Too Many Going Back, Not Enough Getting Out? Supervision Violators, Probation Supervision, and Overcrowding in the Federal Bureau of Prisons

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THE FEDERAL BUREAU OF PRISONS' (BOP) inmate population has grown substantially during the last few decades, and the increase is taking its toll on inmates, staff, and the very walls and floors of the prisons themselves. Studies demonstrate that the increase is driven primarily by the imposition of longer prison terms, fewer avenues for inmates to earn early release, higher conviction rates, and increased enforcement efforts. Persons revoked from community supervision and returned to prison constitute a small proportion of the inmate population, approximately six percent.[2] Yet, the number of people being revoked has been on the rise and that has garnered attention from those who want to both reduce the number of persons returned to prison and expand the role of supervision in getting current inmates out.

This article discusses the variety of complex factors that have influenced the slow but steady increase in supervisees being revoked.[3] One factor is the large number of illegal aliens subject to supervision who are deported and then revoked after they illegally re-enter the United States. In those cases, there is very little the probation system can do to promote behavioral change, other than to initiate revocation proceedings for purposes of punishment and deterrence. Another factor influencing the rise in revocations has been the increase in the size of the supervisee population generally. There are now more people under supervision and in jeopardy of being revoked than ever before. A third factor is the worsening criminogenic risk profile of the supervision population, as measured by various empirical assessment tools. Finally, advancements in technology, policy guidance, and training have made officers more effective in detecting noncompliance. So while the raw number of supervisees returned to prison is increasing, when you take the above factors into account, the relative rate of revocations has actually been declining.

This article also provides detailed information about the factors that federal probation officers consider when responding to supervisee noncompliance, and it urges caution when interpreting statistical information concerning revocation rates. For instance, a revocation described as "technical" does not necessarily mean that there were no allegations of new criminal conduct. Furthermore, though not revealed by the data, in many cases that end in revocation, there have been numerous attempts to stop the noncompliance with lesser sanctions and intensified treatment.

The article also provides background on some of the key supervision strategies employed by the federal probation and pretrial services system to protect the public and reduce recidivism. Finally, this article explains how the federal probation and pretrial services system's use of alternatives to incarceration produces considerable cost savings while offering the potential for supervisee rehabilitation and long-term community protection.

Although the probation system alone cannot solve the BOP's overcrowding problem, it can play a role, whether by assuming responsibility for inmates released early pursuant to a new statute or serving as a more primary sentencing option in lieu of imprisonment. The challenge will be deciding which cases are most appropriate for direct referral to supervision versus supervision after a period of imprisonment adjusted for good behavior and reduction in criminogenic risk. There is also the economic reality that under sequestration and appropriation shortfalls, the probation and pretrial services system is losing staffing strength and has diminishing resources for supervisee monitoring and treatment. Expanding the responsibilities of the probation and pretrial services system when it has insufficient resources can compromise community safety and produce other undesired consequences, such as overburdening again the BOP.

One source for optimism, however, is that the savings from using supervision in lieu of incarceration in appropriate cases is substantial, amounting to tens of thousands of dollars per case. Those savings could be drawn upon by Congress and the agencies involved to experiment with greater use of and innovation in community supervision, ideally better protecting the public, reducing costs, and alleviating overcrowding at the BOP. Movement of funds in that manner has occurred successfully in state systems.

A. FEDERAL BUREAU OF PRISONS OVERCROWDING

The BOP inmate population has been growing exponentially. The number of inmates doubled in the 1980s, doubled again in the 1990s and has increased 60 percent since the

turn of the millennium.[4] Not only are there more federal inmates, but they are serving longer periods in custody.[5] As a result, the BOP now houses 220,000 inmates, more than the civilian population in 15 of the country's largest 100 cities.[6]

The stress of the unrelenting growth on the BOP is taking its toll. Prison facilities are filled 38 percent beyond rated capacity, with overcrowding being particularly acute in higher-security institutions. Prison cells are double- and triple-bunked, making it more likely that some inmate misconduct will go undetected and jeopardizing the safety of inmates and staff alike. There are too many inmates for available rehabilitative programming, leading to waiting lists and lost opportunities for inmate rehabilitation. In addition, the overcrowding is causing excessive wear and tear on prison infrastructure and contributing to the $6.8 billion cost of operating the BOP.[7]

The growth in the federal inmate population has been sparked and sustained by legislative changes and Department of Justice initiatives designed to promote sentencing uniformity, procedural transparency, and community safety.[8] The Sentencing Reform Act of 1984 abolished parole, limited reductions for good behavior, and provided for more structured sentencing. A series of statutes enacted in the midst of the crack-cocaine epidemic mandated lengthy custody terms for the types of cases that made up much of the federal criminal docket.[9] At the same time, the Department of Justice expanded prosecutions in drug crimes, firearm offenses, child pornography and illegal immigration.[10] In analyzing the federal inmate boom, the Urban Institute concluded:

> [The] increase in prisoners' expected time to be served was, by far, the leading determinant of the prison population growth, accounting for over one-half of the net population increase…. Higher conviction rates were responsible for one-quarter of the growth, while increased enforcement efforts and higher rates of sentencing to prison each contributed roughly one-tenth of the overall growth in the prison population…. The increase in time to be served by drug offenders alone accounted for nearly one-third of the total federal prison population growth…. Other offense-specific factors that contributed to growth included increased enforcement efforts against immigration and weapons violators, as well as a higher conviction rate for drug defendants.[11]

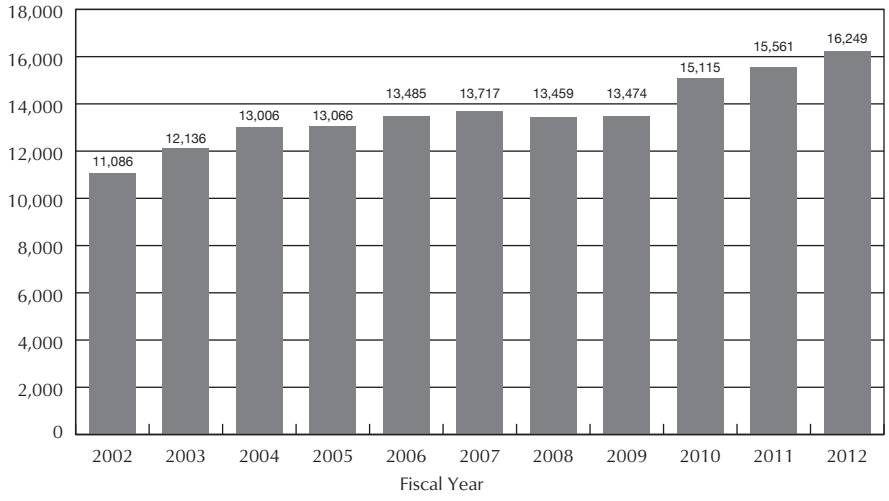
B. SUPERVISION VIOLATORS' CONTRIBUTION TO THE OVERCROWDING

Relative to the other driving forces, persons revoked from community supervision and returned to prison constitute a small proportion of the federal inmate population. Somewhere between 8 and approximately 15 percent of the new admissions into the BOP each year are said to be supervision violators.[12] And since violators are subject to substantially shorter prison terms than those sentenced for new federal convictions, supervision violators occupy only 6 percent or so of the prison space on any given day.[13] Nonetheless, the number of people being revoked has been increasing and that has generated concern among those studying prison overcrowding and looking to supervision as a possible means to alleviate it (see Figure 1).[14]

Between 2002 and 2012, the number of immigration-related prosecutions in federal court more than doubled.[15] Immigration offenses now rival drug offenses as the type of crimes most frequently prosecuted in federal court.[16] Some statutes and, up until recently, the Federal Sentencing Guidelines required supervised release terms to be imposed on deportable aliens following a period of incarceration. Since the aliens are deported shortly after their release from the BOP, the supervision term is put on "inactive" status and not "activated" unless the alien illegally re-enters the country or commits another offense in the United States, in which case revocation proceedings are initiated. So, in effect, these aliens

FIGURE 1.

Persons Revoked from Post-Conviction Supervision by Fiscal Year



Source: Administrative Office of the U.S. Courts, Decision Support System. Washington, DC.

C. FACTORS INFLUENCING THE NUMBER OF SUPERVISEES REVOKED

A variety of factors have influenced the slow but steady rise in revocations in the federal system, including: (1) the increasing number of people unavailable for active supervision, specifically those deported after their imprisonment term, but who come back into the United States illegally and who are revoked as a result; (2) the increase in the size of the supervision population generally; (3) the escalation of the criminogenic profile of the supervisee population; and (4) improvement in the techniques to uncover supervisees' noncompliance. Adjustments to one or more of these factors could alter the number of people returned to prison in the future.

The probation system's data entry rules are being modified to better identify such cases going forward, but existing records indicate that 20 percent of the persons revoked in fiscal year 2012 were illegal or undocumented aliens. Similarly, illegal and undocumented aliens were responsible for 40 percent of the increase in revocations between 2002 and 2012.[17]

The impact of these cases on revocation rates and prison costs is all the more disconcerting when you take into account that there are not actively supervised by probation officers and there is very little the probation system can do to promote behavioral change in them.

are currently 68,000 supervised release terms running inactively for individuals who either: (1) have been deported; (2) remain in administrative custody pending deportation; or (3) are being held in federal, state, or local custody on new criminal charges and for whom a violator's warrant has been lodged as a detainer.[18]

It is unclear if the number of immigration prosecutions will increase or decline. As this article is being written, Congress is debating immigration reform; any legislation passed will likely provide for enhanced enforcement, particularly along the southwest border with Mexico where the vast majority of federal immigration prosecutions already occur. In addition, the United States Sentencing Commission modified its policy statements in 2011 to state that "[t]he court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment."[19] The *Sentencing Guidelines Manual* further states:

> Unless such a defendant legally returns to the United States, supervised release is unnecessary. If such a defendant illegally returns to the United States, the need to afford adequate deterrence and protect the public ordinarily is adequately served by a new prosecution. The court should, however, consider imposing a term of supervised release on such a defendant if the court determines it would provide an added measure of deterrence and protection based on the facts and circumstances of a particular case.[20]

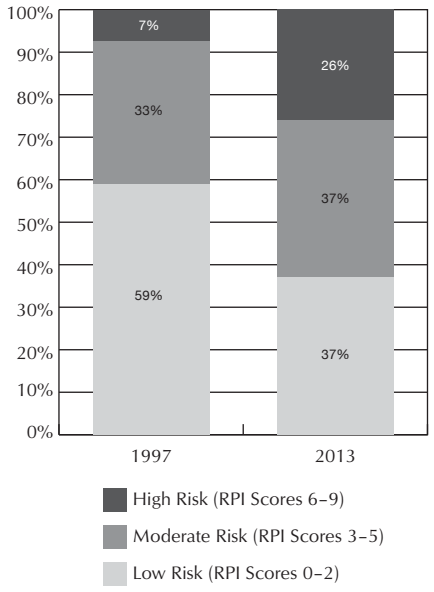
Consequently, it is possible that the number of illegal and undocumented aliens subject to supervised release terms could decrease, even if the number of immigration prosecutions continues to climb.

Another factor contributing to the growth in revocations is the increase in the supervision population generally. The daily supervision population has grown 45 percent in 15 years.[21] The annual growth rate for the past decade has been 3 percent, and continued increases are expected, with the annual supervision population projected to exceed 194,000 by June 2015.[22] Consequently, there has been and will continue to be a larger pool of people at risk of being revoked.

There has also been an escalation of the population's criminogenic profile. In an effort to better protect the community, the Department of Justice has focused on more persistent and violent supervisees, leaving the BOP and probation system with a higher-risk population.[23] Criminogenic risk can be measured in many ways. Since the 1990s, the federal probation and pretrial services system has used the Risk Prediction Index (RPI), an actuarial risk assessment tool developed by the Research Division of the Federal Judicial Center, to empirically measure the risk level of the supervisee population. The average RPI score of the supervisee population has been increasing year to year, and is now 50 percent higher than it was for supervisees in 1997 (Figure 2).[24] Similarly, the number of Career Offenders and Armed Career Criminals as defined by the United States Sentencing Guidelines has more than doubled, and the Commission's Criminal History Category system has detected increasingly more severe criminal histories and risk among defendants (Tables 1 and 2).[25]

With fiscal reality precluding the probation and pretrial services system from providing the ideal level of supervision in all cases, and research suggesting that available resources are best focused on higher-risk supervisees, judiciary policy directs probation officers to dedicate their energies to those cases with elevated risk.[26] Officers are statutorily required to provide rehabilitative programming and make efforts to detect and report noncompliance.[27] In the case of high-risk supervisees, officers' monitoring efforts include: the use of GPS and other electronic devices; manual surveillance; development of third-party sources of information in the community; coordination with law enforcement agencies; and, if authorized by the court, warrantless searches and seizures.[28] Increased training, policy guidance, and supporting technology have made officers more effective and efficient in their monitoring role. For example, the judiciary's policy guidance on search and seizure was updated in 2010, and a national "train-the-trainer" program to develop officer expertise on search and seizure in the probation and pretrial services districts commenced shortly thereafter. In 2012, the probation and pretrial services system recorded its greatest number of search and seizure incidents, more than 1,000 (exclusive of computer monitoring of child-pornography supervisees). Three quarters of the search and seizure efforts resulted in contraband being removed from the streets, including everything from false identification to firearms and drugs.[29] Similarly, GPS-based location monitoring and drug-testing equipment has grown in sophistication, and communication has improved between probation and law enforcement agencies with the use of shared databases.[30] The net result is

FIGURE 2.
Composition of Supervision Population by Risk Prediction Index Score



Source: Eaglin, J., Gilbert, S., Hooper, L.; Lombard, P. (1997). Descriptive Information About Offenders Grouped by Their RPI Scores, Washington, DC: Federal Judicial Center; Administrative Office of the U.S. Courts, Decision Support System. Washington, DC.

TABLE 1.
*USSC Criminal History Points Assigned to Sentenced Defendants**

Points	1997	2012	Change
0	45.8%	36.0%	-9.8%
1	9.8%	9.0%	-0.8%
2	4.0%	5.4%	1.4%
3	6.5%	8.5%	2.0%
4	4.6%	6.0%	1.5%
5	3.8%	6.0%	2.3%
6	4.8%	5.7%	1.0%
7	2.5%	3.4%	1.0%
8	2.6%	3.9%	1.3%
9	2.6%	3.0%	0.4%
10	1.8%	2.2%	0.4%
11	1.5%	2.2%	0.7%
12	1.6%	1.8%	0.2%
13+	8.3%	6.8%	-1.5%

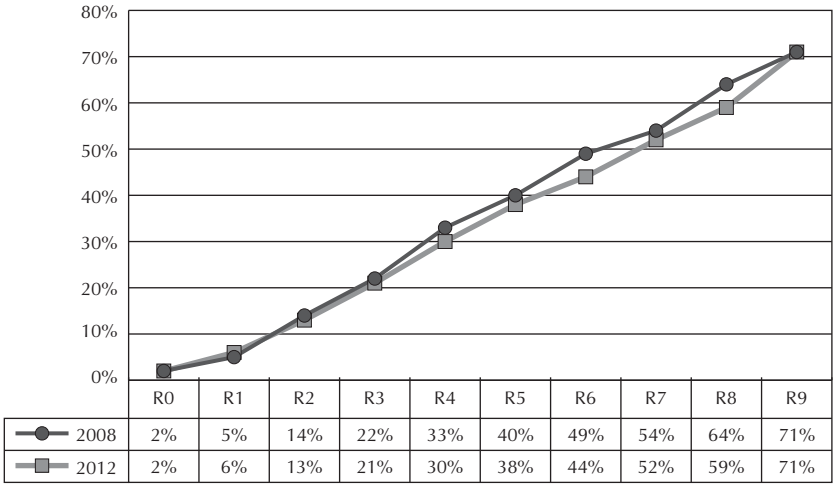
Source: United States Sentencing Commission Sourcebook, Table 20, Fiscal Years 1997 and 2012.
*All percentages subject to rounding.

TABLE 2.
*USSC Criminal History Category Assigned to Sentenced Defendants**

Points	I	II	III	IV	V	VI
1997	55.9%	10.6%	13.0%	7.2%	4.2%	9.2%
2012	44.9%	13.9%	17.4%	9.5%	5.4%	8.8%
Change	-11.0%	3.3%	4.4%	2.3%	1.2%	-0.4%

Source: United States Sentencing Commission Sourcebook, Table 21, Fiscal Years 1997 and 2012.
*All percentages subject to rounding.

FIGURE 3.
Revocation Rate for U.S. Citizens Only, Displayed by FJC Risk Prediction Index Score
Source—National PACTS Reporting Database and Decision Support System



Source: Administrative Office of the U.S. Courts, Decision Support System. Washington, DC.

that supervisee noncompliance, when it does occur, is more likely than ever before to be detected, and that influences the number of persons revoked.

Taking into account all the various factors noted above, revocation rates have actually been stable, and have even declined among supervisees in some risk categories. Figure 3 reflects the revocation rate in 2008 and 2012 respectively for U.S. citizens only, based on their Risk Prediction Index scores as computed at the beginning of supervision.

D. BASES FOR REVOCATION AND RECIDIVISM

In an effort to put revocation numbers into context, the probation and pretrial services system has historically reported revocations as a percentage of total cases closed, excluding cases closed upon death and transfers. Like the raw number of revocations, the "revocation rate" has been increasing, although at a lower rate (Table 3). New crime revocations are described by the federal courts as either "major" or "minor," labels meant to track the felony and misdemeanor distinction common in most penal codes. All other revocations are considered "technical" (Table 3).

It would appear that most revocations are on technical grounds, but that statistic should be viewed with caution because a substantial percentage of those cases actually involve allegations of criminal conduct (Table 4 and Figure 4). Noncompliant supervisees often commit both new crime and technical violations simultaneously, or in quick succession. For example, a supervisee who conspires and works with a former cellmate to distribute cocaine has committed both new crime and technical violations, specifically drug trafficking and association with a known felon. Indeed, a sampling of 768 cases from five judicial districts revealed that 93 percent of supervisees revoked for new crimes also had been cited for technical violations. Similarly, 39 percent of supervisees revoked for technical violations had incurred an arrest consistent with new criminal conduct during supervision.[32]

For various reasons, such as minimizing the burden on witnesses and deferral to local prosecutions, the parties may settle on the supervisee pleading to a technical violation in lieu of going forward with a hearing on the criminal charge. The pressures and considerations that drive plea bargaining elsewhere in the criminal justice process are also present in the revocation context.[33] Also, in most instances, the applicable statutory penalties are the same for technical and new crime violations.

Further clouding an understanding of the bases of revocations at the macro level, probation and pretrial services' case management system is not all-inclusive in terms of data related to revocations. Although there are plans to capture more data elements in the future, presently the case management system only requires users to enter one violation charge per revocation, even if the court found multiple violation charges proven. Data-entry rules suggest that the "most serious proven charge" be entered, but that still omits information on charges of equal or lesser severity for purposes of national reporting and analysis.

Recidivism in community corrections is measured in different ways. As noted above, the federal probation and pretrial services system has historically reported recidivism as the percentage of cases revoked in relation to total cases closed. That percentage now stands

TABLE 3.
*Federal Post-Conviction Revocation Rate**

Fiscal Year	Revocation Rate	Change from Prior Year
2000	23.8%	1.2%
2001	23.3%	-0.4%
2002	25.7%	2.4%
2003	26.3%	0.5%
2004	23.4%	-2.9%
2005	25.0%	1.6%
2006	26.9%	2.0%
2007	27.9%	1.0%
2008	27.4%	-0.5%
2009	27.3%	-0.1%
2010	29.3%	2.1%
2011	29.3%	0.0%
2012	29.7%	0.3%
Average	26.6%	0.5%

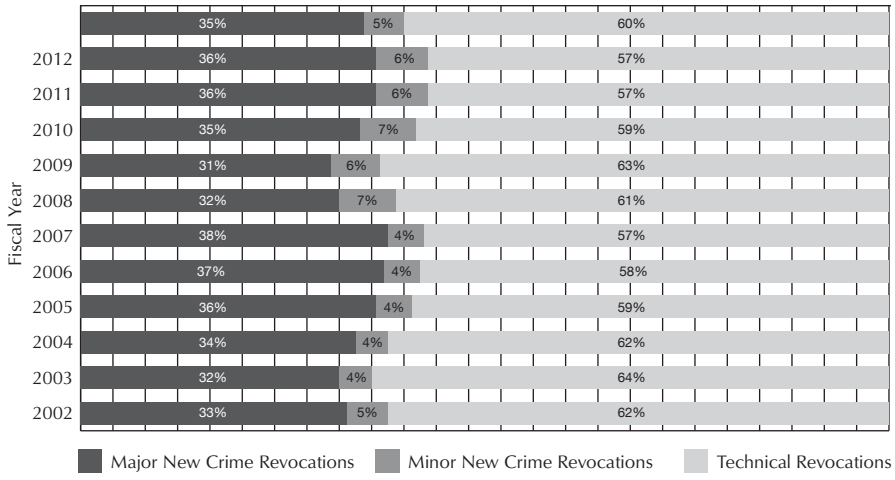
Source: Judicial Business of the U.S. Courts, Table E-7A, Administrative Office of the U.S. Courts, Decision Support System.
*All percentages subject to rounding.

TABLE 4.
Top 5 Violation Charges in Each Revocation Category During Fiscal Year 2012

Rank	Major	Minor	Technical
1	Drug Possession and Distribution	Traffic Violations (e.g., Driving without a License)	Violation of General Conditions
2	Immigration Offenses	Drunk and Disorderly	Use of Drugs
3	Assault	Simple Assault	Absconding
4	Firearm Offenses	Petty Theft	Willful Non-Payment of Court-Imposed Obligation
5	Larceny	Driving Under the Influence	–

Source: Administrative Office of the U.S. Courts, Decision Support System, Washington, DC.

FIGURE 4.
Percentage of Major New Crime, Minor New Crime, and Technical Revocations



Source: Judicial Business of the U.S. Courts, Table E–7A; Administrative Office of the U.S. Courts, Decision Support System. Washington, DC.

at 30 percent.[34] More recently, the system also began reporting supervisees' felony rearrest rate for the three-year period following commencement of supervision (24 percent) and the three-year period after terminating supervision (18 percent).[35] The federal supervisee recidivism rate, using the broad definition of revocation on any charge or felony rearrest regardless if that arrest results in a conviction or reincarceration, has been independently computed at 30 percent.[36]

E. FEDERAL SUPERVISION STRATEGIES AND PRACTICES

In the states, recidivism rates average between 43 and 67 percent, and supervision violators constitute a third of the persons admitted to state correctional facilities.[37] That leaves the federal recidivism rate somewhere between 13 and 37 percentage points below those of the states, and leaves violators as new prison admissions between 18 and 25 percentage points lower in the federal system.

Many things may explain the difference between the state and federal statistics, including factors outside the control of the agencies involved. The relatively positive outcomes produced by the federal system, however, are consistent with, and logically related to, the stated objectives of the federal judiciary's policies and procedures. The results also reflect the financial investment made in the probation and pretrial services system by Congress and the Judiciary, as well as rehabilitation work undertaken by the BOP, despite the BOP's overcrowding issues and pressures on staff.[38]

Under judiciary policy, federal probation officers are responsible for promoting "the successful completion of the term of supervision, during which the offender commits no new crimes; is held accountable for victim, family, community, and other court-imposed responsibilities; and prepares for continued success through improvements in his or her conduct and condition."[39] Officers employ a variety of tools to promote the desired outcome, but all are based on the risk, need, and responsivity principles demonstrated by social science research to be effective in reducing recidivism.[40] According to the risk principle, the level of correctional intervention should match the client's risk of recidivism.[41] Under the need principle, correctional interventions should target known and changeable predictors of recidivism (also referred to as "criminogenic needs").[42] Finally, according to the responsivity principle, interventions should involve the treatment modality most capable of addressing the criminogenic need found in the case. To increase the likelihood of positive effects on clients' behaviors, interventions must also be delivered in a style and mode specifically suited to the supervisee's learning styles and abilities. Responsivity factors may be relevant not because they predict criminal conduct, but because they affect how supervision and treatment services are delivered and received by the supervisee.

The most advanced risk and needs assessment instruments incorporate the principles of risk, need, and responsivity by addressing all three components: 1) whom to target for correctional intervention, 2) what needs to address, and 3) how to remove barriers to successful implementation of a supervision and treatment plan. To enhance officers' professional assessment of a case and supervision plan development, the federal probation system now has an additional actuarial tool, complementing the Risk Prediction Index. The new instrument is called the Post Conviction Risk Assessment (PCRA), and has been described in more detail in other peer-reviewed journals and in *Federal Probation*.[43]

To further address need and responsivity issues, the system also has a formal training program for officers called Staff Training Aimed at Reducing Rearrest (STARR). Social science research has demonstrated that the most effective approach for changing behavior in the community supervision context is through cognitive-behavioral techniques, which involve exercises and instructions designed to alter the dysfunctional thinking patterns exhibited by many supervisees. Likewise, research suggests that the quality and nature of the relationship between the client and the supervision officer have an impact on

outcomes.[44] STARR builds on officers' existing communication skills, use of authority, and ability to impart cognitive restructuring strategies to supervisees. STARR, and its demonstrated ability to reduce recidivism, has also been featured in other peer-reviewed journals and in *Federal Probation*.[45]

The PCRA and STARR complement many district-based initiatives, such as re-entry courts, assorted cognitive behavioral programs, and specialized employment and vocational training for supervisees.[46] Although the amounts disbursed were reduced significantly with sequestration, each district continues to receive funds for traditional mental health and substance abuse services for supervisees whose condition requires it, but who are unable to pay on their own. Collectively, the federal judiciary dedicated more than a $100 million in fiscal year 2012, above and beyond probation officer salaries and expenses, in an effort to reduce the criminogenic factors of persons under federal supervision.[47]

Federal probation officers are also encouraged by judiciary policy to provide positive incentives for change.[48] As risk issues are addressed and supervisees meet their objectives, officers respond to such positive changes with graduated reductions in the level of supervision—up to and including early termination of supervision.[49] Under 18 U.S.C. §§ 3564(c) and 3583(e)(1), the court may terminate terms of probation in misdemeanor cases at any time and terms of supervised release or probation in felony cases after the expiration of one year of supervision if satisfied that such action is warranted by the conduct of a supervisee and is in the interest of justice. Policy directs officers to consider the suitability of early termination for supervisees as soon as they are statutorily eligible.[50] Recently, staff at the Administrative Office of the U.S. Courts completed a study examining the effectiveness of the judiciary's guidance to probation officers on recommending appropriate cases for early termination. The report confirmed that the policies allow officers to make responsible decisions about which supervisee to recommend for early termination (see Baber & Johnson, 2013, appearing in this issue of *Federal Probation;* full reference in Footnote 51).[51]

While the desired outcome is that persons under supervision change for the better, based on supervisees' risk profile, that may not always possible. As noted earlier, the overall risk level of the supervisee population has been increasing steadily. A recent snapshot has shown that, on average, persons under supervision have five prior arrests; 16 percent violated a previous term of federal, state, or local community supervision, and 8 percent have a history of absconding.[52]

Nearly 9 in 10 supervisees have been convicted of a felony-level offense, most involving drug trafficking, property crimes, firearms, or a crime of violence.[53] The majority of supervisees (83 percent) are not on probation but supervised release or another form of post-incarceration supervision.[54] The average prison term was 60 months for supervisees sentenced to supervised release terms between January 12, 2005, and fiscal year 2009.[55] While in custody, the supervisees were separated from family and any positive community ties they may have had, and were housed in the very same overcrowded institutions that are recognized now as a problem.

Close to half (43 percent) of supervisees have a history of alcohol abuse and more than a quarter have used opiates. Mental health issues plague 27 percent of the population, and 10 percent have a history of domestic violence.[56]

Almost one in five supervisees are actively engaged in criminal thinking and manifest antisocial values, while 80 percent have a person in their life currently engaged in or promoting drug use or other criminal activity.[57] At the start of supervision, 34 percent of supervisees were unemployed, and at some point in their supervision terms 60 percent will have a problem with underemployment, employment stability, or the workplace not being conducive to a law-abiding lifestyle. Many supervisees are in debt, owing restitution and child support among other things, and 19 percent require basic housing and transportation services.[58]

Overcoming such entrenched criminal involvement and criminogenic risk is a challenge for the federal probation and pretrial services system. Fortunately, nearly half of supervisees coming under supervision also have access to a prosocial support network, such as a well-adjusted family member, a socially responsible friend, or a caring mentor. An equal number of supervisees are said by their probation officer to be earnestly motivated to change.[59] Those positive traits, leveraged by probation staff with considerable skill and training,[60] may explain—in part—the relatively positive results in the federal system.

F. THE FEDERAL APPROACH TO NONCOMPLIANCE

Probation officers' response to noncompliance, new crime and technical alike, is guided by the policies of the Judicial Conference of the United States, the U.S. Sentencing Commission, and the judge with jurisdiction over the case.[61] Federal policy does not afford much discretion when it comes to felony-level new crime violations. Such violations "shall promptly" be reported by probation officers to the court.[62] If the court finds the violations proven, the court "shall" revoke supervision and order the supervisee imprisoned between 4 and 63 months, depending on the nature of the violation and the supervisee's original offense and criminal history.[63] In instances where the proven violation relates to possession of a firearm, a controlled substance, refusal to participate in drug testing, or repeatedly testing positive for illicit drug use, revocation is mandatory.[64]

In contrast, probation officers have more discretion when dealing with misdemeanor new crime and technical violations. The violations do not have to be reported to the court if the "[probation] officer determines (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to reporting violations."[65] However, even if such violations are not reported to the court, probation officers are still required to take timely and proportional action in response to the violations.[66] Officers can act within existing conditions of supervision conditions or seek to have the conditions modified by the court with the consent with the supervisee.[67] But the preferred response is community-based rather than prison-based sanctioning.[68]

Probation offices and courts consider numerous complex and context-specific factors when deciding how to respond to noncompliance. Therefore, it is difficult to draw categorical conclusions about when revocation is appropriate. According to judiciary policy, each intervention in response to noncompliance should be individually tailored to relate to the nature and degree of the noncompliant behavior and to the context in which the behavior occurs. Contextual elements to be evaluated include the past history of the supervisee, his or her overall adjustment during this period of supervision, and the circumstances surrounding the current instance of noncompliance.[69] Another factor is the uneven availability of rehabilitative services and sanctioning facilities. For example, some districts have access to quality-intense treatment programs, halfway houses, and day-reporting centers, while other districts do not or not to the same degree.[70]

Because of these factors, an intervention used for one supervisee may not be

appropriate for another supervisee even if both engaged in the same conduct. While community-based interventions are preferred for technical violations, there are exceptions, such as when the possible intervention is not available,[71] where a pattern in the supervisee's past has been associated with a significant and imminent public safety threat, or where there is repeated noncompliance after less-intrusive community-based interventions have failed.[72]

The ultimate objective for officers is to apply the general principles of managing noncompliance to the individual case. Those supervising supervisees always need to individualize the response and to be prepared for exceptions to the rules.[73] All responses to noncompliance that involve substantive changes to the terms or conditions of supervision are subject to the Federal Rules of Criminal Procedure and require the supervisee's consent, or a court order after the supervisee is afforded a host of procedural protections.[74]

The probation officers' response to minor and technical violations must be both "controlling" and "correctional."[75] According to judiciary policy, "controlling strategies" serve the dual purpose of: (1) maintaining awareness of a supervisee's activities and (2) encouraging compliance. "Correctional strategies" are designed to provide the supervisee with additional information, skills, resources, and treatment for the purpose of facilitating positive behavioral change during the period of supervision and beyond. This two-pronged approach simultaneously provides a punitive consequence designed to deter further noncompliance and offers the supervisee the means to change his or her behavior over the long term.[76]

Examples of "controlling" community-based sanctions are home detention, imposition of a curfew, issuing a verbal or written reprimand, and intensifying reporting requirements. "Correctional" interventions include enhanced rehabilitative programming and treatment referrals. Two cases selected from the districts of Montana and the District of Columbia demonstrate the use of correctional and controlling interventions. Although the outcomes in the cases are different, they are representative of the use of interim sanctions across the country and the effort to avoid the use of costly incarceration (that would further burden the BOP).

> ***Defendant #1*** *was convicted of firearms violations and, with a history of substance abuse and mental health problems, repeatedly failed to follow probation officer instructions, missed treatment sessions and used alcohol despite an abstinence condition imposed by the court. Working together, the court and probation officer developed a response to the noncompliance that did not require imprisonment but rather 4 months home detention. The defendant was also required to read and report on books related to personal responsibility, and to maintain a written calendar with the times and dates of all treatment sessions clearly highlighted. Although there have been some minor setbacks, the defendant has been generally compliant and remains under supervision.*

> ***Defendant #2*** *was convicted of crack cocaine and firearms offenses. He was resistant to the probation officer's efforts to secure him full-time employment. The defendant also interfered with efforts to test him for drug use, and eventually he was found to be using cocaine. Working with the court, the probation office developed a comprehensive, prison alternative, response. The response included 90 days of (electronic) location monitoring, overt surveillance, increased office reporting and drug testing, coupled with outpatient and in-house drug treatment and referrals to support groups. Unfortunately, the defendant persisted in his cocaine use and remained resistant to supervision, and his supervision term was revoked.*

These cases are not atypical. An examination of a sample of cases, including all cases closed in five districts during 2012, indicated that 65 percent of supervisees had some degree of noncompliance during their supervision term. Only a third of those supervisees were ultimately revoked and returned to prison. The vast majority were brought back into compliance without resorting to incarceration. Consistent with the graduated nature of the sanction system in the federal courts, most supervisees—88 percent—were exposed to controlling and correctional strategies that operated within their initially imposed conditions.

G. COST CONSIDERATIONS TO REVOCATIONS

Alternatives to incarceration are an effective part of the federal judiciary's response to supervisee noncompliance, and using them produces considerable cost savings and greater potential for supervisee long-term rehabilitation. The most recent figures indicate that incarceration is nine times more expensive than community supervision, and a term of supervision in lieu of prison saves $25,600 a year per supervisee.[77] Community supervision also has the collateral benefit of allowing a supervisee to maintain employment and family connections and to participate in community-based treatment.

In addition, when supervisee rehabilitation does occur, the benefits to society go beyond avoiding the cost of new crimes and incarceration. Supervisees contribute to their communities through paying taxes, supporting dependents rather than relying on welfare, satisfying ordered financial penalties, and performing community service. Although computations are complicated when supervisees transfer across districts, available data indicate that the supervisees completing supervision in fiscal year 2012 paid in the vicinity of $645 million in restitution, fines, and assessments. The supervisees also contributed $4 million worth of community service, applying the current minimum wage to their more than 600,000 hours of service. And assuming conservatively that the persons who completed supervision successfully paid $3,000 in taxes (income, sales, real estate), another $115 million is added to the total.

H. OPPORTUNITIES AND CHALLENGES

Clearly, the probation system cannot unilaterally solve the BOP's overcrowding problem.[78] The number of persons revoked from supervision and returned back to the BOP is relatively small when compared to other drivers of the prison population.[79] However, although it is not a major contributor to the overcrowding problem, the probation and pretrial services system can play a role in alleviating it. The Urban Institute stated in a recent study: "While some aspects of the federal system differ from the states, many lessons can be learned from the state experience. Chief among them is the need for the federal government to enhance its community corrections capabilities and resources as it develops strategies to contain its institutional population and accompanying costs."[80]

The probation system could assume responsibility for inmates released early pursuant to a new statute or in response to policy changes in the Department of Justice allowing for greater community placement.[81] Such an approach has been implemented recently to address budget crises at the state level. There are examples where states have strategically shifted correctional resources from prison to community corrections, reducing overall corrections costs and crime. The Department of Justice has expressed support for such

measures.[82] The probation system could also serve as a greater sentencing option, with more defendants being sentenced directly to supervision terms rather than to prison.[83] The fact is that supervision offers a lot of appeal: an opportunity for defendants to rehabilitate and redeem themselves, the ability to quickly detect and respond to changes in criminogenic risk, and enforcement of community-based punitive conditions (e.g., fines, community service, house arrest, employment restrictions), all at a relatively low cost.

There are risks and benefits to these suggestions. Most would agree that imprisonment carries a greater punitive and incapacitation punch than does supervision, but it is costly and may make some offenders worse in the long run.[84] On the other hand, supervision is relatively inexpensive and offers a degree of deterrence and incapacitation,[85] but the community is at greater immediate risk of harm from a wayward supervisee than it is from an inmate behind bars. The challenge is correctly determining which sentencing option or combination of options will produce the best result. That daunting task rests with U.S. district court judges. Even if judges were inclined to use supervision more often to alleviate prison overcrowding and further the goals of sentencing generally, their discretion is currently limited by statutes, advisory guidelines, and procedural rules that suggest and in some cases mandate lengthy custody terms and prohibit judges from revisiting a prison sentence once it is imposed.[86]

Another complicating fact in relation to expanding the role of community supervision is that sequestration and other financial reductions are reducing the capacity of the probation and pretrial services system. Specifically, staffing and treatment resources have been on the decline.[87] The system's ability to promote positive behavioral change and to timely detect noncompliance will diminish over time, especially if programs like PCRA and STARR cannot be maintained and officers are saddled with large caseloads populated by higher-risk supervisees. The Vera Institute noted that "[w]ithout funds sufficient to ensure that people are receiving appropriate and individualized supervision, communities may see high failure rates, increased victimization, and delayed rather than avoided costs as understaffed agencies return [supervisees] to costly jail and prison beds on technical violations of probation or parole conditions or rules."[88] In addition, with less money to spend on alternative sanctions for violations, it is possible that courts may be forced to revoke more rather than fewer supervisees, even if the overall supervision population remains unchanged.

One source for optimism, however, is that the savings from using supervision in lieu of incarceration is substantial, amounting to tens of thousands of dollars per case.[89] Those savings could be drawn upon by Congress and the agencies involved to experiment with greater use and innovation in community supervision, ideally better protecting the public, reducing costs, and alleviating overcrowding at the BOP.

References

Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services. *An Overview of Federal Post Conviction Risk Assessment*. September 2011, http://www.uscourts.gov/uscourts/FederalCourts/PPS/PCRA_Sep_2011.pdf

Administrative Office of the U.S. Courts. *Guide to Judiciary Policy.* Posted on JNET (federal judiciary intranet).

Administrative Office of the U.S. Courts. National Probation Automated Case Tracking System (PACTS) Database and Decision Support System (DSS). Washington, DC.

Baber, L. "Results-based Framework for Post-conviction Supervision Recidivism Analysis." *Federal Probation*, 74, no. 3 (2010).

Baber, L.M., and J. L. Johnson. "Early Termination of Supervision: No Compromise to Community Safety." *Federal Probation,* 77, no. 2 (2013).

Byrne, J., A. Gelb, and J. Horowitz. *Maximum Impact: Targeting Supervision on Higher-Risk People, Places and Times.* Washington, DC: Pew Center for the States, 2009.

Carson, E., and W. Sabol. *Prisoners in 2011.* Washington, DC: Bureau of Justice Statistics, 2012.

Devers, L. *Plea and Charge Bargaining, Research Summary.* Arlington, Virginia: CSR, Inc., 2011.

Dowden, C., and D.A. Andrews. "The Importance of Staff Practices in Delivering Effective Correctional Treatment: A Meta-analytic Review of Core Correctional Practices." *International Journal of Offender Therapy and Comparative Criminology*, 48 (2004): 203–214.

Drazga-Maxfield, L., M. Harer, T. Drisko, C. Kitchens, and S. Meacham. *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines.* Washington, DC: U.S. Sentencing Commission, 2004.

Eaglin, J., S. Gilbert, L. Hooper, and P. Lombard. *Descriptive Information About Offenders Grouped by Their RPI Scores.* Washington, DC: Federal Judicial Center, 1997.

Federal Bureau of Prisons. *About the Bureau of Prisons.* Washington, DC, 2011, http://www.bop.gov/news/PDFs/ipaabout.pdf.

Federal Bureau of Prisons. *Weekly Population Report*. Washington, DC, 2013, http://www.bop.gov/locations/weekly_report.jsp.

Federal Defenders of New York, Eastern and Southern Districts of New York. *Information for Clients and Families, Supervised Release.* Posted 2013, http://federaldefendersny.org/information-for-client-and-families/supervised-release.html.

Government Accountability Office. *Bureau of Prisons: Evaluating the Impact of Protective Equipment Could Help Enhance Officer Safety.* Washington, DC, 2011.

Government Accountability Office. *Bureau of Prisons: Growing Inmate Crowding Negatively Affecting Inmates, Staff and Infrastructure.* Washington, DC, 2012.

Hansen, C. "Cognitive-Behavioral Interventions: Where They Come From and What They Do." *Federal Probation*, 72, no. 2 (September 2008).

Hughes, T., and D. Wilson. *Reentry Trends in the United States.* Washington, DC: Bureau of Justice Statistics, 2003.

Johnson, James L., Christopher T. Lowenkamp, Scott W. VanBenschoten, and Charles R. Robinson. "The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA)." *Federal Probation Journal,* 75, no. 2 (September 2011).

Judicial Business of the U.S. Courts. www.uscourts.gov.

Kent, C. "OPPS Releases Search and Seizure Data for Calendar Year 2012." *News & Views.* Washington, DC: Administrative Office of the U.S. Courts, April 1, 2013.

King, R., M. Mauer, and M. Young. *Incarceration and Crime: A Complex Relationship.* Washington, DC: The Sentencing Project, 2005.

Langan, P., and D. Levin. *Recidivism of Prisoners Released in 1994.* Washington, DC: Bureau of Justice Statistics, 2002.

LaVigne, N., and J. Samuels. *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions.* Washington, DC: Urban Institute, 2012.

Levitt, S.D. "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation." *The Quarterly Journal of Economics*, 111, no. 2 (1996).

Lowenkamp, C., A. Holsinger, C. Robinson, and M. Alexander. "Diminishing or Durable Treatment Effects of STARR? A Research Note on 24-Month Re-Arrest Rates." *Journal of Crime and Justice* (2012), http://www.tandfonline.com/doi/abs/10.1080/0735648X.2012.753849

Lowenkamp, C., J. Johnson, A. Holsinger, S. VanBenschoten, and C. Robinson. "The Federal Post Conviction Risk Assessment (PCRA): A Construction and Validation Study." *Psychological Services* (2013).

MacKenzie, Doris Layton. "Evidence-Based Crime Prevention." *Reducing the Criminal Activities of Known Offenders and Delinquents*. Ed. David Farrington, Doris Layton Mackenzie, Lawrence Sherman, and Brandon C. Welsh. New York: Routledge, 2006.

MacKenzie, Doris Layton. *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents.* New York: Cambridge University Press, 2006.

Mallik-Kane, K., B. Parthasarathy, and W. Adams. *Examining Growth in the Federal Prison Population, 1998 to 2010.* Washington, DC: Urban Institute, 2012.

Marvel, T., and C. Moody. "Prison Population and Crime Reduction." *Journal of Quantitative Criminology,* 10: 109–139.

McGarrell, E., N. Kroovand-Hipple, N. Corsaro, T. Bynum, H. Perez, C. Zimmermann, and M. Garmo. *Project Safe Neighborhoods—A National Program to Reduce Gun Crime: Final Project Report.* Ann Arbor, MI: Michigan State University, 2009.

McGarry, P., A. Shames, A. Yaroni, K. Tamis, R. Subramanian, L.B. Eisen, L. Digard, R. Delaney, and S. Sullivan. *The Potential of Community Corrections To Improve Communities and Reduce Incarceration*. New York, NY: Vera Institute of Justice, 2013, http://www.vera.org/sites/default/files/resources/downloads/potential-of-community-corrections.pdf.

Motivans, M. *Immigration Offenders in the Federal Justice System, 2010.* Washington, DC: Bureau of Justice Statistics, 2012.

Motivans, M., and T. Kyckelhahn. *Federal Prosecution of Child Sex Exploitation Offenders, 2006*. Washington, DC: Bureau of Justice Statistics, 2007.

Myfoxmemphis.com. "Feds cracking down on repeat offenders." Posted April 3, 2013, updated April 10, 2013, http://www.myfoxmemphis.com/story/21872408/feds-cracking-down-on-repeat-offenders

Nagin, D., F. Cullen, C. Jonson. "Imprisonment and Reoffending." *Crime and Justice*, 38, no. 1 (2009), 115–200.

Oleson, J.C., S. VanBenschoten, C. Robinson, C. Lowenkamp, and A. Holsinger. "Actuarial and Clinical Assessment of Criminogenic Needs: Identifying Supervision Priorities Among Federal Probation Officers." *Journal of Crime and Justice,* 35 (2012).

Petersilia, Joan. "Community Corrections: Probation, Parole, and Prisoner Reentry." *Crime and Public Policy.* Ed. James Q. Wilson and Joan Petersilia. New York: Oxford University Press, 2011.

Pew Center on the States. *State of Recidivism: The Revolving Door of America's Prisons.* Washington, DC: The Pew Charitable Trusts, 2011.

Piehl, Anne Morrison, and Bert Useem. "Prisons," in *Crime and Public Policy.* Ed. James Q. Wilson and Joan Petersilia. New York: Oxford University Press, 2011.

Rhodes, W., C. Dyous, R. Kling, D. Hunt, and J. Luallen. *Recidivism of Offenders on Federal Community Supervision.* Cambridge, Massachusetts: Abt Associates, 2012.

Robinson, C.R., S.W. VanBenschoten, M. Alexander, and C.T. Lowenkamp. "A Random (Almost) Study of Staff Training Aimed at Reducing Re-arrest (STARR): Reducing Recidivism through Intentional Design." *Federal Probation*, *75*, no. 2 (September 2011).

Robinson, C., C. Lowenkamp, C. Holsinger, S. VanBenschoten, M. Alexander, and J.C. Oleson. "A Random Study of Staff Training Aimed at Reducing Re-arrest (STARR): Using Core Correctional Practices in Probation Interactions." *Journal of Crime and Justice,* 35 (2012).

Rowland, Matthew G. Letter to chief U.S. probation and pretrial services officers, dated May 17, 2013, on federal judiciary intranet (JNET), http://jnet.ao.dcn/sites/default/files/pdf/PPSAD13002.pdf.

Sabol, W., and J. McGready. *Time Served in Prison by Federal Offenders, 1986–97.* Washington, DC: Bureau of Justice Statistics, 1999.

"Top 100 Biggest Cities (2013)." http://www.city-data.com/top1.html.

U.S. Attorney's Office—Eastern District of Virginia. Project Exile, http://www.ojjdp.gov/pubs/gun_violence/profile38.html

U.S. Department of Justice. *Fiscal Year 2013 Budget Request: Prisons and Detention Fact Sheet*. Washington, DC, 2012.

U.S. Department of Justice. Office of the Inspector General, Evaluation and Inspections Division. *The Federal Bureau of Prisons' Compassionate Release Program*. April 2013, http://www.justice.gov/oig/reports/2013/e1306.pdf.

U.S. Department of Justice. *Federal Prison System, FY 2013 Congressional Budget, Buildings and Facilities.* Washington, DC, 2013, http://www.justice.gov/jmd/2013factsheets/prison-detention.pdf

U.S. Sentencing Commission. *Federal Offenders Sentenced to Supervised Release.* Washington, DC, 2010.

U.S. Sentencing Commission. Federal Sentencing Guidelines (Washington, DC: 2012).

U.S. Sentencing Commission. *Overview of Statutory Mandatory Minimum Sentences*. Washington, DC: 2009, http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20090710_StC_Mandatory_Minimum.pdf.

U.S. Sentencing Commission. *2010 Sourcebook of Federal Sentencing Statistics.*

U.S. Sentencing Commission. Notice of Proposed Priorities, #7, "Undertaking a multi-year review of federal sentencing practices pertaining to violations of conditions of probation and supervised release, including possible consideration of amending the policy statements in Chapter Seven of the Guidelines Manual," http://www.ussc.gov/Legal/Federal_Register_Notices/20130530_FR_Proposed_Priorities.pdf

Vance, S. "Federal Re-entry Court Programs: A Summary of Recent Evaluations." *Federal Probation*, 75, no. 2 (September 2011).

Vincent, B., and P. Hofer. *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings.* Washington, DC: Federal Judicial Center, 1994, http://www.fjc.gov/public/pdf.nsf/lookup/conmanmin.pdf/$file/conmanmin.pdf.

Visher, C., N. Smolter, and D. O'Connell. "Workforce Development Program: A Pilot Study in Delaware." *Federal Probation*, 74, no. 3 (December 2010).

West, H., and W. Sabol. *Prisoners in 2007.* Washington, DC: Bureau of Justice Statistics, 2012.

Woods, James. A., Statistics Division, Administrative Office of the U.S. Courts. Memo, June 10, 2013.

Wroblewski, Jonathan, Department of Justice. Letter to Sentencing Commission. July 11, 2013, p. 13, http://www.justice.gov/criminal/foia/docs/2013annual-letter-final-071113.pdf.

Endnotes

1. The author would like to thank Nancy Beatty and Stephen Vance of the Administrative Office of the U.S. Courts (AO) for their input on this article and the AO's Dong Nguyen and Ann Meeker of the District of Kansas for assisting in the collection of data.

2. Supervision violators constituted 5.3 percent of the inmate population in 1998, and 3.4 percent in 2010. K. Mallik-Kane, B. Parthasarathy, and W. Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010* (Washington, DC: Urban Institute, 2012), p. 5, Table 1. See also U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (Washington, DC., 2010), p. 69 ("According to data provided by the BOP […], at the end of calendar year 2009 […], there were 207,815 federal inmates in BOP custody serving sentences of imprisonment; slightly more than six percent […] of them were serving prison sentences imposed after revocation of their terms of supervised release.").

3. For purposes of simplicity, this article refers to all persons under post-conviction as "supervisees." In reality, the system supervises: probationers; supervised releases; military

parolees; civilian parolees; mandatory releases; juvenile delinquents; persons conditionally discharged (incompetent to stand trial, etc.), and sexually dangerous persons.

4. Federal Bureau of Prisons, *About the Bureau of Prisons* (Washington, DC, 2011), http://www.bop.gov/news/PDFs/ipaabout.pdf. See also H. West and W. Sabol, *Prisoners in 2007* (Washington, DC: Bureau of Justice Statistics, 2012), Table 1; Federal Bureau of Prisons. *Weekly Population Report* (Washington, DC, 2013).

5. W. Sabol and J. McGready, *Time Served in Prison by Federal Offenders, 1986–97* (Washington, DC: Bureau of Justice Statistics, 1999); N. LaVigne and J. Samuels, *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012).

6. Federal Bureau of Prisons, *Weekly Population Report* (Washington, DC, 2013); "Top 100 Biggest Cities (2013)" http://www.city-data.com/top1.html

7. Government Accountability Office, *Bureau of Prisons: Growing Inmate Crowding Negatively Affecting Inmates, Staff and Infrastructure* (Washington, DC, 2012); Government Accountability Office, *Bureau of Prisons: Evaluating the Impact of Protective Equipment Could Help Enhance Officer Safety* (Washington, DC, 2011) ("From fiscal year 2000 through 2010, assaults on staff in BOP facilities increased from 1,188 to 1,696. During this same period, the number of inmates per BOP staff member increased from 4.13 in fiscal year 2000 to 4.82"); U.S. Department of Justice, *Fiscal Year 2013 Budget Request: Prisons and Detention Fact Sheet* (Washington, DC, 2012); U.S. Department of Justice, *Federal Prison System, FY 2013 Congressional Budget, Buildings and Facilities* (Washington, DC, 2013), http://www.justice.gov/jmd/2013factsheets/prison-detention.pdf

8. For various reasons, it is difficult to definitively say if the promotion of community safety has been achieved at a reasonable price. See S.D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation," *The Quarterly Journal of Economics*, 111, no. 2 (1996): 319–351 ("While calculations of the costs of crime are inherently uncertain, it appears that the social benefits associated with crime reduction equal or exceed the social costs of incarceration for the marginal prisoner."); R. King, M. Mauer, and M. Young, *Incarceration and Crime: A Complex Relationship* (Washington, DC: The Sentencing Project, 2005) ("While incarceration is one factor affecting crime rates, its impact is more modest than many proponents suggest, and is increasingly subject to diminishing returns."); T. Marvel and C. Moody, "Prison Population and Crime Reduction," *Journal of Quantitative Criminology,* 10: 109–139 (reviewing 44 studies on the impact of prison populations on crime and concluding that "[r]esearchers reach extremely disparate estimates concerning this impact"); Anne Morrison Piehl and Bert Useem, "Prisons," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), 541 ("'To the extent that higher rates of incarceration cause reductions in crime, expanding the use of prison has practical social value…. The size of the impact is likely to depend on the scale of imprisonment. Expansions of prison populations will add to deterrence, but if deterrence is already high, then its impact on crime may be low. Similarly, prison expansion will increase incapacitation, but if these expansions involve less serious offenders, either by expanding the categories of crime or by the inclusion of less serious offenders within crime type, again the practical gains may be small. And some authors argue that expansions of prison will lead to increases in crime rates, as the community disruption impacts swamp the other mechanisms…. The crucial issue is not whether some negative effects occur in communities; they most certainly do….Rather, the key question for the policy debate is whether those effects overwhelm the crime-reducing mechanisms of prison—deterrence and incapacitation—which also most certainly occur under present conditions."); Doris Layton MacKenzie, *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents* (New York: Cambridge University Press, 2006), 36 ("[H]as the dramatic increase in correctional populations been associated with a corresponding decrease in the crime rate? The answer is not clear….Although almost everyone acknowledges that the increased incarceration rates have had some effect on decreasing crime rates, a great deal of controversy exists about the size of the impact….The majority of the studies examining the effect of incapacitation demonstrate a small but positive effect in reducing crime….Debates continue about whether the reduction in crime is worth the additional costs for building and maintaining prisons… and whether there are other more cost-effective methods of crime reduction.").

9. K. Mallik-Kane, B. Parthasarathy, and W. Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010* (Washington, DC: Urban Institute, 2012) ("This period of growth coincided with several major federal initiatives, including the Sentencing Reform Act of 1984, which introduced mandatory federal sentencing guidelines, implemented an 85 percent truth-in-sentencing requirement, and abolished discretionary parole. Other reforms, such as the Anti-Drug Abuse Acts of 1986 and 1988, increased statutory penalties, particularly for drug offenders. These and other lengthy mandatory sentencing requirements continued to affect federal prison population growth through the 1990s and 2000s.").

10. Federal Bureau of Prisons, *About the Bureau of Prisons* (Washington, DC, 2011), http://www.bop.gov/news/PDFs/ipaabout.pdf; M. Motivans and T. Kyckelhahn, *Federal Prosecution of Child Sex Exploitation Offenders, 2006* (Washington, DC: Bureau of Justice Statistics, 2007) ("Child sex offenses among the fastest growing offenses of the Federal criminal caseload").

11. K. Mallik-Kane, B. Parthasarathy, and W. Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010* (Washington, DC: Urban Institute, 2012), 1–2.

12. E. Carson and W. Sabol, *Prisoners in 2011* (Washington, DC: Bureau of Justice Statistics, 2012), Table 12 (admissions data for 2011); N. LaVigne and J. Samuels, *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012), 5.

13. The average prison term upon revocation in 2010 was 10 months, and that average has held consistent for the past decade, with the mode sentence being 6 months. Administrative Office of the U.S. Courts, National PACTS Reporting Database. The average sentence for new federal convictions under the sentencing guidelines in 2010 was 44.3 months. U.S. Sentencing Commission, *2010 Sourcebook of Federal Sentencing Statistics*, Table 13; K. Mallik-Kane, B. Parthasarathy, and W. Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010* (Washington, DC: Urban Institute, 2012), 5, Table 1 (Supervision violators constituted 5.3 percent of the supervisee population in 1998, and 3.4 percent in 2010); U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (Washington, DC, 2010), 69 ("According to data provided by the BOP […], at the end of calendar year 2009 […], there were 207,815 federal inmates in BOP custody serving sentences of imprisonment; slightly more than six percent […] of them were serving prison sentences imposed after revocation of their terms of supervised release.").

14. U.S. Sentencing Commission, Notice of Proposed Priorities, #7, "Undertaking a multi-year review of federal sentencing practices pertaining to violations of conditions of probation and supervised release, including possible consideration of amending the policy statements in Chapter Seven of the Guidelines Manual," http://www.ussc.gov/Legal/Federal_Register_Notices/20130530_FR_Proposed_Priorities.pdf; Letter from Jonathan Wroblewski at the Department of Justice to Sentencing Commission, July 11, 2013, p. 13 ("We fully support the Commission's review of recidivism and reoffending. We reiterate our hope that the review will focus in significant part on the circumstances under which offenders who violate their terms of supervised release have those terms of supervision revoked so that they are returned to federal prison."), http://www.justice.gov/criminal/

foia/docs/2013annual-letter-final-071113.pdf; N. LaVigne and J. Samuels, *The Growth & Increasing Cost of the Federal Prisons System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012), 6.

15. Judicial Business of the U.S. Courts (2002 and 2012), Table D-2.

16. Judicial Business of the U.S. Courts (2102), Table D-5.

17. Administrative Office of the U.S. Courts, National Probation Automated Case Tracking System Database and Decision Support System (Washington, DC); see also, U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (Washington, DC., 2010) ("Specifically, 49.4 percent of unsuccessfully closed immigration cases involved revocation for a major violation […] The high rate of unsuccessful closure (based on commission of a major violation) for immigration offenders appears to be explained by the large number of felony illegal reentry offenses committed by such non-citizen offenders whose supervision was reactivated upon their arrest in the United States."), 68; M. Motivans, *Immigration Offenders in the Federal Justice System, 2010* (Washington, DC: Bureau of Justice Statistics, 2012) ("Of immigration offenders first released from federal prison during 2007 following a U.S. district court commitment, 14% were readmitted to federal prison within 3 years. This was similar to a cohort of immigration offenders first released from federal prison during 2000, where 16% were readmitted to federal prison within 3 years…. As the window for observing returns to federal prison increases, the percentage of offenders returning to prison increases."), 36.

18. Administrative Office of the U.S. Courts, National Probation Automated Case Tracking System Database and Decision Support System (Washington, DC).

19. U.S.S.G. §5D1.1(c).

20. U.S.S.G. §5D1.1, Application Note 5.

21. Judicial Business of the U.S. Courts, Table E-2, 1997 and 2012.

22. Memo from James A. Woods, Administrative Office of the U.S. Courts, Statistics Division, June 10, 2013 (figure reflects total cases supervised during the year).

23. E. McGarrell, N. Kroovand-Hipple, N. Corsaro, T. Bynum, H. Perez, C. Zimmermann, and M. Garmo, *Project Safe Neighborhoods—A National Program to Reduce Gun Crime: Final Project Report* (Ann Arbor, MI: Michigan State University, 2009), iii ("Increased federal prosecution was intended to incapacitate chronic violent offenders as well as to communicate a credible deterrent threat to potential gun offenders."); Project Exile, U.S. Attorney's Office—Eastern District of Virginia (goal "[t]o reduce Richmond's homicide rate by detaining dangerous armed felons prior to trial and prosecuting them in Federal court."), http://www.ojjdp.gov/pubs/gun_violence/profile38.html; "Feds cracking down on repeat offenders," myfoxmemphis.com, posted April 3, 2013, updated April 10, 2013, http://www.myfoxmemphis.com/story/21872408/feds-cracking-down-on-repeat-offenders.

24. The Risk Prediction Index takes into account various factors, including the supervisee's criminal history, possession of a firearm in relation to the federal offense, the supervisee's age, employment, and education, and marital status. See, J. Eaglin, S. Gilbert, L. Hooper, and P. Lombard, *Descriptive Information About Offenders Grouped by Their RPI Scores* (Washington, DC: Federal Judicial Center, 1997).

25. United States Sentencing Commission Sourcebook, fiscal years 1996 and 2011, Tables 20; L. Drazga-Maxfield, M. Harer, T. Drisko, C. Kitchens, and S. Meacham, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (Washington, DC: U.S. Sentencing Commission, 2004), 10 ("Both [criminal history categories] and criminal history points predict recidivism, regardless of whether recidivism is measured with the primary definition or by a re-conviction only definition…. However, the most predictive result occurs when criminal history points are the measure used to predict the primary recidivism measure.").

26. *Guide to Judiciary Policy*, Vol. 8E, § 310.10(b), Administrative Office of the U.S. Courts ("Not all offenders require the same level of supervision to reach this goal [success under supervision and afterward]. It is the officer's job to distinguish among them and to implement supervision strategies that are appropriately matched with the offender's risks, needs, and strengths and neither more nor less intrusive than necessary to facilitate supervision goals. This is key to providing effective supervision that is individualized, proportional, and purposeful. It is also the essence of 'working smart,' by devoting the majority of officer time and system resources to the higher risk cases that need them most."); J. Byrne, A. Gelb, and J. Horowitz, *Maximum Impact: Targeting Supervision on Higher-Risk People, Places and Times* (Washington, DC: Pew Center for the States, 2009), 3–4 ("There is considerable evidence that concentrating both services and supervision on these higher risk, higher rate offenders will result in significant reductions in crime and victimization.").

27. 18 U.S.C. §§ 3603(2), 3603(3).

28. *Guide to Judiciary Policy*, Vol. 8E, § 450.

29. C. Kent, "OPPS Releases Search and Seizure Data for Calendar Year 2012," *News & Views* (Washington, DC: Administrative Office of the U.S. Courts, April 1, 2013).

30. Various statutes and policies now require probation officers and police to share information. See, the Violent Crime Control and Law Enforcement Act (VCCA) of 1994, 103rd Congress (1993–1994), H.R.3355, Sec. 20417: Notification of Release of Prisoners. The Administrative Office of the U.S. Courts has developed an automated system, called the Law Enforcement Notification System (LENS), to satisfy the requirements of the VCCA. In addition, the AO has developed another system, Access to Law Enforcement Automated Systems (ATLAS), so that probation officers can be notified by law enforcement if persons under supervision are being investigated, have been arrested, or were the victims of crime. The system works across jurisdictions, so the notification can occur even if the person under supervision has left (with or without permission) the judicial district.

31. Technical violations usually refer to conduct that is not criminal in and of itself, but rather impermissible based on the supervisee's supervision status. Examples of technical violations include failure to report to a supervising probation officer, associating with known felons, and frequenting known drug and crime locations.

32. Administrative Office of the U.S. Courts, National Probation Automated Case Tracking System Database and Decision Support System, Washington, DC.

33. L. Devers, *Plea and Charge Bargaining, Research Summary* (Arlington, Virginia: CSR, Inc., 2011), 1 ("While there are no exact estimates of the proportion of cases that are resolved through plea bargaining, scholars estimate that about 90 to 95 percent of both federal and state court cases are resolved through this process"), 1; Federal Defenders of New York, Eastern and Southern Districts of New York, *Information for Clients and Families, Supervised Release*, posted 2013, http://federaldefendersny.org/information-for-client-and-families/supervised-release.html ("In some cases, the parties can reach an agreement where the client will admit to one or more of the specifications, and the other specifications will be dismissed. In some cases, the judge will allow the specification to remain open or pending, to give the client an opportunity to improve his compliance with the terms of supervision. After a certain period of good behavior, sometimes violation specifications can be dismissed or withdrawn.").

34. Judicial Business of the U.S. Courts, Table E-7A, Post-Conviction Cases Closed 12-Month Period Ending March 31, 2013, http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/E7ASep12.pdf.

35. L. Baber, "Results-based Framework for Post-conviction Supervision Recidivism Analysis," *Federal Probation*, 74, no. 3 (2010) (updated statistics will be published in future editions of *Federal Probation*).

36. W. Rhodes, C. Dyous, R. Kling, D. Hunt, and J. Luallen, *Recidivism of Offenders on Federal Community Supervision* (Cambridge, Massachusetts: Abt Associates, 2012).

37. Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, 2011); P. Langan and D. Levin, *Recidivism of Prisoners Released in 1994* (Washington, DC: Bureau of Justice Statistics, 2002); E. Carson and W. Sabol, *Prisoners in 2011* (Washington, DC: Bureau of Justice Statistics, 2012), Table 12; T. Hughes and D. Wilson, *Reentry Trends in the United States* (Washington, DC: Bureau of Justice Statistics, 2003) ("At least 95% of all State prisoners will be released from prison at some point; nearly 80% will be released to parole supervision.").

38. See the large number of Federal Bureau of Prisons program evaluations and research reports on their website: http://www.bop.gov/news/research_reports.jsp.

39. *Guide to Judiciary Policy,* Vol. 8E, Ch. 1, § 150(a).

40. *An Overview of Federal Post Conviction Risk Assessment*, Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services (September 2011), 2, footnote 5 (citing articles reporting on important research on risk, need, and responsivity), http://www.uscourts.gov/uscourts/FederalCourts/PPS/PCRA_Sep_2011.pdf; *Guide to Judiciary Policy*, Vol. 8E, Ch. 1, § 140(d) ("Officers carry out [their] responsibilities by assessing the risks, needs, and strengths of each offender to determine the appropriate level of supervision. They use skills from various disciplines to simultaneously monitor and, as necessary, control and correct offender behavior. These include the investigative skills of law enforcement and the treatment and service-delivery skills of social workers. Investigative skills are used for the primary purpose of planning for success rather than documenting failure. The primary focus of treatment and service-delivery skills is to improve circumstances that are linked to criminal behavior…").

41. Ibid., 3 ("Higher-risk persons require more intensive services in order to reduce reoffending, while lower-risk persons need less intervention. The risk level is determined by the presence or absence of criminogenic factors, which are personal characteristics and circumstances statistically associated with an increased chance of recidivism. Research has shown that actuarial devices in combination with professional judgment are generally more accurate and consistent than professional judgment alone, which is based solely on the experience and individualized assessment of clinicians, probation officers, and other criminal justice professionals.").

42. Ibid., 3 ("Empirical research has shown that the needs most associated with criminal activity include procriminal attitudes, procriminal associates, impulsivity, substance abuse, and deficits in educational, vocational, and employment skills. While an assessment of overall risk suggests the level of correctional services that should be used, the assessment of criminogenic needs suggests the appropriate factors that should be changed in order to reduce recidivism. Though static factors such as criminal history are good predictors of offending, they do not identify what needs should be targeted to reduce reoffending.").

43. C. Lowenkamp, J. Johnson, A. Holsinger, S. VanBenschoten, and C. Robinson, "The Federal Post Conviction Risk Assessment (PCRA): A Construction and Validation Study," *Psychological Services* (2013); J.C. Oleson, S. VanBenschoten, C. Robinson, C. Lowenkamp, and A. Holsinger, "Actuarial and Clinical Assessment of Criminogenic Needs: Identifying Supervision Priorities Among Federal Probation Officers," *Journal of Crime and Justice*, 35 (2012), 239; James L. Johnson, Christopher T. Lowenkamp, Scott W. VanBenschoten, and Charles R. Robinson, "The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA)," *Federal Probation*, *75*, no. 2 (September 2011).

44. C. Dowden and D.A. Andrews, "The Importance of Staff Practices in Delivering Effective Correctional Treatment: A Meta-analytic Review of Core Correctional Practices," *International Journal of Offender Therapy and Comparative Criminology*, 48 (2004): 203–214.

45. C. Robinson, C. Lowenkamp, C. Holsinger, S. VanBenschoten, M. Alexander, and J.C. Oleson, "A Random Study of Staff Training Aimed at Reducing Re-arrest (STARR): Using Core Correctional Practices in Probation Interactions," *Journal of Crime and Justice*, 35 (2012), 167; C. Lowenkamp, A. Holsinger, C. Robinson, and M. Alexander, "Diminishing or Durable Treatment Effects of STARR? A Research Note on 24-Month Re-Arrest Rates," *Journal of Crime and Justice* (2012), http://www.tandfonline.com/doi/abs/10.1080/0735648X.2012.753849; C.R. Robinson, S.W. VanBenschoten, M. Alexander, and C.T. Lowenkamp, "A Random (Almost) Study of Staff Training Aimed at Reducing Re-arrest (STARR): Reducing Recidivism through Intentional Design," *Federal Probation*, 75, no. 2 (September 2011).

46. S. Vance, "Federal Re-entry Court Programs: A Summary of Recent Evaluations," *Federal Probation*, 75, no. 2 (September 2011); C. Hansen, "Cognitive-Behavioral Interventions: Where They Come From and What They Do," *Federal Probation*, 72, no. 2 (September 2008); C. Visher, N. Smolter, and D. O'Connell, "Workforce Development Program: A Pilot Study in Delaware," *Federal Probation*, 74, no. 3 (December 2010).

47. Administrative Office of the U.S. Courts, National Probation Automated Case Tracking System Database and Decision Support System, Washington, DC.

48. *Guide to Judiciary Policy*, Vol. 8E, § 170(d) (probation officers are to "… build on offenders' strengths, and provide offenders with incentives to change").

49. *Guide to Judiciary Policy*, Vol. 8E, § 170(f) ("there is a rebuttable presumption that the intrusiveness and frequency of supervision activities will be reduced over time for stable, compliant offenders who are meeting their supervision objectives").

50. *Guide to Judiciary Policy*, Vol. 8E, § 380.10(b).

51. L. M. Baber and J. L. Johnson, "Early Termination of Supervision: No Compromise to Community Safety," *Federal Probation*, 77, no. 2 (2013). Specifically, early-terminated supervisees were arrested within three years at approximately half the rate of their counterparts who served full terms (i.e., 10.2 percent for early terminated supervisees vs. 19.2 percent for similarly situated full-term supervisees). In fiscal year 2012, more than 7,000 supervisees were early terminated, saving the judiciary more than $7.7 million.

52. W. Rhodes, C. Dyous, R. Kling, D. Hunt, and J. Luallen, *Recidivism of Offenders on Federal Community Supervision* (Cambridge, Massachusetts: Abt Associates, 2012).

53. Judicial Business of the U.S. Courts, Fiscal Year 2012, Table E-3.

54. Judicial Business of the U.S. Courts, Fiscal Year 2012, Table E-2.

55. U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (Washington, DC, 2010), 50.

56. W. Rhodes, C. Dyous, R. Kling, D. Hunt, and J. Luallen. *Recidivism of Offenders on Federal Community Supervision* (Cambridge, Massachusetts: Abt Associates, 2012), 3.

57. Administrative Office of the U.S. Courts, Electronic Reporting and Decision Support Systems.

58. W. Rhodes, C. Dyous, R. Kling, D. Hunt, and J. Luallen. *Recidivism of Offenders on Federal Community Supervision* (Cambridge, Massachusetts: Abt Associates, 2012), 3; Administrative Office of the U.S. Courts, Electronic Reporting and Decision Support Systems.

59. Ibid.

60. Administrative Office of the U.S. Courts, Decision Support System (more than half of federal probation officers have a master's degree or doctorate in a related field of study, and officers have an average of seven years prior job experience and 11 years with the federal probation system).

61. Title 18 U.S.C. § 3672 requires the Director of the Administrative Office of the U.S. Courts to "formulate general rules for the proper conduct of the [supervision] work" and that is accomplished in coordination with the Judicial Conference of U.S. Courts and guidance published in the *Guide to Judiciary Policy* and elsewhere. The U.S. Sentencing Commission is required under 28 U.S.C. § 994(a)(3) to issue guidelines or policy statements related to revocation of probation and supervised release. The Commission's current policy statements are found in Chapter 7 of the Commission's *Guidelines Manual*. Though the policy statements in Chapter Seven of the *Guidelines Manual* are non-binding, the Court is required to consider them, and failure to do so will constitute reversible error on appeal. U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release*, 2010, page 41. Ultimate authority to modify, terminate, or revoke the terms of supervision rests with the judge with jurisdiction over the case. See, 18 U.S.C. § v3583(e).

62. U.S.S.C. § 7B1.1, 7B1.2.

63. U.S.S.C. § 7B1.3(a)(1), 7B1.4(a).

64. 18 U.S.C. 3565(b), 3563(g), 3583(d), 3583(g).

65. U.S.S.C. § 7B1.2(b).

66. *Guide to Judiciary Policy*, Vol. 8E, Ch. 6, § 620(b).

67. Federal Rules of Criminal Procedure § 32.1(c)(2)(A).

68. *Guide to Judiciary Policy*, Vol. 8E, 620.30(a).

69. *Guide to Judiciary Policy*, Vol. 8E, § 620.20).

70. This could be a factor, for instance, when a court determines whether to grant an exception to mandatory revocation for testing positive for drugs. Section 3583(d) of Title 18 provides for a limited exception to the requirement that a court incarcerate an offender for possessing drugs: If a failed drug test constitutes the sole evidence of drug possession, and if the court finds that an offender would benefit from "an appropriate substance abuse treatment program," the court may substitute drug abuse treatment for imprisonment.

71. Intervention requirements should not be impractical in and of themselves (e.g., 80 hours of community service a week) or so burdensome that they will likely interfere with an offender's employment or family responsibilities (e.g., reporting to a distant probation office multiple times a week at 9:00 a.m.) or be beyond the offender's ability to achieve (e.g., getting a job within 24 hours). Unrealistic expectations facilitate failure rather than success. *Guide to Judiciary Policy*, Vol. 8E, § 620.20(d).

72. *Guide to Judiciary Policy*, Vol. 8E, §§ 620.20(e), 620.30(b)(3).

73. The following examples of possible exceptions are illustrative: First, a Driving under the Influence (DUI) is classified as a moderate-severity violation for which revocation is an option but is not favored. Requesting revocation may be appropriate, however, if the supervisee is under supervision for or has a history of DUI, or if there were aggravating circumstances present. Second, unauthorized association with a felon is classified as a low-severity violation, but there may be instances where the nature of the unauthorized association is so closely related to the supervisee's past pattern of criminal behavior that a request for revocation is warranted. Third, testing positive for drugs does not become a high-severity violation until the fourth instance, but a supervisee with a chronic criminal history marked by violence and a negative supervision history who tests positive for phencyclidine and is not attending treatment may be ripe for a revocation request well before the fourth positive. Fourth, the episodic drug user who is actively participating in treatment, is making progress towards other objectives, and is not considered a danger to self or others should be given more consideration. This may be the supervisee who was referred for treatment on the basis of one or more positive tests and, much later following a period of compliance, briefly relapses, thereby generating the third and fourth positives in rapid succession. It is this supervisee, the one who is working in treatment and who is otherwise compliant, for whom the exception to requesting revocation in the "High Severity" category may be appropriate if consistent with circuit case law. *Guide to Judiciary Policy*, Vol. 8E, § 620.50.10.

74. Federal Rules of Criminal Procedure § 32.1.

75. *Guide to Judiciary Policy*, Vol. 8E, § 610(c)(1).

76. *Guide to Judiciary Policy*, Vol. 8E, §§ 610(b), 620.30(e).

77. Letter from Matthew G. Rowland to chief U.S. probation and pretrial services officers dated May 17, 2013 on federal judiciary intranet (JNET), http://jnet.ao.dcn/sites/default/files/pdf/PPSAD13002.pdf

78. N. LaVigne, J. Samuels, *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012) ("As with the federal system, states across the country have also experienced burgeoning criminal justice populations and costs. Many have implemented policies to control the growth and increase the effectiveness of spending to enhance public safety goals. These policies include both legislative and administrative measures that change diversion practices; revise sentencing laws; adjust good time and earned time provisions for incarcerated offenders; improve community corrections to reduce the likelihood of recidivism and the return of offenders to prison for technical violations; employ risk and needs assessment tools more consistently across the criminal justice system; and improve correctional and supervision practices to be more consistent with evidence-based practices").

79. Ibid., 7 ("The main drivers are front-end decisions about who goes to prison and for how long.… Changes in prison admissions and the time served by offenders are the primary determinants of growth in the [federal] prison population. These factors, in turn, can be understood as the cumulative end product of investigative and prosecutorial practices that determine the number and types of offenses brought to federal courts; decisions about whether to convict in a given case; sentencing decisions about whether and for how long to incarcerate convicted offenders; and release practices that govern length of stay. Together, changes in these factors shape changes in the size and composition of the prison population.").

80. Ibid., at 6; *see also* J. Petersilia, "Community Corrections: Probation, Parole, and Prisoner Reentry," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), at page 500 ("Policymakers at all levels of government are asking the same question: can [community corrections] be strengthened and improved, thereby increasing public safety, decreasing system costs, and fostering offender reintegration?").

81. A bipartisan bill titled the "Public Safety Enhancement Act of 2013" was recently introduced in the U.S. House of Representatives. Among other things, the bill would establish supervisee risk and needs assessment as the cornerstone of the prison system and reward prisoners who reduce their risk of recidivism by providing them with the ability to earn time credits and be placed in home confinement in the community in lieu of a period of imprisonment. See also N. LaVigne and J. Samuels, *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012) at 6 ("Back-end changes can help alleviate the pressure. Although the main drivers of the BOP population are the number of offenders and sentence length on the front end, sentence reductions on the back end can also ease crowding and slow the population growth trend. While BOP plays a lead implementation role in most back-end sentence reductions, current authorities are limited by statute and, in some cases, budgetary constraints.").

82. *See* Letter from Jonathan Wroblewski at the Department of Justice to Sentencing Commission, July 11, 2013, p. 13 (describing recent Justice Reinvestment initiatives in the states, stating that such reforms "have decreased corrections spending while improving public safety in many of these states by redirecting some resources that might otherwise go to expensive imprisonment towards less expensive community-based efforts," that these initiatives "commonly include two elements that [the Department of Justice] believe[s] are needed at the federal level: redirected funding and incentives to reduce reoffending, and adjustments to sentencing for non-violent drug offenders," and describing specific state efforts to "hire new staff to reduce community supervision officer caseloads" and to "provide grants to strengthen community-based supervision, sanctions, and programs"). http://www.justice.gov/criminal/foia/docs/2013annual-letter-final-071113.pdf.

83. N. LaVigne and J. Samuels, *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* (Washington, DC: Urban Institute, 2012), 13 ("Efforts to manage future prison population growth may require attention to all stages of the federal criminal justice process. These findings suggest that targeting the length of prison terms—through modified sentencing practices, prison release policies, or both—has the potential to impact this leading source of prison population growth."). See also LaVigne and Samuels 2012 at 6 ("Front-end changes can most directly contain future growth. Reducing sentence length, particularly for drug offenders, would be the most direct way to slow the projected growth of the BOP population. Decreasing the number of offenders committed to prison–both sentenced offenders and supervision violators–would also reduce the long-term projections and cost for the system. BOP does not control either of these drivers.").

84. D. Nagin, F. Cullen, and C. Jonson, "Imprisonment and Reoffending," *Crime and Justice*, 38, no. 1 (2009), 115–200, 123 ("It is possible that these two global views—prisons as criminogenic and prisons as a preventative deterrent—are both correct. Thus, imprisonment might have differential effects, pushing some offenders toward and others away from crime. The effect might be conditioned by characteristics of the offender (e.g., low risk or high risk), of the institution (e.g., harsh or therapeutic), or of the sanction (e.g., length). And the effect is comparative, assessed in relation to what a noncustodial sanction, if applied instead of custody, might have entailed. Current research is not sufficiently developed to address issues of this specificity.").

85. D.L. Mackenzie, "Evidence-Based Crime Prevention," in *Reducing the Criminal Activities of Known Offenders and Delinquents*, ed. David Farrington, Doris Layton MacKenzie, Lawrence Sherman, and Brandon C. Welsh (New York: Routledge, 2006), 330–404, 341, 343 ("Theoretically, increasing the surveillance and control over offenders in the community will prevent criminal activities by reducing both their capacity and their opportunity to commit crimes. Additionally, it is expected that the punitive nature of sanctions will act as a specific deterrence to reduce offenders' future criminal activity. [Researchers] have found that re-arrests are reduced when offenders receive treatment services in addition to increased surveillance and control of [intensive supervision programs].").

86. See 18 U.S.C. § 3553 (general factors to be considered in imposing sentence); Federal Sentencing Guidelines (Washington, DC: U.S. Sentencing Commission, 2012); B. Vincent and P. Hofer, *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings* (Washington, DC: Federal Judicial Center, 1994), 1, http://www.fjc.gov/public/pdf.nsf/lookup/conmanmin.pdf/$file/conmanmin.pdf, (identifying at least 60 federal statutes providing mandatory minimum penalties in effect as of 1994); *Overview of Statutory Mandatory Minimum Sentences* (Washington, DC: U.S. Sentencing Commission, 2009), 1, http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20090710_StC_Mandatory_Minimum.pdf (citing 171 federal offenses with mandatory minimum penalties in effect as of 2009); 18 U.S.C. § 3582(b) (Sentences of imprisonment are final upon imposition, subject only to review by an appellate court, adjustment by the district court for a "clear error" or motion of the government under Federal Rule of Criminal Procedure § 35, or challenge by a defendant under 28 U.S.C. § 2255 for an illegal or unconstitutional sentence. Also, the court may consider release of an inmate based on his or her being infirm or other compelling reason, but only upon motion under 18 U.S.C. § 3582(c) by the Director of the Federal Bureau of Prisons.). See, U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Federal Bureau of Prisons' Compassionate Release Program* (April 2013), 1, http://www.justice.gov/oig/reports/2013/e1306.pdf ("We found that, on average, only 24 inmates are released each year through the BOP's compassionate release program.").

87. In fiscal year 2013, the salary account for probation and pretrial services was reduced 14 percent and treatment resources were reduced 20 percent. Staffing at the end of fiscal year 2012 was the same as fiscal year 2002, although the number of supervisees increased 29 percent and, as noted earlier in this article, the supervisee risk profile has increased.

88. P. McGarry, A. Shames, A. Yaroni, K. Tamis, R. Subramanian, L.B. Eisen, L. Digard, R. Delaney, and S. Sullivan, *The Potential of Community Corrections To Improve Communities and Reduce Incarceration* (New York, NY: Vera Institute of Justice, 2013), 9, http://www.vera.org/sites/default/files/resources/downloads/potential-of-community-corrections.pdf

89. As Joan Petersilia, a renowned scholar of community corrections, put it when discussing community corrections at the state level, "The current fiscal crisis has provided an opening to discuss the appropriate role for a strong community corrections system…. Criminologists have spent the last 20 years improving risk assessments and evidence-based program data to reliably separate those offenders who belong in prison from those who can be kept in the community. It would be a shame if the current prison-crowding crisis served to simply dump offenders into overloaded [community corrections] agencies without commensurate financial support. If that happens, history will again repeat itself: offenders will recidivate, community corrections will be blamed for their high failure rates, the public will be again convinced that 'nothing works,' and increases in prison commitments will follow. On the other hand, if we use this crisis as an opportunity to implement evidence-based community correctional programs, we might finally demonstrate the critical role that community corrections agencies can play in the promotion of community safety, successful reintegration, and individual accountability." ("Community Corrections: Probation, Parole, and Prisoner Reentry," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), 527.)