

Implementing

Harm Reduction

in Pennsylvania's Community Supervision Systems

January 2024

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Background: The Problem

The state of community supervision: Pennsylvania is an outlier in community supervision

Pennsylvania has nearly a quarter of a million people under supervision by county probation departments and the highest incarceration rate¹ in the northeast. 942 per 100,000 adults² are on probation as of December 31, 2021.

In Pennsylvania, the only limit³ to a probation sentence is the statutory maximum for the crime charged and judges can unilaterally⁴ decide to revoke probation, extend state supervision for years, or send someone to jail based on the "preponderance of the evidence." Pennsylvania, unlike most states, allows judges to place people on probation for years⁵, even decades. 42 Pa. C.S. 9913⁶ gives probation officers the power to "arrest with or without warrant, writ, rule or process, any person on probation, intermediate punishment or parole under the supervision of the court for failing to report as required... or for any other violation of that person's probation." If someone on probation is arrested for a new crime, a probation officer may lodge a detainer⁵ that holds the probationer in custody indefinitely until the resolution of the new case.

Recently, Pennsylvania courts have limited probation officers' ability to revoke people's probation. Commonwealth v Foster⁷ established that a person may only be revoked for a specific condition of probation. In Pennsylvania, only the trial court and not the probation officer may assign conditions of supervision⁸.

Supervision requirements are burdensome.

In Pennsylvania, probation requirements⁹, such as frequent reporting, ongoing and random drug testing, curfews, electronic monitoring, and the payment of fines and fees, make it difficult for many people on probation and parole to keep a job, maintain stable housing, participate in drug or mental health treatment, or fulfill financial obligations, such as child support.

The recently signed SB 838¹⁰ introduces administrative probation for individuals that owe 50% of their restitution or made a good faith effort to pay. This provides for reduced supervision but also may result in individuals remaining on probation for the sole purpose of payment of restitution. It is also unclear if missed payments would be considered technical violations.

Technical Violations

Technical violations of supervision are a leading driver of incarceration in Pennsylvania

While probation was originally intended to serve as an alternative to incarceration, nationally nearly 25 percent of all state prison admissions¹¹ in 2017 were associated with technical violations of supervision - such as breaking rules or failing drug tests according to the Council State Governments. Intensive supervision programs—which typically involve high rates of surveillance, drug testing, and swift punishment—may be associated with high rates of failure¹², especially for individuals with substance use issues. Substance-involved people on probation are at a greater risk of technical violations¹³ than those who do not use substances. And, a study found that substance use-related violations and failures to report are more likely to result in more punitive outcomes:¹⁴

In Pennsylvania more than 50%¹⁵ of people sent to state prison each year are there for supervision violations. And as one of just a handful of states¹⁶ that does not limit terms of probation, mass supervision in Pennsylvania is driving our mass incarceration problem. This stresses county budgets and is a major driver of the excessive caseloads managed by probation and parole officers in the commonwealth. According to the Pennsylvania Commission on Crime and Delinquency 2020 County Adult Probation and Parole Caseload Statistics Report,¹⁷ counties had a 2902 average caseload with an 89 average caseload per staff which was a 13.9% increase over the prior 10 years.

Substance-related technical violations drive probation re-sentencing.

In Pennsylvania, among those resentenced for technical violations of probation, up to 50.9 percent were resentenced for a substance-related technical violation. Technical violations, rather than new criminal offenses, account for approximately 80% of resentencing events. Technical violations are a violation of the rules of supervision such as missing an appointment or having a positive drug test. Substance use was directly implicated in up to 30.5 percent of all resentencing events.¹⁷ The Philadelphia Inquirer observed 98 preliminary hearings for people in Philadelphia incarcerated for violations.¹⁸ In close to half, return to use or failure to complete treatment were key factors, though often the primary violation was absconding or a new drug charge. Absconding is the failure to report to probation. Often individuals abscond because they have used and know they will test positive on a drug test.

Technical Violations Contd.

Resentencing/technical violations for substance use are costly.

Research has shown that incarceration is no more effective at reducing recidivism¹⁹ than non-custodial sanctions and can deepen illegal involvement for some people, inducing the negative behaviors it is intended to change.

Technical violations that lead to incarceration are incredibly costly for the commonwealth. According to the PA Commission on Sentencing,¹⁷ “[t]he marginal cost of additional supervision incurred from substance-related violations of community supervision is estimated to be up to \$2.9 million per year. Approximately two-thirds of this estimate is the cost of county-level supervision and incarceration. This does not include the costs of criminal justice processing or the costs to communities associated with additional services or new offenses.”

The financial cost of supervision, incarceration, and legal processing is significant. The cost to communities is also significant as social and family bonds are disrupted, employment and housing are disrupted, and treatment is delayed and disrupted.

Incarceration and Overdose Death

Incarceration increases the risk of overdose and death for people with substance use disorder.

Across the US, people held in pretrial detention face a significantly elevated risk²⁰ of death by suicide. The suicide rate²¹ among people awaiting trial in jail is 7.5 times higher than among people in the general population. Incarceration also creates a greater risk of death for people with opioid use disorder, as overdose is the leading cause of death²² among recently released people and the third leading cause of death in custody. During the first two weeks (and up to at least the fourth week)²³ after release, people with SUD are at (up to 129 times)²⁴ increased risk of drug-related death.²⁵ Incarceration frequently makes the initiation of treatment impossible, disrupts treatment, and makes people more susceptible to overdose death²⁶ because tolerance for opioids will be reduced by imprisonment. Moreover, jails threaten the health of the entire community— as county jail incarceration rates rise,²⁷ the mortality rate for the surrounding county also rises.

While Pennsylvania specific data on deaths in custody are mostly unreported,²⁸ two studies looking at Allegheny County²⁹ and Philadelphia County³⁰ found that individuals released from incarceration had higher risk of overdose during the 30 days following release.

A person in a dark jacket and pants is walking from left to right in the foreground. In the background, a banner is stretched across a building's facade with the text "LEAVE NO ONE BEHIND" written in large, hand-painted letters. The scene is dimly lit, suggesting dusk or dawn.

Implementing a Harm Reduction Framework in Community Supervision

Effective Evaluation

Effective supervision begins with an appropriate evaluation of the individual.

Identifying the needs of an individual can look vastly different from person to person. Supervision plans require the consideration of the specific medical, mental, occupational, family and legal needs of clients³¹. Recovery looks different for every individual and may include clinical treatment, medications, faith-based approaches, peer support, family support, self-care, and other approaches.³² Regardless of the approach, voluntary, evidence-based treatments are the most effective at addressing the drivers of excess morbidity and mortality.³³

Although risk assessment tools are often touted as an evidenced based practice, they have been shown to bake in and even exacerbate racial bias³⁴ by often relying on static criminal justice risk factors while simultaneously proving inaccurate³⁵ in their labeling.

While assessing an individual's needs is important for creating an individualized picture of what support may be helpful for a client, it is key that any such tools or algorithms are fully transparent, subject to strict scrutiny, independent oversight and not used to categorize people by “risk level”.

Individualized Supervision Plans

Probation departments should encourage evidence based practices including MOUD/MA.

Medications for Opioid Use Disorder (MOUD)/Medication Assisted Treatment (MAT) are safe, evidence-based, and successful³⁶ in reducing illicit drug use, overdose risk and rates of drug-related crime. The Food and Drug Administration (FDA) has approved³⁷ Methadone, Naltrexone (Vivitrol and Revia), and Buprenorphine (Suboxone, Subutex, and Sublocade) to treat opioid use disorder. MAT relieves withdrawal symptoms and psychological cravings that make the process of recovery more challenging.

According to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA): “Opioid Use Disorder medication can be taken on a short- or long-term basis, including as part of medically supervised withdrawal and as maintenance treatment.” SAMHSA cautions that “patients who discontinue OUD medication generally return to illicit opioid use.” OUD medication gives people³⁸ “the time and ability to make necessary life changes associated with long-term remission and recovery,” “minimizes cravings and withdrawal symptoms,” and “lets people better manage other aspects of their life, such as parenting, attending school, or working.”

In January 2018, Governor Wolf declared the opioid crisis in Pennsylvania as a disaster emergency and directed that MAT be provided within the DOC's prison system.³⁹ As of April 2018, Vivitrol is available³⁹ at all state correctional institutions (SCIs) but resistance to opioid agonist medications (buprenorphine and methadone) continues, despite evidence that they are more effective,⁴⁰ are associated with lower incidence of overdose, and are more cost effective. Many treatment facility staff favor an abstinence model, and provider skepticism, all rooted in drug use and recovery stigma,⁴¹ contribute to low adoption of agonist MAT (methadone/buprenorphine). Stigma and misinformation drive the beliefs that create a culture that sees drug use and SUD as a moral failing, not the disease it is, and OAT as trading one drug for another. In county jails, access is a significant problem. If an incarcerated person already has a prescription when they enter, only 18 jails allow treatment to continue.

Individualized Supervision Plans

Resistance by probation departments and staff to medication assisted treatment (MAT) is a barrier to accessing evidence-based treatment. Despite data demonstrating⁴² that access to treatment may promote successful probation outcomes, treatment is relatively rare.⁴³ People on probation with opioid use disorder may be especially limited in their access to MAT despite the strong, and growing, body of evidence demonstrating its effectiveness.

Probation and parole departments are the least likely to allow MAT⁴⁴ compared to other criminal justice agencies. In some PA counties, a zero-tolerance approach to supervision⁴⁵ ensnares people who struggle with substance-use disorders in the criminal justice system. These practices have led to a US Department of Justice lawsuit⁴⁶ against the PA Court System for violating the Americans with Disabilities Act by engaging “in discrimination by prohibiting or limiting the use of lawful prescribed medication to treat Opioid Use Disorder by individuals under court supervision.”

Decreased Revocations & Increased Support

Probation departments should decrease revocations of probation for substance use.

Revocation from supervision that results in incarceration has several negative knock-on effects for those on probation. Even brief periods of incarceration have been shown to increase recidivism⁴⁷ for people who have been deemed unlikely to reoffend or have needs related to substance use, drug addiction or mental illness.

Substance use related violations should trigger increased support instead of punishment.

Experts agree⁴⁸ that punitive measures are far less effective (and often increase harm) than increasing support for individuals with substance use disorders. After all, substance use disorders are chronic, but treatable health conditions, but they are too often treated as a deliberate antisocial or deviant choice.⁴⁹

Effective solutions to address substance use disorder and overdose within the criminal legal system must center this approach with SAMHSA's recovery principles⁵⁰ and NIDA's most recent strategic plan⁵¹ which takes a harm reduction approach that supports the many pathways of recovery and supports people with substance use disorder in their quest for healthy and connected lives. It is also important to note that compulsory treatment approaches have not been shown to improve outcomes, and may in fact lead to greater harm.⁵²

Some options for increased support are:

1. Drug & Alcohol treatment programs
 - a. Recommend a new program that addresses root causes or that is more intensive
 - b. Extended the length of a program
 - i. For example, an extensive trauma history, unaddressed or poorly addressed mental health issues may require more time and can be complex to address.

Decreased Revocations & Increased Support

2. A sober living environment/recovery house can be a good alternative when coupled with support and monitoring.
3. Drug court programs
 - a. Drug courts can be effective⁵³ when they are based on a collaborative public health approach that is evidence-based⁵⁴, and includes the full range of MOUD, peer support,⁵⁵ mental health counseling, strategies to address the social determinants of health, and should be led by a group of experts in the above areas. In sum, this approach should be guided by SAMHSA's 10 guiding principles of recovery.⁵⁶
4. Peer support programs
 - a. Expanding peer support programs can be an incredibly effective tool to aid in the success of the participant. The human connection that develops between individuals with shared lived experience is often powerful medicine to address substance use disorders. Research has supported this idea of human connection as treatment for addictions.⁵⁷ Peer support helps to engage, educate, and support participants in their recovery. And peer support programs have been shown to decrease psychiatric symptoms, increase housing stability, and employment in people with substance use disorders.⁵⁸ Peer support workers engage participants through activities such as attending meetings together, accompanying participants to court hearings, and offering guidance through their own lived experience. Offering peer support as an alternative (ideally this should be offered immediately on entry to the justice system to those with mental health or SUD) to incarceration recognizes the need for support, rather than punishment, for those who are struggling with substance use disorder.
5. Increased counseling/therapy to address underlying issues.
6. Increased or alternative mutual aid support groups.
 - a. Dharma Recovery & SMART Recovery can be alternatives to traditional NA/AA programs
7. Educational programs and life skills training can also be instrumental
8. Restorative Justice

Decreased Revocations & Increased Support

9. Medical interventions.

a. MOUD and other mental health related issues should be addressed based on evidence-based practices. . Reassessment, evaluation, adjustment of meds and therapy.

b. Mental and physical health challenges, including chronic pain, need to be addressed, guided by the individual, and in a timely fashion since they all . can I drive increased drug use and collateral consequences.

10. Incentive programs like contingency management⁵⁹ can sometimes be very effective especially for stimulant use.

Early Termination

Probation departments (in collaboration with courts and prosecutors) should encourage early termination of probation whenever possible.

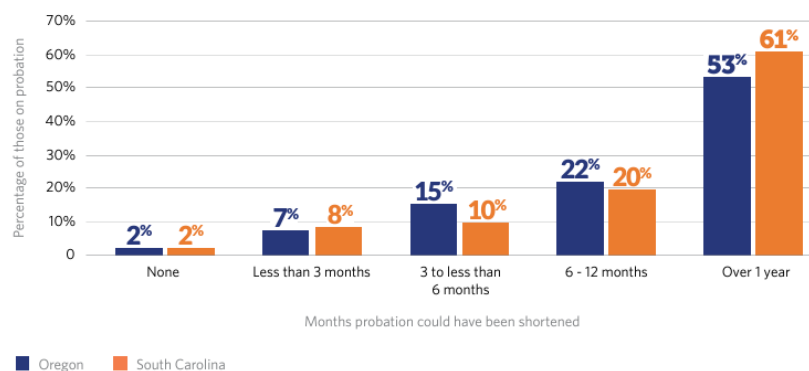
Revocation from supervision that results in incarceration has several negative knock-on effects for those on probation. Even brief periods of incarceration have been shown to increase recidivism for people who have been deemed unlikely to reoffend or have needs related to substance use, drug addiction or mental illness.

Research by the Robina Institute⁶⁰ has found that longer terms of probation “may not reduce re-offending but may increase detection of non-compliance with probation conditions (i.e., technical violations)

A further 18 year analysis of probation data⁶¹ in Oregon and South Carolina conducted by Pew Charitable Trusts found that “...among people who were on probation for a year without being arrested, more than 90% could have spent less time on supervision without an impact on recidivism (as measured by rearrests). Had these individuals served the shortest supervision terms needed to minimize re-offending, the average probation length in South Carolina would have been shortened from 26 to 18 months and in Oregon from 24 to 14 months, without an associated increase in arrests. These reductions would have cut the two states’ average daily populations (ADPs) on supervision by 32% and 44%, respectively, with the declines driven largely by people whose probation terms could be reduced by two or more years.”

Many People in Oregon and South Carolina Could Have Safely Served Shorter Probation Terms

Percentage of individuals who were arrest-free for their first year on supervision whose terms could have been shorter, by months of reduction



Source: Analysis by Maxarth LLC of data from: the South Carolina Department of Probation, Parole and Pardon Services, 2009-13; South Carolina State Law Enforcement Division; Oregon Department of Corrections, 2010-14; and Oregon Criminal Justice Commission

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Early Termination

Sentencing Commission

After a comprehensive review, the PA Commission on Sentencing updated the 8th Edition Sentencing and Re-Sentencing Guidelines in an attempt to stem the rash of punishment as a response to technical violations, such as failed drug tests. The guidelines recommend several evidence-based options as an alternative to incarceration such as therapy, addiction treatment, peer support. These guidelines also incorporate research on the effective length of probation.



Cultural Change

Continued Cultural Change Among System Actors

Ultimately, a large part of combating drug use, addictions, and overdose while lowering rates of recidivism for those in the criminal legal system involves continued cultural change among system actors. A human rights and public health approach as the north star can lead to significant improvements in public health and public safety. These ideas are not new and have been implemented into systems globally (ie Portugal⁶³, Switzerland⁶⁴, and France⁶⁵) with great success. Countries that have taken this approach see lower rates of overdose and overdose deaths, lower rates of HIV and Hepatitis C transmission, criminality, and increased usage of drug and alcohol treatment programs. These countries are healthier and safer and generally have lower rates of drug and alcohol related stigma and discrimination.

The science is clear, the vast majority of drug use is not classified as a disorder or disease. Using drug testing only as a tool to determine treatment needs⁶⁶, as opposed to a catch all policy for all probationers would avoid expending department resources and remove a potential tripwire for many individuals on probation (particularly those whose substance use disorder is not related to their offense). When drug use becomes problematic and rises to the level of a substance use disorder it is a chronic, yet treatable medical condition.⁶⁷ A hallmark feature of severe substance use disorder is compulsive use of a substance despite significant negative consequences.⁶⁸

Thus, those who experience it are best served by it being treated as any other medical diagnosis with support and evidence based practices⁶⁹ being at the forefront. It requires understanding that recurrence of use is a common symptom of substance use disorder, and that therapeutic intervention after return to use works to strengthen the recovery process, whereas punishing people for return to use disrupts treatment. Moreover, fear of punishment can make patients afraid to speak honestly about their struggles with substance use, for fear of reprisal.

It is key that responses to Opioid Use Disorder focus on reducing ineffective⁷⁰ and harmful responses such as stigma, punishment, shame and isolation. There are a variety of alternative metrics for success for people under community supervision. For example, SAMHSA's four major dimensions of recovery⁷¹ are health, home, purpose, and community. How can supervision be grounded in encouraging these dimensions? And our strategy should align with NIDA's latest strategic plan⁷² (which encourages a harm reduction frame) which redefines recovery as:

Cultural Change

Continued Cultural Change Among System Actors

"Recovery from SUDs means different things to different people. Broadly speaking, it is a process of change through which people improve their health and well-being while abstaining from or lessening their substance use or by switching to less risky drug use. For some, this may mean complete abstinence; for others, recovery could be ceasing problematic drug use, developing effective coping strategies, improving physical and mental health, or experiencing some combination of those or other outcomes."

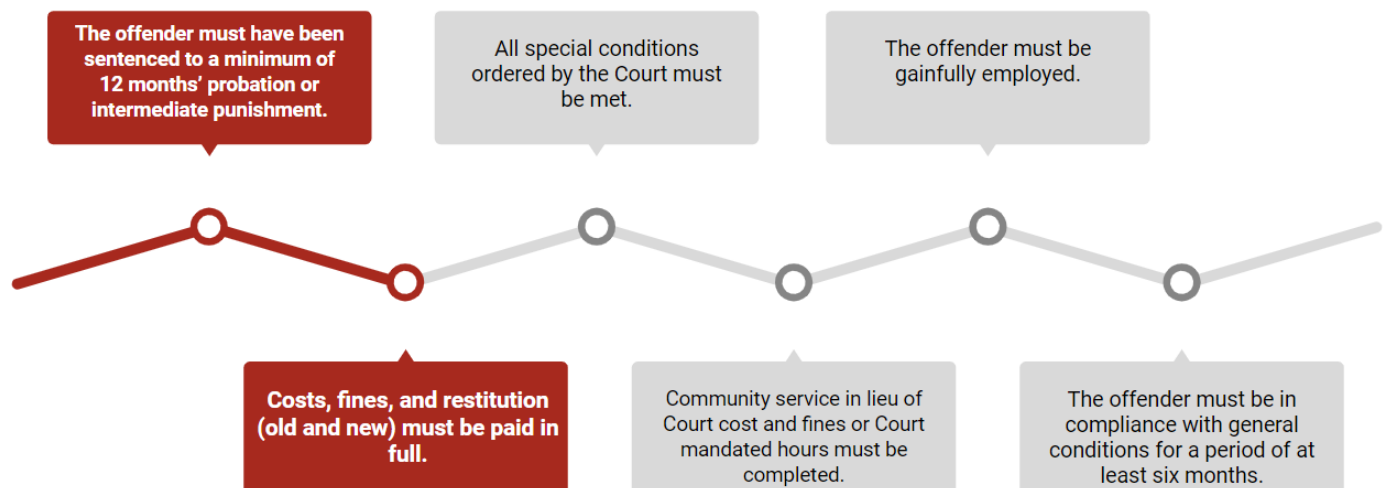
While probation officers did not create the legislation that criminalizes substance use, nor pass down the sentences that exacerbated Pennsylvania's jails, prisons, and community supervision rolls, they do see the consequences of these policies every day. Probation departments can play a key role by utilizing their discretion when implementing conditions of probation, advocating for harm reduction measures in the criminal legal system among other criminal legal system stakeholders, and implementing best practices to improve outcomes for their clients and reduce their caseload.

Case Study: York County

York County found that implementing evidence based practices (such as: enhancing intrinsic motivation, skill training with directed practice, and increasing positive reinforcement) was made difficult due to unmanageable caseloads within York County Probation Services Department.

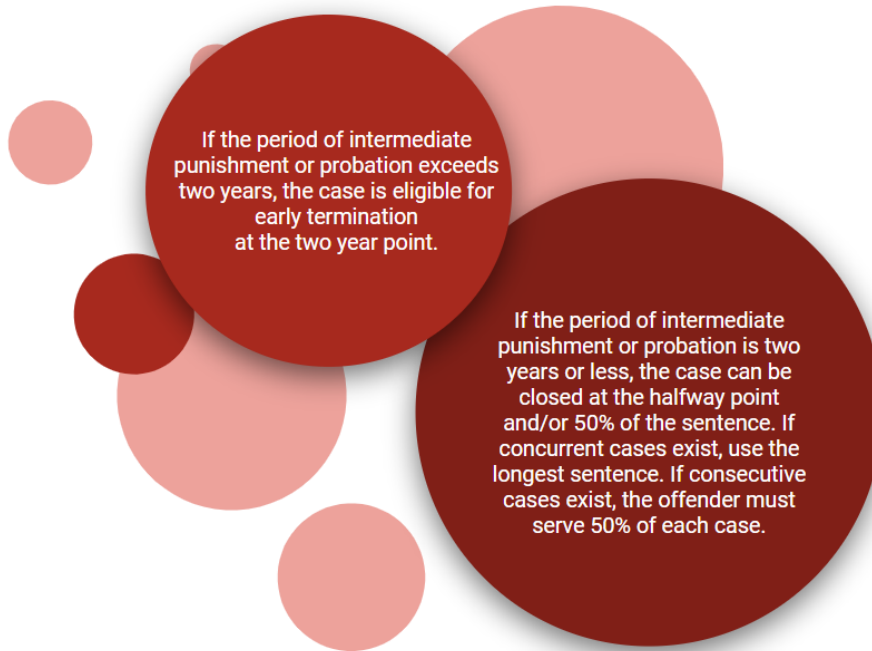
Using the authority found in [42 Pa.C.S.A. § 9771](#) (probation sentences) and [42 Pa.C.S.A. § 9773](#) (Intermediate Punishment sentences) to decrease in conditions or early termination of supervision without a hearing before the Court, York County established an Early Termination Procedure in June 2016. The criteria for cases that would qualify for early termination are as follows:

General Criteria for Closing Cases Early



Case Study: York County

Early Termination Guidelines



Cases meeting this criterion would also be subject to all supervision fees being paid, district attorney and judicial review. Individuals assessed as High Needs/Risk by the Ohio Risk Assessment System would also have their cases reviewed by a Review Board and meet additional criteria.

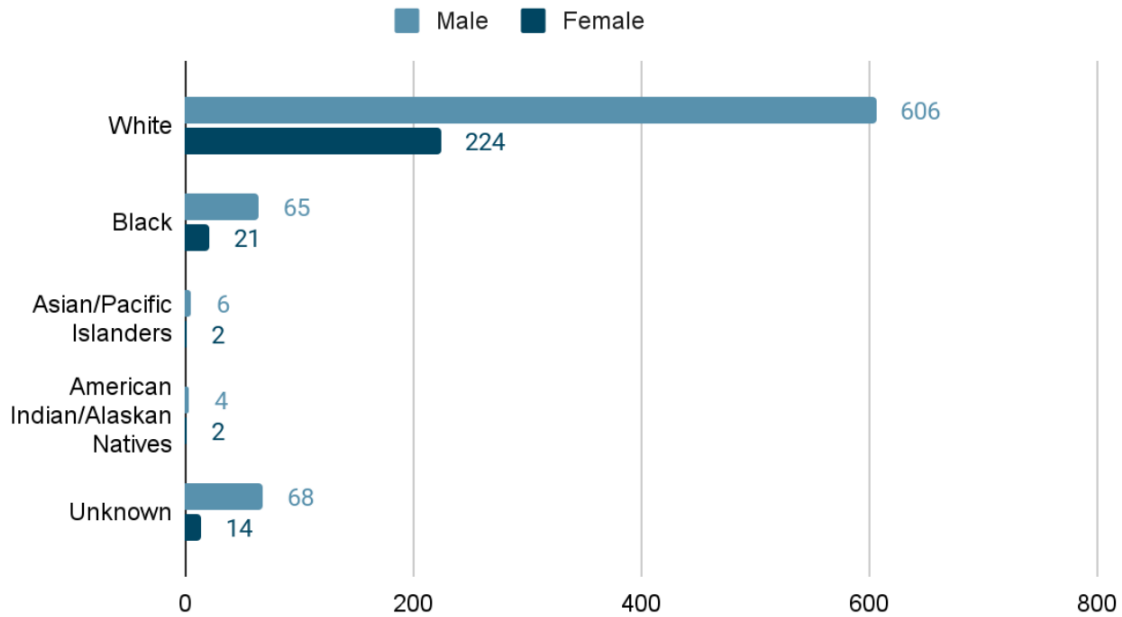
As of March 2023, out of a total of 1101 early terms that had been submitted for early termination, 58 individuals recidivated within two years of their case being terminated, giving the program a 95% success rate. An additional 50 individuals recidivated post-two years early termination, giving the program an overall success rate of 90%. Considering that statewide, reentrants who use opioids have the highest 3-year recidivism rate, and reentrants that use non-opioid drugs have a higher than average recidivism rate, this is a very promising program.

Case Study: York County

Statistics

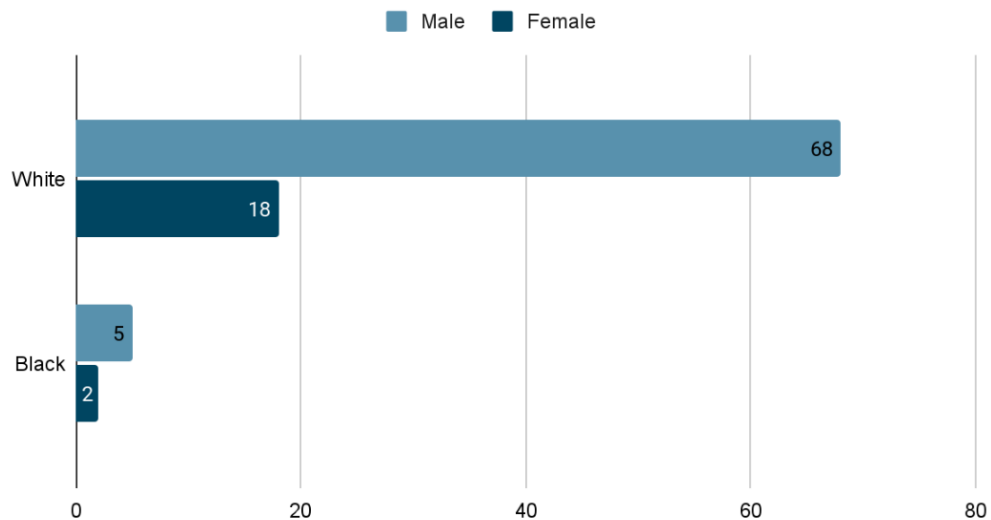
1015 total number **APPROVED** by the Court.

Breakdown by race and gender



86 total number **DENIED** by the Court. **93% of cases submitted for early termination are approved by the Court.**

Breakdown by race and gender



Case Study: York County


Statistics continued

Early terminations that have re-offended: misdemeanor or felony

OFFENSE CLASSIFICATION UNDER 2 YEARS	OFFENSE CLASSIFICATION OVER 2 YEARS
58 Individuals Total	50 Individuals Total
32 Driving Under the Influence	25 Driving Under the Influence
4 Drug Law	10 Drug Law
11 Other	9 Other
7 Property Offense	5 Property Offense
6 Violence Offense	9 Violence Offense

Appendix A: York County Probation

York County Department of Probation Services Early Termination of Sentence Policy

	YORK COUNTY DEPARTMENT OF PROBATION SERVICES	Section: <i>Supervision</i>
		Subject: <i>Early Termination of Sentence</i>
		Policy No. III-0006
	Adult Office	Rule No. 42 Pa.C.S.A. § 9771; 42 Pa.C.S.A. § 9773
		State Standard 4-APPFS-2A-14
		Revised Date November 2017

Early Termination of Probation and Intermediate Punishment Sentences

Research: The most recent research in the field of community corrections indicates that in order to reduce recidivism and improve outcomes, we must radically change current community supervision practices. A substantial amount of research exists on cost-efficient Evidence Based Practices (EBP) that are proven to reduce offender risk while improving lives. The Pennsylvania State Board of Probation and Parole committed to this change with their adoption of the Performance-Based Standards for Adult Probation and Parole Field Services, Fourth Edition published in 2010 by the American Correctional Association in cooperation with the Commission on Accreditation for Corrections. The Pennsylvania Board of Probation and Parole adopted these new standards in 2011. Additionally, the National Institute of Corrections has published several articles laying the ground work for this change: Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention, published in 2004, Dosage Probation: Rethinking the Structure of Probation Sentences published in January 2014 and Implementing Evidence-Based Policy and Practice in Community Corrections, published in 2009. This new method emphasizes eight evidence based principles to effectively intervene in a positive manner with those in the adult criminal justice system and reduce recidivism.⁷³

Appendix A: York County Probation

Early Termination of Probation and Intermediate Punishment Sentences

These include:

- Assess Actuarial Risk/Needs: Implementing an accurate risk and needs tools to assess offenders risk and needs.
- Enhance Intrinsic Motivation: Relating to offenders in a sensitive and constructive way to enhance intrinsic motivation. This includes implementation of motivational interviewing skills.
- Target Interventions: Prioritize supervision and treatment based on risk and needs, targeting interventions based on criminogenic risk factors and needs, being responsive to individuals temperament, learning style, motivation, culture and gender when assigning programs and finally, dosing services based on where an offender is in the criminal justice system.
- Skill Training with directed practice: Utilizing cognitive behavioral treatment methods to improve outcomes
- Increase positive reinforcement
- Engaging ongoing support from offenders natural communities
- Measure relevant process and practices: Maintain data to evaluate programs
- Provide Measurement Feedback: Analyze the data to ensure program are successful.

One of the primary hurdles for implementation of EBPs is large offender caseloads currently under supervision by the York County Probation Services Department. The Adult Probation offender caseload has increased by approximately 1000 offenders per year over the past six years. By the end of 2013, Adult Probation was supervising approximately 12,000 offenders with no corresponding increase in probation staff thereby creating large and unmanageable caseloads. The department, like many across the Commonwealth and the nation, must implement strategies to address these large caseloads in order to meaningfully impact offender's lives and reduce recidivism. Incentive based supervision is one strategy to reduce caseloads while providing motivation for offenders to complete court ordered conditions, maintain positive relationships with the Court and Probation Services and pay early and in full court costs, fines and restitution.

Appendix A: York County Probation

A number of studies exist that have examined violation behavior including the time frame when most violations of sentence occur. Individuals on probation and/or parole are at highest risk to recidivate during the first few months of supervision with re-arrest rates dropping significantly after six months and plateauing by the 24th month of supervision. (See the attached report by Mark Carey, A Research Evidence Examination of Caseload Size, Length of Supervision and Other Related Factors.) Additionally, offenders whose sentence is terminated early are arrested less frequently than those who completed the entire term of the original sentence. Clearly early termination of sentence does not compromise community safety. Please see the attached study, Early Termination of Supervision: No Compromise to Community Safety, published in the Federal Probation Journal of Correctional Philosophy and Practice.⁷⁴

Statutes Allowing Early Termination of Sentence: The Court of Common Pleas has the authority to modify the conditions of probation by terminating the probationary term and ending supervision early where an offender demonstrates good behavior and positive adjustment to supervision based upon 42 Pa.C.S.A. § 9771 (probation sentences) and 42 Pa.C.S.A. § 9773 (Intermediate Punishment sentences). Both statutes allow for a decrease in conditions or early termination of supervision without a hearing before the Court.⁷⁵

Pennsylvania Law of Probation and Parole further indicates that offenders who seek early termination of supervision must demonstrate they have been rehabilitated, the goals of probation have been met and further supervision is not necessary. Several key factors are recommended to convince the court that further supervision is no longer required and the goals of supervision have been met. These include:⁷⁶

- The offender has not been arrested for any violation of the law while under supervision.
- The offender has satisfied all of the financial obligations associated with the term of supervision.
- The offender receives a favorable recommendation for early termination from the supervising probation officer.
- The concurrence of the District Attorney's Office for early termination is a considering factor.

Appendix A: York County Probation

Other factors that weigh in favor of a petition for early termination of supervision may include the following:

- A history of gainful employment by the offender.
- The offender's satisfaction of family obligations, including child support.
- The offender's participation in community activities such as volunteer work or regular attendance at a religious institution.
- The offender's relationship with the probation supervision staff. This includes regular attendance at probation appointments and compliance with the conditions of supervision.

Procedure: The York County Adult Probation Department weighed the above criteria carefully when crafting the following guidelines. The management team recommends the following:

General Criteria for closing cases early.

1. The offender must have been sentenced to a minimum of 12 months' probation or intermediate punishment.
2. Costs, fines, and restitution (old and new) must be paid in full.
3. All special conditions ordered by the Court must be met.
4. Community service in lieu of Court cost and fines or Court mandated hours must be completed.
5. The offender must be gainfully employed.
6. The offender must be in compliance with general conditions for a period of at least six months.

Early Termination Guidelines

1. If the period of intermediate punishment or probation is two years or less, the case can be closed at the halfway point and/or 50% of the sentence. If concurrent cases exist, use the longest sentence. If consecutive cases exist, the offender must serve 50% of each case.
2. If the period of intermediate punishment or probation exceeds two years, the case is eligible for early termination at the two year point.

Appendix A: York County Probation

If an offender is eligible for early termination of sentence and does not meet the criteria for violent, personal injury or high risk/high needs offenders as outlined below, the probation officer should prepare a motion and order for the court's review. This motion and order should be submitted at least 30 days prior to the proposed termination date and should include the following information:

- Docket number(s), the original sentence(s) with maximum date(s) of supervision
- Defendant's employment and family status
- Status of Court ordered special conditions
- Status of any past or present Court costs, fines and restitution
- Defendant's overall adjustment to supervision
- Recommendation to terminate the sentence early and the recommended termination of sentence date.

The Probation Officer should submit the completed early termination of sentence motion and order to their supervisor for review and approval. If the supervisor approves the application, the motion and order should be sent to the appropriate Deputy Director for review and signature then to the District Attorney's Office for review and signature.

Supervision Fees

Offenders are responsible for full payment of supervision fees for the entire term of the original sentence. This includes five year sentences. No refunds will be given.

Individuals who meet statutory conditions for supervision fee reduction or waiver as outlined in Section 10:8 of West's Pennsylvania Practice of Pennsylvania Law of Probation and Parole, and are also eligible for early termination of sentence, as long as any required community service has been completed in full and any restitution or other mandatory Court costs and fines are paid in full.

Appendix A: York County Probation

District Attorney Review

Requests for early termination of sentence will be submitted to the District Attorney's Office for review. If that office is in agreement, the District Attorney or their designee will check indicating they do not object to agree with early termination of sentence and sign the application. If the District Attorney or their designee objects to early termination of sentence, they will check the appropriate box and list the reason(s) they object. The application and memo should then be returned to the Probation Services Department.

Judicial Review

After the District Attorney's review and recommendation, the memo and application will be submitted to the assigned Judge for review and decision. The Judge should review the facts of the case and sign the order either approving or denying the early termination of sentence. The Judge may approve the early termination even if the District Attorney is not in agreement.

Violent, Personal Injury and/or High Risk/High Needs Offender Guidelines

Offenders who commit personal injury offenses and/or assess as High Risk/High Needs on the Ohio Risk Assessment System (ORAS) may be eligible for early termination of supervision; however, these cases must go before a Review Board and meet additional eligibility criteria.

The Review Board will meet weekly to review cases submitted for early termination of supervision. Officers may sign up for the review board just as they would for PSI staffings on the sheets outside Supervisor Kershaw's office.

Appendix A: York County Probation

Review Board Cases:

- Sex offenders
- Domestic Violence
- Felonious assault
- Burglary with person present
- Risk and Needs Assessment of High Risk/High Needs
- Other personal injury crimes

Review Board Composition:

- 3 Supervisors
- 1 Hearing Officer
- 1 Assistant Supervisor, on a rotating basis

Referral to the Board Will Include the Following:___

- Defendant's Name
- Docket Number(s)
- A complete List of Criminal Charges
- Current sentences
- Maximum Supervision Dates
- Referring Officer

Presentation to the Board: The referring probation officer should be prepared to discuss the following and answer questions that interface with the material presented:

Part I. Background:

- Age of Defendant (Consider risk factors for youthful offender > 15 YOA and concept of "aging out" in the system)
- Prior arrests and convictions
 - a. How many
 - b. What kind
 - c. Extended periods of time between arrests? (5 or more arrests indicates a probability for long-term involvement in the criminal justice system)
 - d. Age at first arrest
 - e. Factual description of current crime
 - f. Compliance history (How many prior violations of supervision and for what?)
- Maximum Supervision Dates
- Referring Officer

Appendix A: York County Probation

Part II. Review of Risk Profile: This Review is based on eight criminogenic factors. These factors are listed based on their strongest correlation to risk/further criminal behavior to the least correlation.

- Antisocial attitudes, beliefs, values and associates
 - a. With whom does the offender live and how positive/supportive is this relationship?
 - b. Who is in the offender's peer group and how positive/supportive are these relationships?
 - c. Family history of criminal behavior
- Poor problem solving and decision making
 - d. Does the offender take responsibility for their crime?
 - e. What positive steps has the offender taken to change/improve behavior, family ties and peer groups?
- Poor Impulse Control
 - f. Cite an example of a conflict or troublesome situation the offender experienced during the current term of supervision and how he/she resolved that conflict in a meaningful, forward thinking way.
- Educational Deficits and Limited Vocational Skills and Work History
 - g. Highest grade completed
 - h. What educational/vocational goals does the offender express?
 - i. What steps has the offender taken to improve his/her education and/or vocational goals?
 - j. Current employment?
 - k. Number of months of employment (defined as permanent employment with at least 20 hours per week)
- Alcohol and Other Drug Dependence and Addiction
 - l. Age of first use (under 14 YOA= significant risk)
 - m. Drug history
 - n. Drug of choice
 - o. Prior rehabilitative/habilitative endeavors
 - p. Family history of addiction/dependence
 - q. 12 step involvement/actions step within the Recovery Oriented Systems of Care (ROSC) model
 - r. Current level of treatment
 - s. Level of support in the community.
- Poor Use of Leisure Time and Few or No Attachments to Pro-social People/Activities
 - t. What positive organizations/clubs is the offender involved in?
 - u. How does the offender manage free time?
 - v. What hobbies/interests does the offender have?

Appendix A: York County Probation

Part III. Victim Contact: Notification of and input from the victim should be obtained and included for consideration.

Review Board Voting Procedure: Review board members are encouraged to make notes of strengths and concerns as the referring officer is presenting the offender's case. Each review board member gets one vote, with the majority vote carrying the review board decision.

Rejection of Early Termination of Sentence: Collectively the review board will cite specific reasons why the case should not be submitted for early termination of sentence. These reasons will be documented in Probate or the Unified Case Management system. The offender will continue on the current term of supervision. The review board should provide recommendations/suggestions to tailoring supervision for better outcomes. The case is eligible for review again in six (6) months if the offender has made improvements.

Affirmative Review Board Decision for Early Termination of Sentence: If the review board approves early termination, a memo will be drafted for the sentencing judge with the required information listed previously. Additionally, the probation officer should outline the individual's recidivism risk factors and criminogenic needs considered and provide specific examples of how the offender presents as low risk at this time. The memo will outline the review board's rationale for rendering an affirmative response.

The memo should then be submitted for supervisor approval, along with the motion and order for consideration of early termination and proceed to the District Attorney's Office and the assigned Judge.

Appendix B: Legislation from Other States

States across the country have recognized a need to implement evidence based practices and reduce the amount of time individuals spend on probation. Several have also begun implementing some harm reduction principles into their approaches to substance use disorder. Below are examples of such recent legislation.

Enacted Legislation

Maine

[LD 858 \(2021\)](#)

An Act To Expand Recovery Services to Persons on Probation

1. If a person on probation is subject to conditions requiring the person to refrain from drug use and excessive use of alcohol and the probation officer has cause to suspect a violation of those conditions, but not a violation of law that constitutes a crime, the bill prohibits arrest and revocation of probation for the violation of probation conditions.
2. If a person on probation is subject to conditions requiring the person to refrain from drug use and excessive use of alcohol and the probation officer has cause to suspect a violation of those conditions, but not a violation of law that constitutes a crime, the bill authorizes the probation officer to impose additional conditions in lieu of probation revocation, including referral to a certified recovery coach, a certified intentional peer support specialist or a qualified recovery support service, allows participation in a public restitution program or treatment program regardless of whether the program is administered through a correctional facility or county jail and prohibits the use of incarceration.

Feedback from Stakeholders

A public hearing on LD 858 was held on April 22, 2021. (Testimony can be found here under “public hearing testimony.”)

Appendix B: Legislation from Other States

Enacted Legislation

Michigan

The [Michigan Joint Task Force on Jail and Pretrial Incarceration](#) made recommendations to modify 11 areas that would [promote decriminalization and defelonization](#).

Based on these recommendations, the [legislature passed a package of 20 bills](#), signed into law in early 2021, that created:

1. Increased discretion for law enforcement to use citations rather than arrest to respond to misdemeanors.
2. Alternatives to jail sentences.*
3. Prioritization of the use of non-jail and non-probation sentences for most misdemeanors and includes a presumption against jail sentences for some low-level felonies.
4. Reduction of jail admissions for people on probation and parole.
5. Establishment of a maximum probation term to three years for most felonies, criteria to allow for earned early discharge from probation, limiting arrest and incarceration for probation violations and requiring that conditions be tailored to individual needs.
6. Tailoring conditions to the people being supervised in order to improve their outcomes and reduce recidivism.

Changes to probation:

1. Shortens the maximum probation term to three years for most felonies.
2. Establishes criteria to allow for earned early discharge from probation.
3. Limits arrest and incarceration for probation violations.
4. Requires conditions be tailored to individual needs.

Appendix B: Legislation from Other States

Enacted Legislation

New York

Modifies the standard of evidence and certain other procedures when determining whether to revoke the community supervision of a person (parole). Restricts the use of incarceration for technical violations. Incarceration would be eliminated as a sanction for most technical violations. Certain technical violations could still result in jail time, but it would be capped at a maximum of 30 days.

[S1144A \(2021\)](#)

1. Bolsters due process: rather than being automatically detained in local jails, people accused of a technical violation will be issued a written notice of violation with a date to appear in court and would remain at liberty for any hearings. People on parole accused of a new criminal offense would be afforded a recognizance hearing in a local criminal court before they are detained, and the standards of the bail reform statute would apply.
2. Provides speedy hearings: persons under community supervision shall be afforded a speedy adjudicatory hearing upon an alleged violation of their conditions of release. Hearings would be conducted within 30 days rather than taking up to 105 days.
3. Provides earned time credits: people under community supervision would be eligible to earn a 30-day “earned time credits” reduction in their community supervision period for every 30-day period in which they do not violate a condition of supervision.
4. [Limits](#) a parole officer’s ability to send people back to prison for noncriminal violations.
5. Reduces unnecessary incarceration related to parole violations* (see below for [specific bill language](#)).

*Reincarceration shall not be imposed for a sustained technical violation that involves: (a) violating curfew; (b) alcohol use, provided however that incarceration is permissible for alcohol use if the person is subject to community supervision due to a conviction for driving under the influence of alcohol; (c) drug use, provided, however incarceration is permissible for drug use if the person is subject to community supervision due to a conviction for driving under the influence of drugs; (d) failing to notify parole officer of a change in employment or program status; (e) failing to pay surcharges and fees; (f) obtaining a driver's license or driving a car with a valid driver's license, provided however incarceration is permissible if either action is explicitly prohibited by the person's conviction; (g) failing to notify community supervision officer of contact with any law enforcement agency, provided however, incarceration is permissible if the person intended to hide illegal behavior; (h) failing to obey other special conditions, provided however that incarceration is permissible if the failure cannot be addressed in the community and all reasonable community-based means to address the failure have been exhausted.

Appendix B: Legislation from Other States

Enacted Legislation

Utah

[HB 348 \(2015\)](#)

1. Revised sentencing guidelines for certain lower-level crimes.
2. Established formal graduated revocation caps for technical probation revocations.
3. Established formal graduated revocation caps for technical parole revocations.
4. Implemented a graduated sanctions and incentives matrix [for Adult Probations and Parole].
5. Established a system of earned compliance credits on supervision.
6. Expanded treatment services.
7. Established treatment standards and certification.
8. Established standards for recovery and reentry support programs.
9. Required the Division of Substance Abuse and Mental Health to establish standards for mental health and substance abuse treatment, and for treatment providers, concerning individuals who are incarcerated or who are required by a court or the Board of Pardons and Parole to participate in treatment.
10. Required that the Sentencing Commission establish graduated sanctions to provide prompt and effective responses to violations of probation or parole.
11. Required that the Department of Corrections, in collaboration with the Commission on Criminal and Juvenile Justice, the Division of Substance Abuse and Mental Health, and the Utah Association of Counties gather information related to treatment and program outcomes, including recidivism reduction and cost savings based on the reduction in the number of people incarcerated, requires that the Department of Corrections evaluate and update case action plans for those who are incarcerated, including treatment resources and supervision levels to address reentry into the community at the termination of incarceration.
12. Requires that the Department of Corrections establish a program allowing individuals to earn credits of days for compliance with terms of probation or parole, which will reduce the time on probation or parole.

Feedback from Stakeholders

- [Pew Charitable Trust advised Utah](#): People on probation and parole supervision are failing at higher rates than they did 10 years ago. Revocation from supervision—being sent back to prison for a violation of probation or parole—accounted for 46 percent of Utah prison population. People returned to prison for violating the terms of their supervision accounted for 67 percent of prison admissions in 2013. And nearly half of that group (43 percent) was revoked for technical violations, such as missing appointments with officers or failing drug tests, rather than for new convictions—up from 38 percent in 2004. Overall, 46 percent of incarcerated Utahans are serving time for probation and parole revocations.
- [Libertas Institute](#) supported the bill.

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About the ACLU of Pennsylvania

The American Civil Liberties Union of Pennsylvania is a nonprofit, nonpartisan, membership organization that serves as an enduring guardian of justice, fairness, and freedom, working to protect civil liberties and advance equity for all. Integrating litigation, legislative and policy advocacy, organizing, and communications, ACLU-PA's staff and volunteers work both independently and in coalition with those most affected by the issues we address to ensure that threats to liberty and the civil rights of all persons in Pennsylvania are met with stark resistance as we progress toward a more genuine multiracial, multicultural democracy.

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