, enact legislation that presumptively terminates peoples’ supervision within the first couple years, regardless of whether they have paid their court costs or completed restitution.
- Repeal statutes that permit the extension of supervision terms for failure to abide by supervision conditions, including failure to pay court costs or restitution. Instead, develop proportionate responses to nonpayment of court costs or restitution (see above recommendations to Judges, Court Systems, and Parole Boards).
- Enact legislation to eliminate court-imposed fees, including fees related to supervision requirements (see above recommendation Judges, Court Systems, and Parole Boards).
- Enact legislation that prohibits the suspension of driver’s licenses for non-safety-related reasons (see above recommendation to Judges, Court Systems, and Parole Boards).
- Require prosecutors, courts, and supervision and corrections departments to track, retain, and make public data on supervision, including conditions violated; whether the violation was considered a “rule” or “new offense” violation, and—for rule violations—whether someone had pending criminal charges or uncharged criminal conduct; sanctions imposed up to and including revocation; length of detention pending violation hearings; and

¹² For a discussion of “supervision time” credits, see Section IV, “Sentencing for Violations.”

whether hearings were waived; as well as race, ethnicity, age, sex, county of conviction, and other demographic data.

- Eliminate statutes, rules, or regulations that automatically bar those convicted of crimes and people serving terms of supervision from voting.
- Eliminate statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.
- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs that help to address the underlying causes of supervision violations. Additionally, appropriate sufficient funds to support restorative justice initiatives and other alternatives to incarceration. This includes redirecting saved funding from reducing supervision, jail, and prison populations.
- Enact measures to ensure that courts and parole boards have sufficient funding to operate without imposing fees, including by redirecting saved funding from reducing supervision, jail, and prison populations.

To Wisconsin Lawmakers:

- Enact strengthened versions of Assembly Bills 831 and 832, which shorten supervision terms and limit incarceration for violations, as a first step toward reform.
- Consider closing the Milwaukee Secure Detention Facility (MSDF), as running a correctional facility solely for the purpose of incarcerating people for supervision violations risks creating perverse incentives to incarcerate people under supervision. Instead, Wisconsin should eliminate or severely limit its use of detention pending violation proceedings, as well as incarceration for supervision violations.
- Enact legislation to appoint counsel within 24 hours of an individual's arrest on a hold, regardless of whether a revocation petition has been filed.
- Prohibit supervision officers from questioning people accused of supervision violations, or from seeking a waiver of their right to a preliminary hearing, without an attorney present, and from mandating that they provide statements about the alleged violations.

To Pennsylvania Lawmakers:

- Enact legislation, along the lines of Senate Bill 14 as originally introduced—before amendments in 2020 eliminated significant reforms and added language that would make

probation worse—to reduce the lengths of probation terms and limit incarceration for violations, as a first step toward reform.

To Georgia Lawmakers:

- Prohibit enhanced penalties for violations of “special” conditions of felony probation where those conditions are duplicative of “general” conditions.
- Decriminalize nonserious traffic offenses,¹³ which often lead to probation terms for traffic violation convictions only because of the individual’s inability to pay the required fines and fees on their court date.
- Eliminate pay-only probation, which allows judges to place people on probation solely because they cannot pay their court-ordered fines and surcharges. Given monthly supervision fees, people already facing financial challenges are required to pay even more than people convicted of the same crime who could afford the fine.

To State and Local Prosecutors:

- Refrain from prosecuting those accused of simple drug possession or consensual sex work.
- Significantly limit requests for probation sentences and instead utilize true alternatives to incarceration, including through cooperation with restorative justice programs.
- Where supervision is sought, significantly limit the lengths of sentences requested (see above recommendation to Judges, Court Systems, and Parole Boards).
- Do not request a sentence of incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).
- Do not seek any sanctions, up to and including incarceration, for conduct that is beyond an individual’s control or for the use of drugs or alcohol (see above recommendation to Supervision Departments).
- Do not seek detention pending violation proceedings in cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work. In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will

¹³ Under Georgia law, “serious traffic offenses” are found in Title 40, Chapter 6, Article 15 of the Georgia Code.

deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.

To State and Local Governments:

- Provide sufficient re-entry services for all people coming out of jails and prisons, and ensure that re-entry assessment and support begins sufficiently prior to release.
- If programs and services are supervision-mandated, locate such programs in the community, not within jails or prisons. Further, provide sufficient resources for them, as well as transportation costs to and from those services and any other required meetings.
- Fund, promote, and encourage initiatives and enterprises that engage people in impoverished communities and formerly incarcerated people in areas including employment, housing, education, and health.
- Develop and preserve low-income housing for people who are homeless or at risk of homelessness, including housing with supportive services for those who need them.
- Develop and fund accessible community-based mental health services, which include professionals to conduct outreach and to provide support for people with mental health conditions, as well as to respond comprehensively to emergencies that may be related to these conditions.
- Develop and provide sufficient voluntary, community-based drug treatment facilities to meet the needs of all who seek treatment. Ensure access to evidence-based treatment, such as Medication-Assisted Treatment.
- Fund, promote, and encourage community-based restorative justice processes grounded in human rights principles for cases that would otherwise typically trigger incarceration.

To State Governors:

- Presumptively commute sentences of people who are incarcerated for violating their supervision by engaging in conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).
- Given research that supervision terms beyond a couple years have little safety or rehabilitative value, presumptively commute supervision sentences of people after no more than two years under supervision.

To Local Police Departments:

- Given that many of the underlying offenses that trigger supervision, as well as the stops and arrests that can lead to violation proceedings, stem from over-policing, particularly in poor and minority communities, develop and implement a plan, with specific metrics, to reduce disparate treatment of people based on race, poverty, and geography.
- Since many of the arrests that trigger violation proceedings are for minor offenses such as for crimes related to homelessness, poverty, or simple drug possession, that should not be criminalized to begin with, create a policy that ends or vastly reduces arrests for these offenses.

Federal Government

To the United States Congress:

- Decriminalize the possession of all drugs for personal use.
- Eliminate federal statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.
- Condition any federal funding to law enforcement agencies on their enforcing a ban on racial profiling and on their documenting, collecting, and publicly sharing data on pedestrian and traffic stops, arrests, and searches by race, ethnicity, gender, and location, designating funds for such data collection if needed.
- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs, including Medication-Assisted Treatment, that will help to address the underlying causes of supervision violations, as well as in restorative justice and other alternatives to incarceration.

To the United States Department of Health and Human Services:

- Fund and encourage programs, including pilot programs, emphasizing public health approaches to substance use disorder that focus on harm reduction and evidence-based treatment rather than punitive measures within the criminal legal system.