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The Role of Human Service Providers During Community Supervision

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Executive Summary

One of every 58 American adults is currently under some form of community correctional supervision.¹ People placed on community supervision often have significant human service needs, some of which are addressed through correctional agency resources, but most of which are met, if at all, through community-based human service agencies.

People on community supervision connect to human service agencies through a variety of channels. Sometimes they are court-ordered to engage with treatment programs, obtain employment, or pay child support as a condition of supervision. In these cases, failure to cooperate with human service agencies can result in revocation of community supervision and incarceration in jails or prisons. In addition, probation or parole officers frequently refer people on supervision to human service agencies for additional assistance with meeting basic human needs, including housing, food, and child care. Finally, many people on probation and parole engage (voluntarily and involuntarily) with human service agencies, including child welfare departments and local community health providers, without the knowledge or involvement of community corrections agencies. In most cases, there is typically little or no coordination between these multiple service providers — a fact that can lead to conflicting, duplicative, and inefficient service delivery.

This paper summarizes what is known about the human service needs of people on supervision, and catalogs the ways in which various forms of community supervision can operate to either facilitate or impede the meaningful delivery of programs, treatment, and other services to people on probation, parole, and pretrial release. Finally, this paper proposes three key targets for improving the efficient and effective delivery of human services to people on community supervision:

- Streamlining access to human services upon entry to pretrial or probation supervision, and before release to parole.
- Creating mechanisms at the local and state levels to ensure continuity of high-priority services for those entering from or exiting to correctional settings.
- Collaborating with clients, community corrections agencies, and human service providers to improve consistency in human service and correctional system expectations for service recipients.

¹DANIELLE KAEBLE & MARIEL ALPER, BUREAU OF JUST. STAT., PROBATION & PAROLE IN THE UNITED STATES, 2017-2018 3, T.1 & T.2 (2020), <https://www.bjs.gov/content/pub/pdf/ppus1718.pdf>.

The Structure of Community Supervision

Community supervision can take many forms, but three are most common: pretrial supervision, probation, and parole. Pretrial supervision refers to the conditional release of people who have been charged with a crime, and who must follow conditions set by the court in order to remain in the community awaiting trial. The structure of pretrial supervision varies widely; defendants can be supervised by jail staff, probation agents, or employees of nonprofit organizations. Probation is a community-based sanction imposed by a court as punishment for a crime. It is the most common sentence in America: 56% of the 6.6 million people serving sentences in the United States at the end of 2016 were serving a term of probation. Finally, parole (and other types of post-incarceral supervision) impose a period of supervision after release from custody. In 2018, more than 878,000 people were serving some form of parole or other post-release supervision.

All three forms of community supervision require people to comply with specific release conditions or face the threat of incarceration, whether in jail or prison. Courts and community supervision agencies impose and enforce a broad array of conditions of supervision. Estimates suggest that the average number of standard conditions typically exceeds a dozen, a number that increases when “special” conditions are added to address defendant-specific concerns.

There is wide variation in how often people are required to see their community supervision agents and what kind of supervision they receive. The intensity of supervision and the rigidity of supervising agents’ expectations can have profound effects on the ability of people to comply with the terms of their supervision and to engage meaningfully with other services.

Following all rules of supervision can be difficult, and consequently violations of supervision conditions remain common. Ordinarily, minor violations result in sanctions ranging from a reprimand to a few weeks in jail. Short jail stays are not uncommon among persons on probation or parole. They can serve both as punishments for less serious violations and as investigative tools when a violation is alleged. Although less punitive than revocation, these “short stays” can disrupt employment, family life, and housing. When lesser sanctions have not deterred significant misconduct or when serious rule violations occur, revocation and incarceration often follow.

Although community corrections agencies make efforts to address the broad needs of people on supervision, many factors limit their ability to do so. Resource limitations, lack of specialized training in nonsurveillance functions, and the sheer breadth of the needs of people on community supervision all reduce the capacity of community corrections agencies to address the needs of the people they supervise. There is also broad disagreement among and within community supervision agencies about how agents should respond to the human service needs of those they supervise. Some agents see themselves as social workers and community advocates whose job is to connect those on probation or parole with a wide array of programs, some of which they may provide one-on-one. Other agents see their role as that of a service broker whose job is to refer people on supervision to needed programs, but who is not responsible for ensuring that a meaningful connection has been made. Finally, some officers see themselves primarily as rule enforcers, whose job is merely to ensure compliance with court orders.

However agents and agencies understand their roles, limited resources combined with the many needs of people under

supervision frequently create significant service gaps. As a result, many individuals on supervision are not provided with the social services they need during their terms of supervision. When they do receive needed services, lack of coordination between human service and correctional agencies can easily disrupt hard-won progress. Gaps in service during reentry can cause people with chronic mental illness to lose access to much-needed medication, and jail sanctions for minor rule violations can result in the loss of employment or even housing. In short, the current system is often painfully inefficient.

Human Service Needs of People on Community Supervision

The human service needs of people on supervision have not been studied with as much care as have the needs of people who are incarcerated. Data remain particularly thin with respect to those on probation and those on pretrial release. Nonetheless, people on community supervision clearly face a host of social welfare challenges at rates higher than the general population. They break down into seven major areas of need:

- **Housing.** Stable, long-term housing is difficult to come by for people on supervision, especially those who have experienced incarceration. Many recently released people live with family or friends; few have the means to live alone. In cases of emergency, community supervision agencies can offer those on probation or parole short-term assistance, but correctional agencies are typically unable to provide longer-term housing support.

Major federal programs that address this area of need: The U.S. Department of Housing and Urban Development's (HUD) Public Housing Program

(including the joint HUD-Veterans Affairs Supportive Housing Program), Housing Choice Voucher Program, and Section 8 project-based rental assistance program (these programs exclude from public housing people with some categories of criminal conviction); Second Chance Act grants.

- **Food.** Isolated studies examining hunger among persons on probation or parole have found staggeringly high amounts of food insecurity, ranging from 70% to 90% across samples. These studies suggest that people on both probation or parole (along with their families) are at heightened risk for hunger and its related morbidities, such as malnutrition.

Major federal programs that address this area of need: The U.S. Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) Temporary Assistance to Needy Families (TANF) program, which is administered by the states (individuals with histories of drug conviction are ineligible for or have limited access to benefits in some states).

- **Physical Health.** People on community supervision suffer from chronic physical health challenges (including asthma and sexually transmitted diseases) and die at rates far exceeding the general population. Leading causes of death include overdose, homicide, suicide, cardiovascular disease, and cancer. Rates of health insurance coverage have improved for these individuals since 2014, but they remain underinsured compared to the general population.

Major federal programs that address this area of need: The U.S. Department of Health and Human Services' Medicaid and Medicare programs, which provide health coverage to the qualifying poor, elderly, and disabled; the Social Security Administration's Supplemental Security

Income and Social Security Disability Insurance programs, which offer cash to qualifying elderly and disabled people; and the U.S. Department of Veterans Affairs' Health Care for Re-Entry Veterans program.

- **Substance Use Disorders and Other Behavioral Health Conditions.** Almost half of individuals on community supervision are known to have a substance use disorder (a rate two to three times higher than that found in the general population), and this group suffers from serious mental health problems at rates from two to four times that of the general population. Large treatment gaps exist with respect to available and appropriate treatment for people on supervision with behavioral health needs, a problem complicated by a lack of sufficient community providers and supervision policies hostile to some forms of evidence-based treatment.

Major federal programs that address this area of need: The U.S. Department of Health and Human Services' Medicaid and Medicare programs, and the Social Security Administration's Supplemental Security Income and Social Security Disability Insurance programs.

- **Vocational Training and Employment.** Although people on supervision often point to employment as a primary need, data on the workforce engagement of those on probation or parole are limited. However, apparent from current studies is that people on supervision — and particularly people on parole — face significant obstacles to securing the type of meaningful

work that has been linked to lower rates of recidivism. Those on probation or parole often lack the education and soft skills needed to obtain and retain work in the skilled labor market. Additionally, their ability to secure work is impeded by discrimination, stagnant labor markets, employment licensing restrictions, and sometimes by supervision itself.²

Major federal programs that address this area of need: SNAP Employment and Training Programs, administered by the states; U.S. Department of Education-funded vocational rehabilitation programs for people with physical, intellectual, or emotional disabilities that interfere with recipients' ability to work; the U.S. Department of Labor-funded Reentry Projects program; and the U.S. Department of Justice's Second Chance Act Adult Reentry and Employment Strategic Planning Program, which provides grants for projects that increase job readiness for formerly incarcerated people.

- **Parenting-Related Needs.** Shockingly few data are available about the number of people on community supervision who are also parents of minor children. Nonetheless, it is easy to infer that many people on supervision are parents of minor children, juggling the many practical, financial, and emotional obligations that accompany child rearing. For people on supervision in the community, parenting needs arise in three primary areas: child care assistance, child support payment, and child welfare court involvement.

²See Darren Wheelock, Christopher Uggen & Heather Hlavka, *Employment Restrictions for Individuals with Felon Status and Racial Inequality in the Labor Market*, in GLOBAL PERSPECTIVES ON RE-ENTRY (IKPONWOSA EKUNWE, ED. 2011); Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 QUART. J. ECON. 191 (2018).

Major federal programs that address this area of need: Assistance with child care is provided largely by state grants (some funded through the Child Care and Development Block Grant Program) and through Head Start programs, designed to promote school readiness for children from birth to age five; state child support agencies calculate the amount of child support due to custodial parents or from noncustodial parents, and state and county child welfare agencies provide both services and surveillance for parents whose children are found to be in need of protection or services.

- **Transportation.** Although not ordinarily classified as a human service need, lack of reliable and efficient transportation significantly impedes engagement with human services for people on community supervision. This problem is especially pressing for people on probation or parole who live in rural communities without public transportation.³ In addition to the often-prohibitive costs of vehicle ownership and maintenance, people on supervision often face the additional barriers of license forfeiture, imposed either as punishment for a crime or in response to nonpayment of fines and fees. Even when public transportation is available, it can be costly and inefficient.

Major federal programs that address this area of need: Few, outside of reimbursements for transportation to medical appointments for those insured through Medicaid.

Special Considerations for Serving People on Community Supervision

Given the broad spectrum of human services from which people on supervision can benefit and the number of programs involved in delivering these services, opportunities for streamlining service delivery abound. Among these, three areas stand out as top priorities, all of which require intentional policies and collaborative efforts among multisystem providers and agencies. The first priority is **improving access to human services** upon entry to pretrial or probation supervision, and before release to parole. The second is **ensuring the continuity of high-priority services** for those entering from or exiting to correctional settings. The third is **forming collaborations with clients, community corrections agencies, and human service providers** to improve consistency in human service and correctional system expectations for service recipients.

People on supervision face a host of barriers to accessing programs, from residential instability to scheduling difficulties created by their conditions of supervision. The most effective way to reduce these access barriers is to bring programs — or at least applications for benefits and programs — to clients. This process can take many forms, from placing service facilitators in supervision offices to training community corrections agents on how to assist potential clients in completing required paperwork and obtaining necessary supporting documentation. In order to provide timely and effective intervention, efforts to connect clients with services should

³Jay Whetzel & Aaron F. McGrath, Jr., *Ten Years Gone: Leveraging Second Chance Act 2.0 to Improve Outcomes*, 83-June FED. PROBATION 23, 29 (2019).

occur as soon as possible after people are placed on pretrial supervision or probation, and in advance of release from jail or prison custody.

In addition to increasing access to needed programs by supporting and simplifying the application process, human service agencies can play a role in reducing service gaps that occur when people return to the community after a period of incarceration or are incarcerated while receiving services in a community setting. Treatment gains made in community or institutional settings are often lost when people transition between settings, or when supervision ends. Delays in access to medication and programming can lead to relapse (or even death), and can erase much of the progress made in prior treatment programs. Many of these risks can be mitigated with better transitional planning. Human service agencies, community corrections, jails, and prisons should collaborate regularly. This collaboration should occur at the administrative level — to adopt information-sharing policies and iron out funding issues — and also at the individual case level — to coordinate care and navigate waitlists for high-priority services, such as substance use treatment and physical and behavioral health care for those with significant disabilities or otherwise at high risk of harm from gaps in care.

Human service agencies can dramatically improve the effectiveness of services for people on supervision by collaborating with other human service agencies, community corrections agencies, and clients themselves to create consistent

expectations for clients across agencies and programs. Too often, the expectations set for program participants or benefits recipients force them to choose between competing rules and regulations imposed by community corrections agents and specific service providers, or ask them to engage in an unrealistic number of simultaneous programs. In complex cases involving multiple programs, efforts should be made to staff cases at regular intervals, helping clients (with the permission of community corrections) to prioritize programmatic needs. Every effort should be made to prioritize necessities of living, followed by programs designed to address the client's most pressing needs, and finally by other obligations (such as court-ordered community service or educational programming). Clients should be included in decision-making and given clear (ideally written) guidance about the expectations of all providers.

Although community corrections and other criminal justice agencies engage in a substantial amount of human service facilitation, community corrections agencies and their employees are not uniformly trained in social work or other service-oriented fields. Their missions are grounded in the enforcement of court orders, and therefore community supervision agents often emphasize surveillance and control over addressing the underlying needs of people on supervision. Although community corrections agents routinely offer some direct services and refer clients to other community services, agents do not routinely receive ongoing education in best practices for helping people access or remain connected with

various services and providers. Human service agencies can and should take a leadership role in educating their criminal justice counterparts about best practices in service delivery, and work to problem-solve around the obstacles that prevent people on community supervision from fully accessing

and benefitting from available human service programs. Moreover, because engaging in these system improvements is not cost-free, agencies should work together to identify federal, state, and private resources to cover the start-up costs of building ongoing collaborations.

I. Introduction

Approximately 4.4 million people in the United States — one of every 58 Americans — live in their local communities while serving criminal sentences of probation, parole, or other forms of correctional supervision.⁴ Millions more live in the community on pretrial supervision, awaiting the resolution of their open criminal cases.⁵ Together, pretrial defendants, people on probation, and those on post-release supervision comprise a large population with a number of distinctive human service needs. These include a need for stable housing, access to food, employment services, parenting support, and medical and behavioral health services.

Accessing complex and disaggregated services is a challenge for many human service recipients. Obstacles to access and engagement are heightened for people involved in the criminal justice system. Individuals on supervision face numerous restrictions on their movement and behavior, and are often required to engage in activities that make it difficult for them to manage the logistics of accessing and engaging with community service providers, even when doing so is a condition of their supervision.

This paper examines the intersection between community supervision and the human service needs of people on probation, parole, and pretrial release. It begins by explaining the structure of community supervision and the ways in which supervision affects the lives of those on probation, parole, and pretrial release. It then catalogs what is known about the human service needs of people on supervision and examines the current ways in which human service agencies try to meet those needs, noting service gaps and redundancies that exist presently. It ends with suggestions for improving the delivery of human services to people on community supervision by streamlining access to services, carefully planning for continuity of services for those entering from or exiting to correctional settings, and collaborating with community corrections agencies to improve consistency in the expectations set for human service recipients by both human service and correctional agencies.

⁴KAEBLE & ALPER, PROBATION & PAROLE IN THE UNITED STATES, 2017-2018, *supra*, n. 1, at 1.

⁵Although these pretrial defendants are not ordinarily counted among the community supervision population, many are supervised by specialized pretrial probation officers or other specialized court staff, who monitor their compliance with a wide range of bond conditions and have the power to order detention for violations of release conditions.

II. Understanding the Structure of Community Supervision

Identifying community supervision as a concept is much simpler than describing its structure. Community supervision is conducted by hundreds of different agencies, situated at all levels of government, and by private-sector contractors.⁶ Ordinarily, probation rules and lengths are set by judges at the county level, with supervision conducted by agents situated in either the judicial or executive branch of county or state government.⁷ By contrast, rules of parole are usually set by supervising agencies themselves and are typically managed by state-level executive-branch agencies, such as state parole boards or departments of corrections.⁸ In 35 states, a single state agency (typically a department of corrections) provides supervision for both those on probation or parole.⁹ Pretrial supervision is sometimes conducted by probation offices (as is true in the federal system), or by specialized bail monitoring programs run by courts, or even contracted out to private agencies.¹⁰

Adding to the complexity of supervision is the fact that individuals can be subject to multiple forms of supervision simultaneously. There are few data available on the number of people serving overlapping community supervision sentences; however, studies suggest

⁶See Austin McCullough, *Private Probation and Incarceration of the Poor*, 53 AM. CRIM. L. REV. ONLINE 17, 17 (2016) (reporting that “[c]ollected records indicate that at least a dozen states have authorized the privatization of misdemeanor probation”).

⁷A 2011 survey of 46 states found that in adult misdemeanor cases, probation was considered an executive branch function in 43% of states, a judicial branch function in 39% of states, and a mixed function in 17% of states. NATIONAL CENTER FOR STATE COURTS, CONFERENCE OF CHIEF JUSTICES & CONFERENCE OF STATE COURT ADMINISTRATORS, CCJ AND COSCA SURVEY OF EVIDENCE-BASED PRACTICES IN SENTENCING & PROBATION: BRANCH RESPONSIBLE FOR PROBATION (2012), https://www.ncsc.org/___data/assets/pdf_file/0022/25672/branch-responsible-for-probation.pdf. For adult felony offenses, probation was an executive function in 63% of states, a judicial function in 33%, and a mixed function in 4%. *Id.*

⁸THOMAS P. BONCZAR, BUREAU OF JUST. STAT., CHARACTERISTICS OF STATE PAROLE SUPERVISING AGENCIES, 2006 1 (rev. 2009), <https://www.bjs.gov/content/pub/pdf/cpspa06.pdf>.

⁹*Id.* at 1.

¹⁰Cynthia E. Jones, “Give Us Free”: Addressing Racial Disparities in Bail Determinations, 16 N.Y.U J. LEGIS. & PUB. POL’Y 919, 951-52 (2013) (identifying the inherent conflicts of interest emerging from probation offices collecting fees from defendants at pretrial); Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1189.

that people serving dual sentences of probation and parole may constitute 7% or more of all individuals on supervision.¹¹ No data are available on the number of people serving multiple terms of probation in different counties, or of those on dual state and federal supervision. In some states, probation itself is a function of split agencies: In Ohio, for example, probation can be configured in a variety of ways and administered by county or state offices, leaving individuals on probation potentially subject to multiple supervision orders with multiple supervising officers for related convictions.¹²

Despite the diversity of structures and agencies that control community supervision across the United States, there are some common features shared by all community supervision agencies that are important to understand when considering how best to meet the human service needs of people on community supervision. The sections below examine the most common forms of community supervision, the types of conditions most commonly imposed, and the legal avenues for enforcing the rules of supervision.

A. Forms of Community Supervision

Across the country, community supervision comes in many forms and goes by many names.¹³ Ordinarily, the term “community supervision” is used to refer to all forms of post-conviction supervision that are imposed by a court as part of the sentence for a crime (usually called probation), or that result from the conditional release of a person from prison before his or her sentence has been fully served (usually called parole). Increasingly, however, individuals on pretrial release are also subject to release conditions that closely resemble those imposed as conditions of probation or parole. For that reason, the section below begins with a brief discussion of the pretrial population.

1. Pretrial Supervision

As discussed above, community supervision is a term ordinarily reserved for people convicted and sentenced to probation or given a period of post-release supervision following incarceration. For this reason, all data and studies of community supervision focus on people whose criminal cases have been resolved. Nonetheless, it is

¹¹*Cf.* KRISTINE DENMAN, DALE WILLITS & JENNA DOLE, NEW MEXICO STATISTICAL ANALYSIS CENTER, *ABSCONDING AND OTHER SUPERVISION VIOLATIONS: A STUDY OF PROBATIONERS, PAROLEES, AND DUAL SUPERVISION IN NEW MEXICO 17* (2017) (reporting 7% dual status probation-parole in sample of all individuals beginning state community supervision in two-year period), <https://isr.unm.edu/reports/2017/absconding-and-other-supervision-violations--a-study-of-probationers,-parolees,-and-dual-supervision-in-new-mexico.pdf>.

¹²OHIO REV. CODE § 2301.27 (2012) (describing various configurations for the provision of adult probation services); Juliene James et al., *A View from the States: Evidence Based Public Safety Legislation*, 102 J. CRIM. L. & CRIMINOLOGY 821, 844 (2012).

¹³For example, in addition to probation, noncustodial supervision sentences are variously known as “community control sanctions,” OHIO REV. STAT. § 2929.01(E), “conditional discharge,” “administrative release.” Parole is a form of community supervision that exists in indeterminate sentencing systems, in which an incarcerated person is conditionally released prior to the service of the maximum sentence imposed by a court. Many determinate sentencing systems provide for a period of post-imprisonment community supervision that adds on to (rather than subtracts from) the period of incarceration imposed by the court. Examples of this include “supervised release,” 18 U.S.C. § 3583, and “extended supervision,” WIS. STAT. § 973.01 (2017).

important for human service professionals to recognize that people on pretrial release — that is, people who have been charged with a crime but who have not yet been convicted — share many of the same needs and are often also subject to the same restrictions as people on probation and post-release supervision.

The vast majority of the hundreds of thousands of defendants arrested and charged each year are not detained while they await the resolution of their criminal cases.¹⁴ Instead, they are placed on bond (sometimes secured by cash bail, but often not). Even though these individuals are presumed innocent under law, courts are allowed to make pretrial release contingent on defendants' compliance with conditions that will ensure their appearance in court or reduce the risk of harm to the community.¹⁵ In recent years, pretrial

reform efforts focused on decreasing the number of defendants incarcerated in local jails have succeeded in negotiating a trade-off: More people are being released on bond, but more conditions are being attached to their release.¹⁶ Often, these bond conditions closely resemble those imposed by community supervision orders: mandating treatment, imposing electronic monitoring, and requiring random drug testing, among other conditions of release.¹⁷

Despite efforts to collect national data on the pretrial population, reliable statistics about the number and characteristics of those on pretrial supervision have proven difficult to obtain.¹⁸ Nonetheless, there is reason to believe that the number of people under supervision is significant — and growing. Millions of people are charged annually with crimes, while less than half a million are detained pretrial at

¹⁴ Estimates suggest that more than 10 million people are arrested annually, see OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK, ESTIMATED NUMBER OF ARRESTS BY OFFENSE AND RACE, 2018, https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=2 (last visited Jun. 27, 2020), resulting in approximately 5 million new criminal cases annually, see Court Statistics Project DataViewer (N. Waters et al., eds., Accessed Jun. 27, 2020), www.courtstatistics.org. The number of people estimated to be detained pretrial on any given day is less than 500,000. See JOSHUA AIKEN, PRISON POLY INITIATIVE, ERA OF MASS EXPANSION: WHY STATE OFFICIALS SHOULD FIGHT JAIL GROWTH (2017), <https://www.prisonpolicy.org/reports/jailsovertime.html> (last visited Jun. 27, 2020).

¹⁵ Lydette S. Assefa, *Assessing Dangerousness Amidst Racial Stereotypes: An Analysis of The Role of Racial Bias in Bond Decisions and Ideas for Reform*, 108 J. CRIM. L. & CRIMINOLOGY 653, 659 (2019).

¹⁶ Brook Hopkins et al., *Principles of Pretrial Release: Reforming Bail Without Repeating Its Harms*, 108 J. CRIM. L. & CRIMINOLOGY 679, 681 (2018).

¹⁷ *Id.*; CHICAGO COMMUNITY BOND FUND, PUNISHMENT IS NOT A “SERVICE”: THE INJUSTICE OF PRETRIAL CONDITIONS IN COOK COUNTY 1 (2017) (reporting that, of a sample of recently-bonded defendants, “more than one in four were subjected to punitive pretrial conditions, including electronic monitoring, overnight or 24-hour curfews, monthly check-ins with a Pretrial Services officer, and drug testing—all after we posted their significant monetary bonds”), <https://chicagobond.org/wp-content/uploads/2018/10/pretrialreport.pdf>; ROGER H. PETERS & HARRY K. WEXLER, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION CENTER FOR SUBSTANCE ABUSE TREATMENT, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM 129 (2005) (“An increasingly common condition of release is participation in some form of treatment in which a pretrial supervision agency or probation department monitors compliance”), https://www.ncbi.nlm.nih.gov/books/NBK64137/pdf/Bookshelf_NBK64137.pdf.

¹⁸ KIDEUK KIM ET AL., BUREAU OF JUST. STAT., NATIONAL PRETRIAL REPORTING PROGRAM, FINAL REPORT 25 (2019) (reporting that “significant challenges that make it difficult for local jurisdictions to report aggregate-level data on pretrial case processing”), <https://www.ncjrs.gov/pdffiles1/bjs/grants/250751.pdf>.

any given time.¹⁹ A study of the largest 75 counties in the country from 1990 to 2004 estimated that among those charged with felony offenses, 62% were released from custody prior to the resolution of their criminal cases.²⁰ Although many pretrial defendants are released on their own recognizance and are not subject to ongoing supervision, in recent years, many states have added or expanded pretrial service agencies, increasing their capacity to permit supervision of larger numbers of pretrial defendants.²¹

2. Probation

Probation is a community-based sanction imposed by a court as punishment for a crime.²² Although a brief term of jail custody can be attached to the beginning of a probation term in some jurisdictions, probation is ordinarily intended to serve as an alternative to incarceration.²³

Probation is the most common disposition in American criminal justice: 55% of the 6.4 million people serving sentences in the United States at the end of 2018 were

serving a term of probation.²⁴ Probation is often used as a way to prevent those convicted of first-time, youthful, or minor offenses from experiencing the dangers and criminogenic effects of jails and prisons by allowing them to maintain connections to naturally occurring community supports, including family, friends, and employers.²⁵ Over time, probation has come to serve other purposes, too. It can be a powerful tool for inducing guilty pleas, and a cheap (or cheaper than prison) way to provide accountability to large numbers of people.²⁶ The popularity of probation extends beyond misdemeanor cases to include a large range of felonies as well. In fact, national statistics show that more than 60% of all people on probation are being supervised as a result of a felony offense.²⁷

Rates and lengths of probation vary considerably from one state to another, and from county to county. Across the United States, probation rates measure from a low in New Hampshire of 291 per 100,000 adults on probation to a high in Georgia of 3,943 per 100,000.²⁸ The U.S. average

¹⁹*Supra*, n. 13.

²⁰THOMAS H. COHEN & BRIAN A. REAVES, BUREAU OF JUST. STAT., PRETRIAL RELEASE OF FELONY DEFENDANTS IN STATE COURTS 2 (2007).

²¹Hopkins, Principles of Pretrial Release, *supra*, n. 15, at 681. See also NAT'L TRENDS IN PRETRIAL RELEASE: STATE LEGISLATION UPDATE (2018), https://www.ncsl.org/portals/1/ImageLibrary/WebImages/Criminal%20Justice/pretrialEnactments_2017_v03.pdf.

²²Joan Petersilia, *Probation in the United States*, PERSPECTIVES, Spring 1998.

²³DANIELLE KAEBLE & MARY COWHIG, BUREAU OF JUST. STAT., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2016 6 (2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.

²⁴LAURA M. MARUSCHAK & TODD D. MINTON, BUREAU OF JUST. STAT., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2017-2018 2 T.1 (2020), <https://www.bjs.gov/content/pub/pdf/cpus1718.pdf>.

²⁵Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L & CRIMINOLOGY 1015, 1024 (2013).

²⁶*Id.*

²⁷KAEBLE & ALPER, BUREAU OF JUST. STAT., PROBATION & PAROLE IN THE UNITED STATES 2017-18, *supra*, n. 1, at 20, T.4.

²⁸PRISON POLICY INSTITUTE, CORRECTIONAL CONTROL 2018: INCARCERATION AND SUPERVISION BY STATE, Data Appendix (2018), https://www.prisonpolicy.org/reports/correctionalcontrol2018_data_appendix.html.

rate falls at 1,118 per 100,000.²⁹ Maximum probation lengths are typically set by statute, with ranges of six months for minor misdemeanors to lifetime supervision for serious or repeat felony offenses.³⁰ In some states, the maximum term of supervision is matched to the maximum authorized jail or prison term, while in others it is capped at between three and five years.³¹ Some states allow judges or correctional agencies to terminate supervision early in cases where a person on probation has complied with the conditions of supervision and either the person or the supervising agency petitions the court for early termination.³² In many states, judges are also allowed to increase the length of supervision in response to rule violations or for failure to pay legal financial obligations in full by the end of the original probationary period.³³

Like those who are incarcerated, people placed on probation enter supervision with lower levels of education, lower income levels, less occupational engagement, and more medical challenges than the general population, although “these disparities are substantially less pronounced than

those for prisoners.”³⁴ Nationally, men outnumber women on probation 4 to 1.³⁵ Whites comprise a majority of those on probation (55%), followed by Blacks/African Americans (28%), Hispanics (14%), American Indians and Alaska Natives (1%), and Asians and Pacific Islanders (1%).³⁶ Like gender disparities, racial disparities among those on probation are not as pronounced as among those who are incarcerated. Nonetheless, they are significant: In 2018, Black men were 2.5 times more likely to be on probation than white men.³⁷

3. Parole and Other Forms of Post-Incarceral Supervision

Probation is intended to replace a custodial sentence with a community-based sanction. By contrast, parole and other forms of post-incarceral supervision are designed to provide surveillance and services to people who are transitioning back to their communities after a period of imprisonment.³⁸ Technically speaking, parole is a form of supervision that exists only in indeterminate sentencing systems — that is, systems that permit

²⁹ *Id.*

³⁰ KELLY LYN MITCHELL ET AL., ROBIN A INST., PROFILES IN PROBATION REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN 21 STATES (2014), <https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/robin-report-2015-web.pdf>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Michelle S. Phelps, *Race, Class, and Gender Disparities in Supervision and Revocation*, in HANDBOOK ON PUNISHMENT DECISIONS: LOCATIONS OF DISPARITY (JEFFREY T. ULMER & MINDY S. BRADLEY, EDS. 2018).

³⁵ KAEBLE, *supra*, n. 3, at 17 T.4. Although this disparity is stark, it is substantially lower than the 10 to 1 ratio of male to female incarcerated persons. LAUREN GLAZE & DANIELLE KAEBLE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 6 T.5 (2014), <https://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

³⁶ *Id.*

³⁷ KENDRA BRADNER, VINCENT SCHIRALDI, NATASHA MEJIA, & EVANGELINE LOPOO, COLUMBIA JUST. LAB, MORE WORK TO DO: ANALYSIS OF PROBATION AND PAROLE IN THE UNITED STATES, 2017-2018 6 (2020), <https://justicelab.columbia.edu/sites/default/files/content/More%20Work%20to%20Do.pdf>.

³⁸ Klingele, *Rethinking Community Supervision*, *supra*, n. 25, at 1026.

individuals to be released prior to the expiration of the court-imposed period of incarceration. Typically, paroling states permit (and sometimes require) a parole board or department of corrections to release a person before the maximum sentence set by a court.³⁹ When a person is paroled, what remains of the authorized period of imprisonment converts to a period of conditional release, which can be revoked should the person violate the rules of supervision. Although indeterminate sentencing decreased in popularity during the 1980s and 1990s, a majority of states still authorize parole for at least some categories of crime.⁴⁰

As a result of sentencing reforms in the late 20th century, some states no longer impose indeterminate sentences, or limit them to certain classes of offenses.⁴¹ In a number of these states, new forms of post-incarceral supervision have been created that do not subtract from the court-imposed period of incarceration, but instead impose a period of supervision after release from custody.⁴² Violations of the conditions of release can result in a return to prison for up to the maximum length of the originally imposed period of supervision. Although these forms of supervision are legally distinct from parole, they operate

identically once an incarcerated person has been released to the community. For that reason, most research and data refer collectively to people serving terms of post-incarceral supervision as “parolees,” and data reflecting national parole statistics capture all people serving any form of post-incarceral supervision. (This paper follows that convention, collectively referring to people on all forms of post-imprisonment supervision as people on “parole.”) In 2018, more than 878,000 people were serving some form of parole or other post-release supervision.⁴³

Like those on probation, people on parole must follow specific rules and report as directed to their supervising agents, or risk being returned to prison to serve out their remaining prison sentence (in the case of those on parole), or up to the full period of post-release supervision (in the case of those supervised in determinate sentencing systems).⁴⁴ In 2009, nearly 3 out of every 4 individuals leaving prison were released to community supervision.⁴⁵

As is true with probation, rates and lengths of post-incarceral supervision vary from one state to another. Supervision rates range from 2 adults per 100,000 in Maine to 1,389 per 100,000 in Pennsylvania.⁴⁶

³⁹Edward E. Rhine et al., *The Future of Parole Release*, 46 CRIME & JUST. 279, 280 (2017).

⁴⁰Edward E. Rhine et al., *Improving Parole Release in America*, 28 FED. SENT’G REP. 96, 96 (2015) (noting that “[i]n a majority of states, boards determine the amount of time offenders spend in confinement, conditions of post-release supervision, and whether violations will result in revocation”).

⁴¹Michael Vitello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1012 (1991).

⁴²*Id.* See also LA. REV. STAT. ANN. § 40.966 (West 1989); e.g., MONT. CODE ANN. § 45-9-101 (1990).

⁴³KAEBLE & ALPER, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2017-18, *supra*, n. 1, at 1.

⁴⁴*Id.* at 1031.

⁴⁵Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry*, 41 N.M. L. REV. 421, 434 (2011).

⁴⁶PRISON POLICY INSTITUTE, CORRECTIONAL CONTROL 2018: INCARCERATION AND SUPERVISION BY STATE, Data Appendix (2018), https://www.prisonpolicy.org/reports/correctionalcontrol2018_data_appendix.html.

The U.S. average rate falls at 226 per 100,000.⁴⁷ For people who enter parole on an indeterminate sentence, the length of supervision is typically the difference between the maximum sentence set by the court and the time the person has already served in prison.⁴⁸ In states with determinate sentencing structures, periods of supervision are usually set by the court at sentencing.⁴⁹ These periods of post-release supervision may be limited to the first years following release, as in Ohio and the federal system (both of which impose five-year maximum periods of supervision),⁵⁰ or they may run as long as the difference between the period of imprisonment and the maximum sentence available for the crime of conviction, as in Wisconsin.⁵¹ Similarly to probation, some states allow judges or correctional agencies to terminate supervision early in cases where a person on parole has complied with the conditions of supervision.⁵²

As formerly incarcerated people, the demographics and needs of those on parole

are closer to those of incarcerated persons than of those on probation. Nationally, men outnumber women on parole nearly 9 to 1.⁵³ Whites comprise a majority of people on parole (45%), followed by Blacks/African Americans (38%), Hispanics (15%), American Indians and Alaska Natives (1%), and Asians and Pacific Islanders (1%). A study by the National Council on Crime and Delinquency found that African Americans are on parole “at over 5 times the rate for Whites,”⁵⁴ reflecting the increasing disparities found in each layer of the sentencing and correctional process.

B. Structure of Supervision

1. Conditions of Supervision

Community supervision has traditionally been treated by courts as a benevolent alternative to incarceration,⁵⁵ and although it does provide an alternative, it often carries significant punitive weight for the person under supervision.⁵⁶ Probation

⁴⁷*Id.*

⁴⁸W. David Ball, *Heinous, Atrocious, and Cruel: Apprendi, Indeterminate Sentencing, and the Meaning of Punishment*, 109 COLUM. L. REV. 893, 952-54 (2009).

⁴⁹See Steven L. Chaneson, *The Next Era of Sentencing Reform*, 54 EMORY L.J. 377, 453 (2005).

⁵⁰See Ohio Rev. Code § 2929.15 (2019); 18 U.S.C. § 3583 (2016).

⁵¹See WIS. STAT. § 973.01(2)(d) (2017).

⁵²See, e.g., S.D. Codified Laws § 16-22-29 (2017) (authorizing compliant discharge for those on probation or parole who have participated in qualifying treatment programs).

⁵³KAEBLE & ALPER, PROBATION AND PAROLE IN THE UNITED STATES, 2017-2018, *supra*, n. 1, at 27, T.8.

⁵⁴CHRISTOPHER HARTNEY & LINH VUONG, NAT’L COUNCIL ON CRIME & DELINQUENCY, CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 3 (2009), https://www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf.

⁵⁵Klinge, *Rethinking the Use of Community Supervision*, *supra*, n. 25 (citing *United States v. Murray*, 275 U.S. 347, 357 (1928) (“The great desideratum [of the Federal Probation Act] was the giving to young and new violators of law a chance to reform and to escape the contaminating influence of association with hardened or veteran criminals in the beginning of the imprisonment.”)).

⁵⁶See, e.g., Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEORGETOWN L. J. 291 (2016); Klinge, *Rethinking the Use of Community Supervision*, *supra*, n. 25. See also PEW CHARITABLE TRUSTS, PROBATION AND PAROLE SYSTEMS MARKED BY HIGH STAKES, MISSED OPPORTUNITIES 6 (2018), https://www.pewtrusts.org/-/media/assets/2018/09/probation_and_parole_systems_marked_by_high_stakes_missed_opportunities_pew.pdf.

allows a convicted person to avoid the deprivations of incarceration, and parole (the most common form of post-release supervision) ameliorates the harshness of an otherwise longer prison term by providing a mechanism for early release from custody.⁵⁷ Even so, community supervision never offers a “free pass.” Courts and community supervision agencies impose and enforce a broad array of conditions of supervision. There are few legal restrictions on the number or kind of rules that can be imposed: In general, so long as a condition does not violate a core Constitutional right and is not more restrictive than imprisonment itself, it will stand.⁵⁸

Rules of supervision vary widely from state to state, and even from county to county. In many jurisdictions, statutes set forth certain conditions that are required in all cases.

The most common of these include rules prohibiting new criminal offenses (and sometimes all law violations) and requiring that supervisees report to and cooperate with their supervising agents.⁵⁹ Frequently, standard conditions also include “catch-all” directives requiring supervisees to do things such as “avoid injurious and vicious habits” or “be of good behavior” — rules whose meaning is unclear and subject to competing interpretation by courts, supervising agents, and people under supervision.⁶⁰ Estimates suggest that the average number of standard conditions typically exceeds a dozen, and frequently the number of conditions is twice that amount or more.⁶¹

In addition to mandatory rules of supervision, courts and supervising agencies are often authorized (and sometimes required) to impose specialized

⁵⁷See, e.g., *United States v. Murray*, 275 U.S. 347, 357 (1928) (“The great desideratum [of the Federal Probation Act] was the giving to young and new violators of law a chance to reform and to escape the contaminating influence of association with hardened or veteran criminals in the beginning of the imprisonment.”); *Com. v. Fox*, 69 Pa. Super. 456, 458 (1918) (“[probation legislation was] enacted with the benevolent object of giving the class of convicts described in the act an opportunity for reformation without the stigma of a sentence in a criminal court”).

⁵⁸Klinge, *Rethinking the Use of Community Supervision*, *supra*, n. 25, at 1032; Note, *Judicial Review of Probation Conditions*, 67 COLUM. L. REV. 181, 202–07 (1967).

⁵⁹Heather Barklage et al., *Probation Conditions Versus Probation Officer Directives: Where the Twain Shall Meet*, 70 FED. PROBATION 37, 37 (2006) (“Currently, both federal and state probation and parole systems utilize what are known as ‘standard conditions of supervision.’ These ‘standard’ conditions routinely require the person convicted of a crime to: 1) avoid commission of any new offenses; 2) notify the supervising agency prior to leaving the district of supervision; 3) notify the supervising agency of any change in residence; 4) maintain stable employment; 5) report any new arrests without delay to the supervising agency; 6) report regularly to the supervising agency; and 7) to comply with any directives or instructions from the supervising corrections agent.”).

⁶⁰See generally Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, *supra*, n. 55, at 295; Note, *Legal Aspects of Probation Revocation*, 59 COLUM. L. REV. 311, 315 n. 31 (1959) (quoting *State v. McBride*, 83 S.E.2d 488, 490 (N.C. 1954); *Swan v. State*, 90 A.2d 690, 693 (Md. 1952)).

⁶¹*Cf.* Ronald P. Corbett, Jr., *The Burdens of Leniency: The Changing Face of Probation*, 99 MINN. L. REV. 1697, 1709 (2015) (discussing the increasing number of conditions imposed on those on probation); ALEXIS LEE WATTS ET AL., PROFILES IN PAROLE RELEASE AND REVOCATION MISSISSIPPI, ROBINA INST. OF CRIM. L. & CRIM. JUST. 7-8 (2019) (listing 22 standard conditions of parole); ALEXIS LEE WATTS, BRENDAN DELANEY & EDWARD E. RHINE, ROBINA INST. OF CRIM. LAW & CRIM. JUST., PROFILES IN PAROLE RELEASE AND REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN THE UNITED STATES: OKLAHOMA 8 (2018) (listing 20 mandatory parole conditions).

rules of supervision on people convicted of specific crimes,⁶² or which are directed to the needs of specific individuals.⁶³ Common discretionary conditions require participation in employment or education;⁶⁴ ban access to firearms (including in a shared home where a firearm might be stored);⁶⁵ impose curfews;⁶⁶ prohibit entering any place that sells alcohol (including restaurants)⁶⁷ or using alcohol or any controlled substance (including some that may be prescribed by a physician, such as medication-assisted treatment for opioids);⁶⁸ limit social contact with other

convicted individuals, including family members;⁶⁹ bar romantic relationships without prior agent authorization;⁷⁰ require participation in one or more community-based or residential treatment programs;⁷¹ impose random drug testing;⁷² restrict travel outside the county or state without prior authorization (even for limited day trips or holidays);⁷³ and mandate the payment of monthly supervision fees, court-ordered evaluation costs, and program copayments in addition to restitution, child support, and court costs.⁷⁴ In some jurisdictions, discretionary or special

⁶²See, e.g., COLO. REV. STAT. § 18-1.3-1008 (2002) (requiring those convicted of sex crime to be ordered to participate in intensive supervision program as condition of probation); N.M. STAT. § 31-21-10.1 (2007) (specifying special conditions for paroled individuals convicted of a sex crime).

⁶³See, e.g., 18 U.S.C. § 3563(b) (listing twenty-three discretionary conditions, and authorizing “such other conditions as the court may impose”); N.C. GEN. STAT. § 15A-1343(a) (2017) (“The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.”); 61 PA. STAT. AND CONS. STAT. § 6141 (2009) (“The board may make general rules for the conduct and supervision of persons placed on parole and may, in particular cases, as it deems necessary to effectuate the purpose of parole, prescribe special regulations for particular persons.”); VT. STAT. TIT. 28, § 252 (2009) (permitting court to order a person on probation to “[s]atisfy any other conditions reasonably related to his or her rehabilitation” including “prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements.”).

⁶⁴See, e.g., COLO. REV. STAT. ANN. § 18-1.3-207 (2012).

⁶⁵See e.g., 18 U.S.C. § 3563(b) (2012); See, also., *United States v. Swan*, 275 F.3d 272 (3d Cir. 2002); *United States v. Brown*, 254 F.3d 454 (3d Cir. 2001).

⁶⁶See NEB. REV. STAT. ANN. § 29-2262.04 (2020).

⁶⁷See CAL. GOV'T CODE § 26299.011 (2020).

⁶⁸Cf. *Bazzle v. State*, 2019 WY 18, ¶ 43, 434 P.3d 1090, 1101 (Wyo. 2019) (affirming revocation of probation for person on probation who violated condition of Treatment Court participation by taking legally-prescription suboxone, which was prohibited by the Treatment Court).

⁶⁹See e.g., WIS. STAT. § 973.049(2) (2012).

⁷⁰See, e.g., *United States v. Ellis*, 720 F.3d 220, 226 (5th Cir. 2013) (upholding supervised release condition that required banned “dat[ing] or befriend[ing] anyone who has children under the age of 18, without prior permission of the probation officer”).

⁷¹See, e.g., 720 ILL. COMP. STAT. ANN. 570/509 (2017) (authorizing court to require participation in approved treatment program for substance-addicted individuals on probation).

⁷²See, e.g. OHIO REV. CODE § 2951.05 (2002); OR. REV. STAT. ANN. § 137.540 (2018).

⁷³See, e.g., CAL. PENAL CODE § 1203.1 (2012).

⁷⁴See, e.g., Arthur L. Rizer, III, Nila Bala & Emily Mooney, *Realigning Probation with Our Values*, 43 Nat'l Affairs (2020). (“Though these conditions might be well intentioned, piling on conditions can exacerbate problems for those under supervision and make the public less safe.”).

conditions can only be imposed by the court; in others, the supervising agent is legally empowered to add any restrictions that support the client’s rehabilitation.⁷⁵ In general, there is no legal limit to the number of conditions that can be imposed.

Two categories of supervision conditions are particularly worthy of attention from human service providers: those requiring payment of legal financial obligations and those requiring engagement with human service programs.

Over the past several decades, the rising costs of court and correctional operations have been funded in part by the imposition of “user fees.” These fees take numerous forms, including surcharges for collection of DNA from convicted people,⁷⁶ mandatory partial payments for indigent defense counsel,⁷⁷ fees for supervision itself,⁷⁸ and payments for the full or partial cost of court-mandated programs and technology

(e.g., drug testing, counseling, and GPS monitoring).⁷⁹ One study reported that in California “16 different statutes codify 269 separate court fines, fees, forfeitures, surcharges and penalty assessments” that can be assessed, depending on the crime of conviction, while in Texas there are “15 categories of court costs that are ‘always assessed’ and an additional 18 discretionary [legal financial obligations] that include fees for being committed or released from jail.”⁸⁰ Jurisdictions sometimes add additional fees for use of payment plans and late payments.⁸¹

The vast majority of the fees and fines assessed through the criminal justice system go uncollected.⁸² Nevertheless, legal financial obligations remain a significant source of revenue for many courts and state agencies. (In one Texas county, for example, “probation fees made up 46 percent of the . . . Probation Department’s

⁷⁵ Compare *Com. v. MacDonald*, 736 N.E.2d 444, 448 (Ma. Ct. App. 2000) (“A probation officer does not have the discretion to modify or alter the terms of a defendant’s probation”) with WIS. ADMIN. CODE DOC § 328.04(3)(s) (2019) (“Standard rules require that the offender shall comply . . . with any additional rules that may be established by an agent”). See also Heather Barklage, Dane Miller & Gene Bonham, *Probation Conditions Versus Probation Officer Directives: Where the Twain Shall Meet*, 70 FED. PROBATION (2006).

⁷⁶ See, e.g., *State v. Thornton*, 353 P.3d 642 (Wash. Ct. App. 2015).

⁷⁷ See Helen A. Anderson, *Penalizing Poverty: Making Criminal Defendants Pay for Their Court-Appointed Counsel Through Recoupment and Contribution*, 42 U. MICH. J.L. REFORM 323, 324 (2009).

⁷⁸ See Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1762 (2015) (reporting that “[s]ome probation agencies have reported that they receive as much as fifty percent of their budgets through the collection of user fees—and many private probation contractors subsist entirely on monies wrung out of supervised offenders”); Paul Peterson, *Supervision Fees: State Policies and Practice*, 76 FED. PROBATION 40 (2012).

⁷⁹ See Francis T. Cullen, et al., *Reinventing Community Corrections*, 46 Crime & Just 27, 51 (2016) (noting “an increasing array of ‘user fees’ for probation, including payments for court and prosecution, use of a public defender, electronic monitoring, drug tests, and mandatory treatment”).

⁸⁰ KARIN D. MARTIN ET AL., NAT’L INST. JUST., SHACKLED TO DEBT: CRIMINAL JUSTICE FINANCIAL OBLIGATIONS AND THE BARRIERS TO RE-ENTRY THEY CREATE 4 (2017), <https://www.ncjrs.gov/pdffiles1/nij/249976.pdf>.

⁸¹ *Id.*

⁸² See MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES: A FISCAL ANALYSIS OF THREE STATES AND TEN COUNTIES 10 (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.

\$18.3 million budget in 2006.”⁸³) Although it is possible to make these fees subject to collection through civil judgments, the more common practice is to use community corrections as debt-collection agencies to compel those on supervision to pay not only restitution, supervision fees, and payments for court-ordered programs, but also child support, court costs, and other legal financial obligations.⁸⁴ When payment of these obligations is a condition of supervision, failure to pay means more than a bad credit score: It can — and sometimes does — result in incarceration.⁸⁵ Even when incarceration does not occur, the mere threat of sanctioning for nonpayment can motivate people on supervision to prioritize supervision fees over basic living costs for themselves and their families.⁸⁶ In some cases, the prospect of being asked for payment has even led some people to skip supervision meetings entirely — a practice that can lead to revocation for absconding from supervision.⁸⁷

Financial sanctions frequently overlap with another important category of conditions: those that require engagement with specific human service programs. Individuals on probation and parole are often ordered

to undergo specialized drug or mental health assessments, and to comply with the recommendations that flow from those assessments. Individual and group counseling is often recommended for those with mental health challenges, and individuals with substance use disorders are often referred for drug treatment and testing. Each of these services (assessment, counseling, treatment, and testing) may be charged in part or in whole to the person on supervision, a fact that can form an obstacle to long-term engagement with needed services. Further complicating access to needed services are long waitlists and limited providers, especially for those with specialized treatment needs.⁸⁸ When they are available at all, these programs and providers may be located far from the places where clients live, necessitating time-consuming travel and creating complicated logistics for people who wish to engage with services while balancing competing obligations.

Even when mandatory and special conditions appear reasonable in isolation, the aggregation of conditions often imposes burdens that can overwhelm people on supervision. Researchers, commentators,

⁸³ *Id.* at 6.

⁸⁴ See ALICIA BANNON ET AL., BRENNAN CTR. FOR JUST., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf.

⁸⁵ See, e.g., ARIZ. REV. STAT. § 13-810E.2 (2019) (upon finding wilful non-payment of a fine, fee, surcharge, or assessment, court may “[r]efer the defendant for revocation of probation, parole or community supervision”); *Vangilder v. State*, 556 S.W.3d 534, 538 (Ark. Ct. App. 2018) (upholding revocation for failure to pay court-ordered obligations).

⁸⁶ For specific stories and examples, see HUMAN RIGHTS WATCH, SET UP TO FAIL: THE IMPACT OF OFFENDER-FUNDED PRIVATE PROBATION ON THE POOR 1-2 (2018), https://www.hrw.org/sites/default/files/report_pdf/usprobation0218_web.pdf.

⁸⁷ RAM SUBRAMANIAN ET AL., VERA INST. JUST., INCARCERATION’S FRONT DOOR: THE MISUSE OF JAILS IN AMERICA 45 (2015), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/01/incarcerations-front-door-report.pdf>; BANNON ET AL., *supra*, n. 82, at 24.

⁸⁸ PETERS & WEXLER, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM, *supra*, n. 16, at 130 (“[J]ust as overcrowded court dockets force the hand of criminal justice system officials on certain decisions, overcrowded caseloads can make it difficult for treatment programs to accept new clients.”)

and criminal justice professionals alike have criticized the “piling on” of conditions, arguing that it sets people up to fail on supervision without offering any commensurate benefit to public safety.⁸⁹ The person on probation without reliable transportation who is required to be home by 10 p.m., maintain employment, participate in drug treatment counseling, and undergo intermittent drug testing may struggle to balance competing demands with limited access to rides from family or friends. The same is true for people on supervision who have to choose between maintaining housing, paying child support, and keeping up with monthly supervision fees, all on a restricted income. The costs and time constraints imposed by supervision conditions limit the ability of people on supervision to seek additional needed services not required by their supervision orders.

2. Oversight of People on Community Supervision

Once a person is placed on supervision, whether probation or parole, the law rarely dictates what kind of supervision the person will receive, in terms of frequency, intensity,

or supervision style.⁹⁰ These matters turn in part on the temperament of individual supervising officers and in part on the culture and policies of supervision offices.⁹¹ The intensity of supervision and the flexibility (or rigidity) of supervising agents' expectations can have profound effects on the ability of people on supervision not only to comply with the terms of their supervision, but also to engage meaningfully with other services.⁹²

The growing popularity of actuarial risk tools means that, in many places, decisions about how often a person should report to a community corrections officer and what specific programs he or she should attend will be tied to the person's predicted risk of future reengagement with the criminal justice system.⁹³ Ordinarily, lower-risk individuals will be offered fewer programs and services than their higher-risk counterparts, on the theory that interventions may increase risk of future crime by exposing people to more experienced criminal actors.⁹⁴ Medium- and higher-risk individuals are generally given higher levels of surveillance and referred for more programs in order to target areas of need related to their alterable

⁸⁹ See generally, Michael P. Jacobson et al., *Less Is More: How Reducing Probation Populations Can Improve Outcomes*, Program in Criminal Justice Policy and Management, Harvard Kennedy School (2017), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf; Ronald P. Corbett, Jr., *The Burdens of Leniency*, *supra*, n. 59, at 1709.

⁹⁰ The one exception relates to those convicted of a sex crime, who often are subject to more intensive supervision as a matter of statute. See, e.g., NEV. REV. STAT. § 213.1243 (2019).

⁹¹ Klingele, *supra*, n. 24, at 1036-37; Richard McCleary, *How Structural Variables Constrain the Parole Officer's Use of Discretionary Powers*, 23 SOC. PROBS. 209 (1975).

⁹² Sam King, *Assisted Desistance and Experiences of Probation Supervision*, 60 PROBATION J. 136-151 (2013).

⁹³ Pew Charitable Trust, *Policy Reforms Can Strengthen Community Supervision: A Framework to Improve Probation and Parole 18-20* (2020), https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf. But see Jill Viglione et al., *Misalignment in Supervision: Implementing Risk/Needs Assessment Instruments in Probation* 42 CRIM. JUST. & BEHAVIOR 263 (2015) (finding that even when risk and needs tools are used to assess people on supervision, the results are often ignored in later case management decisions).

⁹⁴ See Jill Viglione & Faye S. Taxman, *Low Risk Offenders Under Probation Supervision: Risk Management and the Risk-Needs-Responsivity Framework*, 45 CRIM. JUST. & BEHAVIOR 1809, 1811 (2018); Celesta A. Albonetti & John R. Hepburn, *Probation Revocation: A Proportional Hazards Model of the Conditioning Effects of Social Disadvantage*, 44 SOC. PROBS. 124, 135 (1997).

(“dynamic”) risks of future offending.⁹⁵ Unfortunately, given the correlation between social disadvantage and criminal justice system involvement, members of racial minority groups and the poor are disparately more likely to be classified as high risk, thereby exposing them to greater supervision burdens, on average, than wealthier, white people on probation or parole.⁹⁶ In places where risk instruments are not routinely used, determinations of how often those on probation or parole should report to their agents remain largely within the discretion of supervising agents.

Jurisdictions vary in where reporting occurs. Most commonly, those on probation or parole report in person to local offices at designated intervals. Between meetings, supervising agents may check in by phone and may periodically contact “collaterals,” such as family members or service providers, to assess how the individual is doing and glean whether supervision rules are being followed.⁹⁷ Some jurisdictions permit certain low-risk individuals to report exclusively by mail, phone, or via kiosk for some or all of their scheduled meetings.⁹⁸ Most agencies have policies on how frequently (if ever) supervising agents need to meet with those under supervision in the community, whether at home or at work.⁹⁹ Often these visits are prearranged, but some may be unannounced (particularly

those meant to confirm residency or to investigate allegations of rule violations). In many jurisdictions, those on probation or parole are required to waive Fourth Amendment rights against unreasonable searches and seizures; as a result, probation officers (alone or accompanied by police) may sometimes engage in warrantless searches of spaces in which the person under supervision resides.¹⁰⁰

Complying with reporting requirements can be more difficult than it sounds. Arranging for child care and transportation to agents’ offices can be time-consuming and costly, and people often spend more time waiting for their agents than they do speaking with them. Reporting can be further complicated by the rigid 9 a.m. to 5 p.m. (or 8 a.m. to 4 p.m.) operating hours of many offices, which make it difficult for people to meet as directed with their agents without disrupting work, school attendance, or other daytime appointments and business. The more often people are required to report, the more difficult it becomes to balance reporting obligations with these competing commitments. Logistical challenges are multiplied when supervision conditions require additional daytime programming, drug testing, court hearings, and counseling sessions — often at scattered locations.

⁹⁵Steven S. Alm, *HOPE Probation and the New Drug Court: A Powerful Combination*, 99 MINN. L. REV. 1665, 1690-91 (2015).

⁹⁶Phelps, *Mass Probation and Inequality: Race, Class, and Gender Disparities in Supervision and Revocation*, in HANDBOOK ON PUNISHMENT DECISIONS: LOCATIONS OF DISPARITY 50 (JEFFREY T. ULMER & MINDY S. BRADLEY, EDS. 2017).

⁹⁷Guy Bourgon et al., *The Living Laboratory Studies: Providing Insights into Community Supervision Practices*, 82-JUNE FED. PROBATION 3, 5 (2018).

⁹⁸Doherty, *Obey All Laws and Be Good*, *supra*, n. 55, at 316; *see generally* Eileen M. Ahlin et al., *Kiosk Reporting Among Probationers in the United States*, 96 PRISON J. 688 (2016).

⁹⁹Bourgon et al., *The Living Laboratory Studies*, *supra*, n. 95, at 5.

¹⁰⁰Jay M. Zitter, *Validity of Requirement That, As a Condition of Probation, Defendant Submit to Warrantless Search*, 99 A.L.R.5th 557 (2002) (finding the requirement upheld by courts with few exceptions).

3. Enforcement Mechanisms

Given the large number of conditions typically imposed on supervisees, it is no surprise that violations are common.¹⁰¹ Although most minor rule violations go undetected, any violation gives supervising agencies the legal authority to imprison the violator and seek revocation of supervision.¹⁰² Ordinarily, minor or first-time infractions result in sanctions less severe than revocation, but in cases of serious or repeat violations, the consequence of breaking even noncriminal rules can be imprisonment, sometimes for a short-term jail sanction, and other times for a full jail or prison sentence following revocation of probation or parole.¹⁰³

a. Holds and Sanctions

When a person is accused of having violated a rule of supervision, community supervision agencies can respond in a variety of ways. Typically, the first step is investigation. Community supervision officers are often legally authorized to have the person arrested and detained while the officer investigates.¹⁰⁴ In some jurisdictions, such arrests are reflexive: When an allegation is made, agents arrest

first and ask questions later. In other places, agency policies dictate when a person can or must be detained as a result of an alleged violation.¹⁰⁵ When the allegations are minor or highly speculative, supervising officers will often conduct their investigation while the individual remains in the community.

If a person concedes guilt and the offense at issue is not unduly serious, many community corrections agencies will offer to impose a sanction short of revocation to punish the rule violation without ending supervision entirely.¹⁰⁶ Sometimes these sanctions take the form of detention in jail, ranging from hours to a few weeks.¹⁰⁷ Other times, sanctions may include more frequent reporting, community service, or participation in a program designed to address the rule-violating behavior.¹⁰⁸ When used effectively, sanctions can prevent needless imprisonment. There is little research to date, however, on the effects of short-terms sanctions, including whether the use of jail actually prevents revocation or only delays it.

Regardless, even a day or two of jail has been shown to significantly disrupt employment, child care, and housing

¹⁰¹Doherty, *Obey All Laws and Be Good*, *supra*, n. 55, at 316.

¹⁰²*Id.*

¹⁰³*Id.* at 322-23.

¹⁰⁴NEIL P. COHEN, LAW OF PROBATION & PAROLE § 23:22 (2019) (“Statutes in many jurisdictions specifically authorize the warrantless arrest of probationers and parolees”).

¹⁰⁵*Cf.* PEW CHARITABLE TRUST, TO SAFELY CUT INCARCERATION, STATES RETHINK RESPONSES TO SUPERVISION VIOLATIONS 16-17 (2019), https://www.pewtrusts.org/-/media/assets/2019/07/pspp_states_target_technical_violations_v1.pdf (providing examples of state laws and policies).

¹⁰⁶VERA INST. OF JUST., THE POTENTIAL OF COMMUNITY CORRECTIONS TO IMPROVE SAFETY AND REDUCE INCARCERATION 18 (2013), <https://www.prisonpolicy.org/scans/vera/potential-of-community-corrections.pdf>.

¹⁰⁷Doherty, *Obey All Laws and Be Good*, *supra*, n. 55, at 323-27.

¹⁰⁸NAT’L CTR. FOR STATE COURTS, AN EVIDENCE-BASED APPROACH TO PROMOTING & ENFORCING COMPLIANCE WITH CONDITIONS OF PROBATION SUPERVISION (2017), <https://www.ncsc.org/~media/Microsites/Files/CSI/NCSC%20CSI%20brief%203-27-17.ashx>.

for those living in the community.¹⁰⁹ For people on supervision working with human service agencies to secure employment, reunify their families, or establish secure housing, such short-term disruptions can present a significant obstacle to success, potentially undoing months or even years of effort by the supervised person and community service providers to stabilize his or her environment.

b. Revocation

When a person on supervision commits a serious violation of the rules of supervision, accumulates a record of repeated noncompliance, absconds from supervision entirely, or commits a serious new crime, supervising agencies will ordinarily seek to revoke supervision.¹¹⁰ In cases of probation, the sentencing court usually decides whether to revoke the person's supervision and what new sentence to impose, while parole boards or other administrative agencies ordinarily decide whether and for how long to return a person to prison.¹¹¹ In most (but not all) jurisdictions, a person can be revoked for less than the full custodial sentence.¹¹² States differ in whether they provide credit against the sentence for time spent successfully in the community prior to revocation: Some states offer day-for-day credit, while others offer no credit at all for time spent on supervision.¹¹³

When a person's probation is revoked, he or she will almost always serve time in jail or prison. If supervision is revoked only partially, the period of incarceration will be followed by a return to supervision. If, however, the revocation is for all of the remaining portion of community supervision, he or she will leave jail or prison without any supervision at all. One complication is that when the behavior that leads to revocation is itself illegal, the person on supervision may also be charged with a new crime, in addition to facing revocation. When that happens, the person may be required to serve an additional probation, jail, or prison term related to the new crime or crimes.

C. Access to Human Services Through the Criminal Justice System

A common misperception is that the criminal justice system both assesses and addresses the rehabilitative needs of people on community supervision. As discussed above, community corrections agencies do make efforts to address the needs of people on supervision. Many factors, however, limit their ability to succeed in these efforts. Resource limitations, lack of specialized training in nonsurveillance functions, and the sheer breadth of the needs of people on community supervision all reduce

¹⁰⁹*Cf.* VERA INST. OF JUST., THE POTENTIAL OF COMMUNITY CORRECTIONS TO IMPROVE SAFETY AND REDUCE INCARCERATION *supra*, n. 105, at 7; ERNEST M. DRUCKER, A PLAGUE OF PRISONS: THE EPIDEMIOLOGY OF MASS INCARCERATION IN AMERICA (2011).

¹¹⁰Doherty, *Obey All Laws and Be Good*, *supra*, n. 55, at 295.

¹¹¹Klinge, *Rethinking the Use of Community Supervision*, *supra*, n. 25, at 1040.

¹¹²*Id.* at 1041.

¹¹³*Compare* FLA. STAT. § 948.06(1)(f)4. (2019) (denying credit for time spent out of custody) *with* LA. CODE CRIM. PROC. ANN. art. 895.6 (2018) (granting "compliance credit" of 30 days per month).

the capacity of community corrections agencies to address the real needs of the people they supervise. Role conflict and goal ambiguity are other well-documented barriers: There is no consistent agreement about how community supervision officers should balance the sometimes-competing functions of social worker, bureaucrat, and law enforcer,¹¹⁴ or how they should define what “success” on supervision looks like.¹¹⁵

To understand the role that community corrections plays in addressing the human service needs of those on supervision, it is important to understand both how correctional agents and agencies define their own role, and what role external human service agencies play (both intentionally and inadvertently) in the work of community supervision.

1. Models of Interaction

There are many different models for how supervising agents view their role in relation to the needs of the people they supervise. Both agencies and individual agents are likely to differ in the approaches they take, and many may define their role differently from one case to another.¹¹⁶ Nevertheless, it is possible to identify at least three different ways of viewing the role of community corrections in meeting the human service needs of those on supervision: service provider, service broker, and compliance monitor.

a. Model 1: Community Corrections Agent as Service Provider

Historically, community corrections workers were primarily social workers, trained to help people engaged in the criminal justice system connect to community-based services and to provide the support and services needed to promote long-term desistance from crime.¹¹⁷ During the latter portion of the 20th century, as agencies increasingly shifted their focus to monitoring compliance with the conditions of release, an increasing number of community corrections officers were hired with non-service-oriented backgrounds.¹¹⁸ Today’s officers come from a variety of different educational backgrounds and possess varied skills in the area of service delivery.

All community corrections agencies rely on larger human service agencies to deliver medical services, long-term housing assistance, and most forms of vocational and employment training. Some agents and agencies remain casework-oriented in their delivery of day-to-day services, particularly with respect to more vulnerable populations, such as those with known mental illness or a history of victimization.¹¹⁹

The human services that community corrections agencies provide directly come in two forms: assistance with material needs

¹¹⁴Jeffrey Ian Ross, *Overburdened Community Correction System*, in KEY ISSUES IN CORRECTIONS 153, 155 (2d ed. 2016).

¹¹⁵Matthew DeMichele et al., *Probation and Parole Officers Speak Out—Caseload and Workload Allocation*, 71-DEC FED. PROBATION 30, 34 (2007).

¹¹⁶See Michelle Phelps, *Ending Mass Probation: Sentencing, Supervision, and Revocation*, 28 THE FUTURE OF CHILDREN 125, 130 (2018) (“Even within one department, probationers often experience supervision quite differently, depending on the orientation of the officer and the level of their supervision”).

¹¹⁷*Id.*

¹¹⁸*Id.*

¹¹⁹See, e.g., Loudon, Jennifer Eno, et al., *Supervision Practices in Specialty Mental Health Probation: What Happens in Officer-Probationer Meetings?* 36 L. & HUM. BEHAVIOR 109 (2012).

and rehabilitative programming. Many agencies provide limited, discretionary material assistance in short-term crises: bus passes, gift certificates for groceries or gas, or paying for a few nights at a hotel. Still, in the main, community supervision agencies do not have the budgetary capacity to assist clients with obtaining long-term stability in housing, food, or transportation.¹²⁰ To do that, they rely primarily on external partners, including government agencies and nonprofit organizations.

Some community supervision agencies provide limited direct services to people under supervision in both individual and group settings. Although community corrections officers are ordinarily not licensed to provide mental health or substance abuse treatment in an intensive way, agents are sometimes trained to deliver targeted programming (examples include the popular cognitive intervention program “Thinking for a Change,” which can be delivered by trained community supervision staff)¹²¹ and to incorporate cognitive-behavioral interventions into their work with people on supervision.¹²² Particularly in rural communities, where specialized providers are difficult to find, community corrections agents may offer programs ranging from anger management to one-on-one behavioral coaching out

of necessity, since community providers are often difficult to access.¹²³ Even in offices where officers are trained to use motivational techniques and other cognitive-behavioral interventions, however, there is a gulf between supervisees’ needs and the time agents have available to meet them. On average, meetings between officers and clients are short and sporadic. (One recent study estimated that probation officers on average spent only 25 minutes in face-to-face meetings with people under supervision.¹²⁴) Topics to be covered in such meetings include general updates, fee collection, and paperwork — leaving little time for in-depth treatment of any kind.

b. Model 2: Community Corrections Agent as Service Broker

As a result of high caseloads, limited resources, and other limitations described above, most supervising agents function more as service brokers than service providers. When the needs of a person on probation or parole are identified, either through formal assessments or requests for help from supervised people, supervising agents will often refer their clients to community-based services and programs. Sometimes the connection between the community corrections agency and the service provider is a close one, in which the

¹²⁰Ross, *Overburdened Community Correction System*, *supra*, n. 114, at 158 (“[W]hen the lion’s share (typically 85%) of the agency’s budgets goes for salaries and fringe benefits, little money is left for meaningful programs for the people who need it the most, in particular convicts who have been released who have few resources at their disposal”).

¹²¹See Nat’l Inst. Corr., Thinking for a Change (“T4C is provided by corrections professionals in prisons, jails, detention centers, community corrections, probation, and parole settings”), <https://nicic.gov/thinking-for-a-change> (last visited Jun. 28, 2020).

¹²²For a review of popular modalities used to guide agent-supervisee interactions, see generally Heather Toronjo & Faye S. Taxman, *Supervision Face-to-Face Contacts: The Emergence of an Intervention*, in EVIDENCE-BASED SKILLS IN CRIMINAL JUSTICE 217 (PAMELA UGWUDIKE ET AL., EDS. 2018).

¹²³Cf. J.B. Wogan, *The Changing Relationship Between Ex-Criminals and Their Parole Officers*, GOVERNING (Oct. 2015) (describing use of the EPICS program to engage persons on probation or parole in behavior change), <https://www.governing.com/topics/public-justice-safety/gov-probation-parole-states-community-supervision.html>.

¹²⁴Matthew DeMichele & Brian Payne, *Taking Officer Time Seriously: A Study of the Daily Activities of Probation Officers*, 65 PROBATION J. 39, 47 T.2 (2018).

supervising agency contracts for a fee with local programs to provide specific services (e.g., halfway houses, drug testing, anger management counseling).¹²⁵ In these cases, services may be made available to those who need them for free or at a reduced cost. In many cases, however, the supervising agent will merely provide a phone number or address, leaving the person on probation or parole to navigate the process of applying for and connecting with needed services.

This model has some advantages over one in which programming is delivered in house by community corrections agents. By connecting people on supervision to specialized providers, supervision agents' time is freed to engage in other tasks of supervision, including one-on-one contact, investigation, administration, and court appearances. More importantly, experienced providers with superior training in human services and more targeted resources may be better equipped to help people on supervision get the help they need. The challenges lie in ensuring that community corrections agents are aware of existing resources in their communities (many of which turn over rapidly), that they provide adequate assistance in helping people under supervision access needed services, and that the service recipient, human service provider, and community supervision officer all clearly understand what outcome is expected to result from the referral.

In this model, whether the human service needs of people on supervision are met will ultimately turn on the self-advocacy skills of those on supervision, and on the number and kind of contracted programs the supervising agency knows about or supports. When contracted partners are few (or their service slots are limited), and when would-be clients lack the knowledge, time, and ability to navigate social service access alone, the end result of this approach is unmet need.

c. Model 3: Community Corrections Agent as Compliance Monitor

A third model of supervision is one in which the community corrections agency embraces a purely law enforcement mentality, seeing its job as enforcing court orders and viewing its role in human service delivery as limited to enforcing court rules that require people on supervision to engage with specific programs or services. As one officer explained, agencies with this mentality “view [them]selves as the front line between high-risk offenders and the community [they] live in.”¹²⁶ In this model, the onus is on supervised people to take initiative to obtain the services they need to comply with their legal obligations, including the rules of supervision.¹²⁷ The job of the agent is to ensure that the person does just that, and to punish any failure to do so.

¹²⁵ See, e.g., § 18 U.S.C. 3672 (2011) (authorizing Director of the Administrative Office of the United States Courts “to expend funds or to contract with any appropriate public or private agency or person to monitor and provide services to any offender in the community”). See also Larry T. Hoover, *Effect of Contracted Treatment Referrals on Probation Officer Role*, 57 J. OFFENDER REHAB. 506 (2018) (describing results of analysis by the Texas Department of Criminal Justice’s Community Justice Division on effects of using outsourced service providers).

¹²⁶ DeMichele et al., *Probation & Parole Officers Speak Out*, *supra*, n. 112, at 32.

¹²⁷ Reuben Jonathan Miller, *Devolving the Carceral State: Race, Prisoner Reentry, and the Micro-Politics of Urban Poverty Management*, 16 PUNISHMENT & SOC’Y 305, 315 (2014) (noting that “[t]his shift in the responsibility of the state to serve the needs of former prisoners and the off-loading of its capacity to rehabilitate them onto poor communities of color corresponds with broader trends in social welfare that render the urban poor accountable for their own social outcomes”).

Agencies embracing this model often emphasize the political dangers of leniency. The “cost of strict enforcement” is seen as being “borne only by the parolee,” while “the cost of failing to clamp down on a dangerous parolee is borne by an entire agency.”¹²⁸ Although this approach has been criticized by many scholars, policymakers, and practitioners as counterproductive and overly harsh,¹²⁹ it enjoys the benefit of drawing a clear separation between humanitarian social services and the punitive power of the criminal justice system. In this model, the criminal justice system does not promise rehabilitation or social assistance — it merely guarantees punishment for noncompliance with the terms of probation or parole.¹³⁰

d. Effects of Agent Demeanor and Resource Limitations

Whichever model of supervision prevails in a given agency (and often individual agents will adopt a mix of different approaches even within a single office),¹³¹ factors such as agent demeanor and agency resources also affect the ability of correctional agencies to assist people in successfully completing their terms of supervision. For example, studies suggest that community supervision agents who balance the social work and law enforcement aspects of their work by

using “a firm, fair, and caring approach help protect against rearrest,” even after controlling for the personality traits and level of risk for rearrest among those being supervised.¹³²

Resource constraints are also an ever-present factor that affects nearly all supervision agencies: Agency budgets are limited and, in many communities, needed human services are absent or in short supply. These resource limitations, combined with the many needs of people under supervision, can result in significant service gaps. Even when community corrections agencies refer to community-based services, persons on probation or parole often fall through the cracks, failing to properly apply for services, being placed on lengthy waitlists for urgent needs, and being given treatment in doses that fall far below the amount needed to promote health and stability.¹³³ As a result, many individuals on supervision are not provided with the services and treatment they need during their terms of supervision.

Commentators have lamented that “most probationers receive little in the way of treatment, services, or assistance programs that would help them address their (often many) challenges, including addiction,

¹²⁸NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES, NAT’L ACADEMIES PRESS 36 (2014), <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

¹²⁹See, e.g., Michelle S. Phelps, *Ending Mass Probation: Sentencing, Supervision, and Revocation*, 28 FUTURE OF CHILDREN 125 (2018); Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, *supra*, n. 55; Klingele, *Rethinking the Use of Community Supervision*, *supra*, n. 25; PEW CHARITABLE TRUSTS, PROBATION AND PAROLE SYSTEMS MARKED BY HIGH STAKES, MISSED OPPORTUNITIES, *supra*, n. 25.

¹³⁰See, e.g., Walter L. Barkdull, *Probation: Call It Control - And Mean It*, 40 FED. PROBATION 3 (1976).

¹³¹See Phelps, *Ending Mass Probation*, *supra*, n. 115, at 130.

¹³²Patrick J. Kennealy, Jennifer L. Skeem, Sarah M. Manchak & Jennifer Eno Loudon, *Firm, Fair, and Caring Officer-Offender Relationships Protect Against Supervision Failure*, 36 L. & HUM. BEHAVIOR 496, 501 (2012).

¹³³See generally NAT’L INST. CORR., DOSAGE PROBATION: RETHINKING THE STRUCTURE OF PROBATION SENTENCES (2014), <https://s3.amazonaws.com/static.nicic.gov/Library/027940.pdf>.

spotty work histories, histories of trauma and abuse, and unstable family and living arrangements.”¹³⁴ When people on supervision connect with services, those services are often inadequate to address the complexity and severity of the challenges supervisees face in their daily lives.¹³⁵

In those instances when people on supervision do manage to secure needed services and establish stable housing, sobriety, wellness, and employment, lack of coordination between human service and correctional agencies can easily disrupt their hard-won progress. Intensive drug treatment in prison, for example, is often followed by long delays in connecting persons on parole to appropriate aftercare programming in the community. Stabilization of mentally ill individuals is commonly disrupted when they are released from custody without medication sufficient to carry them through to an appointment with a community provider. And frequently, short-term incarceration during investigation of alleged violations or as a “micro-sanction” for technical violations can threaten the ability of persons on probation or parole to remain connected

to jobs, treatment programs, child care obligations, and other essential components of long-term stability.¹³⁶

2. Role of Service Agencies in Community Supervision

Although the work of human service agencies is independent of the criminal justice system in many ways, it also serves important criminal justice functions. Some of these functions are benign: By stabilizing the lives of people on supervision, human service programs can significantly improve the ability of people on supervision to comply with the conditions of their release.¹³⁷ In addition, as discussed above, community corrections agencies frequently contract with community-based and residential treatment services focused on behavioral health, and use entry into these programs as noncustodial sanctions for rule violations. In this way, human service programs can divert people from revocation and prevent unnecessary incarceration. At the same time, community corrections agencies frequently use information gleaned from human service partners and programs to extend their surveillance capabilities. By

¹³⁴Phelps, *Mass Probation and Inequality*, *supra*, n. 95, at 46. See also Faye S. Taxman, *Probation, Intermediate Sanctions, and Community-based Corrections in THE OXFORD HANDBOOK OF SENTENCING & CORRECTIONS* 363 (JOAN PETERSILIA & KEVIN R. REITZ, EDS. 2012).

¹³⁵See, e.g., Cecelia Klingele, *Understanding Revocation from Community Supervision*, in EX-OFFENDERS UNDER WATCH, BADGER INST. 3, 7 (2019) (reporting on “drug treatment” in the form of weekly Narcotics Anonymous meetings as the sole probation intervention for individuals with significant substance abuse problems).

¹³⁶See Claire W. Herbert et al., *Homelessness and Housing Insecurity Among Former Prisoners*, 1 RSF: THE RUSSELL SAGE FOUNDATION J. SOC. SCI. 44 (2015) (“Frequent, short-term, temporary moves in and out of intermediate sanctions are a potential source of residential instability for parolees”).

¹³⁷Some of the best examples of interventions of this sort come from the substance use context; specialized substance use treatment can reduce harm in the form of both addiction and adjacent criminal behavior. See, e.g., Beth M. Huebner & Jennifer Cobbina, *The Effect of Drug Use, Drug Treatment Participation, and Treatment Completion on Probationer Recidivism*, 37 J. DRUG ISSUES 619 (2007) (finding that completion of drug treatment reduced odds of recidivism for persons on probation, while partial program participation did not); John H. Boman IV, Thomas J. Mowen, Eric J. Wodahl, Bryan Lee Miller & J. Mitchell Miller, *Responding to Substance-Use-Related Probation and Parole Violations: Are Enhanced Treatment Sanctions Preferable to Jail Sanctions?*, 32 CRIM. JUST. STUDIES 356 (2019) (finding that increasing treatment in response to drug use violations by people on intensive supervision increased odds of successful completion of supervision).

reporting missed meetings and violations of program rules to community supervision officers, human service agencies often become inadvertent criminal justice agents themselves, sometimes provoking criminal justice sanctions and even revocation.¹³⁸

a. Diverting From Revocation

Many rule violations, particularly those related to the use of controlled substances or to behaviors that flow from that use (such as theft and intoxicated operation of motor vehicles), can be better addressed through treatment than through imprisonment. Ideally, the results of risk-needs assessments conducted at the outset of supervision would result in persons on probation or parole being matched to appropriately intensive treatment services early on, with sufficient supports to enable their continued participation in programming as long as it is needed. In reality, the cost of high-intensity treatment combined with limited available treatment slots means that in most cases, individuals on supervision are not offered intensive treatment resources until they have engaged in serious rule violations and are facing the real possibility of revocation.

When individuals are placed in high-intensity treatment programs as an alternative to revocation, the stakes are high. Many programs have strict rules about attendance, substance use, peer communication, and overall behavior that are designed to facilitate smooth program delivery. Violations of even apparently minor rules can become a basis for termination from these programs — a result that can end in imprisonment for people on probation or parole who have been ordered to complete intensive programming as an alternative to revocation.¹³⁹

Despite the pressure these stakes place on both program participants and service providers, treatment-oriented diversions from revocation can serve two important functions. First, when successful, they can eliminate the need for imprisonment, with all its fiscal and social costs. Second, treatment-oriented diversions can provide people on supervision who have significant treatment needs with a way to access higher levels of care than might be otherwise available to them in their communities.¹⁴⁰

¹³⁸ Cf. Robert J. McGrath, Georgia Cumming & John Holt, Collaboration Among Sex Offender Treatment Providers and Probation and Parole Officers: The Beliefs and Behaviors of Treatment Providers, 14 *Sexual Abuse: A Journal of Research & Treatment* 49 (2002).

¹³⁹ See also Christopher T. Lowenkamp, Anthony W. Flores, Alexander M. Holsinger, Matthew D. Makarios & Edward J. Latessa, *Intensive Supervision Programs: Does Program Philosophy and the Principles of Effective Intervention Matter?*, 38 *J. CRIM. JUST.* 368, 369 (2010).

¹⁴⁰ Adequate mental health and substance use services are difficult for many Americans to access. For example, “as recently as 2018, only 26% of the U.S. population’s mental healthcare needs were met and, in a given year, more than 50% of individuals meeting diagnostic criteria for mental illness do not receive any related treatment.” Monica Deza, Johanna Catherine Maclean & Keisha T. Solomon, *Local Access to Mental Healthcare and Crime*, NAT’L BUREAU OF ECON. RESEARCH, Working Paper 27619 (2020), <http://www.nber.org/papers/w27619>. Although scholars and advocates have criticized the fact that the U.S. criminal justice system is often the primary source of access to treatment for people with limited resources living with mental illness or substance use disorders, see, e.g., Alana Rosenberg, Robert Heimer, Danya E. Keene, Allison K. Groves & Kim M. Blankenship, *Drug Treatment Accessed through the Criminal Justice System: Participants’ Perspectives and Uses*, 96 *J. URBAN HEALTH* 390, 398 (“Our participants’ perspectives on criminal justice system-related drug treatment highlight the need to critically reappraise placement of such services in the context of the criminal justice system”); the criminal justice system continues to provide treatment that, for some, is otherwise unavailable.

b. Monitoring Compliance

Although human service agencies usually see their role with regard to clients as supportive and client-focused, the truth is more complicated when it comes to people on community supervision. Studies have repeatedly found that people on supervision who engage with interventions such as drug treatment or counseling are

more likely to be subject to revocation than their unconnected peers.¹⁴¹ One reason for this somewhat counterintuitive finding is that higher levels of surveillance produce higher rates of detection when it comes to rule violations. Importantly, detection under these circumstances is not always helpful; often the rule that is violated does not implicate safety and may not even have independent value.¹⁴²

¹⁴¹Celesta A. Albonetti & John R. Hepburn, *Probation Revocation: A Proportional Hazards Model of the Conditioning Effects of Social Disadvantage*, 44 SOC. PROBS. 124, 135 (1997); see also Todd R. Clear & Patricia L. Hardyman, *The New Intensive Supervision Movement*, 36 CRIME & DELINQ. 42, 44-45 (1990); Kenneth C. Land et al., *Logistic Versus Hazards Regression Analyses in Evaluation Research: An Exposition and Application to the North Carolina Court Counselors' Intensive Protective Supervision Project*, 18 EVALUATION REV. 411, 424 (1994).

¹⁴²For example, while the phrase “relapse is part of recovery” is a mantra in the substance use treatment community, cf. Steven M. Melemis, *Relapse Prevention and the Five Rules of Recovery*, 88 YALE J. BIO. MED. 325 (2015), relapse is not always treated with understanding under rules of supervision. Although treatment providers may not be alarmed by positive drug tests during the course of substance use treatment, community correctional agents often respond differently, referring any violations of sobriety conditions to the court for sanctioning or even revocation. See *Commonwealth v. Eldred*, 101 N.E.3d 911, 915 (Mass. 2018) (upholding judge’s authority to impose condition of absolute sobriety on drug-addicted persons on probation and to sanction any violation of that condition).

III. Human Service Needs of People on Community Supervision

Although there is substantial overlap between people on community supervision and those receiving community-based human services, scholars and policymakers have paid limited attention to the unique concerns that arise when the criminal justice system and human service agencies engage with the same clients.¹⁴³ This inattention has many causes, including “value conflicts between social work and criminal justice professionals, perceived limited effects of interventions with adults involved in the criminal justice system, and lack of social work training in services to those involved in the criminal justice system.”¹⁴⁴ In order to better meet the human service needs of those on community supervision, it is important to identify what is currently known about existing service gaps and overlaps, and where better interagency coordination might make the provision of services more effective and efficient.

A. Areas of Particular Health and Human Service Need

People involved in the criminal justice system experience social disadvantage at higher rates than the general population. They are more likely to lack access to stable housing and food, and to suffer from untreated physical and behavioral health challenges.¹⁴⁵ As a result of these significant obstacles, many people on community supervision are involved with multiple human service agencies. Some of these agencies provide people on supervision with desired assistance with the necessities of life: food stamps, housing, and access to health care are good examples. Other human service agency involvement is unwanted; child welfare agencies and child support offices, for example, may require payments, mandate oversight, or restrict child custody and visitation in ways that justice system-involved parents find objectionable. Still other services, such as treatment for substance use disorders or other behavioral health conditions, are imposed by courts and correctional agencies as required conditions of community supervision. In these cases, court-ordered services may be welcomed or resisted; regardless, noncompliance with the rules of human service programs

¹⁴³ See Carrie Pettus-Davis, *Reverse Social Work's Neglect of Adults Involved in the Criminal Justice System: The Intersection and an Agenda*, 36 SOC. WORK RESEARCH 3, 3 (2012); Stephen Metraux, Caterina G. Roman & Richard S. Cho, *Incarceration and Homelessness* in TOWARD UNDERSTANDING HOMELESSNESS: THE 2007 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH (U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT 2013) (“Service and housing providers have given limited attention and resources to addressing the needs presented by persons with histories of both incarceration and homelessness”).

¹⁴⁴ Pettus-Davis, *Reverse Social Work's Neglect of Adults Involved in the Criminal Justice System*, *supra*, n. 143, at 3.

¹⁴⁵ See generally, NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES, NAT'L ACADEMIES PRESS, 2014, <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

is a ground for potential incarceration. In short, the interplay between human services and community supervision is broad and complex.

As discussed above, most human services are not delivered by community corrections agencies themselves. Instead, people on supervision tend to receive services through a combination of state and federal programs, along with a wide variety of community-based private and nonprofit service providers, many of which are funded, in whole or in part, by government grants.¹⁴⁶ Federal programs such as the Social Security Administration’s Supplemental Security Income program offer cash assistance to the elderly and those with disabilities on limited incomes.¹⁴⁷ Other programs, such as Medicaid, are funded jointly by the federal and state governments, and are administered through agencies of state and local government.¹⁴⁸ Additionally, nonprofits and other private organizations provide a host of programs, ranging from medical care to mentoring, independently or in partnership with community corrections and other governmental agencies.¹⁴⁹

¹⁴⁶GOVERNMENT ACCOUNTABILITY OFFICE, HOMELESSNESS: BARRIERS TO USING MAINSTREAM PROGRAMS (2000), <https://www.gao.gov/new.items/rc00184.pdf>.

¹⁴⁷See 42 U.S.C. §1381a (1994).

¹⁴⁸See 24 C.F.R. § 982.1 et seq.

¹⁴⁹Cf. Andreja Siliunas, Mario L. Small & Joseph Wallerstein, *We Can Help, But There’s a Catch: Nonprofit Organizations and Access to Government-funded Resources Among the Poor*, 8 J. ORGANIZATIONAL ETHNOGRAPHY 109 (2019) (observing that “[n]onprofits are a crucial component of federal and state governments’ delivery of services” and exploring ways in which their service roles may be compromised by their “brokerage position in the current political and funding context”).

¹⁵⁰See Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 CRIMINOLOGY & PUB. POL’Y 139 (2004).

¹⁵¹Herbert et al., *Homelessness and Housing Insecurity Among Former Prisoners*, *supra*, n. 133, at 44.

¹⁵²For a discussion of homelessness among persons on probation in the United Kingdom and Ireland, see *Mairead Seymour Homeless Offenders in the Community: The Issues and Challenges for Probation Supervision*, 1 IRISH PROBATION J. 3 (2004).

1. Housing

Housing instability affects a significant number of people on supervision, and lack of stable housing is a factor that has been correlated with revocation and reincarceration.¹⁵⁰ In fact, many researchers and practitioners have suggested that “stable housing may be the foundation upon which other aspects of successful reentry rely.”¹⁵¹

There is little research about the housing needs of those on probation in the United States,¹⁵² likely because most enter supervision while already residing in the community, making inquiry into the safety and stability of housing a less pressing concern for these individuals than it is with respect to those reentering the community after a lengthy period of incarceration. Regardless of the reasons for the information disparity, far more is known about the housing needs of those on parole than of those on probation.

For people returning to the community after imprisonment, housing is often difficult to establish and maintain. One

study of over 650 men leaving prison found that seven months after release, 35% had moved at least once, 10% had moved twice, and half hoped to move in the upcoming year.¹⁵³ Another study of people leaving prison in Michigan found “relatively low rates of outright rooflessness or shelter use among formerly-incarcerated persons, but very high rates of housing insecurity.”¹⁵⁴

Importantly, community supervision itself has been implicated as a cause of housing instability. The disruption that attends being supervised, including “increased risk of arrests, substance abuse tests, intermediate sanctions, returns to prison, and absconding” makes it difficult for many people on supervision to keep housing when it has been established, and increases the number of residency changes among those on supervision.¹⁵⁵

Housing services and support for people on supervision come from a variety of sources. A majority of people leaving prison live at first with family members or with friends.¹⁵⁶ For those without community supports, probation and post-release supervision agencies often operate or contract for

short-term housing to assist with emergency housing gaps for both those on probation or parole. Many post-release supervision agencies also fund limited transitional housing assistance for people leaving prison without alternate viable housing options. (The availability of these resources may explain in part why studies consistently show that most people leaving prison have access to immediate shelter.¹⁵⁷)

Long-term housing is more difficult to acquire, and challenges with maintaining housing are often closely linked to the difficulty people with criminal records have securing and keeping meaningful employment. Surveys suggest that “the inability of returning prisoners to secure jobs to provide income for rent” is a significant barrier to housing maintenance¹⁵⁸ — a problem with which those on probation also struggle. As the cost of housing on the private market continues to rise, and the number of affordable housing units declines in most communities,¹⁵⁹ many people on supervision require housing subsidies in order to maintain stable long-term housing for themselves and their families.

¹⁵³CHRISTY VISHER ET AL., URBAN INST., LIFE AFTER PRISON: TRACKING THE EXPERIENCES OF MALE PRISONERS RETURNING TO CHICAGO, CLEVELAND AND HOUSTON 2 (2010), <https://www.urban.org/sites/default/files/publication/28671/412100-Life-after-Prison-Tracking-the-Experiences-of-Male-Prisoners-Returning-to-Chicago-Cleveland-and-Houston.PDF>.

¹⁵⁴Herbert et al., *Homelessness and Housing Insecurity Among Former Prisoners*, *supra*, n. 133, at 46.

¹⁵⁵*Id.*

¹⁵⁶Jessica T. Simes, *Place After Prison: Neighborhood Attainment and Attachment During Reentry*, 41 J. URBAN AFFAIRS 443 (2019).

¹⁵⁷*Id.*

¹⁵⁸Stephen Metraux, Caterina G. Roman & Richard S. Cho, *Incarceration and Homelessness in TOWARD UNDERSTANDING HOMELESSNESS: THE 2007 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH* (U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT 2013).

¹⁵⁹JOINT CTR. FOR HOUSING STUDIES OF HARV. UNIV., THE STATE OF THE NATION’S HOUSING 2019 30 (2020) (predicting that “conditions at the lower end of the [housing] market will remain challenging as millions of low-income households compete for an already insufficient number of affordable rental units”), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf.

The primary sources of subsidized housing in the United States come from the U.S. Department of Housing and Urban Development's (HUD) Public Housing Program, Housing Choice Voucher Program, and Section 8 project-based rental assistance program.¹⁶⁰ Access to public housing is controlled by local public housing authorities (PHAs), which are charged with creating rules to prioritize applications for public housing and tenant selection for Section 8 vouchers and overseeing compliance with those rules, many of which disparately affect people on supervision.

HUD has made clear that, with several statutory exceptions,¹⁶¹ PHAs cannot bar people with criminal records from accessing public housing.¹⁶² At the same time, federal law makes clear that PHAs have an obligation to screen for drug-related behavior and other indications that an applicant will not be a safe tenant. PHAs are allowed to set policies that consider prior criminal convictions as one factor in

prioritizing applicants. Some PHAs have adopted criteria significantly more stringent than federal law requires.¹⁶³

HUD has repeatedly emphasized that, when investigating criminal history, PHAs should only consider crimes committed within a “reasonable time” of application.¹⁶⁴ The department has warned that banning applicants due to criminal records might violate the Fair Housing Act, given the disparate impact such a rule might have on people of particular races, places of national origin, or other protected classes who are overrepresented in the U.S. criminal justice system.¹⁶⁵ Nonetheless, because there is no formal definition of what amount of time is “reasonable” to consider when examining applicants’ criminal histories, many PHAs still impose de facto “lifetime bans or use overly long lookback periods” when determining an applicant’s criminal history.¹⁶⁶

Given the overwhelming number of qualified applicants with a need for

¹⁶⁰Marah A. Curtis et al., *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, 15 CITYSCAPE: A J. OF POLYDEV. & RESEARCH 37 (2013).

¹⁶¹People subject to lifetime sex offender registration and those who have been convicted of producing methamphetamines in federally funded housing are barred from housing benefits entirely. 24 CFR § 982.553(a)(1)(ii)(C), (2)(i). People who have been evicted due to the drug activity of a household member are barred from re-admission for three years, unless the PHA makes a finding that the member has obtained appropriate treatment or is no longer a household member. *Id.*, § 982.553(a)(1)(i).

¹⁶²*Id.*, § 982.553(a)(1)(i).

¹⁶³Danya E. Keene et al., *Navigating Limited and Uncertain Access to Subsidized Housing After Prison*, 28 HOUS POLYDEBATE 199 (2018).

¹⁶⁴U.S. Dep’t of Housing and Urban Dev., Notice PH 2015-19 (Nov. 15, 2015), <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.

¹⁶⁵Elayne Weiss, *Housing Access for People with Criminal Records*, in ADVOCATE’S GUIDE 6-25 (NAT’L LOW INCOME HOUSING COALITION 2017), https://nlihc.org/sites/default/files/AG-2017/2017AG_Ch06-S06_Housing-Access-Criminal-Records.pdf.

¹⁶⁶Elayne Weiss, *Housing Access for People with Criminal Records*, in ADVOCATE’S GUIDE 6-22 (NAT’L LOW INCOME HOUSING COALITION 2017), https://nlihc.org/sites/default/files/AG-2017/2017AG_Ch06-S06_Housing-Access-Criminal-Records.pdf.

subsidized housing,¹⁶⁷ waitlists for housing or housing vouchers can be years long, and the deprioritization of people with criminal records often makes it impossible for them to secure independent housing unless they also fall into a priority housing category. For this reason, many people with criminal histories may seek to live with family members or friends who already receive public housing assistance, though in order to do so, they must still meet screening criteria — or jeopardize the housing status of their family members or friends.¹⁶⁸

When people on supervision are able to secure subsidized housing, whether alone or with relatives, their supervision status places them and their family members at heightened risk of eviction. In addition to restrictions based on criminal records and other illegal behavior, PHAs may enforce strict occupancy limits that are exceeded by the addition of new household members. Some studies report that these restrictions are enforced not only by PHAs, but also by community corrections officers, who may not approve the residency of people on supervision who seek to live with family members in contravention of formal PHA policies.¹⁶⁹ (At the same time, other studies suggest that both PHAs and community corrections officers are often inclined

to ignore the presence of well-behaved individuals who reside informally in public housing.¹⁷⁰)

In addition, under federal law, public housing authorities are required to develop lease agreements that provide for eviction for “any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants;” “any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household or any guest;” and for immediate termination of the tenancy “if such tenant ... is violating a condition of probation or parole.”¹⁷¹ Whether family members are aware of prohibited activity is irrelevant to their vulnerability to eviction: The Supreme Court has upheld the authority of PHAs to evict all members of a household in which any member or even guest engages in prohibited activities.¹⁷² As a result, many people on supervision — particularly those whose substance use habits might place their families at risk of eviction — fail to establish stable housing with family members and instead float between residences.

Despite the difficulty people on supervision may have accessing public housing, many

¹⁶⁷Estimates suggest that only 4 million of the 16 million households eligible for HUD housing benefits are able to access housing through HUD programs. Curtis et al., *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, *supra*, n. 160, at 38, & n. 1.

¹⁶⁸Danya E. Keene et al., *Navigating Limited and Uncertain Access to Subsidized Housing After Prison*, 28 HOUS POLY DEBATE 199 (2018).

¹⁶⁹*Id.*

¹⁷⁰FRANÇOIS BONNET, THE UPPER LIMIT: HOW LOW-WAGE WORK DEFINES PUNISHMENT AND WELFARE 80-83 (2019).

¹⁷¹42 U.S.C. § 1437d(1)(6), (9)(2) (2013).

¹⁷²*Dep’t of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 131, 122 S. Ct. 1230, 1234 (2002) (holding that “plain language of § 1437d(1)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant’s knowledge of the drug-related criminal activity”).

cities and counties throughout the country have created pilot programs to experiment with improving housing outcomes for people with criminal histories and their family members. Often these programs involve designating a specific number of vouchers or housing units for criminal justice system-involved people who face additional reentry barriers (such as a particularly high risk of homelessness or mental illness), and providing intensive, wraparound supports in addition to housing, either through human service agencies or through a specialized reentry court.¹⁷³

In addition to HUD funding, some people on supervision may be eligible for assistance with housing and related services through local community programs and agencies funded by Second Chance Act grants.¹⁷⁴ Finally, veterans may be able to benefit from recent initiatives in the U.S. Department of Veterans Affairs that have focused on decreasing homelessness among veterans, including those involved with the criminal justice system.¹⁷⁵

2. Food Security

Across the United States, approximately 11% of households struggle with food insecurity.¹⁷⁶ There is very little research examining the issue of food insecurity among those on probation or parole, but the few data available suggest that those on community supervision struggle at higher-than-average rates to find enough to eat. A recent study of a sample of people on probation in Rhode Island, for example, “found staggering differences” between food insecurity among those on probation and in the general population.¹⁷⁷ Seventy percent of the participants in that study lacked adequate food — a fact that was found to correlate with poorer physical health and depression.¹⁷⁸ Even more alarmingly, a study of 110 recently released incarcerated individuals from Texas, California, and Connecticut found that 91% reported food insecurity, and 37% reported not eating for a day due to poverty.¹⁷⁹ Other studies have found that households in which a parent has experienced incarceration are more likely to suffer from food

¹⁷³See NAT’L HOUS. L. PROJECT, AN AFFORDABLE HOME ON REENTRY 111-119 (2018) (providing multiple examples of successful interagency programs designed to improve housing for people with criminal justice system involvement), <https://www.nhlp.org/wp-content/uploads/2018/08/Rentry-Manual-2018-FINALne.pdf>.

¹⁷⁴See COUNCIL FOR STATE GOVT’S, SECOND CHANCE ACT FACT SHEET (2018) (describing grant funding and providing examples of services provided by grant recipients), https://csgjusticecenter.org/wp-content/uploads/2020/02/July-2018_SCA_factsheet.pdf.

¹⁷⁵See U.S. Dep’t of Veterans Affairs, Veterans Experiencing Homelessness, <https://www.va.gov/homeless/> (last visited Jun. 28, 2020).

¹⁷⁶U.S. DEP’T OF AGRICULTURE, ECON. RESEARCH SERV., KEY STATISTICS AND GRAPHICS, <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#foodsecure> (last visited Jun, 27, 2020).

¹⁷⁷Kimberly R. Dong et al., *Food Insecurity, Morbidities, and Substance Use in Adults on Probation in Rhode Island*, 95 J. URBAN HEALTH 564, 571 (2018).

¹⁷⁸*Id.* at 568.

¹⁷⁹Emily A. Wang, *Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released from Prison*, 25 AIDS EDUC. & PREV. 112 (2013).

insecurity than those without a history of incarceration.¹⁸⁰ These studies suggest that those on probation and parole (along with their families) are at heightened risk for hunger and its related morbidities.

The primary government-sponsored supports for Americans who struggle to find enough to eat are the U.S. Department of Agriculture’s Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance to Needy Families (TANF) program, which is administered by the states. SNAP provides income-qualifying individuals and households with assistance for food purchases,¹⁸¹ while TANF provides time-limited cash benefits to the working poor and those with qualifying work exceptions and funds programs that are designed to help families achieve financial independence.¹⁸²

People on supervision are eligible for SNAP and TANF benefits on the same terms as other applicants, with two exceptions. First, under federal law, people convicted of felony drug possession or distribution offenses after August 1996 are ineligible

to be counted as a qualifying household member for purposes of SNAP or TANF benefits, unless state law provides otherwise.¹⁸³ States have taken different approaches to modifying the federal ban for each of these programs. For SNAP benefits, only two states (Mississippi and South Carolina) have declined to lift the ban in any way, while 23 states and the District of Columbia have modified the ban to set time limits or permit reinstatement of benefits following participation in drug treatment,¹⁸⁴ and the remaining 25 states have lifted the federal ban entirely.¹⁸⁵ With respect to TANF, 11 states have maintained the federal lifetime ban on cash benefits, while 23 states and the District of Columbia have modified the length and conditions of the ban, and 16 states have eliminated the ban in its entirety.¹⁸⁶ In addition to the felony drug restrictions on receipt of SNAP and TANF benefits, a person cannot receive those benefits if there is an active warrant out for his or her arrest, including a warrant issued by a community supervision agency in response to an alleged rule violation.¹⁸⁷

Food is one of the most fundamental

¹⁸⁰*Id.* at 565; Robin Cox & Sally Wallace, *Identifying the Link Between Food Security and Incarceration*, 82 S. ECON. J. 1062 (2016) (finding that the likelihood of food insecurity for families experiencing a parental incarceration is almost 1.5 times the prevalence of families that do not report a parental incarceration”).

¹⁸¹7 U.S.C. § 2020 (2018).

¹⁸²U.S. DEP’T OF HEALTH & HUM. SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, 12TH REPORT TO CONGRESS FISCAL YEARS 2014 AND 2015 iv (2018), https://www.acf.hhs.gov/sites/default/files/ofa/12th_annual_tanf_report_to_congress_final.pdf.

¹⁸³7 CFR § 273.11 (m) (2019).

¹⁸⁴DARREL THOMPSON, CLASP, NO MORE DOUBLE PUNISHMENTS: LIFTING THE BAN ON SNAP AND TANF FOR PEOPLE WITH PRIOR FELONY DRUG CONVICTIONS 7 (2019), <https://www.clasp.org/sites/default/files/publications/2019/04/2019.03.15%20No%20More%20Double%20Punishments.pdf>.

¹⁸⁵*Id.*

¹⁸⁶*Id.*

¹⁸⁷7 CFR § 273.11 (n)(2) (2019) (“An individual determined a parole or probation violator shall not be considered to be an eligible household member”).

of life's necessities, and an essential prerequisite to all other forms of stability. Ensuring that people on supervision — particularly those entering onto parole from prison — have immediate and sustained access to food must precede any other efforts to engage people with services or programs. One way to do this is by allowing people to apply and certify their eligibility for SNAP benefits before leaving prison or jail so they can reenter the community with an electronic benefit transfer card that is activated and ready to use.¹⁸⁸ Another option would be for states to seek waivers for people on supervision from the otherwise-applicable three-month limit on SNAP benefits for unemployed adults not living in households with children, recognizing that individuals on probation and parole face unique obstacles to securing employment that may justify an extension of time for nutritional benefits.¹⁸⁹

3. Physical Health

Like those who are incarcerated, people on community supervision suffer from chronic physical health challenges — including asthma and sexually transmitted diseases — at higher rates than the general population.¹⁹⁰ One recent study of people leaving prison found that half of men

and two-thirds of women “had chronic physical health conditions requiring long-term management and care at the time of their release.”¹⁹¹

Recent studies have found that people on community supervision die at rates far exceeding those of both the general population and the incarcerated population. Once age distributions are standardized, people on probation have been found to die at more than twice the rate of nonincarcerated individuals and between 2.8 and 3.4 times the rate of people in jails and prisons.¹⁹² Studies of people discharged from prison to serve terms of parole have also found elevated mortality rates, with the period immediately following release from prison the time of greatest fatality.¹⁹³ Although many individuals on community supervision die from drug overdoses, homicide, and suicide, cardiovascular disease and cancer are also leading causes of death among the community supervision population.¹⁹⁴

Despite the clear evidence of the need for health care access among those on community supervision, little research has focused specifically on the needs of those on probation or parole in the areas of

¹⁸⁸ELIZABETH WOLKOMIR, CTR. O BUDGET & POL'Y PRIORITIES, HOW SNAP CAN BETTER SERVE THE FORMERLY INCARCERATED 7 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/3-6-18fa.pdf>.

¹⁸⁹*Id.* at 8.

¹⁹⁰Michael G. Vaughn et al., *Toward a Criminal Justice Epidemiology: Behavioral and Physical Health of Probationers and Parolees in the United States*, 40 J. CRIM. JUST. 165, 169-70 (2012).

¹⁹¹Arielle McPherson, *Controlling Crime Through Medicaid Expansion: The Convergence of Medicaid and the Criminal Justice System in the Effort to Reduce Re-Incarceration*, 28 ANNALS HEALTH L. ADVANCE DIRECTIVE 131, 136 (2018).

¹⁹²Christopher Wildeman, Alyssa W. Goldman & Emily A. Wang, *Age-Standardized Mortality of Persons on Probation, in Jail, or in State Prison and the General Population, 2001-2012*, 134 PUB. HEALTH REPORTS 660 (2019).

¹⁹³Ingrid A. Binswanger et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 NEW ENGLAND J. MED. 157, (2007).

¹⁹⁴*Id.*

health care access and treatment.¹⁹⁵ It is fair to say that access to medical care is a major barrier to stable health for all people on supervision: In some studies, 80% of those leaving prison lacked private or public insurance at the time of discharge.¹⁹⁶

The primary government programs that assist with health-related needs are Medicaid, which provides health insurance to the poor; Medicare, which provides health coverage to the elderly and disabled; Supplemental Security Income, which provides cash assistance to the poor, elderly, and disabled; and Social Security Disability Insurance, which provides cash assistance to disabled individuals with a qualifying work history.¹⁹⁷ People on supervision are eligible for medical and disability benefits on the same terms as others, with two exceptions: Benefits cannot be given for disabilities incurred as the result of committing a felony offense, and disability benefits are not available to people for whom a substance use disorder would be a material factor in concluding that the person is disabled.¹⁹⁸

Although its effects are felt unevenly across the states, the adoption of the Affordable Care Act (ACA) in 2014 significantly increased the number of people on supervision with access to health care nationally. Prior to the passage of the ACA, public medical assistance was generally limited to the elderly, disabled, pregnant women, and children.¹⁹⁹ Following passage of the ACA, 37 states expanded eligibility for Medicaid to include anyone earning up to 133% of the federal poverty level.²⁰⁰ (In the remaining states, Medicaid eligibility remains limited, though individuals earning up to 400% of the federal poverty level who can afford to do so may buy private insurance and receive a tax credit toward the cost of insurance.²⁰¹) The effects of differences in state policy have been dramatic in terms of access to health insurance for those on parole. According to one report, officials in New York and Colorado, two states that have expanded Medicaid access, “estimate that 80 and 90 percent of state prison inmates respectively, were likely eligible for Medicaid” upon

¹⁹⁵*Id.* at 166 (“[R]esearchers have largely ignored the physical and behavioral health, including treatment experiences, of probationers and parolees. Further, little research has accrued that has compared probationers and parolees to non-criminal justice involved persons in nationally representative samples”).

¹⁹⁶NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES, *supra*, n. 63, at 227.

¹⁹⁷Kalman Rupp & Gerald F. Riley, *Longitudinal Patterns of Medicaid and Medicare Coverage Among Disability Cash Benefit Awardees*, 72 SOC. SECURITY BULL. (2012).

¹⁹⁸42 U.S.C. § 423 (d)(2)(C) (2015).

¹⁹⁹GOV. ACCOUNTABILITY OFFICE, INFORMATION ON INMATE ELIGIBILITY AND FEDERAL COSTS FOR ALLOWABLE SERVICES, GAO-14-752R, Medicaid and Inmates, Sept. 5, 2014.

²⁰⁰KFF, STATUS OF STATE MEDICAID EXPANSION DECISIONS: INTERACTIVE MAP, May 29, 2020, [https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/#:~:text=To%20date%2C%2037%20states%20\(including,have%20not%20adopted%20the%20expansion](https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/#:~:text=To%20date%2C%2037%20states%20(including,have%20not%20adopted%20the%20expansion) (last visited Jun. 27, 2020); Risdon N. Slate & Laura Usher, *Health Coverage for People in the Justice System: The Potential Impact of Obamacare*, 78 FED. PROBATION 19, 19 (2014).

²⁰¹AVIVA ARON-DINE & MATT BROADUS, CTR. ON BUDGET & POL’Y PRIORITIES, IMPROVING ACA SUBSIDIES FOR LOW- AND MODERATE-INCOME CONSUMERS IS KEY TO INCREASING COVERAGE 4 (2019), <https://www.cbpp.org/sites/default/files/atoms/files/3-21-19health2.pdf>.

release.²⁰² By contrast, “in North Carolina, which has not expanded Medicaid, only 2 percent of state prison inmates [would be] eligible for Medicaid at any given time” following release.²⁰³

One study of trends in insurance coverage found that national “uninsurance rates among justice-involved individuals declined substantially following implementation of Medicaid expansion and Marketplace plans in 2014,” although justice system-involved people remained less insured than their non-system-involved peers.²⁰⁴ Notably, although Medicaid has been and remains the primary source of insurance for people on supervision, the ACA’s dependent care mandate (which took effect in 2010 and requires private insurers to allow young adults to remain on their parents’ private insurance policies until age 26) has also increased the number of younger adults with private health insurance coverage.²⁰⁵ Given the financial pressures faced by many people on supervision, health insurance is an important prerequisite to meeting their need for treatment of both chronic and acute health problems.

In addition to Social Security programs, individuals who are veterans of the U.S. armed forces may be eligible for health care and pensions from the military,

depending on the length and terms of their service. Moreover, people recently released from prison who are on parole may also be eligible for services through the U.S. Department of Veterans Affairs’ Health Care for Re-Entry Veterans program, which assists incarcerated persons with applying for benefits prior to discharge and provides short-term case management following release.²⁰⁶

Even with expanded access to low- and no-cost medical insurance, many people on community supervision have difficulty navigating the process of applying for coverage and accessing health benefits. These difficulties are compounded by the fact that Medicaid will not pay for any treatment or medication that is delivered while a person is confined in jail or prison, with the exception of overnight hospital stays.²⁰⁷ Despite clear federal guidance to correctional agencies and state Medicaid offices,²⁰⁸ many times people incarcerated in jail find their benefits are terminated (rather than temporarily suspended) following arrest or short-term sanctioning. When this happens, previously insured people must complete the full reenrollment process, a requirement that causes unnecessary and often lengthy gaps in coverage.

²⁰²MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION, MEDICAID AND THE CRIMINAL JUSTICE SYSTEM 2 (2018), <https://www.macpac.gov/wp-content/uploads/2018/07/Medicaid-and-the-Criminal-Justice-System.pdf>.

²⁰³*Id.*

²⁰⁴Tyler N. A. Winkelman et al., *Health Insurance Trends and Access to Behavioral Healthcare Among Justice-Involved Individuals—United States, 2008–2014*, J. GEN. INTERN. MED. 1523, 1526 (2016).

²⁰⁵*Id.*

²⁰⁶U.S. DEP’T OF VETERANS AFFAIRS, HEALTH CARE FOR RE-ENTRY VETERANS SERVICES AND RESOURCES, <https://www.va.gov/homeless/reentry.asp> (last visited Jun. 27, 2020).

²⁰⁷*See* 42 U.S.C. § 1396d (a)(28)(A).

²⁰⁸*See, e.g.*, CENTER FOR MEDICARE & MEDICAID SERVS., SHO #16-007 7 (Apr. 28, 2016) (encouraging suspension of benefits for periods of incarceration), available at <https://www.medicare.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf>. *See also* (POMS GN 02607.160 (2016) (providing guidance on suspension of benefits for people sentenced to confinement); POMS GN 02607.200 (2017) (providing guidance on suspension of benefits for pretrial supervisee and probation and parole violators).

4. Substance Use Disorders and Other Behavioral Health Conditions

Two of the most critical areas in which people on supervision have disparate levels of human service needs are substance abuse and behavioral health. The statistics are staggering: Almost half of individuals on community supervision are known to have a substance use disorder, and studies suggest that those on supervision have rates of substance use disorders two to three times higher than those found in the general population.²⁰⁹ Moreover, a full two-thirds of those on probation and three-fourths of those on parole are considered “alcohol- or drug-involved.”²¹⁰ Though statistics vary somewhat depending on study design, people on supervision also suffer from serious mental health problems at rates two to four times higher than those found in the general population.²¹¹ Justice system-involved individuals are more likely to have experienced childhood trauma, as well as adult victimization.²¹²

The use and abuse of alcohol and illegal substances is commonplace among those on community supervision, and is a substantial factor associated with revocation and recidivism.²¹³ Nonetheless, large gaps exist with respect to available and appropriate treatment for people on supervision. One study found that only half of those on supervision who needed substance abuse treatment had received any in the past year, and only 10% were engaged in treatment at the time of the survey.²¹⁴ Later surveys have revealed similarly high levels of need. In 2012, for example, roughly 40% of males on probation and parole had a substance use disorder.²¹⁵ Rates of substance use among women are similarly high.²¹⁶

Demand for substance use treatment has increased in recent years, as the opioid epidemic has increased the number of people struggling with substance use, and as the parity mandate of the ACA has required health insurers to cover mental health and substance use treatment in the

²⁰⁹PEW CHARITABLE TRUSTS, PROBATION AND PAROLE SYSTEMS MARKED BY HIGH STAKES, MISSED OPPORTUNITIES, *supra*, n. 1, at 13; Thomas E. Feucht & Joseph Gfroerer, *Mental and Substance Use Disorders among Adult Men on Probation or Parole: Some Success Against a Persistent Challenge*, SAMHSA DATA REV. (2011), <https://www.ncjrs.gov/pdffiles1/nij/235637.pdf>.

²¹⁰PETERS & WEXLER, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM, *supra*, n. 16, at 214.

²¹¹SETH JACOB PRINS & LAURA DRAPER, COUNCIL OF STATE GOVTS., IMPROVING OUTCOMES FOR PEOPLE WITH MENTAL ILLNESSES UNDER COMMUNITY CORRECTIONS SUPERVISION: A GUIDE TO RESEARCH-INFORMED POLICY AND PRACTICE 11 (2009), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Community-Corrections-Research-Guide.pdf>.

²¹²See Nancy Wolff et al., *Trauma Exposure and Posttraumatic Stress Disorder among Incarcerated Men*, 91 J. URBAN HEALTH 707 (2014); Doreen D. Salina et al., *Rates of Traumatization and Psychopathology in Criminal Justice-Involved Women*, 18 J. TRAUMA DISSOCIATION 174 (2017).

²¹³*Cf.* NATIONAL RESEARCH COUNCIL, PAROLE, DESISTANCE FROM CRIME, AND COMMUNITY INTEGRATION 26-27 (2008) (reviewing literature showing that reduction in illicit substance use decreases recidivism).

²¹⁴PETERS & WEXLER, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM, *supra*, n. 16, at 214.

²¹⁵SAMHSA, TRENDS IN SUBSTANCE USE DISORDERS AMONG MALES AGED 18 TO 49 ON PROBATION OR PAROLE, NATIONAL SURVEY ON DRUG USE AND HEALTH (2014), <https://www.samhsa.gov/data/sites/default/files/sr084-males-probation-parole/sr084-males-probation-parole/sr084-males-probation-parole.htm>.

²¹⁶See, e.g., Seana Golder, *Substance Use Among Victimized Women on Probation and Parole*, 49 SUBST. USE MISUSE 435 (2014) (finding that among a sample of the 80% of women on supervision who have been crime victims, that 58% reported use of an illicit substance within the past two years).

same way they cover care for other medical needs.²¹⁷ Nevertheless, the need for both substance use and mental health treatments far outstrips available resources.

According to a recent White House report, “nearly 89% of the estimated 20.2 million Americans who met the criteria for a substance use disorder (SUD) in 2018 did not receive specialized treatment for their condition.”²¹⁸ Although many people with SUDs do not seek out treatment voluntarily, those who do are frequently unable to access the care they need.²¹⁹ Treating addiction can be even more difficult for people on supervision than it is for others. For example, medication-assisted treatment for opioid addiction is considered the gold standard in reducing the harms of addiction and helping people desist from opioid use.²²⁰ Many community corrections agencies and correctional institutions ban medication-assisted treatment, however, on the mistaken belief that it “replaces one addiction with another.”²²¹ As a result,

taking medication prescribed to combat addiction violates the rules of supervision in some jurisdictions.²²² Individuals on supervision who take medication are often denied that medication if they are detained in jail or revoked to prison — an abrupt withdrawal that can lessen their interest in receiving future drug treatment.²²³

The treatment needs of people on supervision are unique in other respects as well. People on pretrial release who seek treatment for addiction have a heightened need to avoid disclosures that could threaten the outcome of their pending criminal cases, and service providers should be conscious of and attentive to the need for due process protections.²²⁴ In addition, efforts should be made to reduce treatment wait times for individuals who are required to participate in treatment as a condition of pretrial supervision.²²⁵ Expedited access to treatment for those on pretrial release can reduce violations of release conditions related to use of alcohol and controlled

²¹⁷Claire E. Blevins et al., *Gaps in the Substance Use Disorder Treatment Referral Process: Provider Perceptions*, 12 J. ADDICTION MED. 273, 273-74 (2018) (noting increase in available treatment programs and number of people served from 2003-2013).

²¹⁸OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL TREATMENT PLAN FOR SUBSTANCE USE DISORDER 2020 1 (2020), <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-NDCS-Treatment-Plan.pdf>.

²¹⁹*Id.*

²²⁰AM. SOC. ADDICTION MED., THE NATIONAL PRACTICE GUIDELINE FOR THE USE OF MEDICATIONS IN THE TREATMENT OF ADDICTION INVOLVING OPIOID USE (2015),

²²¹JESSICA REICHERT ET AL., ICJIA, ADDRESSING OPIOID USE DISORDERS IN COMMUNITY CORRECTIONS: A SURVEY OF ILLINOIS PROBATION DEPARTMENTS T.4 (2018), https://icjia.illinois.gov/researchhub/files/Opioid_MAT_Probation_Article_PDF_102618-191011T20092013.pdf.

²²²Jessica Reichert & Lily Gleicher, *Probation Clients’ Barriers to Access and Use of Opioid Use Disorder Medications*, 7 Health & Just. 2 (2019) (observing that “[t]here is an apparent gap between evidence-based treatment with medications for OUD and current practices of U.S. probation departments”).

²²³Shannon Gwin Mitchel, *Incarceration and Opioid Withdrawal: The Experiences of Methadone Patients and Out-of-Treatment Heroin Users*, 41 J. PSYCHOACTIVE DRUGS 145 (2009).

²²⁴PETERS & WEXLER, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM, *supra*, n. 16, at 127.

²²⁵*Id.* at 129 (recommending “that, ideally, judges should mandate as a condition of release that persons convicted of crime receive [substance abuse] treatment within 24 hours” of release on bond).

substances and can also ensure that pretrial defendants have time to complete treatment before plea and sentencing, when successful engagement with services can result in less-punitive outcomes.²²⁶

People on probation or parole with significant mental health problems face similar challenges to substance users when it comes to accessing care. Even when people are able to obtain insurance coverage, the waitlists for mental health providers — and especially for psychiatrists — are often prohibitively long.²²⁷ After all, mental health challenges are not isolated problems; they can easily spill over into problems with employment, physical health, parenting, and social behavior in ways that destabilize the person's life and may result in sanctionable violations of the conditions of release. Without support to adjust medication and manage behavioral changes linked to mental illness, people on supervision struggle to comply with the rules imposed on them. It is in part for this reason that those on probation or parole with mental health disorders are more likely to be subject to revocation than their non-mentally ill peers.²²⁸

Perhaps because the need for immediate care is obvious in cases involving people

on probation or parole with acute mental illness, community supervision agencies have had some success in creating specialized programs and collaborations to meet the needs of this population. From specialized mental health courts (which provide expedited access not only to psychological care but often also to wraparound services)²²⁹ to specialized caseloads staffed by trained supervision officers,²³⁰ small-scale interventions have shown modest positive results. The challenge for correctional agencies is scaling up these services to adequately meet the needs of the substantial number of those on probation or parole who might benefit from the more personalized services they provide.

Finally, a substantial number of people on supervision who have a mental health condition also have a substance use disorder.²³¹ Individuals with co-occurring disorders are often classified by supervision officers as higher risk than those who are incarcerated who experience substance use disorders or mental illness alone,²³² and in some studies they have been shown to be subject to revocation from supervision at higher rates.²³³ Finding providers to treat individuals with co-occurring disorders is particularly challenging “because of the stigma associated with the combined

²²⁶ *Id.*

²²⁷ See JAMES G. BAKER & SUSAN E. BAKER, PUBLIC & COMMUNITY PSYCHIATRY 35 (2020) (reporting waitlists measured in “months” for psychiatric services).

²²⁸ Louden et al., *Supervision Practices in Specialty Mental Health Probation*, *supra*, n. 119, at 109.

²²⁹ See Evan M. Lowder et al., *Effectiveness of Mental Health Courts in Reducing Recidivism: A Meta-Analysis*, 69 PSY. SERVS. 15 (2018) (metastudy finding modest effects in recidivism reduction tied to mental health court participation).

²³⁰ Louden et al., *Supervision Practices in Specialty Mental Health Probation*, *supra*, n. 119.

²³¹ DORIS JAMES & LAUREN GLAZE, BUREAU OF JUST. STAT., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (2006), <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

²³² Jennifer Eno Louden & Jennifer L. Skeem, *How Do Probation Officers Assess and Manage Recidivism and Violence Risk for Probationers With Mental Disorder? An Experimental Investigation*, 37 L. & HUM. BEHAV. 22 (2013).

²³³ Jacques Baillargeon, *Parole Revocation Among Prison Inmates With Psychiatric and Substance Use Disorders*, 60 PSY SERV. 1516, 1520 (2009).

problems of [co-occurring disorders] and a criminal record.”²³⁴ In addition, few community mental programs offer the kind of specialized treatment this population requires.²³⁵ Effective interventions require cooperation between community corrections agents and community providers. Correctional agencies may need to consider adjusting their policies on reporting and rule enforcement to better facilitate the ability of supervised people to participate in treatment and demonstrate progress. Providers may need to adjust their hours of service and expectations to account for their clients’ competing obligations under correctional orders. In addition, providers working with this population may wish to offer additional support services, such as behavioral coaching, peer counseling, or supported employment services,²³⁶ to promote recovery and boost successful supervision outcomes.

5. Vocational Training and Employment

Although employment is a key concern of people on supervision,²³⁷ national data on workforce engagement by those on probation or parole are limited. Probation and parole agencies do not routinely track or report employment data for people on supervision.²³⁸ A recent examination of working-age, formerly incarcerated people (a group that includes, but is not limited to, people on parole supervision) found 27% unemployed, compared to 5% for those without prison experience.²³⁹ Although there are no aggregate statistics on the unemployment rates of those on probation, data show that arrestees’ employment status varies from average to far lower than average as the number of arrests increases.²⁴⁰ This hints at what may be an important difference between those on

²³⁴PETERS & WEXLER, *SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM*, *supra*, n. 16, at 111.

²³⁵*Id.*

²³⁶Connie Longmate, Evan Lowder, Ashley Givens, Tonya B. Van Deirse, Marilyn Ghezzi, Stacey Burgin & Gary S. Cuddeback, *Social Support Among People With Mental Illnesses on Probation*, *PSY. REHAB. J.* 5-6 (Jun 25, 2020) (concluding that social isolation among people with mental illness who are also on probation correlated to poorer relationships with supervising agents and promoting greater use of “prosocial supports” such as “peer supports and supported employment services”); Debra A. Pinals, *Crime, Violence, and Behavioral Health: Collaborative Community Strategies for Risk Mitigation*, 20-Jun *CNS SPECTRUM* 241 (2015) (promoting use of peer supports for those with co-occurring substance use and mental illness).

²³⁷*See infra*, at 34.

²³⁸*See* John Rakis, *Improving the Employment Rates of Ex-Prisoners Under Parole*, 69-JUN *FED. PROBATION* 7, 10 (2005).

²³⁹LUCIUS COULOUTE & DANIEL KOPF, *PRISON POLY INITIATIVE, OUT OF PRISON & OUT OF WORK: UNEMPLOYMENT AMONG FORMERLY INCARCERATED PEOPLE* (2018), <https://www.prisonpolicy.org/reports/outofwork.html> (last visited June 27, 2020).

²⁴⁰ALEXI JONES & WENDY SAWYER, *ARREST, RELEASE, REPEAT: HOW POLICE AND JAILS ARE MISUSED TO RESPOND TO SOCIAL PROBLEMS* (2019), <https://www.prisonpolicy.org/reports/repeatarrests.html> (last visited Jun 26, 2020).

probation and those on parole: Although some people on probation struggle to connect with the labor market, others fare far better — a factor that courts sometimes cite when deciding to impose probation over jail or prison.²⁴¹

For all of the 65 million American adults of working age estimated to have criminal records,²⁴² finding meaningful work can be difficult. Studies have shown that a past conviction reduces job prospects and lowers lifetime earnings.²⁴³ As a subset of those with criminal records, people on supervision face myriad employment challenges. On average, people on probation or parole have low educational attainment,²⁴⁴ which complicates efforts to secure work in the skilled labor market.²⁴⁵ Other factors, too, limit the ability of people on supervision to secure work. These include racial prejudice in hiring; stagnant labor markets in the poor communities where many live; employment licensing restrictions based on criminal records; and even supervision itself, which can create formidable barriers to the

kind of stable schedule that is needed to maintain many kinds of paid labor. As one scholar observed, community supervision “may paradoxically dampen its double mission of public safety and offender reintegration by building barriers to post-prison employment.”²⁴⁶

Both federal and state programs provide career counseling, vocational training, and job placement services to people on community supervision, through direct services and grants to private organizations. Recipients of SNAP funds who struggle to meet the program’s work requirements may retain eligibility for nutrition benefits by participating in the SNAP Employment and Training Program, which provides a variety of educational, job skills, and job search assistance to program participants, many of whom have limited employment histories.²⁴⁷ Vocational training is also offered through state vocational rehabilitation programs funded in part by the U.S. Department of Education. These programs offer individualized employment assistance, including job training and placement, to

²⁴¹NEIL P. COHEN, *LAW OF PROBATION & PAROLE* § 2:38 (2d) (2019) (“As a general rule, a person with a good work history is viewed as a likely candidate for rehabilitation and is often considered an appropriate person for probation. Someone with a bad employment record is seen as more likely to recidivate and a more appropriate candidate for prison”).

²⁴²LE’ANN DURAN ET AL., *COUNCIL OF STATE GOV’TS, INTEGRATED REENTRY AND EMPLOYMENT STRATEGIES: REDUCING RECIDIVISM AND PROMOTING JOB READINESS* (2013), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG-Reentry-and-Employment.pdf>; MAURICE EMSELLEM & MICHELLE N. RODRIGUEZ, *NATIONAL EMPLOYMENT LAW PROJECT, 65 MILLION “NEED NOT APPLY”: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT* (2011).

²⁴³Devah Pager, *The Mark of a Criminal Record*, 108 *Am. J. Soc.* 937 (2003); Richard B. Freeman, *Crime and the Economic Status of Disadvantaged Young Men*, in *URBAN LABOR MARKETS AND JOB OPPORTUNITIES* (George E. Peterson & Wayne Vro, eds. 1992).

²⁴⁴CAROLINE WOLF HARLOW, *BUREAU OF JUST. STAT., EDUCATION AND CORRECTIONAL POPULATIONS* (2003), <https://www.bjs.gov/content/pub/pdf/ecp.pdf>.

²⁴⁵LUCIUS COULOUTE, *PRISON POL’Y INITIATIVE, GETTING BACK ON COURSE* (2018), <https://www.prisonpolicy.org/reports/education.html> (last visited Jun. 27, 2020).

²⁴⁶Josh Seim & David J. Harding, *Parolefare: Post-prison Supervision and Low-Wage Work*, 6 *RSF: RUSSELL SAGE FOUNDATION J. SOC. SCI.* 173, 174 (2020).

²⁴⁷See GRETCHEN ROWE ET AL., *U.S. DEP’T OF AG., SNAP EMPLOYMENT AND TRAINING (E&T) CHARACTERISTICS STUDY: FINAL REPORT* (2017).

individuals with physical, intellectual, or emotional disabilities that interfere with their ability to work.²⁴⁸ In some states, vocational rehabilitation agencies partner with community supervision agencies and departments of corrections to proactively identify those who are on probation or parole, or who are incarcerated persons who qualify for program services.²⁴⁹

In addition to supporting specific programs, the federal government also supports vocational training and employment opportunities through grants to community organizations. In 2019, the U.S. Department of Labor invested \$85.9 million in grants to nonprofit organizations for reentry projects supporting education and job training for young adults to promote long-term employment stability to program participants.²⁵⁰ The U.S. Department of Justice’s Second Chance Act Adult Reentry and Employment Strategic Planning Program provides grants for

projects that “test innovative approaches to reducing recidivism and increasing job readiness for people returning from incarceration.”²⁵¹ Although regular employment has been strongly correlated with desistance from crime,²⁵² evaluations of employment-focused reentry programs have suggested that such job programs often have a limited effect on future reoffending due to myriad factors, including lack of adequate service delivery.²⁵³

6. Parenting-Related Needs

Shockingly few data are available about the number of people on community supervision who are also parents of minor children. Although there is a robust body of literature identifying the prevalence and characteristics of incarcerated parents²⁵⁴ (many of whom will go on to serve terms of parole supervision following release), research is nearly silent on the parenting-related needs of those on probation or

²⁴⁸See U.S. Dep’t of Ed., Rehabilitation Services Admin., State Vocational Rehabilitation Services Program, <https://rsa.ed.gov/about/programs/vocational-rehabilitation-state-grants>.

²⁴⁹See, e.g., Idaho, VR Service Programs: Public Offenders, <https://vr.idaho.gov/vr-services/service-programs/> (last visited Jun. 27, 2020).

²⁵⁰U.S. Dep’t of Labor, Agency Employment and Training Admin., *U.S. Department of Labor Awards \$85.9 Million for Reentry Projects*, Release Number 19-1196-NAT, Jul. 17, 2019.

²⁵¹See Nat’l Reentry Resource Center, Second Chance Act Adult Reentry and Employment Programs, <https://nationalreentryresourcecenter.org/second-chance-act-technology-career-training-grant-program/#:~:text=Second%20Chance%20Act%20Adult%20Reentry%20and%20Employment%20Strategic%20Planning%20Program,practices%20in%20reentry%20and%20employment> (last visited Jun. 27, 2020).

²⁵²See, e.g., Victor R. Van Der Geest et al., *The Effects of Employment on Longitudinal Trajectories of Offending: A Follow-up of High-Risk Youth from 18 to 32 Years of Age*, 49 CRIMINOLOGY 1195–1234 (2011) (finding desistance among those with regular employment); Sarah Lageson & Christopher Uggen, *How Work Affects Crime—And Crime Affects Work—Over The Life Course*, in HANDBOOK OF LIFE COURSE CRIMINOLOGY 201, 203 (CHRIS L. GIBSON & MARVIN D. KROHN, EDS. 2012) (discussing correlation between desistance from crime and high quality work).

²⁵³Pamela K. Lattimore, *Considering Reentry Program Evaluation: Thoughts from SVORI (and Other) Evaluations*, in RETHINKING RE-ENTRY 21, 24-25 (BRENT ORRELL, ed. 2020), <https://www.aei.org/wp-content/uploads/2020/01/Rethinking-Reentry.pdf> (summarizing results of SVORI Multi-Site Evaluation of 12 adult and four juvenile reentry programs).

²⁵⁴See, e.g., Lawrence M. Berger et al., *Families at the Intersection of the Criminal Justice and Child Protective Services Systems*, 665 ANN. AM. ACAD. POL. SOC. SCI. 171 (2016).

parole.²⁵⁵ Nonetheless, it is easy to infer from existing research on incarcerated parents that many people on supervision are parents of minor children, juggling the many practical, financial, and emotional obligations that accompany child rearing. Notably, as in other aspects of criminal justice, minority parents and children are disparately affected by community supervision orders.

For people on supervision in the community, parenting needs arise in three primary areas: child care assistance, child support payment, and child welfare court involvement (including both in-home supervision and out-of-home care for minor children). Each of these areas presents distinct challenges, some of which are improved by the involvement of community corrections agencies, and some of which are made worse by them.

a. Child Care

Participating in the employment and programming requirements of community supervision takes time, and custodial parents of minor children often need assistance finding safe and affordable child care. Parents with preschool-age children may rely on Head Start programs to

provide daytime care and school-readiness programming,²⁵⁶ but the primary source of public support for child care comes from the Child Care and Development Block Grant, “the primary public program that helps low-income parents afford child care so they can participate in employment and education.”²⁵⁷ The program provides grants to states that are typically used to provide poor parents with vouchers toward the cost of child care, though reportedly “only 15 percent of families eligible under federal rules for the subsidies use them, due to insufficient funding, state eligibility rules and policy priorities, lack of program awareness, and bureaucratic hassles.”²⁵⁸

b. Child Support

An unknown number of parents on community supervision (particularly among those who have been previously incarcerated) do not have full physical custody of their children and are obliged to pay child support, either to the custodial parent or to the state.²⁵⁹ Child support is often a condition of supervision, and many community supervision agencies are authorized to collect child support payments; nonpayment can result in revocation or in the filing of new criminal

²⁵⁵Keva M. Miller & Lewis Bank, *Moderating Effects of Race on Internalizing and Externalizing Behaviors Among Children of Criminal Justice and Child Welfare Involved Mothers*, 35 CHILDREN AND YOUTH SERVS. REV. 472, 472 (2013) (“There are no reliable statistics to account for the number of children by race who experience parental arrest, probation, or parole. Criminal justice systems do not routinely track those data nor inquire about the impact that these types of involvements have on their children”).

²⁵⁶Karen Kontz, *Head Start: A Push for Quality in Early Education Reform*, 17 U.C. DAVIS J. JUV. L. & POL’Y 29, 31 (2013).

²⁵⁷ROBERT WOOD JOHNSON FOUNDATION, CHILD CARE SUBSIDIES: SUPPORTING WORK AND CHILD DEVELOPMENT FOR HEALTHY FAMILIES 2 (2020), https://www.healthaffairs.org/doi/10.1377/hpb20200327.116465/full/brief_child_care_subsidies_Henly.pdf.

²⁵⁸*Id.* at 3.

²⁵⁹MITALI NAGRECHA ET AL., CTR. FOR COMM. ALTERNATIVES, WHEN ALL ELSE FAILS, FINING THE FAMILY 4 (2013) (noting that almost 1/4 of incarcerated men have child support orders, many of which continue to accrue arrears during the period of imprisonment), https://www.prisonpolicy.org/scans/communityalternatives/criminal_justice_debt.pdf.

charges, in cases where nonpayment is found to be willful.²⁶⁰ Despite this fact, some studies have found that being supervised was a factor that predicted noncompliance with support obligations,²⁶¹ likely because of the limited financial means of parents on supervision.

Prior to 2016, courts in some jurisdictions treated periods of incarceration as equivalent to voluntary unemployment — a result that meant incarcerated parents with child support orders could accrue arrearages throughout any terms of incarceration. Upon release, these overdue payments, along with accumulated interest, would become collectable debts, and failure to pay could — and sometimes did — result in cycles of incarceration.²⁶² Rule changes that began in 2016 have resulted in federal regulations that now bar all states from treating incarceration as voluntary unemployment.²⁶³ These changes also provide a legal mechanism for people who are incarcerated to reduce the debt load they will face at the time of reentry and permit — but do not require — states to modify child support automatically following parental incarceration.²⁶⁴ In

jurisdictions that do not automatically modify support, incarcerated parents seeking a reduction in child support must first petition for modification; some may require assistance in order to do so.²⁶⁵

c. Child Welfare

When the state has cause to believe that a minor child is in need of protection or services that a parent cannot provide, state and county child welfare departments typically intervene. Ideally, these agencies offer services to struggling parents on a voluntary basis, but in some cases they will initiate legal proceedings to mandate provision of services. Although there are no reliable statistics on the number of parents on supervision whose children are involved in child welfare cases, research suggests that the number is not insignificant.²⁶⁶

A court order governing a child in need of protection or services places obligations on parents that in many ways resemble those found in community supervision orders. In the child welfare context, a social worker plays the role of community supervision agent, monitoring the parent's compliance with the terms of the court order. Whether

²⁶⁰ See Tamar R. Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1604 (2015).

²⁶¹ STEVEN ELDRED, ORANGE COUNTY DEPT. OF CHILD SUPPORT SERVS., UNDERSTANDING PAYMENT BARRIERS TO IMPROVE CHILD SUPPORT COMPLIANCE 30 (2013) (finding in study that “N[on] C[ustodial] P[arent]s not on probation/parole reported a higher compliance level (51.1 percent) compared to NCPs who reported being on parole/probation (12 percent)”), https://ywcss.com/sites/default/files/pdf-resource/understanding_payment_barriers_to_improve_child_support_compliance.pdf.

²⁶² Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Non-custodial Fathers and Their Families*, 15 J. GENDER RACE & JUST. 617, 617 (2012).

²⁶³ 45 C.F.R. § 302.56(c)(3) (2017).

²⁶⁴ 45 CFR § 303.8(b)(2) (2017).

²⁶⁵ Cf. Lynne Haney, *Incarcerated Fatherhood: The Entanglements of Child Support Debt and Mass Imprisonment*, 124 AM. J. SOC. 1, 22 (2018). Lynne Haney (discussing the obstacles to modification among incarcerated men, including “organizing their cases, getting financial affidavits, collecting the relevant documentation, and negotiating the dynamics of testifying from prison”).

²⁶⁶ See Marilyn Brown, *Reentry and Renegotiating Motherhood: Maternal Identity and Success on Parole*, 55 CRIME & DELINQUENCY 313, 317 (2009) (finding that 25% of paroled women in their study had prior involvement with Child Protective Services).

children live in the parental home or out of home with family members or foster parents, child welfare workers may require parents to attend meetings, participate in programs, undergo drug testing, and submit to home visits. Just as revocation is the consequence of failing to follow rules of community supervision, loss of custody and — at worst — of parental rights is the consequence of failing to abide by the conditions of child welfare court orders.

The requirements placed on parents by child welfare court orders are not always consistent with the rules of supervision and can sometimes be redundant (in the case of drug screening, for example). Although coordination between community corrections agents and social workers is possible,²⁶⁷ it is not standard practice in many places. Often, each operates independently, without knowledge of the sometimes-competing expectations and requirements the other has placed on the supervised person and his or her family.

7. Transportation

Although transportation is not ordinarily classified as a human service need, any discussion about people under supervision would be incomplete without considering how supervised people navigate the maze of appointments and obligations imposed on them by the criminal justice system, and those required by human service providers. Many community-based providers are clustered in the poor urban neighborhoods

where many people on probation or parole live; however, specialized providers and rural providers may be located far from the homes and workplaces of their potential clients. This is especially true for those who live in rural communities without public transportation.

Transportation is widely cited by community supervision officers as a key impediment to accessing employment and other needed services, especially in nonurban settings. Limited data exist about the scope of the transportation problem among those on supervision, but the few extant studies suggest that for people on supervision, lack of transportation is a major obstacle to reintegration and success. In addition to the basic challenge of affording a car, gas, insurance, and vehicle upkeep, people on supervision often face additional barriers to reliable transportation. Many state crimes can result in a mandatory license forfeiture for a period of time following conviction, and nonpayment of fines and fees can also result in license suspension or revocation in many states.²⁶⁸ Public transportation, when available and reliable, can be cost-effective, but it can also be slow and, in some places, dangerous. Friends and family are often a source of transportation assistance, but they can be unreliable. Consequently, people on supervision spend considerable time and social capital planning for and arranging transportation — a fact that further complicates their ability to engage in multiple in-person service programs, appointments, and meetings.²⁶⁹

²⁶⁷For examples of the types of opportunities and challenges posed by collaborations of this sort, see generally Laurie Drabble, *Advancing Collaborative Practice Between Substance Abuse Treatment and Child Welfare Fields: What Helps and Hinders the Process?*, 35 ADMIN. IN SOC. WORK 88 (2011).

²⁶⁸*Id.*

²⁶⁹See generally, Miriam Northcutt Bohmert, *Access to Transportation and Outcomes for Women on Probation and Parole* (2014) (unpublished Ph.D. dissertation, Michigan State University), <https://www.ncjrs.gov/pdffiles1/nij/grants/248641.pdf>.

B. Relationship Between Unmet Human Service Needs and Revocation

1. Perspectives of Affected Individuals

Too often in criminal justice, discussions about “what works” to improve the lives and behavior of justice system-involved people do not involve consultation with affected people themselves. The limited studies that have examined the perspectives of people on supervision yield two key themes, both relevant to the subject of human services more broadly. First is the need for more assistance in securing human services. Second is the desire to be treated with dignity and respect.

On the subject of assistance, studies are fairly uniform in their findings: People on supervision want help with employment, housing, and other human service needs, and do not usually receive the help they need from community corrections agents. They report that when assistance is given, it is typically in the form of referrals for service, which they must then navigate independently.²⁷⁰

Many people on supervision emphasize the pressing need for employment assistance,

without which it is impossible to establish the kind of steady income that enables people to buy food, pay rent, care for children, and pay their legal financial obligations. As one person, formerly on parole explained, reentry needs to be “more than warehousing parolees and offering them unsubstantive supportive services and job training for minimum wage positions.”²⁷¹

Not only do people on supervision feel unassisted by community corrections agents in their efforts to further their job prospects; often, they feel actively thwarted by them. People on probation or parole also frequently emphasize the dehumanizing nature of interactions with community corrections agents. Being supervised makes people inherently vulnerable and puts them under constant scrutiny. Although most people on supervision understand that their supervising agents need to monitor their behavior to a certain extent, many chafe at what they see as malignant paternalism by agents who seek to control even the minutiae of their lives.²⁷²

This experience of dehumanization is not limited to interactions with community corrections agents. Many recipients of human services (criminal justice-system involved and not) report feeling diminished

²⁷⁰Sam King, *Assisted Desistance and Experiences of Probation Supervision*, 60 PROBATION J. 142 (2013) (“[Relatively few individuals commented positively upon the practical assistance that they received during their experiences of probation. Some individuals did remark positively on assistance that they had received from their supervising officer, but where this was the case this tended to involve relatively menial tasks such as: formfilling, telephone calls, letter writing, and so forth”).

²⁷¹Derrick K. Mobley, *Personal Perspective on Reentry Services*, 34 DIALECT. ANTHROPOLOGY 571, 572 (2010).

²⁷²In an interview conducted before his untimely death, Atlanta resident Raychard Brooks (who at the time was on parole) lamented the way in which curfews and other parole restrictions made it difficult to attend to his family obligations. He attributed the micromanagement of the lives of those on parole to a failure to see them as people: “I just feel like some of the system could, you know, look at us as individuals . . . and, you know, not, not just do us, as if we are animals.” Stephen Quirk, *Rayshard Brooks and Me*, Medium, Jun. 17, 2020, <https://medium.com/@sdquirk/rayshard-brooks-and-me-8f5bab2e53d5om/@sdquirk/rayshard-brooks-and-me-8f5bab2e53d5> (last visited Mar. 22, 2021). People on supervision frequently express similar concerns related to the perceived lack of respect and dignity afforded those under correctional control. See generally John M Halushka, *The Runaround: Punishment, Welfare, and Poverty Survival after Prison*, 67 SOC. PROBLEMS 233(2020); MARIEKE LIEM, AFTER LIFE IMPRISONMENT: REENTRY IN THE ERA OF MASS INCARCERATION 169 (2016) (discussing experiences of supervised people).

by interactions when seeking out services. One researcher, studying the experiences of Medicaid recipients, reported, “people I interviewed told me that they were treated like ‘stupid animals,’ made to feel like they were ‘nothing,’ and ‘looked down upon’ for needing help.”²⁷³ Her study showed that this sense of marginalization often led to disengagement from civic life more generally.²⁷⁴

2. Link Between Service Gaps and Recidivism

It should go without saying that no amount or kind of human service can guarantee that a person on supervision will complete the course of supervision without revocation and will desist from all future criminal behavior. The challenges people on supervision face are intertwined and complex, as are the institutional factors that lead to revocation. Nonetheless, some findings in the literature suggest that the right kinds of services can make a positive difference in the life prospects of people on supervision, while the absence of some services can contribute to failure.

Not surprisingly, research suggests that unmet needs — particularly basic needs, such as housing and treatment for serious

substance use disorders or co-occurring conditions — can increase the odds that a person on probation or parole will be subject to revocation before the completion of supervision.²⁷⁵ The answer is not to merely deliver just any services, however; services have to be the right ones. In the realm of employment, for example, “the quality of a job appears to matter more than the mere presence of legal employment in its effect on reducing crime.”²⁷⁶ Low-quality, low-wage jobs have no apparent effect on criminal behavior, while jobs that pay a “decent” wage and offer opportunities for interesting work “facilitate desistance from crime.”²⁷⁷ Similarly, while targeted interventions designed to reduce the known criminogenic risks of those on probation or parole who present a high risk of re-offense can reduce recidivism, giving too many services to low-risk people on probation or parole is likely to have the opposite effect.²⁷⁸ The reason for this is simple: While higher-risk individuals are often socially and economically marginalized and therefore in need of help building skills, lower-risk individuals often already possess connections to work, housing, and other stabilizing features of daily life. For these individuals, intervention is more likely to disrupt daily life than promote long-term

²⁷³Jamila Michener, *People Who Get Medicaid Are Made to Feel Powerless. That Pushes Them Out of Politics and Toward Fatalism*, WASH. POST, Aug. 17, 2017.

²⁷⁴Jamila Michener, *FRAGMENTED DEMOCRACY: MEDICAID, FEDERALISM, AND UNEQUAL POLITICS* (2018).

²⁷⁵See, e.g., Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence from a Sample of People on Probation in San Francisco*, 47 CRIM. JUST. & BEHAVIOR 1097 (2020) (finding in study of persons on probation that “starting probation without a regular living situation increases the hazard of recidivating by 35%,” while “being homeless increased the hazard of recidivism by nearly 50%”); Valerie A. Clark, *Making the Most of Second Chances: An Evaluation of Minnesota’s High-Risk Revocation Reduction Reentry Program*, 11 J. EXPERIMENTAL CRIM. 193 (2015) (finding reduction in recidivism for participants in intensive reentry program providing substance use treatment and housing).

²⁷⁶Sarah Lageson & Christopher Uggen, *How Work Affects Crime—And Crime Affects Work—Over The Life Course*, in *HANDBOOK OF LIFE COURSE CRIMINOLOGY* 201, 203 (CHRIS L. GIBSON & MARVIN D. KROHN, EDS. 2012).

²⁷⁷*Id.*

²⁷⁸Viglione & Taxman, *Low Risk Offenders Under Probation Supervision*, *supra*, n. 95, at 1811.

desistance.²⁷⁹ In short, human service interventions are likely to have the most significant impact when they are tailored to individual needs and help connect people on supervision to housing, work, and other resources that allow them not only to survive for the moment, but to develop sustainable connections to resources that will outlast the period of supervision.²⁸⁰

3. Need for Human Service Sector Education and Training

To ensure that people on supervision receive both the services they want and the ones they need, service providers must be better informed about the constraints to which people on probation or parole are subject and should develop services with those constraints in mind. Too often, human service providers are disconnected from the criminal justice system and only

vaguely aware of the restrictions it imposes. Although both correctional and human service systems interact with the same people and have overlapping interests in connecting them to needed services, they are ignorant of the details of other programs, making it easy to discount the burdens created by overlapping and competing rules, paperwork, and meetings.

If human service agencies are interested in improving service delivery to people under supervision, they must not only take time to become better informed about the rules and expectations of the local community supervision agencies with whom their clients interact, but also be willing to adapt their own practices to better meet their clients' needs. Section IV provides examples of what that flexibility can look like in practice.

²⁷⁹ *Id.*

²⁸⁰ For a longer discussion of the factors associated with long-term desistance from crime, see generally Beth Weaver & Fergus McNeill, *Travelling Hopefully: Desistance Research and Probation Practice*, in *WHAT ELSE WORKS? CREATIVE WORK WITH OFFENDERS* (JO BRAYFORD ET AL., EDS. 2010); SHADD MARUNA, *MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES* (2001).

IV. Special Considerations for Serving People on Community Supervision

There are many ways in which human service providers can improve the delivery of services to people on community supervision. Three stand out as top priorities. First is improving access to programs and services; second is ensuring continuity of service for those entering from, or returning to, correctional settings such as jails and prisons; and third is creating greater “expectation consistency” across agencies serving people on community supervision. All three areas can best be addressed through intentional policies and collaborative efforts among multisystem providers and agencies. The sections below explore each point of intervention and discuss examples of recent successful interagency collaborations.

A. Access to Services

Better access begins with a better understanding of the barriers faced by people on community supervision. As the litany of human service needs discussed in Section III illustrates, people on supervision face a host of barriers, from residential instability to logistical challenges. For many people, supervision can become a full-time job, reducing the ability of people on probation and parole to find time and energy to navigate the maze of paperwork and logistics that is involved in connecting to a new provider. These obstacles are formidable even for people who have only one or two areas of need; for those with more, the challenges can easily become insurmountable.

The most effective way to reduce these access barriers is to bring programs — or at least program application and verification processes — to the client. What this looks like will vary depending on the service at issue, but in many cases it will mean designating individuals in the community corrections agency, human service agency, or both to serve as application facilitators. This can be done on a program-by-program basis, with separate facilitators for each program or service, or it can take the form of wraparound service coordination focused on the particular needs of individual clients.

One example of this type of access-improvement project comes from Delaware, where a multiagency team worked together to connect people on probation to primary care physicians. Using a “change team” approach based on the Network for Improvement

of Addiction Treatment’s process improvement model,²⁸¹ this pilot project used a multiagency team to develop a plan to link more people on probation to primary health care. To do this, the team developed a “Culture of Health” workbook designed to explain to people how to go about establishing care with a primary physician’s office. Then a voluntary group of 400 people on probation in Delaware was randomized to either independently complete a “Culture of Health” workbook, or to meet with a health navigator who was temporarily given an office within the local probation office. The on-site health navigator offered to make appointments for people on probation with local providers; most of these were scheduled to occur within two weeks from the time of the navigator meeting. At the time of the study, nearly 70% of study participants already had health coverage through Medicaid, and nearly 20% were uninsured. Of the study participants who did not have an established primary care physician, 26% of those facilitated by a health navigator subsequently attended a doctor’s appointment within 90 days of study enrollment, while 10% of the control group did. Although the results were modest, the study increased the number of people who sought out health care and simultaneously demonstrated the willingness and feasibility of community health and community corrections to form partnerships to improve health outcomes for those on probation.²⁸²

²⁸¹ See What Is NIATx?, <https://chess.wisc.edu/niatx/Content/ContentPage.aspx?PNID=1&NID=7> (last visited Jun. 27, 2020).

²⁸² See Daniel J. O’Connell, Christy A. Visher & Patricia Becker, *Linking Individuals on Probation to Health Care: A Pilot Randomized Trial*, 8 HEALTH & JUST. 2 (2020); Patricia Becker, Daniel J. O’Connell & Christy A. Visher, *Implementing a Culture of Health Among Probationers*, 27 J. CORR. HEALTH CARE (forthcoming 2021).

²⁸³ Cf. JOHN PETRILA & HALLIE FADER-TOWE, BUREAU OF JUST. ASSISTANCE, INFORMATION SHARING IN CRIMINAL JUSTICE-MENTAL HEALTH COLLABORATIONS: WORKING WITH HIPAA AND OTHER PRIVACY LAWS (2010), .

B. Continuity of Services for Those Entering From and Exiting to Correctional Settings

In addition to facilitating access to needed services, human service agencies can also play a role in reducing service gaps. When people return to the community after a period of incarceration or are incarcerated while receiving services in a community setting, treatment gains made in the previous setting are often lost. Lags in access to medication and appropriate treatment can lead to relapse or even death, and can erase much of the progress made in prior treatment programs. Many of these risks can be mitigated with better transitional planning. To that end, human service agencies, community corrections agencies, jails, and prisons should collaborate regularly to advance their shared goals of stabilizing justice system-involved persons. This collaboration should occur at both the administrative level (for the purpose of adopting information-sharing policies²⁸³ and ironing out funding issues), and at the individual case level (to coordinate care and navigate waitlists for high-priority services).

Transitions between settings — from jail or prison to the community and from the community to jail or prison — create moments of special risk. People

both leaving and entering custody are at heightened risk of death and other morbidities during the period of transition into their new setting.²⁸⁴ This is partly attributable to the anxiety that comes with such life disruptions (which increases the risk of harms such as suicide and overdose),²⁸⁵ and partly due to the way in which changed settings interfere with access to medication, treatment providers, and supportive friends and family. People reentering the community, who may have received treatment for chronic and acute physical and behavioral health concerns behind bars, lose access to guaranteed health care and medication upon release.²⁸⁶ For these individuals, food and housing are no longer certain or stable; employment is often lacking; and waitlists for community-based social service programs are often lengthy and sometimes difficult to navigate, especially without reliable internet and phone access. Conversely, people entering jail or prison may lose housing, employment, and child custody, along with any community-based supports they may have previously been receiving. Not uncommonly, newly

incarcerated people find that medications prescribed to them in the community are not on jail or prison formularies, leading to abrupt and sometimes painful withdrawal.²⁸⁷ All of these disruptive forces increase the odds that newly released and newly confined individuals will experience new problems with previously controlled health conditions.²⁸⁸

The fluidity with which people on community supervision can shift from community to custody and back again is a major challenge to ensuring continuity of services. To preserve the human and fiscal investment made by institutional and community-based service providers in the health and sobriety of those on probation or parole, it is important to establish interagency protocols to avoid undue disruption of medication and needless delays in ongoing treatment when a person moves from an institution to the community or vice versa. Several well-tested examples of this kind of coordination already exist.

One example of transition planning is the effort of some parole agencies, jails, and prisons to connect people

²⁸⁴Ingrid A. Binswanger et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 N. ENGL. J. MED. 157 (2007); Lindsay M. Hayes, *National Study of Jail Suicide: 20 Years Later*, 18 J. CORR. HEALTH CARE 233 (2012).

²⁸⁵See Ingrid A. Binswanger et al., *Release from Prison — A High Risk of Death for Former Inmates*, 356 New Engl. J. Med. 157 (2007) (discussing risks of deaths among newly-released formerly incarcerated people; JOE RUSSO ET AL., RAND JUSTICE POLICY PROGRAM, *CARING FOR THOSE IN CUSTODY IDENTIFYING HIGH-PRIORITY NEEDS TO REDUCE MORTALITY IN CORRECTIONAL FACILITIES* 9 (2017) (discussing transitional pressures faced by people in jail and the prevalence of suicide among those in jails compared to prisons), https://www.rand.org/pubs/research_reports/RR1967.html (last visited June 4, 2021).

²⁸⁶“Inmates of public institutions,” including prisons and jails, have a Constitutional right to necessary medical care under the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97 (1976). Individuals in the community do not.

²⁸⁷See William J. Rich, *The Path of Mentally Ill Offenders*, 36 FORDHAM URB. L. J. 89, 119 (2009); Anasseril E. Daniel, *Care of the Mentally Ill in Prisons: Challenges and Solutions*, 35 J. AM. ACAD. PSYCHIATRY L. 406, 408 (2007) (“[A] commonly used tactic to control cost is to establish a restricted formulary of older generation psychotropics and generic agents that are less expensive and then insist that the psychiatrist preferentially prescribe medications from this restricted formulary instead of the newer, generally more expensive medications that are often included in the non-formulary list.”).

²⁸⁸See McPherson, *Controlling Crime Through Medicaid Expansion*, *supra*, n. 191, at 136-37 (asserting that “the most damaging aspect of the prison health care crisis is inadequate discharge planning”).

leaving prison to Social Security benefits prior to their release. To facilitate this process, institutions have entered into prerelease application agreements with the Social Security Administration.²⁸⁹ These agreements allow designated prison or parole agency personnel to assist incarcerated individuals in applying for Medicaid and Medicare, Supplemental Security Income, and Social Security Disability Insurance before release so that, ideally, benefits can begin seamlessly upon reentry. Participants in these programs assist applicants in completing paperwork, gathering medical records when necessary, and sometimes appealing denials of disability assistance.²⁹⁰

On the other end of the system, many jails and prisons have also entered into information-sharing arrangements with Social Security agencies that allow the agencies to suspend, rather than terminate, the benefits of Medicaid recipients who are serving short terms of custody.²⁹¹ Suspended benefits can be quickly reactivated on release, allowing people to regain medical and pharmaceutical benefits shortly after release from custody.²⁹²

Although many states have adopted prerelease planning processes, as of 2016,

16 state prison systems still had no formal procedure for assisting incarcerated people in applying for Medicaid benefits prior to release, and nine others had limited screening programs available.²⁹³ Only 25% of jails screen incarcerated people for Medicaid eligibility prior to release.²⁹⁴ Similarly, a majority of states terminate, rather than suspend, Medicaid benefits when a recipient is jailed.²⁹⁵ These are missed opportunities.

Connecting people involved with the criminal justice system to Medicaid and other Social Security programs ensures that the physical, mental, and behavioral health needs of eligible individuals can be met regardless of their setting. Access to health insurance supports the work of both community corrections and human service agencies by providing a source of funding for both inpatient and outpatient treatment of chronic illness and mental and behavioral health problems.

Discussing the needs of those with substance use disorders, Peters and Wexler observed that

a crucial aspect for reentry is to develop and sustain an integrated continuum of care between substance abuse

²⁸⁹SSA-POMS SI 00520.910 (2012) (describing the process of creating a prerelease agreement, defined as “a written or verbal agreement between a public institution and SSA, to cooperate in the processing of Title II and Title XVI applications and reinstatements”).

²⁹⁰See, e.g., DAZARA WARE, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., SOAR WORKS FOR INDIVIDUALS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM (2019) (describing variety of programs receiving federal funding support), http://www.cpts.info/CriminalJusticeBestPractices-508-Final_0.pdf%201.2020.pdf.

²⁹¹See Elizabeth Snyder, *Medicaid and Prisoner Reentry: Suspension Is the New Black*, 26-FALL KAN. J.L. & PUB. POLY 84, 95 (2016).

²⁹²NAT'L ASS'N OF COUNTIES, HEALTH COVERAGE AND COUNTY JAILS: SUSPENSION VS. TERMINATION 2 (2014), http://www.naco.org/sites/default/files/documents/Suspension-termination_2015.pdf.

²⁹³MARTHA R. PLOTKIN & ALEX BLANDFORD, COUNCIL OF STATE GOV'TS, CRITICAL CONNECTIONS: GETTING PEOPLE LEAVING PRISON AND JAIL THE MENTAL HEALTH CARE AND SUBSTANCE USE TREATMENT THEY NEED (2017).

²⁹⁴*Id.*

²⁹⁵NAT'L ASS'N OF COUNTIES, HEALTH COVERAGE AND COUNTY JAILS, *supra*, n. 285, at 4.

treatment providers, the parole officer, and social service agencies that can assist the inmate's reintegration into the community ... However, the parolee does not exist in a discrete, well-coordinated system, but rather in a cluster of independent agencies and entities with separate justice responsibilities. Some entities collaborate closely; others do not. Most operate under separate funding streams, with differing organizational missions that may or may not share philosophical orientations toward public safety and offender rehabilitation. Boundary spanners and case managers can sometimes help maintain continuity.²⁹⁶

Given their specialized training and experience, human service agencies are well-positioned to serve this boundary-spanning function, educating their criminal justice counterparts and ensuring that clients are able to access the services they need to remain healthy regardless of the setting in which services are delivered.

C. Expectation Consistency Across Systems

The third way in which human service agencies can help improve services for people on community supervision is by advocating for clearer and more consistent client expectations across agencies and programs. This can occur both at the administrative level, through policy initiatives and joint projects designed

to improve service delivery, and at the individual case level, through regular staffing of complex cases.

There are many examples of effective administrative coordination between community corrections and human service providers. In addition to the examples discussed above, criminal justice coordinating committees have long served as a way for county human service agencies and their nonprofit partners to meet regularly with correctional agencies, law enforcement, and court staff; to identify systemwide problems and service gaps affecting justice system-involved populations; and to develop coordinated solutions.²⁹⁷ Community corrections agencies also regularly partner with specific human service agencies to accomplish specific projects²⁹⁸ or to address the needs of special populations.

Coordination at the level of individual cases is less structured, but no less important. Too often, program participants or benefits recipients are forced to choose between competing rules and regulations imposed by community corrections agents and specific service providers, or asked to engage in an unrealistic number of meetings and programs simultaneously. When the child protection worker says to work more hours to catch up on rent, the probation agent says to work less and complete community service hours, and the therapist says to slow down and focus on sobriety, it can be hard for even the most motivated clients to triage their

²⁹⁶PETERS & WEXLER, SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM, *supra*, n. 16, at 227.

²⁹⁷See ROBERT C. CUSHMAN, NAT'L INST. CORR., GUIDELINES FOR DEVELOPING A CRIMINAL JUSTICE COORDINATING COMMITTEE (2002), <https://s3.amazonaws.com/static.nicic.gov/Library/017232.pdf>.

²⁹⁸See JANEEN BUCK WILLISON ET AL., SECOND CHANCE ACT ADULT OFFENDER REENTRY DEMONSTRATION PROJECTS: COLLABORATION AND REENTRY PARTNERSHIPS (2018) (analyzing ways in which AORDP partnerships worked to better serve people leaving prison), <https://www.ncjrs.gov/pdffiles1/nij/grants/251752.pdf>.

own competing obligations. In cases like this, consistent and clear interagency communication becomes essential to ensuring that service providers do not work at cross-purposes.

Consistency begins with clarity about how those on probation or parole should order programming for their many competing needs. When the needs of an individual person on probation or parole require the involvement of multiple service providers, attempts should be made by both community corrections agencies and service providers to meet with the client at regular intervals to prioritize the order in which programs will be completed, ideally through reciprocal conversation.

How to best prioritize other kinds of programmatic needs will depend on the circumstances of each client. For many people with a substance use disorder, for example, it may be wise to prioritize intensive drug treatment (when available) over employment interventions so that money earned will not be diverted to the purchase of illicit substances.²⁹⁹ However, when a person on probation or parole has no means of basic support other than employment, a job may take priority over accessing a more intensive drug treatment program. Ordering services in this way allows programs to build on, rather than compete with, one another and decreases

the risk that people under supervision will be overwhelmed by what is being asked of them.

Identifying and prioritizing various programs and other interventions requires human service agencies and community corrections officers to find new ways to coordinate with one another and with people on supervision. In some cases, the infrastructure for this kind of coordination may already exist. For example, those on probation or parole who receive Medicaid services and have a qualifying mental health condition may be eligible for mental health case management services through state Medicaid programs.³⁰⁰ Typically, case management support includes regular meetings among service providers and other supports. Although it may not be appropriate to include community corrections agents in all treatment team discussions, including them in some conversations would allow providers to advocate for client needs and clarify any point of confusion for clients. When case management is not available through Medicaid programs, veteran services officers³⁰¹ or other human service providers may be well-positioned to assume the role of coordinator.

As discussed above,³⁰² although community corrections and other criminal justice agencies engage in a substantial amount

²⁹⁹PETERS & WEXLER, *SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM*, supra, n. 16, at 219 (“Although highly important to an offender’s recovery, vocational training and employment can create problems when they are mandated by the community supervision agency before the offender has been engaged in treatment. If the client has not undergone treatment, there is a high risk that money earned will be spent on drugs or alcohol.”)

³⁰⁰See, e.g., WISCONSIN DEPT. OF HEALTH SERVS., *COMMUNITY COMPREHENSIVE PROGRAM* (providing case management services to qualifying Medicaid recipients in 67 counties and three tribal nations), <https://www.dhs.wisconsin.gov/ccs/index.htm>. See also COUNCIL OF STATE GOV’TS, *CRITICAL CONNECTIONS*, supra, n. 287, at 1 (“Medicaid is a system becoming more focused on care management, service coordination, and treatment for people with complex needs. Any state that wants to make an impact on addressing the behavioral health needs of people who are in frequent contact with the justice system should consider how Medicaid and other federal programs can be leveraged”).

³⁰¹Anne S. Doud et al., *Untapped Resources: What Veteran Services Officers Can Provide for Probation and Parole*, 79 *FED. PROBATION* 17 (2015).

³⁰²See Section II, supra, at 2.

of human service facilitation, community corrections agencies and their employees are not uniformly trained in social work or other service-oriented fields. Their missions are grounded in the enforcement of court orders, and therefore they often emphasize surveillance and control over addressing the underlying needs of people on supervision. Although community corrections agents may provide some direct services and refer clients to other community services, agents do not routinely receive ongoing education in best practices for helping people access or remain connected with various services and providers.

One way in which human service agencies can improve the quality of services provided to people on community supervision is to more consciously assume a leadership role in educating criminal justice partners about best practices in relevant areas of human services. Examples abound of the information that is considered common knowledge in human services, but is largely unknown in criminal justice. Understanding readiness for change,³⁰³ respecting client autonomy,³⁰⁴ and appreciating the importance of warm hand-offs in promoting successful transitions between providers³⁰⁵ are all concepts well-known in the human service sector, but often unknown or ignored in corrections. Given their specialized knowledge in these and other matters relating to rehabilitation and behavior change, human service agencies should take a leadership role in educating their criminal justice counterparts about best practices in service delivery, and work to problem-solve around the obstacles that prevent people on

community supervision from fully accessing and benefitting from available human service programs.

D. Resources for Building Better Interagency Coordination

Even when there is agreement that well-designed cooperative ventures advance the mission of both criminal justice and human service agencies, lack of available resources can be an obstacle to building and sustaining new initiatives. Sometimes, filling gaps in service is a matter of communication and creativity. Such efforts may take time, but they often cost no more than a phone call or a regularly scheduled meeting between providers, the supervising agent, and ideally, the client. At other times, improving services will involve start-up costs for drafting new policies, expanding service delivery, ironing out legalities, and training agency staff and partners. Accomplishing these tasks without overwhelming community corrections agents or human service providers often requires additional time, money, and personnel. There are several sources of funding from which human service agencies and their criminal justice partners can draw to support interagency collaborations, including federal funds, state initiatives, and private foundations.

Over the past 20 years, research on all aspects of “prisoner reentry” for those leaving prison has explored the reasons why so many become reentangled in the

³⁰³ See James O. Prochaska & Wayne F. Velicer, *The Transtheoretical Model of Health Behavior Change*, 12 AM. J. HEALTH PROMOTION 38, 38 (1997).

³⁰⁴ See, e.g., Carole Schauer et al., *Promoting the Value and Practice of Shared Decision-Making in Mental Health Care*, 31 PSY. REHAB. J. 54 (2007).

³⁰⁵ See Melinda M. Davis et al., *Clinician Staffing, Scheduling, and Engagement Strategies Among Primary Care Practices Delivering Integrated Care*, 28 J. AM. BD. FAMILY MED. S32 (2015).

criminal justice system.³⁰⁶ This work, which illuminates many ways in which the shadow of conviction lingers long after the criminal sentence has been served, spurred the passage of the Second Chance Act of 2007, which authorized hundreds of millions of dollars in funding for programs and research to improve outcomes for people leaving jails and prisons.³⁰⁷ Those funds have been subsequently reauthorized several times, most recently as part of the First Step Act.³⁰⁸ Recipients of Second Chance Act grants can be state and local government agencies, federally recognized Indian tribes, or nonprofit organizations.³⁰⁹ Funds support adult reentry and employment programs, programs for adults with co-occurring disorders, adult mentoring and transitional services, and family-based substance use treatment, among others.³¹⁰ In addition to Second Chance Act funds, the U.S. Department of Labor’s Reentry Employment Opportunities grants, authorized by the Workforce

Innovation and Opportunity Act of 2014, provide millions of additional dollars toward programs that provide employment opportunities for people on parole or otherwise discharged from prison.³¹¹ On a smaller scale, the Justice and Mental Health Collaboration Program, funded by the Mentally Ill Offender Treatment and Crime Reduction Act of 2004,³¹² provides grants to state and local government initiatives that feature collaboration with mental health agencies to improve outcomes for people with mental illness who are involved in the criminal justice system.

In addition to government funding, private foundations have shown increasing interest in investing in community corrections reform. Through both direct grants and the use of social impact bonds,³¹³ private donors have shown a willingness to invest in innovative ways of reducing recidivism and improving the social engagement of justice-involved individuals.³¹⁴

³⁰⁶ See generally FAYE S. TAXMAN ET AL., FROM PRISON SAFETY TO PUBLIC SAFETY: INNOVATIONS IN OFFENDER REENTRY (2002) (presenting a conceptual model of the offender reentry process); JEREMY TRAVIS, URBAN INST., BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY (2005) (describing the housing, employment, and other challenges facing returning incarcerated persons); JEREMY TRAVIS ET AL./ URBAN INST., FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY (2d ed. 2005) (discussing the negative effects of incarceration on the children and extended families of incarcerated persons), available at http://webarchive.urban.org/UploadedPDF/310882_families_left_behind.pdf; Christy A. Visher, *Returning Home: Emerging Findings and Policy Lessons About Prisoner Reentry*, 20 FED SENT’G REP. 93 (2007) (generally describing the challenges of reentry).

³⁰⁷ See Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008).

³⁰⁸ See First Step Act of 2018, Pub. L. No. 115-391, 122 Stat. 657 (2019).

³⁰⁹ See Nat’l Reentry Resource Center, Second Chance Act Grant Programs, <https://nationalreentryresourcecenter.org/projects/second-chance-act/> (last visited Jun. 29, 2020).

³¹⁰ *Id.*

³¹¹ See Workforce Innovation and Opportunity Act (WIOA) of 2014, Pub. L. 113–128, 128 Stat. 1425 (2014).

³¹² Mentally Ill Offender Treatment and Crime Reduction Act of 2004, Pub. L. No. 108-414, 118 Stat. 2327 (2014).

³¹³ See Cecelia Klingele, *Measuring Change: From Rates of Recidivism to Markers of Desistance*, 109 J. CRIM. L. & CRIMINOLOGY 769, 779-80 (2019).

³¹⁴ See, e.g., Borealis Philanthropy, Spark Justice Fund, <https://borealisphilanthropy.org/grantmaking/spark-justice-fund/> (last visited Jun. 26, 2020). See also RESPONSIVE PHILANTHROPY, A RESOURCE GUIDE ON CRIMINAL JUSTICE FUNDERS (2015), https://bjn9t2lhni2dhd5hvym7llj-wpengine.netdna-ssl.com/wp-content/uploads/2015/11/RP_Fall15_CJRFundersGuide.pdf.

V. Conclusion

Human service agencies can and do play a significant role in meeting the complex needs of people on community supervision. Better coordination between human service agencies and community corrections can improve the quality and consistency of services delivered both during and after the period of supervision and improve the ability of individuals on probation and parole to access and maintain connections to employment, housing, medical care, and other services. Correctional and human service agencies can reduce barriers in many ways, ranging from simple changes to coordinated, large-scale efforts. Agencies can improve access, simplify and consolidate applications for services, expand service hours, and provide more flexibility in accessing services for those with scheduling constraints — changes that have the added benefit of assisting people not on supervision with similar access challenges. Through better coordination between correctional agencies (including jails) and community-based human service providers at both the administrative and individual case levels, more people transitioning from the community to incarceration or back again can be given assistance in accessing medication, substance use intervention, and other time-sensitive services without costly disruptions of care. Finally, human service agencies should look for ways to exercise creative leadership in removing obstacles that prevent people from benefitting fully from existing resources, and in developing new models for service delivery that better promote the health and well-being of those on community supervision.

About the Author

Cecelia Klingele is an associate professor at the University of Wisconsin Law School. After receiving her J.D. in 2005, Klingele served as a law clerk to three federal judges, including Associate Justice John Paul Stevens of the United States Supreme Court. Her past work has focused on challenges in community corrections, correctional programming interventions, and the treatment of violence within the criminal legal system. She is a member of the National Academies of Sciences, Engineering, and Medicine's study committee examining metrics of success among people released from prison. She has also served as associate reporter for the American Law Institute's *Model Penal Code: Sentencing* revision (2012-2018), external co-director of the Sentencing Law and Policy Program at the University of Minnesota Law School's Robina Institute (2013-2018), and co-chair of the Academic Committee of the American Bar Association's Criminal Justice Section (2009-2013).

