

# National Association of Probation Executives EXECUTIVE EXCHANGE

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## OUTGOING PRESIDENT'S MESSAGE

Greetings, friends and colleagues: Many of you have been impacted by the Covid-19 crisis either personally, professionally, and/or within your communities, and our thoughts and prayers go out to you who have been impacted. It is safe to say 2020 will be a year remembered for generations to come: first a pandemic, followed by an economic recession and a civil rights/criminal justice reform movement in the wake of the tragic murder of George Floyd in May. The convergence of these issues creates unique challenges for the probation field moving forward.



The events concerning the murder of George Floyd and similar situated incidents over the last several years are very troubling, particularly for those of us in the criminal justice field. Probation leadership must be at the table listening to advocacy groups and acknowledge the systemic racial disparities in our criminal justice system. Although we have no control over which individuals enter our community corrections system, we do have opportunities to address community-based programming and practices which can make a positive impact. As agency leaders, I hope we will each take opportunities to listen, learn and develop proactive responses to the concerns relative to community corrections.

With regard to Covid-19 and the eventual budget crisis about to impact us all, I'm reminded of a famous quote from Rahm Emanuel: "You never want a serious crisis to go to waste. And what I mean by that is an opportunity to do things that you think you could not do before." Covid-19 has certainly changed how we conduct business and deliver services. As I write this message, I'm working at home in quarantine as a result of exposure to a family member who tested positive – an issue I could not have imagined six months ago. Future changes to our business practices are inevitable and, out of necessity, will likely improve how we deliver services. Some goals we have espoused for years such as focusing on higher risk offenders and limited supervision for low risk may be more palatable to previously

resistant stakeholders who opposed these goals. Technology must be embraced to conduct our responsibilities more efficiently as well as deliver services effectively.

NAPE will have an opportunity to discuss and expand on these issues during a session at the APPA Summer Virtual Institute. I encourage your feedback as we begin preparing for a panel discussion later this summer. Speaking of the Summer Institute, NAPE is working with APPA to host our annual awards reception virtually in conjunction with the Summer Institute. More details will be forthcoming to membership in the near future.

I want to welcome the new NAPE Board of Directors, whose members took office July 1: President Michael Nail, Vice President Kathryn Liebers, Secretary Erika Preuitt, Treasurer Brian Mirasolo, Past President Leighton Iles, New England Region Representative Carmen Gomez, Mid-Atlantic Region Representative Charles Robinson, Central Region Representative Linda Brady, Southern Region Representative Tobin Lefler, Western Region Representative Adolfo Gonzalez, and At Large Representatives Susan Burke and Marcus Hodges.

Finally, it has been an honor serving as your NAPE President for the past 24 months. I have gained incredible insight into our similarities and differences in this field we call probation. Most importantly, I value the relationships developed with an incredibly dedicated group of people who desire positive change for our profession. Thank you for allowing me to serve in this capacity, and I look forward to working with you in the future.

Stay well,  
**Leighton Iles**

**Leighton Iles** serves as the Director of the Tarrant County Community Supervision and Corrections Department in Fort Worth, Texas.

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### EDITOR'S MESSAGE

by

Brian Mirasolo

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It is with great heart that we publish the most recent edition of *Executive Exchange*. This year has presented all of us with great personal and professional challenges. At the time of publication, Covid-19 continues to spread across our great country at an alarming pace. Leading a community corrections organization is not an easy task under the best of circumstance. A pandemic brings additional challenges as we all have new safety issues on our plates along with likely budget cuts that will be significant due to the economic slowdown. Recent racial injustices have also been at the forefront of our minds. While it is encouraging there is a sense from many Americans that racial inequality will finally start to be addressed in a more widespread and tangible way, there are still monumental challenges ahead, and much work to be done.

In this issue we wanted to make sure you had access to the experiences of some of our colleagues and how they've adapted operations due to Covid-19. Marcus Hodges, Deb Minardi, and Michael Nail were kind enough to share with us. Marcus and Michael's conversations are linked in "Operations Amidst Covid-19." Deb Minardi has helped lead the development of a number of pandemic specific resources in Nebraska. Some of those resources can be found via a link in "Operations Amidst Covid-19." You'll also find her "Emergency Preparedness Plan" published. It is a great resource we can all learn from. The next edition of *Executive Exchange* will include similar resources on race and racial inequality, and how we can better lead our organizations in the context of race.

This edition's Academic Spotlight focuses on Dr. David Myers, who chairs the Department of Criminal Justice at the University of New Haven. Prior to getting into the academic realm,



Dr. Myers was a probation officer. We talked about bridging the gap between researchers and practitioners. Our conversation is linked in the spotlight. Dr. Myers, Dr. Daniel Lee of the University of Indiana of Pennsylvania, and Dr. Dennis Giever of New Mexico State University also provided an article on research and support work they did in a jurisdiction with funding from the Bureau of Justice Assistance titled "Using Researcher-Practitioner Partnerships to Enhance Evidence-Based Probation Services."

Judge Glenn Grant provides an update from New Jersey with "A Look at the Changing Philosophy of Probation Services in New Jersey." Todd Jermstad provides context to fees and experiences from his work in Texas in "Inherently Unstable: The History and Future of Reliance on Court-Imposed Fees in the State of Texas." I also provide a piece on the importance of working together during challenging times in "Governance Networks: More Important Than Ever in the Time of Covid-19."

To finish, I'd like to thank Leighton Iles who completed his term as President of the National Association of Probation Executives. Leighton served us all well and we look forward to continuing to work with him into the future. Not surprisingly, the last President's Message is a good one.

Be well and reach out if you have topic ideas or would like to contribute to future editions of *Executive Exchange*.

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**Brian Mirasolo**, the Deputy Commissioner for Field Services for the Massachusetts Probation Service, serves on the board of NAPE and as the Editor of *Executive Exchange*. Brian can be reached by phone at 617-909-3102 or by email at [bmirasolo@gmail.com](mailto:bmirasolo@gmail.com).

## ASSOCIATION ACTIVITIES

The annual awards of the National Association of Probation Executives typically are presented at the organization's annual reception held immediately prior to the annual institute of the American Probation and Parole Association. This year, because of safety concerns and governmental restrictions on travel due to the coronavirus pandemic, the reception had to be canceled. The cancellation of the reception did not adversely impact the NAPE Awards Committee, chaired by past President Ronald P. Corbett, Jr., from going about its work in selecting deserving probation professionals for recognition.

### Sam Houston State University Probation Executive of the Year Award

Since 1989, the National Association of Probation Executives and the George J. Beto Criminal Justice Center at Sam Houston State University have recognized the Probation Executive of the Year by presenting the recipient the Sam Houston State University Award, the Association's oldest and highest honor.

The 2020 recipient of the *Sam Houston State University Probation Executive of the Year Award* is **Marcus Hodges**, Associate Director of the Court Services and Offender Supervision Agency (CSOSA) in Washington, D. C., and a NAPE past President.



Hodges, who earned a bachelor's degree in criminal justice from Virginia Union University and a master's degree in criminal justice and corrections from Florida Metropolitan University, began his career in criminal justice with the Virginia Department of Corrections in 1992. Over the years, he held positions of increasing responsibility, as a Chief Probation and Parole Officer and later as a Regional Administrator. Hodges also served as a Program Specialist with the National Institute of Corrections in the Community Corrections/Prisons Division. In that capacity he served as a member of the faculty of the Executive Development Program for newly appointed probation and parole executives, a joint initiative of the National Institute of Corrections, the National Association of Probation Executives, and Sam Houston State University. In 2017 he was named Associate Director of the Court Services and Offender Supervision Agency, a position in which he continues to serve.

In nominating Hodges for this prestigious award, immediate past President Leighton Iles wrote:

From a national perspective, Marcus has demonstrated a long commitment to leadership in the field of community corrections through his prior work at the National Institute of Corrections, Virginia Department of Corrections, and CSOSA, while actively representing NAPE's interests as a professional organization . . . He remains well respected as a leader and willing to give back to the field of community corrections whenever called to do so.

I cannot think of an individual more deserving of the *Sam Houston State University Probation Executive of the Year Award* than Marcus Hodges.

Hodges is only the second person in the history of the National Association of Probation Executives to serve as President for two consecutive terms, the first being Donald Cochran of Massachusetts from 1988 to 1992.

### George M. Keiser Award for Exceptional Leadership

This award, first presented in 2001, is given in honor of George M. Keiser, the former Chief of the Prisons and Community Corrections Divisions of the National Institute of Corrections, and a career corrections professional.

This year's recipient of the *George M. Keiser Award for Exceptional Leadership* is **Deborah A. Minardi**, State Probation Administrator for the delivery of probation services in Nebraska.



Minardi, who began her career in community corrections in 1980, earned a bachelor's degree in community service from the University of Nebraska at Lincoln and a management development certificate from the University of Nebraska at Lincoln. During a distinguished career that spans four decades, she served as a deputy probation officer, Chief Deputy Probation Officer, Intensive Supervision Chief Probation Officer, Chief Probation Officer in two Nebraska judicial districts, and Deputy Administrator of the Office of Probation Administration for the Nebraska Supreme Court. In January 2019, following the retirement of Ellen Brokofsky, Minardi was named State Probation Administrator responsible for the delivery of probation services in Nebraska.

Minardi's leadership and commitment to service is known beyond the borders of Nebraska. She has served on the American Probation and Parole Association Board of Directors and on the Committee for Training Standards of the American Correctional Association.

She is the recipient of the Nebraska Supreme Court Employee Recognition Award, the Douglas County Domestic Violence Coordinating Council Award, American Probation and Parole Association President's Award, Nebraska Chapter of the American Society for Public Administration Public Service Excellence Award, American Probation and Parole Association Member of the Year Award, and the University of Nebraska at Omaha School of Criminology and Criminal Justice Lifetime Achievement Award.

According to Ellen Brokofsky, Minardi's predecessor, "Deb Minardi is a person of strong character, serving as both an exceptional leader and role model for others. . . . One has only to ask our field's national leaders about Deb Minardi to learn of her

finest attributes. Deb's enthusiasm is contagious. Her desire to improve our country's probation and parole system is purposeful and driven."

### Dan Richard Beto Award

This discretionary award, presented for the first time in 2005, is presented by the President of the Association in recognition of distinguished and sustained service to the probation profession. It is named for Dan Richard Beto, who served the Association as Secretary, Vice President, President, and Executive Director.

The 2020 recipient of the *Dan Richard Beto Award* is **Donald G. Evans** of Toronto, Ontario, Canada, who has done more for the advancement of criminal justice professional organizations than any other single person.

Evans, who earned three bachelor's degrees – one in religious education from the London College of Bible and Missions, another in sociology from York University, and a third in social work, also from York University – began his career in criminal justice as a probation officer in 1967 in Ontario. From the beginning of his career until 1985, Evans served in a variety of positions of increasing responsibility in the Ontario Ministry of Correctional Services: he served as Assistant Director of Staff Training and Development; Coordinator of Training and Development; Director of Community Program Support Services; Director of Probation and Parole Services; Executive Director of the Community Programs Division; and Executive Director of the Planning and Policy Development Division. From 1986 until his retirement in 1994, Evans held the following positions in the Ontario government: Executive Coordinator for Justice Policy, Cabinet Office; Special Advisor for Training and Development in the Human Resources Secretariat; Executive Coordinator for the Executive



Management Branch, Management Board of the Cabinet; Executive Director of the Executive Development, Management Board of the Cabinet; Head of Strategic Education and Development, Management Board of the Cabinet; and Assistant Deputy Minister of the Policing Services Division, Ministry of the Solicitor General and Correctional Services. He has also served as an adjunct professor in penology and policing at Woodsworth College at the University of Toronto.

Throughout his distinguished career, Evans had served as the President of the Ontario Probation Officers Association, President of the International Community Corrections Association, and President of the American Probation and Parole Association. Widely published in criminal justice journals, he serves as Editor of the *Journal of Community Corrections* and as a Contributing Editor of *Executive Exchange*. In addition, he is frequently called on to make presentations at criminal justice conferences and seminars, both domestic and internationally.

In retirement, Evans serves as a consultant to the Crossroads Day Reporting Center of the Toronto John Howard Society, a Senior Fellow with the Canadian Training Institute, and as a member of a number of criminal justice committees and boards.

Dan Richard Beto, for whom the award is named, commented on this year's recipient: "Don Evans has made significant contributions to the criminal justice profession in terms of service, scholarship, and leadership. His many contributions to correctional literature are legendary, and his international activities have helped craft meaningful and sustaining relationships between diverse criminal justice systems. For a couple of decades Don has served as a Contributing Editor for *Executive Exchange* and has been a member of the NAPE International Committee; his involvement in these two initiatives alone have been significant. It pleases me to no end that Don is this year's recipient of the *Dan Richard Beto Award*; I can think of no person more deserving."

Because NAPE will not be gathering in New York, there will be a virtual awards presentation on Tuesday, August 25, 2020, at 6:15 PM. Additional information about this ceremony will be forthcoming.



## OPERATIONS AMIDST COVID-19

Our operating environments have changed dramatically over the past few months given that we are facing a pandemic. Whether it is a community corrections department in Alaska or one in Florida, we have all been forced to adapt. Plans of fidelity monitoring and new programs have been forced to share time with plans around wearing masks and ensuring people maintain a proper social distance. As leaders, our often full plates have become heaping plates. How do you continue to meet your mission in a time of crisis? How do you alleviate fears and keep people safe, all while planning to deal with budget cuts? Unfortunately, there is no easy one-size-fits-all solution, but fortunately, we have each other. Community corrections executives are smart, diligent, and innovative. Together, we can help each other continue the important work we do in communities around the country.

While the current state of things may be overwhelming at times, never forget that we can lean on each other and learn from each other. Collectively, we can continue to keep communities and victims safe and we can continue to help those on probation work towards positive behavior change, and happier, more fruitful lives.

In that spirit, three of our esteemed colleagues were willing to share some of their experiences from the past few months. All three are members of the National Association of Probation Executives and help lead large organizations.

### Marcus Hodges

**Marcus Hodges is Associate Director of the Court Services and Offender Supervision Agency in Washington, D. C.**

Long before Marcus Hodges took on his role in the District of Columbia, he was a community corrections leader in the state of Virginia. His depth of leadership experience and his willingness to share it with others has always stood out. Our conversation on Covid-19 was no different. There are some great examples of how Marcus strategically engages staff and checks in on their well-being in the conversation. You can listen to the conversation by clicking [here](#).



### Deb Minardi

**Deb Minardi is the State Probation Administrator for Nebraska**

As someone who helped lead the evidence-based transformation for Nebraska, Deb Minardi is experienced in helping commander organizations forward. Her understanding of operating environments and proactive approach came through in our conversation, along with great attention to detail. It did not come as a surprise that Nebraska, in partnership with the National Center for State Courts, held a pandemic summit in May of 2019. The foresight helped Deb and her staff be prepared for what we are all experiencing at the moment. Deb and her team have established a great emergency preparedness plan which is included in this edition of *Executive Exchange*. Other emergency preparedness resources she has helped to create for the Nebraska Judicial Branch can be found [here](#).



### Michael Nail

**Michael Nail is the Commissioner of the Georgia Department of Community Supervision**

Michael Nail had the vision to help build the Department of Community Supervision in Georgia. Since its inception in July 2015, Michael has served as its Commissioner. During our conversation, it was evident Michael has the ability to see the environment from a high level and from the ground which is imperative for effective leadership. He also provided some great insight on leading an organization through challenging times. You can listen to the conversation by clicking [here](#).



# EMERGENCY PREPAREDNESS PLAN FOR THE TRIAL COURTS

by

Nebraska Administrative Office of the Courts and Probation

## Executive Summary

This document was created at the direction of the Nebraska Supreme Court and applies to all Nebraska State Courts and court offices.

The mission of the Nebraska Judicial Branch is to ensure the public has equal access to justice. To the best of our ability, the Nebraska Judicial Branch must continue to provide Nebraskans with equal access to the courts, equal ability to participate in court proceedings, and must ensure all parties are treated in a fair and just manner.

The intent of this document to provide guidance in the event of a state of emergency and is to be used in conjunction with a local Continuity of Operations Plan (COOP).

### Purpose

This EMERGENCY PREPAREDNESS PLAN (EPP) establishes guidance to ensure the execution of the **mission essential functions** of the courts, in the event that an emergency in the state/nation threatens or incapacitates operations, and/or the relocation of selected personnel and functions to an **alternate facility** is required. Specifically, this plan is designed to:

- Ensure that the courts are prepared to respond to emergencies, recover from them, and mitigate against operational impacts.
- Ensure that the courts are prepared to provide critical services in an environment that is threatened, diminished, or incapacitated.
- Ensure the continued operation and function of court services as directed by the State Court Administrator or Presiding Judge.

The plan encompasses a combination of decisions and guidance as provided by the Administrative Office of the Courts and Probation (AOCP) and **requires** additional decisions, documents and tasks completed at the local level.

### Applicability and Scope

This document is applicable to all courts and covers all individuals who directly work for the Nebraska Judicial Branch; who may not work for the Nebraska Judicial Branch, but who support the trial courts; and who conduct business with the trial courts.

Support from AOCP and local governments will be coordinated as necessary and provide direction in the event execution of the plan as needed.

## Emergency Preparedness Plan (EPP) Implementation (Concept of Operations)

Emergencies, or potential emergencies, may affect the ability of courts to perform their mission essential functions from any or all of its primary offices. The procedures included in the following sections are intended to help ensure implementation

of the plan goes forward as smoothly as possible and critical decisions and activities are not overlooked because of confusing or stressful events.

The procedures address who is responsible for specific decisions and actions at different points in the implementation process. In the event of an emergency, the implementation process should be followed as closely as possible. Flexibility is necessary, though, given some emergencies come with little or no warning and may require some procedures to be abbreviated or otherwise modified.

See [Nebraska Pandemic Bench Book](#) for additional resources to assist the court with preparing to address the issues that arise when a pandemic or other public health emergency impacts the ability to hold court. The bench book will provide judges with practical suggestions and legal authorities to assist courts with keeping the courts open. It also serves as a reference for the legal questions that may arise during public health threats and explains the role of the courts during such events.

## Decision Process

Only the Chief Justice of the Nebraska Supreme Court has the authority to close a court by issuing an order declaring a nonjudicial day. [Neb. Rev. Stat. § 25-2221](#). The Chief Justice has broad powers to act under emergency conditions. [Neb. Const. Art. V, Sec. 1](#); [Neb. Ct. R. § 1-105](#).

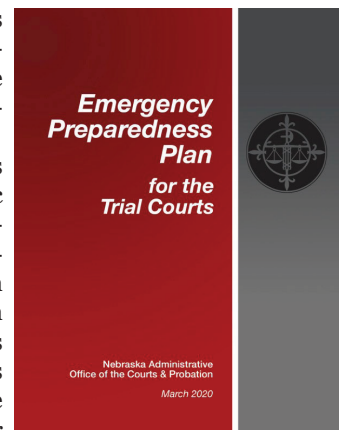
A judge does not have the authority to “close the court.” However, a judge does have the authority, for example, to implement as needed: the adjusting of staff schedules, reducing in-person proceedings as much as possible; increased use of technology; allowing staff to telecommute; instructing attorneys and litigants about safety precautions; and adjusting the docketing of cases.

*The judge must immediately consult with the State Court Administrator prior to making any adjustment to court operations that would interrupt or suspend any mission essential functions.*

### Planning Assumptions

To the best of our ability, the courts must continue to provide Nebraskans with equal access to the courts, equal ability to participate in court proceedings, and must ensure all parties are treated in a fair and just manner.

Disruptions, or potential disruptions, may affect the ability of the court to perform mission essential functions from any or all primary facilities included in the plan. Each court’s COOP should address the basic response to any disaster or emergency



situations. Given the unique challenges posed by an epidemic/pandemic, the information provided in this plan is not exclusive, but designed to enhance a court's current emergency protocol.

For example, in the first 90-days of EPP activation, each court should have the capacity to:

- Perform all mission essential functions as defined in each court's COOP; and
- Address all emergency matters and cases generated by issues associated with quarantines, isolation, civil liberty challenges, and other public health-related cases.

*Emergency Preparedness Plan (EPP) Phases*

- Phase I: Activation
- Phase II: Transition to Mission Essential Functions and/or Alternate Site Operations
- Phase III: Recovery and Reconstitution

**PHASE I – Activation**

Notification of activation may occur at the federal, state or local level depending on the extent of the emergency, but are implemented at the direction of the Chief Justice. Once notification of activation has occurred, a court COOP should be referenced and should provide set procedures for the formal emergency notification to employees through a system or variety of systems that an incident may occur or has occurred. The alert and notification system should also provide response directions to employees and external stakeholders regarding acquisition of future information. The systems may

include, but are not limited to, an organization's emergency telephone notification system; public announcement system; broadcast email; automated telephone messaging; call trees; in person contacts; or use of contracted alert and notification services.

A court COOP should include notifying the State Court Administrator upon activation of the plan.

**PHASE II – Transition to Mission Essential Functions and/or Alternate Site Operations**

This section provides direction and guidance for executing an EPP once notification has been given, including reviewing, updating or developing a plan when mission essential functions are identified, order of succession is determined, delegation of authority is established, alternate facilities are identified, a communication plan is developed, and staffing issues are addressed.

*Mission Essential Functions*

During the emergency, courts may not have the resources to maintain normal operations. In these situations, the court will need to restrict its activities to those functions deemed mission essential to performing the court's mission (e.g., statutorily mandated, vital to the court's mission, critical to maintain the safety of an individual or the public, and/or necessary to the performance of other departments or agency functions).

While mission essential functions may vary from court to court, several mission critical functions are likely to be common to all courts. These may include, but are not limited to:

- Conducting arraignments, including bond reviews
- Hearing juvenile dependency and delinquency cases

- Issuing restraining orders and protective orders
- Assisting litigants with court filings and processing paperwork and requests
- Accepting case filings and payments from litigants
- Managing court calendars, including criminal, civil, family law, probate, small claims, traffic and juvenile calendars
- Summoning jurors for selection and empanelling juries for civil and criminal cases
- Hearing criminal and civil cases
- Processing traffic citations
- Processing small claims filings

*Order of Succession*

Courts must establish a seamless transfer of leadership and decision-making authority at the local level for the period of the EPP activation. This includes, identifying the chain of command for court decisions including in the event the judge is unavailable or unable to make decisions.

*Delegations of Authority*

Courts must establish successive lines of administrative approval and authority for the period of EPP activation. This includes identifying the chain of command for administrative approval, including when a judge or the clerk magistrate is unavailable or unable to make administrative decisions.

*Alternate Facilities*

Courts must identify pre-screened and pre-approved alternate facilities to be used in the event the primary facility is unavailable for an extended period of time. Where necessary, memoranda of understanding should be executed with the alternate site managers and updated annually. This includes:

- Identifying an alternate location or operational strategy, which may include work from home in the event the court is unavailable or uninhabitable.
- Considering what resources may be necessary (e.g., laptop, Internet, VPN capability, WebEX, records).
- Creating an inventory of Records, Databases, and Information Systems to ensure they are available and accessible to support mission essential functions if some or all staff is working from alternate facilities. This includes creating a plan to ensure confidential files not already included in electronic files are secure and protected.

*Communications*

Courts must develop procedures to gather, verify, and disseminate information to decision-makers, all personnel, law enforcement, external stakeholders, and the public. This includes:

- Creating a resource catalog that would serve as a notification listing of necessary stakeholders.
- Identifying a local spokesperson and, ideally, designate at least three additional staff to succeed to the position in the event that the primary spokesperson is unable to perform this function.
- Ensuring that each designated person is fully trained to assume this responsibility.
- Creating signage, reply emails, and phone messages appropriately informing the public and other stakeholders of court operational status.

## Executive Exchange

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### *Human Resources*

During an emergency, the AOCB will provide continued guidance and direction related to the personnel policies, including providing direction as it relates to court staff not directly involved with emergency response teams or operations particularly at an alternate facility. As it relates to personnel, courts should be considering:

- Estimating the impact of an emergency on the court's workforce.
- Designating and training personnel to assume additional or alternate responsibilities to mitigate the effects of staff absenteeism during an emergency.
- Identifying multiple resources for remedying staff shortages and crisis management.
- Reviewing and taking into consideration the Personnel Policies that will provide guidance of AOCB expectations, including implementation of the "work from home" option, which requires utilization of the *Nebraska Judicial Branch Employee Telecommuting* agreement. (See attached.)

### *Strategies to Limit Personal Contact and Encourage Good Hygiene*

During an epidemic/pandemic, court facilities should remain intact, but routine business practices should be altered to limit personal contact. There are several options available to limit personal contact such as allowing staff to work from home, staggering shifts and using video conferencing to conduct business.

Some hygiene and social distancing interventions also include:

- No handshaking policy
- Defer large meetings
- Provide and encourage hand sanitization at entrance
- Lunch at desk rather than in lunch room
- Disinfect high touch surfaces regularly and between users
- Limit food handling and sharing food in the workplace
- Assess staff travel
- Wash hands often with soap and water for at least 20 seconds (If no soap, then use an alcohol-based hand sanitizer)
- Avoid touch your mouth, nose or eyes with unwashed hands
- Cover your nose and mouth with a tissue when you cough or sneeze and then throw the tissue in the trash

Considerations for limiting juror exposure include:

- Asking jurors to report later or on a staggered schedule
- Having jurors report directly to the courtroom
- Avoid having the jurors pass exhibits
- Having hand sanitizer and other protective factors available

Considerations for managing a reduction in jury pool include:

- Reducing the number of jury trials scheduled by postponing trials when possible
- Increasing the number of juror summoned

- Impaneling more jurors to avoid having to adjourn or a mistrial
- Reviewing/developing a policy for
  - Excusing a sick juror
  - Excusing a juror whose family member is sick
  - Identifying and excusing vulnerable populations
  - Who has the authority to excuse, the criteria for excusals and what type of documentation is necessary
  - What happens when a juror fails to appear for jury duty

Also see [Nebraska Department of Health and Human Services](#) and [Centers for Disease Control and Prevention](#) for suggestions on the prevention and treatment of coronavirus.

### *Devolution*

The court should have a plan in place ensuring the capability exists to transfer authority and responsibility for mission essential functions from a court to another court or at an alternate facility to sustain that court's operational capability for an extended period if the primary court and/or personnel are unavailable or incapacitated.

## **PHASE III – Recovery and Reconstitution**

Once any emergency conditions abate, the Chief Justice will rescind as appropriate any orders or rules imposed. In those circumstances when there were no orders or rules imposed by the Chief Justice, a judge may lift or relax the court's EPP as appropriate.

Recovery from an epidemic/pandemic begins when a court determines that it has adequate staff and resources to resume normal business functions. Once normal operations resume, the impact of the epidemic/pandemic on court operations, staff, and other stakeholders should be assessed and an evaluation of the court's response should be drafted. Such evaluation can assist courts in updating their COOPs as well as other emergency response plans, as appropriate.

Once the court resumes normal business functions, the court needs to notify the State Court Administrator in addition to the public and other stakeholders.

## **ATTACHMENTS**

Constitutional and Statutory Authority for Emergency Preparedness

Personnel Policies Related to Emergency Preparedness Plan

Nebraska Judicial Branch Employee Telecommuting Agreement

Information Worksheets to be Completed and Returned to AOCB



Corey R. Steel  
State Court Administrator



Deborah A. Minardi  
State Probation Administrator

## PERSONNEL POLICIES RELATED TO EMERGENCY PREPARENESS PLANNING

NOTE: All forms of leave require preapproval as directed in policy.

### 1. Leave Policies Potentially Relevant in Case of Pandemic

- a. *Sick Leave*: For employees who are unable to perform their work duties due to illness, who have been medically directed to quarantine, or whose presence is required to provide medically related care for an immediate family member (spouse, parent, child).
- b. *Vacation Leave*: For employees that are not performing their work duties, who are self-quarantining, are not ill, nor are they tending to the medical needs of immediate family members.
- c. *FMLA Leave*: Up to 480 hours unpaid (unless used concurrently with paid leave) in a one-year period for a serious condition (requiring at least three days' absence and ongoing care by a medical provider—or several other qualifying criteria).
- d. *Catastrophic Leave*: For employees or employee family members suffering from a life-threatening illness resulting in an absence of at least 30. Provisional employees do not qualify and all earned leave must be exhausted.
- e. *Official Leave of Absence*: Requires direct approval of the State Court or State Probation Administrator. Official Leaves of Absence are unpaid and per state rules —based on IRS tax requirements—employee will lose insurance after 14 days absence.
- f. *Ready to Work Status (RTW)*: Under the “Office Closing” policy, if an employee’s work site is closed due to weather or another emergency situation, the AOCB may place the employee on RTW status with pay.
- g. *Administratively Approved Paid Leave (AA)*: Under the “Office Closing” policy, if the weather is so severe that most local businesses are closed, an employee’s absence may be excused and compensated upon approval of the Court Administrator.

### 2. Other Potentially Relevant Policies/Considerations

- a. *Telecommuting*: Telecommuting (working from home) is a form of alternative worksite or alternative work location. Telecommuting would allow staff to perform duties remotely.
- b. *Remote Work*: If full telework options are not available, meaningful and productive remote work may be an option, such as email communications, project work, policy & procedures work, relevant training, etc.
- c. *ADA Accommodations*: Employee who are “disabled” due to symptoms of a pandemic illness would have a right to “reasonable accommodation” to allow them to perform the essential functions of their job.
- d. *Reassigning Locations of Staff*: The NSC Personnel Rules do not place restrictions on where staff can be assigned, either permanently or temporarily, to meet operational needs.

Administrative Office of the Courts & Probation  
P. O. Box 98910, Lincoln, Nebraska 68509-8910 [www.supremecourt.nebraska.gov](http://www.supremecourt.nebraska.gov)  
Phone (402) 471-3730  
Fax (402) 471-2197

Corey R. Steel  
State Court Administrator



Deborah A. Minardi  
State Probation Administrator

### NEBRASKA JUDICIAL BRANCH EMPLOYEE TELECOMMUTING AGREEMENT

#### **Employment Relationship**

Any employee of the Nebraska Judicial Branch working as a telecommuter must adhere to this Telecommuting Agreement.

This Telecommuting Agreement benefits the Nebraska Judicial Branch as determined by the Administrative Office of the Courts and Probation (AOCB) and is effective as long as telecommuting is deemed an acceptable option for employees in meeting the needs of those served by the Judicial Branch. Accordingly, the Telecommuting Agreement can be altered, revoked or terminated by the Court Administrator, Probation Administrator, or their designee for any reason.

Employees are subject to all Nebraska Supreme Court policies, procedures, rules and regulations whether completing work tasks at home, in a designated office, or at an out-of-office location.

#### **General Availability**

General office hours are considered 8:00 a.m. to 5:00 p.m., Monday through Friday, officially declared holidays excluded. The Judicial Branch workweek is considered to be 8 a.m. Friday morning through 7:59 a.m. the following Friday. For full-time employees, actual work hours plus authorized leave must equal a minimum of 40 hours per workweek. For part-time employees, actual work hours plus authorized leave must equal a minimum of the total authorized hours for their position per workweek. Time is to be recorded per established policies and procedures and on an official Judicial Branch Timesheet.

Employees will be available for on-call hours or to address emergencies outside of normal work hours.

Employees shall monitor email continuously during normal work hours and, likewise, be available by telephone or cellphone, notwithstanding scheduled vacation or other prearranged leave days. Authorized leave is scheduled in accordance with existing leave policy and procedures.

#### **Designated Workspace**

Employees shall designate a specific area of his/her home, equipped with internet access, in which he/she will perform work when not working in the field. Designated work areas utilized for telecommuting shall be safe and ensure confidentiality of all matters. By signing this form employees attest that their designated workspace conforms to these requirements.

Employees will be covered by Workers' Compensation for job-related injuries that occur in the course and scope of employment while telecommuting. Employees must report job-related injuries to his/her supervisor as soon as possible and seek treatment or medical care. In the event of an injury, each employee agrees representatives of the AOCB are allowed immediate access to the home workspace following the report of an injury. Worker's Compensation will not apply to non-job related injuries that might occur in or outside the home.

Each employee is responsible for all personal equipment, supplies and furniture used in the home workspace.

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Maintenance, repair or replacement of these items are at the employee's expense. The AOCB assumes no responsibility for any wear to, damage to, or loss of personal property. The AOCB assumes no responsibility for the cost of, loss of or disruptions to internet service.

**AOCB Issued Property**

AOCB resources are to be used for official business unless otherwise provided in policy. Employees are responsible for ensuring all items are properly used and may be responsible for any damage to, or loss of, AOCB property. AOCB property shall not be used by anyone other than the employee.

If the telecommuting agreement is terminated, any AOCB property provided in order to accomplish telecommuting shall be immediately returned.

**Confidentiality**

Employees shall familiarize themselves with and follow the branch Information Systems and Security Policy.

Employees agree to take reasonable steps to protect any property from loss, theft, damage or misuse. This includes maintaining data security and record confidentiality. Hard copy files will be stored in a secure location when outside the employee's direct control. Electronic access will be maintained through appropriate passwords, PIN numbers and software security. All HIPAA and other compliance policies and procedures will be strictly followed. Employees shall not duplicate documents, nor store any information on any equipment other than AOCB provided property. Employees will comply with the licensing agreements for use of all software owned and utilized by the AOCB.

**Communication**

Employees agree to stay current on all work-group events and facilitate communication with all internal and external stakeholders as necessary or required. Employees agree to keep management staff informed at a minimum of once weekly of progress on work assignments and report immediately regarding any problems encountered while telecommuting. Employees will keep a record of all daily activities in his/her Outlook calendar. Direct supervisors shall have detail level permission to view the employee's calendar.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Employee

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Supervisor

3/17/2020

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### CONSTITUTIONAL AND STATUTORY AUTHORITY FOR EMERGENCY PREPAREDNESS

#### Constitutional Provisions

[Art. V, Sec. 1](#)  
[Art. V, Sec. 8](#)  
[Art. V, Sec. 12](#)  
[Art. V, Sec. 23](#)  
[Art. V, Sec. 27](#)

#### Supreme Court Administrative Authority

[Art. V, Sec. 1](#)  
[Neb. Rev. Stat. § 25-2221](#)  
[Neb. Ct. R. § 1-105](#)

#### Jurisdiction

[Neb. Rev. Stat. § 24-302](#)  
[Neb. Rev. Stat. § 24-517](#)

#### District/County/Juvenile Court Interchange

[Neb. Rev. Stat. § 24-230](#)  
[Neb. Rev. Stat. § 24-303](#)  
[Neb. Rev. Stat. § 24-304](#)  
[Neb. Rev. Stat. § 24-312](#)  
[Neb. Rev. Stat. § 24-516](#)  
[Neb. Rev. Stat. § 43-2,125](#)

#### Hearings by Telephone/Videoconference

[Neb. Rev. Stat. § 24-303](#)

#### Court Facilities

[Neb. Rev. Stat. § 24-515](#)

#### Judicial Absences

[Neb. Rev. Stat. § 24-305](#)  
[Neb. Rev. Stat. § 24-306](#)

[Neb. Rev. Stat. § 24-307](#)

[Neb. Rev. Stat. § 24-308](#)  
[Neb. Rev. Stat. § 24-309](#)  
[Neb. Rev. Stat. § 24-310](#)

#### Clerks

[Neb. Rev. Stat. § 24-337.01](#)  
[Neb. Rev. Stat. § 24-401](#)  
[Neb. Rev. Stat. § 24-402](#)  
[Neb. Rev. Stat. § 25-1144.01](#)  
[Neb. Rev. Stat. § 25-1301](#)  
[Neb. Rev. Stat. § 25-1912](#)  
[Neb. Rev. Stat. § 25-2729](#)  
[Neb. Rev. Stat. § 29-1207](#)

#### Clerk Magistrates

[Neb. Rev. Stat. § 24-507](#)  
[Neb. Rev. Stat. § 24-508](#)  
[Neb. Rev. Stat. § 24-519](#)  
[Neb. Rev. Stat. § 24-520](#)

#### Miscellaneous

[Neb. Rev. Stat. § 24-501](#)  
[Neb. Rev. Stat. § 24-734](#)

#### Change of Venue

[Neb. Rev. Stat. § 25-410](#)  
[Neb. Rev. Stat. § 25-411](#)  
[Neb. Rev. Stat. § 25-412](#)  
[Neb. Rev. Stat. § 25-412.01](#)  
[Neb. Rev. Stat. § 25-412.02](#)  
[Neb. Rev. Stat. § 25-412.03](#)  
[Neb. Rev. Stat. § 25-412.04](#)

### RESOURCES USED TO CREATE EPP

*Continuity of Court Operations: Steps for COOP Planning*, National Center for State Courts, September 2007.

*Court Staff Expectations About Pandemics*, Institute for Court Management: Court Executive Development Program 2007-2008 Phase III project, February 14, 2008.

*Epidemics and the California Courts*, Judicial Council of California, Administrative Office of the Courts, October 2006.

*Nebraska Pandemic Bench Book*, Chief Justice Heavican Pandemic Bench Book Task Force, 2018.

*Pandemic Influenza Preparedness and Resource Planning: Guidelines for Community Corrections*, American Probation and Parole Association, August 2009.

*Pre-emptive low cost social distancing and enhanced hygiene implemented before local COVID-19 transmission could decrease the number of severity of cases*, Dalton CB, Corbett SJ, Katerlaris AL,

*Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators*, National Center for State Courts, 2016.



## ACADEMIC SPOTLIGHT: DR. DAVID MYERS

Dr. David Myers has taught more than 30 different courses at the undergraduate, masters, and doctoral levels, specializing in classes on research methods and quantitative analysis, juvenile justice and delinquency, and criminal justice policy, planning, and evaluation. He has published three books and over 50 journal articles, book chapters, or other scholarly works, and his scholarship has appeared in such journals as *Criminology and Public Policy*, *Crime & Delinquency*, *Youth Violence and Juvenile Justice*, *Criminal Justice and Behavior*, *Crime Prevention and Community Safety*, and *Criminal Justice Studies*.

Dr. Myers currently serves as chair of the Department of Criminal Justice at the University of New Haven, President of the National Association of Doctoral Programs in Criminology and Criminal Justice, board member and subject matter expert for the Crime and Justice Research Alliance, executive board member of the Northeast Association of Criminal Justice Sciences, and a member of the Urban Institute's Federal Justice Research Network. He is a certified reviewer for *CrimeSolutions.gov* and the *OJJDP Model Programs Guide*, and he is the Editor of *ACJS Today*, Editor of *Routledge Studies in Juvenile Justice and Delinquency*, Editor and columnist



for *EBP Quarterly*, and Associate Editor of *Criminal Justice Policy Review*.

Prior to joining the University of New Haven, Dr. Myers was a Professor with the Department of Criminology and Criminal Justice at Indiana University of Pennsylvania (IUP), where he worked from 1998-2016. He previously served as Dean's Associate in the IUP School of Graduate Studies and Research, Interim Vice Provost for Research and Dean of Graduate Studies at IUP, Interim Executive Director of the IUP Research Institute, and Interim Director of the IUP Murtha Institute for Homeland Security.

Before starting his career in education, he was a probation officer in Pennsylvania. Dr. Myers is someone who understands and values the positive role community corrections can play in helping foster positive behavior change. He was nice enough to join us for a conversation in which he touches on his work as a probation officer and professor, and the importance of bridging the gap between the academic realm and practitioners in the field. Dr. Myers sees many benefits in research partnerships between universities and community corrections agencies and is interested in helping to increase the number of established partnerships. Our conversation can be found by clicking [here](#).

## USING RESEARCHER-PRACTITIONER PARTNERSHIPS TO ENHANCE EVIDENCE-BASED PROBATION SERVICES

by

David L. Myers, Ph.D.

Daniel R. Lee, Ph.D.

Dennis M. Giever, Ph.D.

As the modern evidence-based movement in criminal justice evolved and strengthened in recent years, researcher-practitioner partnerships have become more common and collaborative. In general, increasing emphasis is being placed on funding, producing, and utilizing the findings of evaluation research, in the pursuit of policies and practices that are supported by scientific evidence. In addition, criminal justice agencies are being called upon to demonstrate their effectiveness in meeting their goals, with policy-makers and the general public seeking greater information on whether taxpayer money is being well spent. Consequently, researchers and practitioners increasingly are encouraged to work together to produce evidence of "what works" and to enhance the accountability of justice system agencies and organizations.

Although researcher-practitioner partnerships provide potential benefits for all who are involved, they also present challenges and sometimes do not produce the type of relationships or research findings expected by participating stakeholders. The purpose of this article is to summarize the results of one example of this type of collaboration in the field of probation, and encourage researchers and practitioners to continue to develop these types of partnerships as they seek to enhance client outcomes and improve community safety. The focus will be on a Day Reporting Center (DRC) in Somerset County, Pennsylvania, which was implemented and evaluated through the federal Second Chance Act grant program. Findings from the process evaluation and impact assessment will be discussed, along with suggestions for building productive research relationships in the future.

**Somerset County DRC**

In September 2015, Somerset County received a 3-year “Smart Supervision: Reducing Prison Populations, Saving Money, and Creating Safer Communities” grant from the Bureau of Justice Assistance (under the Department of Justice, Office of Justice Programs). The goals of this Second Chance Act funding program, now known as the “Innovations in Supervision Initiative” (ISI), are to develop and test innovative strategies and implement evidence-based probation and parole approaches. In turn, ISI seeks to improve supervision success rates and increase community safety, by effectively addressing client risk, needs, and recidivism. Receipt of grant funding in Somerset County followed previous successful efforts directed at justice system strategic planning, cross-systems mapping, and implementation of evidence-based approaches (Myers, Lee, and Giever, 2018, 2019).

As a result of the federal funding, the Somerset County DRC was created. Subsequently, in providing services to clients, risk and needs assessment was utilized, evidence-based programs and practices were provided, client data were collected, quality assurance tools were employed, and process and outcome evaluation occurred. Data collected from multiple sources suggested DRC programming and practices were implemented as intended, organizational culture was positive, and participants benefited

from the DRC experience (Myers, Lee, and Giever, 2018, 2019). Program participants received a variety of evidence-based services, resulting in improved perceptions of the criminal justice system, lowered risk of recidivism, and a lowered likelihood of rearrest, particularly for participants who graduated from the program. More specific evaluation findings are presented and discussed below.

**Program Participant Survey**

Table 1 presents the results of a survey administered to participants who completed specific programs offered through the DRC. The first six items on this survey were scored from 1 (strongly disagree with the statement) to 6 (strongly agree with the statement). The final item was scored from 1 (very bad) to 5 (very good). In general, higher scores are associated with more positive views of DRC programming.

Overall, the results of the participant survey were favorable, with all average scores on the first six statements being above 4.0 (slightly agree), and 90 of the 114 (79%) average scores being 5.0 (agree) or better. In addition, all average scores based on the final statement were 4.0 (good) or higher. Although these participant survey results were positive, survey findings were used on an ongoing basis by DRC staff and service providers to make collaborative adjustments to DRC programming and improve program implementation and fidelity.

**Table 1: Participant Survey Results**

Survey Item	AM #1 (26)	AM #2 (17)	AM #3 (13)	FC #1 (16)	FC #2 (2)	FS (8)	PREP (27)	STEPS (28)	IY (5)
The program was beneficial to me. (Scored 1-6)	4.96	5.00	4.62	5.44	5.00	4.38	4.89	5.25	4.80
The presentations were useful. (Scored 1-6)	4.88	5.18	4.85	5.44	5.00	4.25	5.04	5.11	4.80
The discussions were helpful. (Scored 1-6)	4.92	5.24	5.08	5.44	5.00	4.25	5.00	5.21	4.80
The activities were engaging. (Scored 1-6)	4.81	5.19	4.46	5.44	5.00	4.25	4.73	5.04	4.60
The program taught you useful tools that you can apply to your life. (Scored 1-6)	4.96	5.13	4.92	5.44	5.00	4.13	5.15	5.39	4.60
The program instructor delivered the program effectively. (Scored 1-6)	5.27	5.47	4.92	5.44	5.50	4.50	5.46	5.26	4.80
What was your overall experience with this program? (Scored 1-5)	4.23	4.50	4.00	4.60	4.50	4.13	4.13	4.50	4.00

**Table 1: Participant Survey Results (continued)**

Survey Item	RP #1 (20)	RP #2 (43)	RP #3 (2)	SC #1 (21)	SC #2 (47)	SC #3 (2)	WRAP #1 (10)	WRAP #2 (50)	MRT #1 (16)	MRT #2 (8)
The program was beneficial to me. (Scored 1-6)	5.40	5.40	5.50	5.19	5.48	5.50	5.28	5.40	5.69	5.75
The presentations were useful. (Scored 1-6)	5.30	5.33	5.50	5.24	5.34	5.50	5.22	5.49	5.44	5.38
The discussions were helpful. (Scored 1-6)	5.40	5.49	5.50	5.29	5.41	5.50	5.28	5.48	5.56	5.38
The activities were engaging. (Scored 1-6)	5.30	5.40	5.50	5.15	5.30	5.50	5.28	5.36	5.56	5.13
The program taught you useful tools that you can apply to your life. (Scored 1-6)	5.45	5.42	5.50	5.33	5.40	6.00	5.29	5.48	5.44	5.63
The program instructor delivered the program effectively. (Scored 1-6)	5.50	5.49	6.00	5.57	5.60	6.00	5.50	5.58	5.63	5.75
What was your overall experience with this program? (Scored 1-5)	4.79	4.77	5.00	4.71	4.63	5.00	4.76	4.72	4.88	4.63

**Notes:** AM = Anger Management; FC = Family Center; FS = Family Strengthening; PREP = Prepared Renters Program; STEPS = Steps Toward Employment Program Success; IY = Incredible Years; RP = Relapse Prevention; SC = Stages of Change; WRAP = Wellness Recovery Action Plan; MRT = Moral Reconciliation Therapy  
 Numbers in parentheses represent number of completed surveys for each program.  
 Other numbers in table represent average score for each survey item.  
 First 6 items were scored from 1 (strongly disagree) to 6 (strongly agree).  
 Last item was scored from 1 (very bad) to 5 (very good).

**Criminal Justice Perceptions Survey**

A pre-test/post-test survey was administered that focused on perceptions of treatment by the criminal justice system. Initially, the survey was completed anonymously by participants entering the DRC, and the follow-up survey was completed anonymously at discharge. Pre- and post-test responses cannot be linked or compared for specific individuals; however, pre- and post-test group responses were assessed. Items on this survey were scored

from 1 (strongly disagree with the statement) to 6 (strongly agree with the statement), except for one item scored from 1 (very bad) to 5 (very good). Again, higher scores are associated with more favorable perceptions.

The results of the client satisfaction survey for the first 139 participants to enter the DRC, including the first 78 participants who were discharged (either successfully or unsuccessfully), appear in Table 2. Of the 78 individuals included in the post-test, 55 (70%) successfully completed DRC programming, and 23 (30%) were unsuccessfully discharged.

**Table 2: Client Satisfaction Survey Results**

Pre-Test	Average Score	N	Post-Test	Average Score	N
The Criminal Justice System treated you with respect. (Scored 1-6)	4.63	139	The Criminal Justice System treated you with respect. (Scored 1-6)	5.38**	78
The Criminal Justice System has been able to help you and/or provide you with services that matched your needs. (Scored 1-6)	4.69	139	The Criminal Justice System has been able to help you and/or provide you with services that matched your needs. (Scored 1-6)	5.29**	78
The Criminal Justice Systems expectations are clear and consistent. (Scored 1-6)	4.73	139	The Criminal Justice Systems expectations are clear and consistent. (Scored 1-6)	5.40**	78
Please rate your overall experience with the Criminal Justice System. (Scored 1-5)	3.38	139	Please rate your overall experience with the Criminal Justice System. (Scored 1-5)	4.03**	78
			Confidentiality procedures were explained to you. (Scored 1-6)	5.53	78

\*\* p < .001

**Note:** Items were scored from 1 (strongly disagree) to 6 (strongly agree), except for the one item that was scored from 1 (very bad) to 5 (very good)

## Executive Exchange

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Results from the criminal justice perceptions survey were positive, with average scores on the four comparable items improving significantly from the pre-test to post-test. Post-test scores all indicate consistent and strong agreement with the statements provided, suggesting high client satisfaction with DRC services and staff, as well as perceptions of fair treatment.

In addition to these findings, qualitative comments provided by participants on the pre-test and post-test surveys support the quantitative results and indicate a high degree of optimism associated with DRC programming and personnel. To illustrate, on the pre-test survey, several individuals voiced displeasure with the criminal justice system:

*My rights were never read to me. When questioning the courts, what jurisdiction they were judging under, they refused to give me the cause and nature of the charges against me. Also, I asked who the injured party was, as outlined by the rule of Corpus Delecti, which states that an injured party must be present. The courts refused to answer me. I feel that my rights have been violated with no compensation to me.*

*I feel that the justice system should be updated more regularly and people with addiction problems should receive more help rather than more time in prison and should not be grouped in with people who have more serious crimes. Prison doesn't help addicts with no new charges and have been doing well. Addiction is always going to be a problem for an addict no matter how much clean time they have, and they should not be incarcerated for long amounts of time for falling short of staying clean.*

*I feel like you should not be represented by people that work for the people that are accusing you. You can't be rightfully represented, in my case my lawyer lied to me the whole time, and when we got to the court room it was a completely different story, so I feel like they don't care about the problem or the solution. They just want the circle to keep going so they can make more money.*

*Could have helped me more instead of just throwing me in jail*

*They judge you without knowing who you are.*

During the pre-test survey, however, there also were various positive comments offered regarding the DRC. For example:

*The criminal justice system has given me an opportunity to make things right. I have struggled with*

*addiction my whole life, and between Twin Lakes and this, it gives me an opportunity to better my life, live addiction free, and live my life to the fullest.*

*I am thankful in a way for this program because I feel optimistic that I will be able to learn to live a clean life and be a more productive member of the community. I know it's a little early to tell, but I really hope and think my life is going to start down a new path.*

*I love how you are starting to look at different aspects to use for our system, other than just jail and prison, and just to cage a human for making a few mistakes in his or her life is not just or fair. We need to find other solutions to the problems at hand and fix the broken and needy. Yours truly a former inmate.*

*Everyone here has been great!! I just want to say thank you for this 2nd chance to get my life back on track. I see there is no reason at all why this program wouldn't work for ANYONE!!! It's out there if you want it!! But you have to want it!! Thanks again guys all of you at the DRC center... hands down, hats off... keep up the great work!!*

Finally, participant post-test statements were uniformly positive and indicative of strong satisfaction with DRC programming and personnel. To illustrate:

*All the staff at DRC are very helpful and really want to help you and see you succeed.*

*[Program Staff] are great people and they keep to their word on helping others based on help wanted. It was a great program.*

*[Program Staff] were especially fair and really respectful to me, and [Staff Member] was also a very amazing guy. I honestly wish the rest of the judicial system had people like these men!!! I am very satisfied with the amount of respect I had... THANK YOU SO MUCH.*

*DRC was a very good stepping stone. It helped me better myself and my decisions. Overall DRC was a very good place for me to be.*

*I thought that all the staff was very helpful, respectful, and willing to help me with anything I needed.*

### Changes in COMPAS Scores

With regard to changes in COMPAS scores, prior to entering the DRC, participants were assessed for recidivism risk by probation officers through the use of the COMPAS tool. When



participants complete phase 2 of DRC programming, the COMPAS tool is readministered, and this takes place again when participants complete phase 3 of DRC programming and are discharged. Quantitative analysis of changes in these scores, particularly for the dynamic risk factors, is presented below.

Tables 3 and 4 provide the results of dependent samples t-tests for differences in means between risk factors at Time 1 (prior to enrollment in DRC programming) and Time 2 (when DRC participants transition from phase 2 to phase 3 of programming). In Table 3, each pair of risk factors is presented in the first column, and the “Mean” column presents the average participant scores for General Recidivism Risk and the 17 dynamic risk factors listed in the table. As of March 31, 2019 (when data

collection ended), 62 DRC participants had transitioned from phase 2 to phase 3 and had COMPAS risk factor scores for both Time 1 and Time 2.

As shown in Tables 3 and 4, 12 of 18 (67%) of the mean differences in risk factors were positive, meaning the average scores were lower at Time 2 (suggesting recidivism risk was lowered). One-third of the mean differences were negative, meaning the average scores were higher at Time 2 (suggesting recidivism risk was increased). In Table 4, the findings highlighted in yellow are those with a statistically significant difference in means. In highlighting these findings. Of the seven highlighted/significant findings, six were positive (i.e., lower recidivism risk) and one was negative (i.e., higher recidivism risk).

**Table 3: Paired Samples Statistics, Time 1 and Time 2**

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	General Recidivism Risk	5.50	62	1.940	.246
	General Recidivism Risk	5.45	62	1.844	.234
Pair 2	Criminal Associates/Peers	4.66	62	2.548	.324
	Criminal Associates/Peers	5.03	62	2.515	.319
Pair 3	Criminal Opportunity	6.32	62	2.260	.287
	Criminal Opportunity	5.23	62	2.279	.289
Pair 4	Leisure and Recreation	6.35	62	2.723	.346
	Leisure and Recreation	5.31	62	2.849	.362
Pair 5	Social Isolation	4.82	62	2.602	.330
	Social Isolation	4.24	62	2.400	.305
Pair 6	Substance Abuse	7.40	62	1.996	.253
	Substance Abuse	8.58	62	1.798	.228
Pair 7	Criminal Personality	7.37	62	1.875	.238
	Criminal Personality	6.37	62	2.404	.305
Pair 8	Criminal Thinking Self Report	5.63	62	2.451	.311
	Criminal Thinking Self Report	4.55	62	2.738	.348
Pair 9	Anger	5.34	62	2.661	.338
	Anger	4.66	62	2.374	.302
Pair 10	Cognitive Behavioral	5.18	62	2.308	.293
	Cognitive Behavioral	4.81	62	2.592	.329
Pair 11	Socialization Failure	2.69	62	2.101	.267
	Socialization Failure	2.92	62	2.411	.306
Pair 12	Financial	6.37	62	2.607	.331
	Financial	6.21	62	2.444	.310
Pair 13	Vocational/Education	6.03	62	2.463	.313
	Vocational/Education	5.81	62	2.666	.339
Pair 14	Educational Problems	3.79	62	2.680	.340
	Educational Problems	3.94	62	2.579	.328
Pair 15	Employment Problems	5.55	62	2.494	.317
	Employment Problems	4.95	62	2.446	.311
Pair 16	Residential Instability	4.66	62	2.661	.338
	Residential Instability	4.95	62	2.888	.367
Pair 17	Social Adjustment Problems	5.05	62	2.602	.330
	Social Adjustment Problems	5.45	62	2.653	.337
Pair 18	Social Environment	3.44	62	3.001	.381
	Social Environment	3.27	62	3.079	.391

## Executive Exchange

**Table 4: Paired Samples T-Tests, Time 1 and Time 2**

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	General Recidivism Risk – General Recidivism Risk	.048	1.015	.129	-.209	.306	.375	61	.709
Pair 2	Criminal Associates/Peers – Criminal Associates/Peers	-.371	2.954	.375	-1.121	.379	-.989	61	.327
Pair 3	Criminal Opportunity – Criminal Opportunity	<b>1.097</b>	<b>2.454</b>	<b>.312</b>	<b>.474</b>	<b>1.720</b>	<b>3.519</b>	<b>61</b>	<b>.001</b>
Pair 4	Leisure and Recreation – Leisure and Recreation	<b>1.048</b>	<b>3.231</b>	<b>.410</b>	<b>.228</b>	<b>1.869</b>	<b>2.555</b>	<b>61</b>	<b>.013</b>
Pair 5	Social Isolation – Social Isolation	.581	2.940	.373	-.166	1.327	1.555	61	.125
Pair 6	Substance Abuse – Substance Abuse	<b>-1.177</b>	<b>1.625</b>	<b>.206</b>	<b>-1.590</b>	<b>-.765</b>	<b>-5.706</b>	<b>61</b>	<b>.000</b>
Pair 7	Criminal Personality – Criminal Personality	<b>1.000</b>	<b>2.416</b>	<b>.307</b>	<b>.387</b>	<b>1.613</b>	<b>3.259</b>	<b>61</b>	<b>.002</b>
Pair 8	Criminal Thinking Self Report – Criminal Thinking Self Report	<b>1.081</b>	<b>2.694</b>	<b>.342</b>	<b>.397</b>	<b>1.765</b>	<b>3.159</b>	<b>61</b>	<b>.002</b>
Pair 9	Anger – Anger	<b>.677</b>	<b>2.461</b>	<b>.313</b>	<b>.052</b>	<b>1.302</b>	<b>2.167</b>	<b>61</b>	<b>.034</b>
Pair 10	Cognitive Behavioral – Cognitive Behavioral	.371	2.292	.291	-.211	.953	1.274	61	.207
Pair 11	Socialization Failure – Socialization Failure	-.226	1.674	.213	-.651	.199	-1.062	61	.292
Pair 12	Financial - Financial	.161	2.887	.367	-.572	.894	.440	61	.662
Pair 13	Vocational/Education - Vocational/Education	.226	2.452	.311	-.397	.849	.725	61	.471
Pair 14	Educational Problems – Educational Problems	-.145	1.716	.218	-.581	.291	-.666	61	.508
Pair 15	Employment Problems – Employment Problems	<b>.597</b>	<b>2.287</b>	<b>.290</b>	<b>.016</b>	<b>1.177</b>	<b>2.055</b>	<b>61</b>	<b>.044</b>
Pair 16	Residential Instability – Residential Instability	-.290	3.185	.404	-1.099	.519	-.718	61	.476
Pair 17	Social Adjustment Problems - Social Adjustment Problems	-.403	2.315	.294	-.991	.185	-1.371	61	.175
Pair 18	Social Environment – Social Environment	.161	3.663	.465	-.769	1.091	.347	61	.730

From Time 1 to Time 2, the following risk factors declined significantly: Criminal Opportunity, Leisure and Recreation, Criminal Personality, Criminal Thinking, Anger, and Employment Problems. In contrast, mean scores for Substance Abuse increased significantly. In addition, the General Recidivism Risk score remained stable. In combination with subsequent changes in risk scores between Time 1 and Time 3, and between Time 2 and Time 3, the DRC leadership team discussed the results presented in Table 4. One possibility for the lack of positive change in General Recidivism Risk, as well as the mixed results for the more specific risk factors, is that more time for change was needed for participants in the program. Another possibility is that DRC participants simply became more truthful at Time 2, meaning their responses were more accurate after participating

in DRC programming and developing a relationship with DRC staff. Regardless of the explanation, six risk factors did improve significantly from Time 1 to Time 2, setting the stage for further COMPAS score analysis.

Tables 5 and 6 provide the results of t-tests for differences in means between risk factors at Time 1 (prior to enrollment in DRC programming) and Time 3 (when DRC participants transitioned from phase 3 and graduated from the program). In Table 5, each pair of risk factors is presented in the first column, and the “Mean” column presents the average participant scores for General Recidivism Risk and the 17 dynamic risk factors listed in the table. As of March 31, 2019, 51 DRC participants had transitioned from phase 3 and had COMPAS risk factor scores for Time 1 and Time 3.

As shown in Tables 5 and 6, 14 of the 18 mean differences in risk factor scores were positive, meaning the average scores were lower at Time 3 (suggesting recidivism risk was lowered). Four of the mean differences were negative, indicating the average scores were higher at Time 3 (suggesting recidivism risk increased). In Table 6, the findings highlighted in yellow are those with a significant difference in means. Nine of the 11 highlighted

findings were positive, indicating lowered recidivism risk. The General Recidivism Risk score declined significantly, along with Criminal Opportunity, Leisure and Recreation, Social Isolation, Criminal Personality, Criminal Thinking, Anger, Cognitive Behavioral, and Financial. In contrast, Substance Abuse and Socialization Failure both increased significantly, indicating higher risk at Time 3 versus Time 1.

**Table 5: Paired Samples Statistics, Time 1 and Time 3**

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	General Recidivism Risk	5.45	51	1.880	.263
	General Recidivism Risk	5.16	51	1.725	.242
Pair 2	Criminal Associates/Peers	4.49	51	2.469	.346
	Criminal Associates/Peers	3.88	51	2.233	.313
Pair 3	Criminal Opportunity	6.18	51	2.251	.315
	Criminal Opportunity	4.71	51	1.911	.268
Pair 4	Leisure and Recreation	6.53	51	2.603	.364
	Leisure and Recreation	4.75	51	2.348	.329
Pair 5	Social Isolation	4.92	51	2.614	.366
	Social Isolation	3.39	51	2.316	.324
Pair 6	Substance Abuse	7.43	51	1.868	.262
	Substance Abuse	8.08	51	2.153	.301
Pair 7	Criminal Personality	7.27	51	1.898	.266
	Criminal Personality	5.84	51	2.774	.388
Pair 8	Criminal Thinking Self Report	5.51	51	2.370	.332
	Criminal Thinking Self Report	3.84	51	2.611	.366
Pair 9	Anger	5.20	51	2.538	.355
	Anger	3.98	51	2.702	.378
Pair 10	Cognitive Behavioral	5.06	51	2.310	.323
	Cognitive Behavioral	4.04	51	2.383	.334
Pair 11	Socialization Failure	2.78	51	2.120	.297
	Socialization Failure	3.33	51	2.582	.362
Pair 12	Financial	6.65	51	2.489	.348
	Financial	5.16	51	2.485	.348
Pair 13	Vocational/Education	5.86	51	2.546	.356
	Vocational/Education	5.55	51	2.641	.370
Pair 14	Educational Problems	3.82	51	2.725	.382
	Educational Problems	4.08	51	2.734	.383
Pair 15	Employment Problems	5.53	51	2.493	.349
	Employment Problems	4.96	51	2.506	.351
Pair 16	Residential Instability	4.57	51	2.663	.373
	Residential Instability	4.67	51	2.754	.386
Pair 17	Social Adjustment Problems	5.06	51	2.641	.370
	Social Adjustment Problems	4.80	51	2.735	.383
Pair 18	Social Environment	3.33	51	2.923	.409
	Social Environment	3.04	51	3.020	.423

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**Table 6: Paired Samples T-Tests, Time 1 and Time 3**

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	General Recidivism Risk – General Recidivism Risk	<b>.294</b>	<b>.986</b>	<b>.138</b>	<b>.017</b>	<b>-.571</b>	<b>2.131</b>	<b>50</b>	<b>.038</b>
Pair 2	Criminal Associates/Peers – Criminal Associates/Peers	.608	2.324	.325	-.046	1.262	1.867	50	.068
Pair 3	Criminal Opportunity – Criminal Opportunity	<b>1.471</b>	<b>2.509</b>	<b>.351</b>	<b>.765</b>	<b>2.176</b>	<b>4.186</b>	<b>50</b>	<b>.000</b>
Pair 4	Leisure and Recreation – Leisure and Recreation	<b>1.784</b>	<b>2.633</b>	<b>.369</b>	<b>1.044</b>	<b>2.525</b>	<b>4.840</b>	<b>50</b>	<b>.000</b>
Pair 5	Social Isolation – Social Isolation	<b>1.529</b>	<b>1.994</b>	<b>.279</b>	<b>.969</b>	<b>2.090</b>	<b>5.479</b>	<b>50</b>	<b>.000</b>
Pair 6	Substance Abuse – Substance Abuse	<b>-.647</b>	<b>2.067</b>	<b>.289</b>	<b>-1.228</b>	<b>-.066</b>	<b>-2.235</b>	<b>50</b>	<b>.030</b>
Pair 7	Criminal Personality – Criminal Personality	<b>1.431</b>	<b>2.484</b>	<b>.348</b>	<b>.733</b>	<b>2.130</b>	<b>4.115</b>	<b>50</b>	<b>.000</b>
Pair 8	Criminal Thinking Self Report – Criminal Thinking Self Report	<b>1.667</b>	<b>2.681</b>	<b>.375</b>	<b>.913</b>	<b>2.421</b>	<b>4.440</b>	<b>50</b>	<b>.000</b>
Pair 9	Anger - Anger	<b>1.216</b>	<b>2.419</b>	<b>.339</b>	<b>.535</b>	<b>1.896</b>	<b>3.589</b>	<b>50</b>	<b>.001</b>
Pair 10	Cognitive Behavioral – Cognitive Behavioral	<b>1.020</b>	<b>1.934</b>	<b>.271</b>	<b>.476</b>	<b>1.563</b>	<b>3.765</b>	<b>50</b>	<b>.000</b>
Pair 11	Socialization Failure - Socialization Failure	<b>-.549</b>	<b>1.665</b>	<b>.233</b>	<b>-1.017</b>	<b>-.081</b>	<b>-2.355</b>	<b>50</b>	<b>.023</b>
Pair 12	Financial - Financial	<b>1.490</b>	<b>2.603</b>	<b>.364</b>	<b>.758</b>	<b>2.222</b>	<b>4.089</b>	<b>50</b>	<b>.000</b>
Pair 13	Vocational/Education - Vocational/Education	.314	2.462	.345	-.379	1.006	.910	50	.367
Pair 14	Educational Problems – Educational Problems	-.255	1.508	.211	-.679	.169	-1.207	50	.233
Pair 15	Employment Problems – Employment Problems	.569	2.492	.349	-.132	1.270	1.630	50	.109
Pair 16	Residential Instability – Residential Instability	-.098	2.625	.368	-.836	.640	-.267	50	.791
Pair 17	Social Adjustment Problems – Social Adjustment Problems	.255	2.568	.360	-.467	.977	.709	50	.482
Pair 18	Social Environment – Social Environment	.294	3.640	.510	-.730	1.318	.577	50	.567

Finally, Tables 7 and 8 provide the results of t-tests for differences in means between risk factors at Time 2 (when DRC participants transition from phase 2 to phase 3) and Time 3 (when DRC participants transition from phase 3 and graduate from the program). Again, as of March 31, 2019, 51 DRC participants had transitioned from phase 3 and had COMPAS risk factor scores for Time 2 and Time 3.

As shown in Tables 7 and 8, 16 of the 18 mean differences in risk factor scores were positive, meaning the average scores

were lower at Time 3 (suggesting recidivism risk was lowered). Two of the mean differences were negative, indicating the average scores were higher at Time 3 (suggesting recidivism risk increased). In Table 8, the findings highlighted in yellow again are those with a significant difference in means. The General Recidivism Risk score declined significantly, along with Criminal Associates/Peers, Social Isolation, Substance Abuse, Cognitive Behavioral, Financial, and Social Adjustment Problems. Socialization Failure increased significantly, indicating higher risk at Time 3 versus Time 2.



Table 7: Paired Samples Statistics, Time 2 and Time 3

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	General Recidivism Risk	5.51	51	1.815	.254
	General Recidivism Risk	5.16	51	1.725	.242
Pair 2	Criminal Associates/Peers	4.98	51	2.494	.349
	Criminal Associates/Peers	3.88	51	2.233	.313
Pair 3	Criminal Opportunity	5.04	51	2.172	.304
	Criminal Opportunity	4.71	51	1.911	.268
Pair 4	Leisure and Recreation	5.02	51	2.818	.395
	Leisure and Recreation	4.75	51	2.348	.329
Pair 5	Social Isolation	4.18	51	2.439	.342
	Social Isolation	3.39	51	2.316	.324
Pair 6	Substance Abuse	8.63	51	1.788	.250
	Substance Abuse	8.08	51	2.153	.301
Pair 7	Criminal Personality	6.18	51	2.504	.351
	Criminal Personality	5.84	51	2.774	.388
Pair 8	Criminal Thinking Self Report	4.49	51	2.633	.369
	Criminal Thinking Self Report	3.84	51	2.611	.366
Pair 9	Anger	4.47	51	2.444	.342
	Anger	3.98	51	2.702	.378
Pair 10	Cognitive Behavioral	4.73	51	2.538	.355
	Cognitive Behavioral	4.04	51	2.383	.334
Pair 11	Socialization Failure	2.88	51	2.346	.329
	Socialization Failure	3.33	51	2.582	.362
Pair 12	Financial	6.29	51	2.360	.331
	Financial	5.16	51	2.485	.348
Pair 13	Vocational/Education	5.78	51	2.802	.392
	Vocational/Education	5.55	51	2.641	.370
Pair 14	Educational Problems	3.88	51	2.566	.359
	Educational Problems	4.08	51	2.734	.383
Pair 15	Employment Problems	5.00	51	2.514	.352
	Employment Problems	4.96	51	2.506	.351
Pair 16	Residential Instability	4.80	51	2.850	.399
	Residential Instability	4.67	51	2.754	.386
Pair 17	Social Adjustment Problems	5.41	51	2.670	.374
	Social Adjustment Problems	4.80	51	2.735	.383
Pair 18	Social Environment	3.08	51	2.925	.410
	Social Environment	3.04	51	3.020	.423

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**Table 8: Paired Samples Tests, Time 2 and Time 3**

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	General Recidivism Risk – General Recidivism Risk	<b>.353</b>	<b>.796</b>	<b>.111</b>	<b>.129</b>	<b>.577</b>	<b>3.168</b>	<b>50</b>	<b>.003</b>
Pair 2	Criminal Associates/Peers – Criminal Associates/Peers	<b>1.098</b>	<b>2.693</b>	<b>.377</b>	<b>.341</b>	<b>1.855</b>	<b>2.912</b>	<b>50</b>	<b>.005</b>
Pair 3	Criminal Opportunity – Criminal Opportunity	.333	1.717	.240	-.149	.816	1.387	50	.172
Pair 4	Leisure and Recreation – Leisure and Recreation	.275	2.367	.331	-.391	.940	.828	50	.412
Pair 5	Social Isolation - Social Isolation	<b>.784</b>	<b>2.335</b>	<b>.327</b>	<b>.128</b>	<b>1.441</b>	<b>2.399</b>	<b>50</b>	<b>.020</b>
Pair 6	Substance Abuse - Substance Abuse	<b>.549</b>	<b>1.629</b>	<b>.228</b>	<b>.091</b>	<b>1.007</b>	<b>2.407</b>	<b>50</b>	<b>.020</b>
Pair 7	Criminal Personality - Criminal Personality	.333	2.113	.296	-.261	.928	1.126	50	.265
Pair 8	Criminal Thinking Self Report – Criminal Thinking Self Report	.647	2.591	.363	-.082	1.376	1.783	50	.081
Pair 9	Anger - Anger	.490	2.043	.286	-.084	1.065	1.713	50	.093
Pair 10	Cognitive Behavioral – Cognitive Behavioral	<b>.686</b>	<b>2.159</b>	<b>.302</b>	<b>.079</b>	<b>1.293</b>	<b>2.270</b>	<b>50</b>	<b>.028</b>
Pair 11	Socialization Failure - Socialization Failure	<b>-.451</b>	<b>1.553</b>	<b>.217</b>	<b>-.888</b>	<b>-.014</b>	<b>-2.074</b>	<b>50</b>	<b>.043</b>
Pair 12	Financial - Financial	<b>1.137</b>	<b>2.482</b>	<b>.348</b>	<b>.439</b>	<b>1.835</b>	<b>3.272</b>	<b>50</b>	<b>.002</b>
Pair 13	Vocational/Education - Vocational/Education	.235	1.582	.222	-.210	.680	1.062	50	.293
Pair 14	Educational Problems – Educational Problems	-.196	1.536	.215	-.628	.236	-.911	50	.366
Pair 15	Employment Problems – Employment Problems	.039	1.600	.224	-.411	.489	.175	50	.862
Pair 16	Residential Instability – Residential Instability	.137	1.767	.247	-.360	.634	.555	50	.581
Pair 17	Social Adjustment Problems – Social Adjustment Problems	<b>.608</b>	<b>2.079</b>	<b>.291</b>	<b>.023</b>	<b>1.193</b>	<b>2.088</b>	<b>50</b>	<b>.042</b>
Pair 18	Social Environment - Social Environment	.039	2.842	.398	-.760	.839	.099	50	.922

Overall, the changes in COMPAS risk scores are positive and indicate a beneficial impact from DRC programming, particularly for the 51 participants who progressed to complete phase 3 of the program. A large majority of risk score changes were in a beneficial direction, and many of these changes were statistically significant. This sets the stage for the next area of statistical analysis, focused on recidivism.

### Recidivism Assessment

Finally, to evaluate the impact of DRC programming and practices on the future behavior of participants, official arrest

data were accessed through *The Unified Judicial System of Pennsylvania Web Portal* (<https://ujportal.pacourts.us/>). This website contains information on all criminal court cases filed in Pennsylvania, beginning with charges filed by police in magisterial district court following the arrest of a defendant.

Initially, recidivism data were collected on DRC participants when they were discharged (either successfully or unsuccessfully) from DRC programming. Then, in order to utilize a quasi-experimental research design (specifically a non-equivalent treatment and comparison group design), rearrest data were collected on an historical group of non-DRC probationers and paroles. In the analyses discussed below, the comparison group

includes non-DRC offenders on probation or parole supervision in 2015 and 2016, for which the COMPAS tool was completed prior to supervision. This comparison group excludes such offenders as those transferred for supervision from another jurisdiction, those who were sanctioned under Accelerated Rehabilitative Disposition, and those under short-term DUI supervision.

The current recidivism analysis focuses on rearrest data at 6 and 12 months following initiation of either DRC programming (i.e., the treatment group) or more typical probation/parole supervision (i.e., the comparison group). First, a descriptive summary of the recidivism data for DRC participants is presented below. Then, a comparative assessment of recidivism figures for the DRC participants and non-DRC probationers/parolees is presented. Finally, analysis is presented that compares DRC graduates to non-graduates, along with the probationers/parolees in the comparison group.

As of March 31, 2019, 95 individuals had been discharged (either successfully or unsuccessfully) from DRC programming and had at least 12 months in the follow-up period. Of these DRC participants, slightly more than half (49) graduated from the program, and slightly less than half (46) were dismissed unsuccessfully. Based on the entire group of 95 participants:

- 9 (11.8%) were rearrested within 6 months of entering the DRC
- 17 (17.9%) were rearrested within 12 months of entering the DRC
- Only 3 (3.2%) were rearrested on a felony within 12 months of entering the DRC

Of the 49 graduates of the DRC:

- 3 (6.1%) were rearrested within 6 months of entering the DRC
- 4 (8.2%) were rearrested within 12 months of entering the DRC
- 2 (4.1%) were rearrested on a felony within 12 months of entering the DRC

At face value, these figures represent a rather low level of recidivism, particularly for DRC graduates and while considering the elevated risk levels of most DRC participants. However, use of comparison group data strengthens the conclusions that can be made regarding the impact of DRC programming on recidivism. To utilize more comparable groups of DRC and non-DRC subjects, individuals in both groups with General Recidivism Risk scores of 4 or higher (from initial COMPAS tool administration) were selected for analysis. This ensured that the two groups were not significantly different based on initial General Recidivism Risk, and enabled the recidivism analysis to focus on medium and higher risk individuals (i.e., the DRC target population). Tables 9 through 11 provide initial results of this comparative analysis.

**Table 9: Rearrest at 6 months, DRC versus Non-DRC**

		DRC			
		No	Yes	Total	
Recidivism at 6 months	No	Count	69	70	139
		% within DRC	87.3%	89.7%	88.5%
	Yes	Count	10	8	18
		% within DRC	<b>12.7%</b>	<b>10.3%</b>	11.5%
Total		Count	79	78	157
% within DRC		100.0%	100.0%	100.0%	

**Table 10: Rearrest at 12 months, DRC versus Non-DRC**

		DRC			
		No	Yes	Total	
Recidivism at 12 months	No	Count	66	63	129
		% within DRC	83.5%	80.8%	82.2%
	Yes	Count	13	15	28
		% within DRC	<b>16.5%</b>	<b>19.2%</b>	17.8%
Total		Count	79	78	157
% within DRC		100.0%	100.0%	100.0%	

**Table 11: Felony rearrest at 12 months, DRC versus Non-DRC**

		DRC			
		No	Yes	Total	
Felony at 12 months	No	Count	74	75	149
		% within DRC	93.7%	96.2%	94.9%
	Yes	Count	5	3	8
		% within DRC	<b>6.3%</b>	<b>3.8%</b>	5.1%
Total		Count	79	78	157
% within DRC		100.0%	100.0%	100.0%	

Based on the figures presented in Tables 9 through 11, DRC participants exhibited slightly lower general recidivism at 6 months (10.3% versus 12.7%) and slightly lower felony recidivism at 12 months (3.8% versus 6.3%), but higher general recidivism at 12 months (19.2% versus 16.5%). However, none of these differences were statistically significant, meaning the recidivism of all DRC participants versus comparable Non-DRC probationers and parolees was similar.

The next set of statistical findings, presented in Tables 12 through 14, is based on comparing DRC graduates with non-DRC individuals. These analyses generally indicate lower recidivism on the part of DRC graduates. More specifically, rearrest rates were lower for DRC graduates than for non-DRC individuals at 6 months (4.9% versus 12.7%) and 12 months (7.3% versus 16.5%). The felony rearrest rate at 12 months was similar for the two groups, but slightly lower for DRC graduates (4.9% versus 6.3%). Although the 6-month and 12-month rearrest rates were lower for DRC graduates, the differences, while noticeable, were not statistically significant. This is likely due to the low sample sizes employed in this analysis, which makes findings of statistical significance difficult to achieve.

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**Table 12: Rearrest at 6 months, DRC Graduates versus Non-DRC**

		DRC			Total
		No	Yes		
Recidivism at 6 months	No	Count	69	39	108
		% within DRC	87.3%	95.1%	90.0%
	Yes	Count	10	2	12
		% within DRC	<b>12.7%</b>	<b>4.9%</b>	10.0%
Total % within DRC		Count	79	41	120
		% within DRC	100.0%	100.0%	100.0%

**Table 13: Rearrest at 12 months, DRC Graduates versus Non-DRC**

		DRC			Total
		No	Yes		
Recidivism at 12 months	No	Count	66	38	104
		% within DRC	83.5%	92.7%	86.7%
	Yes	Count	13	3	16
		% within DRC	<b>16.5%</b>	<b>7.3%</b>	13.3%
Total % within DRC		Count	79	41	120
		% within DRC	100.0%	100.0%	100.0%

**Table 14: Felony rearrest at 12 months, DRC Graduates versus Non-DRC**

		DRC			Total
		No	Yes		
Felony at 12 months	No	Count	74	39	113
		% within DRC	93.7%	95.1%	94.2%
	Yes	Count	5	2	7
		% within DRC	<b>6.3%</b>	<b>4.9%</b>	5.8%
Total % within DRC		Count	79	41	120
		% within DRC	100.0%	100.0%	100.0%

The next set of findings, shown in Tables 15 through 17, is based on comparing individuals who graduated from the DRC with participants who were dismissed unsuccessfully from the DRC. All 95 DRC participants were included in this analysis. The findings again indicate lower general recidivism on the part of DRC graduates, at both 6 months (6.1% versus 13.0%) and 12 months (8.2% versus 28.3%). The felony rearrest rate at 12 months was slightly higher for DRC graduates (4.1% versus 2.2%), but only 3 total DRC participants were rearrested for a felony at 12 months. In addition, the difference in general recidivism at 12 months was statistically significant (chi-square = 6.523,  $p < .05$ ), meaning DRC graduates were significantly less likely to be rearrested at 12 months, as compared to DRC participants who were dismissed unsuccessfully.

**Table 15: Rearrest at 6 months, DRC Graduates versus DRC Dismissals**

		DRC Graduated			Total
		No	Yes		
Recidivism at 6 months	No	Count	40	46	86
		% within DRC Graduated	87.0%	93.9%	90.5%
	Yes	Count	6	3	9
		% within DRC Graduated	<b>13.0%</b>	<b>6.1%</b>	9.5%
Total % within DRC Graduated		Count	46	49	95
		% within DRC Graduated	100.0%	100.0%	100.0%

**Table 16: Rearrest at 12 months, DRC Graduates versus DRC Dismissals**

		DRC Graduated			Total
		No	Yes		
Recidivism at 12 months	No	Count	33	45	78
		% within DRC Graduated	71.7%	91.8%	82.1%
	Yes	Count	13	4	17
		% within DRC Graduated	<b>28.3%</b>	<b>8.2%</b>	17.9%
Total % within DRC Graduated		Count	46	49	95
		% within DRC Graduated	100.0%	100.0%	100.0%

**Table 17: Felony rearrest at 12 months, DRC Graduates versus DRC Dismissals**

		DRC Graduated			Total
		No	Yes		
Felony at 12 months	No	Count	45	47	92
		% within DRC Graduated	97.8%	95.9%	96.8%
	Yes	Count	1	2	3
		% within DRC Graduated	<b>2.2%</b>	<b>4.1%</b>	3.2%
Total % within DRC Graduated		Count	46	49	95
		% within DRC Graduated	100.0%	100.0%	100.0%

Finally, logistic regression analysis was used to assess further the impact of DRC programming on recidivism. These models contained three independent variables: “Graduated from DRC” and “Dismissed from DRC” (with Non-DRC probationers/parolees used as the reference group), along with the “General Recidivism Risk” score for each individual. Essentially, these models assess the likelihood of recidivism for DRC graduates versus the comparison group and for DRC dismissals versus the comparison group, while controlling for general recidivism risk.

Table 18 shows the logistic regression results with rearrest at 6 months used as the dependent variable. The results indicate

DRC graduates were less likely to recidivate, as compared to non-DRC probationers and parolees, while controlling for general recidivism risk. Although the simple odds of rearrest were about 65% lower for DRC graduates, this effect on recidivism did not

reach statistical significance, again likely due to the rather small sample sizes employed in the model. In addition, there was relatively little difference in recidivism for participants dismissed from the DRC versus individuals in the comparison group.

**Table 18: Logistic Regression for Rearrest at 6 Months**

**Model Summary**

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	108.529a	.021	.041

a. Estimation terminated at iteration number 6 because parameter estimates changed by less than .001.

**Variables in the Equation**

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 <sup>a</sup>	DRC Graduated	<b>-1.035</b>	<b>.800</b>	<b>1.672</b>	<b>1</b>	<b>.196</b>	<b>.355</b>
	DRC Dismissed	.223	.575	.150	1	.698	1.250
	General Recidivism Risk	.076	.146	.270	1	.603	1.079
	Constant	-2.391	.958	6.228	1	.013	.092

a. Variable(s) entered on step 1: DRC Graduated, DRC Dismissed, General Recidivism Risk.

Table 19 provides the logistic regression results with rearrest at 12 months used as the dependent variable. The results again indicate DRC graduates were less likely to recidivate, as compared to non-DRC probationers and parolees, while controlling for general recidivism risk. In this case, the simple odds of re-

arrest were about 60% lower for DRC graduates, but again this effect on recidivism was not statistically significant. In addition, the likelihood of recidivism was greater (but not statistically significant) for participants dismissed from the DRC versus individuals in the comparison group.

**Table 19: Logistic Regression for Rearrest at 12 Months**

**Model Summary**

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	138.045a	.057	.093

a. Estimation terminated at iteration number 5 because parameter estimates changed by less than .001.

**Variables in the Equation**

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1a	DRC Graduated	<b>-.909</b>	<b>.673</b>	<b>1.825</b>	<b>1</b>	<b>.177</b>	<b>.403</b>
	DRC Dismissed	.804	.476	2.857	1	.091	2.235
	General Recidivism Risk	.104	.124	.701	1	.402	1.109
	Constant	-2.255	.823	7.500	1	.006	.105

a. Variable(s) entered on step 1: DRC Graduated, DRC Dismissed, General Recidivism Risk.

Table 20 presents the logistic regression results with felony rearrest at 12 months used as the dependent variable. As in the previous two models, the results suggest DRC graduates were less likely to recidivate, as compared to non-DRC probationers and parolees, while controlling for general recidivism risk. Here,

the simple odds of felony rearrest were about 20% lower for DRC graduates, but this effect on recidivism was not statistically significant. In addition, the likelihood of felony rearrest was lower (but not statistically significant) for participants dismissed from the DRC versus individuals in the comparison group.



**Table 20: Logistic Regression for Felony Rearrest at 12 Months**

**Model Summary**

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	60.502 <sup>a</sup>	.017	.052

a. Estimation terminated at iteration number 6 because parameter estimates changed by less than .001.

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1a	DRC Graduated	<b>-.224</b>	<b>.868</b>	<b>.067</b>	<b>1</b>	<b>.796</b>	<b>.799</b>
	DRC Dismissed	-1.159	1.136	1.041	1	.308	.314
	General Recidivism Risk	.295	.209	1.980	1	.159	1.343
	Constant	-4.570	1.495	9.348	1	.002	.010

a. Variable(s) entered on step 1: DRC Graduated, DRC Dismissed, General Recidivism Risk.

**Conclusions and Recommendations**

Overall, stages of evaluation research indicated the Somerset County DRC was implemented as planned during the 3 years of federal funding, and the results of implementation monitoring and outcome assessment were favorable (Myers, Lee, and Giever, 2018, 2019). More specifically, program participants received a wide variety of services, and participant survey data were highly favorable regarding perceptions of the programming received. In addition, pre-test/post-test results indicated improved perceptions of the criminal justice system because of DRC participation. Analysis of COMPAS data revealed a number of significant improvements in risk scores over time, particularly from Time 1 to Time 3 and from Time 2 to Time 3. These positive changes pertained primarily to DRC participants who were successful in the program and eventually graduated. Finally, analysis of recidivism data and use of a comparison group suggested DRC graduates exhibited lower levels of official recidivism (measured by rearrest) at 6 and 12 months. Felony recidivism at 12 months was very low across all DRC participants. Obtaining statistically significant findings was challenging, due to small sample sizes. When combined with the results of the COMPAS data analysis, however, the findings indicate program graduates demonstrated lowered recidivism risk and a lowered likelihood of rearrest, while program non-graduates did not exhibit this same pattern.

Implications of these findings are that evidence-based services provided to medium and high risk clients with a history of substance abuse can lower recidivism risk and improve behavioral outcomes. Also, researcher-practitioner partnerships can be used to study and enhance service delivery, by providing ongoing and data-driven feedback that can be utilized by those who are monitoring program implementation and client behavior. More specific recommendations for evidence-based probation services include the following:

1. Emphasis should be placed on identifying and enrolling medium and higher risk participants, as the weight of the research suggests these individuals can benefit the most from effective treatment. Greater enrollment of medium and higher risk participants in effective programming not only benefits these individuals, but their families and communities as well.

2. Data-driven decision-making is a key aspect of evidence-based organizations, and evidence-based programs and practices are those that have attained the highest degree of research support. Use of risk and needs assessment to identify medium and higher risk individuals, and then match them with appropriate and effective services, is one key principle for evidence-based probation agencies.
3. Although DRC graduation rates (about 50%) were in-line with those of other similar programs examined through research, and the recidivism findings generally were positive, it appears likely that enhancing successful program completion would have an added beneficial impact on recidivism. In general, treatment program graduates typically show the greatest reductions in recidivism risk and official recidivism. To the extent that programs like the DRC could be both expanded to include larger numbers of medium and higher risk participants and increase their graduation/success rates (not an easy task), a larger impact on recidivism appears likely. Doing so, however, would depend on effective use of evidence-based approaches, data-driven monitoring and decision-making, and strong collaboration among stakeholders and with program participants.
4. Researcher-practitioner partnerships are beneficial for assessing program implementation, guiding change, and assessing impact on behavioral outcomes. Strong researcher-practitioner partnerships rarely happen by chance, however. In fact, they often evolve from contacts and relationships built from non-research work. For example, researchers who seek to engage in evaluation research initially can look for opportunities to serve on organizational advisory boards and community coalitions, participate in community events hosted by relevant agencies and organizations, attend practitioner-oriented meetings and conferences, and publish scholarship in practitioner-oriented newsletters and journals. Correspondingly, practitioners from agencies desiring to become more evidence-based should identify and invite faculty members from local universities to serve on their advisory boards and participate in

meetings and conferences. Not all faculty members will be interested or will be a good fit for this type of work, but when a solid contact is made and a strong relationship is formed, the results can be mutually beneficial and long-lasting. Finally, existing or new internship agreements between agencies and universities can lead to discussions of collaborative research possibilities. Strong internships programs therefore can benefit both types of organizations from an educational, personnel, and research standpoint.

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**David L. Myers, Ph.D.**, is the Chair of the Department of Criminal Justice at the University of New Haven, President of the National Association of Doctoral Programs in Criminology and Criminal Justice, board member and subject matter expert for the Crime and Justice Research Alliance, executive board member of the Northeast Association of Criminal Justice Sciences, and a member of the Urban Institute’s Federal Justice Research Network. He is a certified reviewer for Crimesolutions.gov and the OJJ-DP Model Programs Guide, and he is the Editor of *ACJS Today*, Editor of *Routledge Studies in Juvenile Justice and Delinquency*, Editor and columnist for *EBP Quarterly*, and Associate Editor of *Criminal Justice Policy Review*.

**Daniel R. Lee, Ph.D.**, is the Chair of the Department of Criminology and Criminal Justice at Indiana University of Pennsylvania. He serves on the editorial boards for *Criminal Justice Policy Review*, *Prison Journal*, and *Western Criminology Review*. His recent research has been published in *Journal of Research in Crime and Delinquency*, *Prison Journal*, and *Youth Violence and Juvenile Justice*.

**Dennis M. Giever, Ph.D.**, is the Head of the Criminal Justice Department at New Mexico State University. He has published 31 research articles or book chapters in diverse areas such as juvenile transfers, jails, fear of crime, parental management and self-control, and police pursuits, and has presented more than 40 academic papers in areas dealing with criminology, information assurance, risk mitigation, and crime prediction.

## A LOOK AT THE CHANGING PHILOSOPHY OF PROBATION SERVICES IN NEW JERSEY

by

Judge Glenn A. Grant

Probation has historically centered around punitive measures and making sure those who commit crimes pay for them through a variety of sanctions. Those sentenced to probation in New Jersey today still must fulfill the terms of their sentences, such as fines and community service, but the focus has shifted from enforcement and monitoring to rehabilitation and behavioral change. If probation officers can help clients change their attitudes, beliefs and behaviors, it is less likely that they will reoffend.

This change in practice has been adopted across every division of probation operations, including adult and juvenile supervision/intensive supervision program, comprehensive enforcement program and child support collections.

Probation in New Jersey focuses on applying the appropriate amount of supervision based on the client’s needs. The higher the risk of committing another crime, the higher the level of supervision needed. Officer time and division resources are focused on providing high-risk clients with the needed support the chance of reoffending.

“We are working to change the long-held perception that probation is only about punishment,” said Rashad Shabaka-Burns, director of the office of probation services, within the New Jersey

Judiciary. “While we are still committed to making sure clients complete their sentences and pay their fines, we are working more closely with them to provide the direction and resources they need to improve their lives so they don’t reoffend. The goal is to change lives and, in turn, strengthen our communities.”

Probation Services in New Jersey is a statewide unified system that includes 15 local divisions covering all the state’s 21 counties. Staff oversee more than 120,000 supervision clients and 280,000 child support clients.

The changing practice of probation in New Jersey stems from the growing national trend of moving from punishment, enforcement and monitoring to using evidence-based practices that promote positive, lasting changes in thinking and behavior. The New Jersey Supreme Court in 2018 approved probation services recommendations for the future of adult and juvenile probation supervision in New Jersey. Under the direction of Shabaka-Burns, probation services has implemented standards to measure the results of its supervision efforts, including its impact on improving racial disparity.

As part of the statewide implementation of evidence-based practices, probation staff will use the Ohio Risk Assessment System and the Ohio Youth Assessment System to create as-

## Executive Exchange

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assessments and case plans. The automated case plan feature of these tools can be customized to capture the objectives and steps that can be taken while a client is on probation. In 2020, statewide training on the assessment system will be provided to probation officers and each unit of supervision services. Probation officers will act as liaisons to public, private, governmental and community organizations, to engage and connect communities, families, and resources. Probation staff also will use strategies such as active listening and other client-based approaches and methods to help clients develop skills they can use for long term behavior change. Clients will receive incentives and sanctions through the use of a structured response grid to encourage positive behaviors throughout their probation term.

“With the use of these new assessment tools and an improved case plan process, we can be even more effective in helping clients to change their lives for the better,” said Brenda Beacham, assistant director of probation services. “Our assessment tools will assist probation services in tailoring the work they do to improve probation client outcomes and help make communities safer.”

**Child Support Enforcement:** The child support program will no longer rely exclusively on debt-driven enforcement remedies. In the past, the program relied on bench warrants and suspension of licenses to enforce non-custodial parent compliance. The program now takes a more individualized approach to address barriers to non-payment. In collaboration with partners in the state Division of Family Development and the state Department of Labor, probation services is working with employment service providers to expand services to low-income, unemployed, or underemployed custodial parents as part of holistically addressing family poverty.

Child Support Enforcement also is exploring a debt forgiveness initiative that would allow for the permanent removal of certain past-due child support debt owed to the State of New Jersey, in exchange for consistent court-ordered payments of child support. Debt forgiveness can be effective in reducing barriers and help ensure support within the non-custodial parent’s ability to pay.

**Comprehensive Enforcement Program (CEP):** CEP is a cooperative effort of the New Jersey judicial, executive, and legislative branches of government that provides an alternative way of collecting fees, fines, and restitution and gaining compliance with community service orders. CEP will use a proactive approach in assisting clients throughout their probation term rather than addressing issues at the end of their term. Probation services has a new tool to properly assess an individual’s ability to pay and to make adjustments to payment plans so that clients can be successful in paying their obligations. The

program will help clients who have fallen behind on their obligations with resources such as employment referrals and educational programs.

**Ombudsman Unit:** With this change in practice, the Office of Probation Services created an Ombudsman Unit in 2018 to convey the office’s message to the public, clients and stakeholders and to build public trust and confidence in probation practices. Public outreach has been a major component of communicating the philosophical change of probation in New Jersey. The unit is developing new ways to connect with the public and clients.

Acting Administrative Director **Glenn A. Grant** was appointed by [Chief Justice Stuart Rabner](#) effective September 1, 2008. A judge of the Appellate Division of Superior Court, Judge Grant had served as the presiding judge of the family division in Essex Vicinage from 2003 until the time of his appointment. He was named to the Superior Court bench in 1998. In addition to his work in the family division, Judge Grant served as the acting chief judge of the Newark Municipal Court from 2002 to 2003.

Prior to his judicial career, Judge Grant served as the business administrator for the City of Newark from 1992 to 1998, as corporation counsel for the City of Newark from 1986 to 1992 and assistant corporation counsel from 1979 to 1986.

While on the bench, Judge Grant served as the chair of the Conference of Presiding Judges—Family Division from 2007 to 2008, and as chair of the Conference’s Children in Court Committee from 2005 to 2007.

Judge Grant received a Bachelor of Arts degree in government from Lehigh University in 1975, and a Juris Doctor degree from Catholic University in 1978. He also earned a certificate in senior executive management from the John F. Kennedy School of Government at Harvard University in 1991. He and his wife, Newark Municipal Court Judge Roslyn Holmes Grant, have two children, Taylor and Glenn.

As part of an effort to improve the administration of justice in New Jersey, the state constitution gave the Chief Justice authority over the management of the courts. To help the Chief Justice fulfill those management duties, the constitution directed the Chief Justice to appoint an Administrative Director of the Courts. Glenn A. Grant is the Acting Administrative Director of the New Jersey Courts.

Today the Chief Justice and the Administrative Director manage a statewide judiciary that consists of more than 400 trial, tax and appellate judges and Supreme Court justices, and 9000 support staff.

# INHERENTLY UNSTABLE: THE HISTORY AND FUTURE OF RELIANCE ON COURT IMPOSED FEES IN THE STATE OF TEXAS

by

Todd Jermstad, J.D.

Much has been written and discussed about the imposition of fines, fees, and costs on criminal defendants in this country. And much of the academic research has rightfully written about the unfairness of the overreliance of court-imposed fees for the operation of local and state criminal justice systems, especially for the poor. Certain advocacy groups have focused their energy on ensuring that local courts and criminal justice agencies follow Supreme Court precedent in ordering the assessment of fines, fees, and costs. This article will focus on a different aspect of this problem, one more about practicality. This article will examine the question regarding whether the continued reliance on the imposition of court-ordered fees to support the operation of local adult probation departments in Texas is sustainable.

This article is divided into two parts. The first part examines the history of the assessment of court-ordered fines, fees, and costs on probationers in one state – the State of Texas. This portion of the article attempts to address the question, “How did we get here?” with the disturbing notion that to a great extent probation in Texas was more just, humane, and rational fifty years ago than it is today. The second portion of this article examines changes in the economy with a focus on wage growth – and stagnation – within certain demographic groups and on the impact on employment and wages due to advancement of technological innovations in the field of artificial intelligent, robotics, and automation. This portion ends with some recommendations for policy makers and adult probation departments to prepare for the radical changes that they will be facing. Finally this article concludes with an assessment of what the criminal justice system in Texas will be if the status quo remains and the public policy is to continue to rely on offenders to support the criminal justice system.

## A History of Court-Imposed Probation Fees in Texas

The State of Texas, as with many other states, relies heavily on offender payments to fund adult probation services. However, historically it has not always been the case that probationers, outside of paying an assessed fine, were also expected to pay a monthly fee for the operation of adult probation departments. Ironically in recent years one of the selling points in promoting efforts to reform the probation system in Texas has been to add various fees and costs with the argument that the reforms would pay for themselves. The first part of this article will examine how this has come about and how we have reached the point in Texas that the overreliance on court imposed fees has been detrimental not only to impoverished probationers but has also distorted the system by providing incentives to recidivate and avoid probation and has also made it less likely that probation in Texas could serve as an agent of rehabilitation.

Probation in Texas has existed in some form since 1913. Prior to this date, if a defendant were convicted of a criminal offense the sentencing authority had one of two options – the judge

could assess penitentiary time or a jury could recommend that no punishment be assessed. Since 1913 the laws establishing and regulating the probation system in Texas have undergone several significant revisions.

In 1935 an amendment was added to the Texas Constitution to affirm what prior case law had already authorized and state statute had codified under the Suspended Sentence Act of 1925, i.e., that the Courts of the State of Texas having original jurisdiction of criminal actions had the power, after conviction, to suspend the imposition or execution of sentence and to place the defendant on probation and to re-impose such sentence, under such conditions as the Legislature could prescribe. The State Legislature continued to modify the adult probation system with the Adult Probation and Parole Law of 1947 and again of 1957.

In 1965 the Legislature completely re-wrote the Texas Code of Criminal Procedure, including the laws applicable to adult probation. As written in 1965 probation departments were wholly creatures of local government bodies. The district judges, with the advice and consent of the commissioners court, were responsible for employing department personnel, designating titles, and fixing salaries. Salaries and other expenses were paid from the funds of the county. However, the new Code of Criminal Procedure did not authorize a court to impose a monthly fee on probationers for the operation of the adult probation department. Moreover, the new Code specified only nine conditions that a judge could impose although the judge was not limited to imposing other conditions.<sup>1</sup>

It was in the next Legislative session in 1967 that the Legislature created a statute authorizing a trial judge to impose a supervision fee on a probationer as a condition of probation. The new statute provided that a court granting probation could fix a fee not exceeding \$10.00 per month to be paid to the court by the probationer during the probationary period. The Legislature further stated that the court could make payment of the fee a condition of granting or continuing probation. Finally, the Legislature specified that the court had to distribute the fees received under this new measure to the county or counties in which the court had jurisdiction for use in administering the probation laws.

Then in 1977 the Legislature established the Texas Adult Probation Commission (TAPC). The changes made in 1977 made it clear that for providing adequate probation services, it was no longer the county’s responsibility but the district judge or district judges trying criminal cases in each judicial district to establish a probation office and employ district personnel. Moreover, the changes in 1977 authorized the State to contribute funds for the operation of the probation departments in addition to mandating that TAPC establish minimum standards for case-loads, programs, facilities, and equipment, and other aspects of the operation of a probation office necessary for the provision of adequate and effective probation services. In addition, under the changes made in 1977 counties were limited in their financial obligations to providing physical facilities, equipment, and utili-



ties to adult probation departments. Finally, included in the 1977 changes was an increase of the monthly probation fee now to be fixed in an amount not to exceed \$15.00.<sup>2</sup>

The stated purpose in the Act creating the Texas Adult Probation Commission (TAPC) was to: make probation services available throughout the state; improve the effectiveness of probation services; provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services and community-based correctional programs and facilities other than jails or prisons; and establish uniform probation administrative services. The statutory changes made in 1977 to the probation system would serve as the template for further reform efforts. Not only was State funding first injected into the system along with new regulations to standardize the operation and practice of probation in the State, but the Legislature also began the practice of adding more and more statutory conditions of probation and the trend of adding additional costs on probationers to support the system.

In the 1980s Texas, along with many other states in the country, began to see the effects of mass incarceration. In 1980 the State had 35,000 prison beds and could not confine all the new inmates being sentenced to prison. The result was a decade long crisis in state corrections. The two methods for dealing with the prison strain were to drastically reduce the amount of time served in prisons through the parole process and the refusal to accept inmates, leaving them confined in county jails. Also in 1980 a final written decision in *Ruiz v. Estelle* was handed down by a federal district judge ruling that conditions in Texas prisons constituted cruel and unusual punishment and therefore violated the constitutional rights of the plaintiffs in the suit. This ruling led to years of continuing litigation and placed pressure on the state to rectify certain prison practices and conditions.<sup>3</sup> A second lawsuit, *Alberti v. Sheriff of Harris County, Texas* although initially filed in 1972, was litigated throughout the 1980s contesting the jail conditions in the Harris County Jail, the most populated county in Texas.<sup>4</sup> Harris County in turn argued that the jail conditions were a result of the State of Texas's failure to accept inmates, i.e., paper ready-felons being held in the county jail for transport to the state's penitentiary system and thus the State became part of the litigation. Not only was the *Alberti* case a legal issue but it became a political imbroglio as local officials across the State began to demand that the State accept paper ready-felons sentenced to prison in a timely manner.<sup>5</sup>

During the period of the 1980s the Legislature also addressed the imposition of supervision fees on several occasions. In 1985 the Legislature increased the amount that a court could order paid to a fee not to exceed \$40.00 per month. There was no minimum fixed monthly amount. However, in the following legislative session in 1987 the Legislature stated that a court granting probation *must* (emphasis added) fix a fee of not less than \$25.00 and not more than \$40.00 per month. The Legislature further provided that a court could waive or reduce the fee or suspend monthly payment of the fee if it determined that payment of the fee would cause the probationer a significant financial hardship.

The effects of these legislative changes were that not only was the monthly supervision fee increased and a minimum specified amount established by law, but also that the imposition of the fee was now the "default" position in all supervision cases. Instead of leaving it to the discretion of the court to impose any

fee, it was now expected that the court would impose a supervision fee unless the court made the further determination that imposing a fee would cause a significant financial hardship on the probationer.

The crises facing the State's correctional system led to the next great reform efforts in 1989. These reforms in community corrections were designed to divert more people who otherwise would be sent to prison. The reforms allowed adult probation departments to offer pre-trial diversion programs, added funding for substance abuse treatment, offered courts the means to utilize local community corrections facilities for short term confinement, included options for modifying probation instead of revoking the probation for a violation of the conditions of probation and confining the person in a prison, and required departments to collaborate with other local agencies and authorities to develop a community justice plan to identify the criminal justice needs of the community and to request funding from the state. The Legislature created a new formula to allocate funding to departments across the state based on population and the number of felony cases being supervised, increased grant funding and provided more funding for the supervision of felony cases. The Legislature also increased funding for the establishment of more community corrections facilities in the state, including restitution centers. Funding was also directed toward the utilization of electronic monitoring devices and batterers' intervention programs.

The effects of reforms made by the Texas Legislature in 1989 to improve probation resulted in increasing the financial burdens on probationers. A good example of this observation was the creation of restitution centers in 1989. It was thought that the utilization of restitution centers could serve as an alternative to incarceration in prisons while at the same time making the victims of crime financially whole and providing rehabilitation and employment programs to probationers. As originally conceived, a judge could require as a condition of probation that the defendant serve a term of not less than three months or more than 12 months in a restitution center. However if placed in such a center, the director of the facility had to deposit whatever salary was earned by the probationer working outside the center into a fund after deducting:

1. The cost to the center for the probationer's food, housing, and supervision;
2. Necessary travel expenses to and from work and community-service projects and other incidental expenses of the probationer;
3. Support of the probationer's dependents; and
4. Restitution to the victims of the offense committed by the probationer.

The statute provided that after making these deductions the remainder of money in the fund would be given to the probationer on his or her release. As one might reasonably expect, there was generally nothing left in the fund to give to the probationer upon discharge from the center. Moreover, it was often the case that the probationer upon release owed more fees than what was owed upon acceptance into the facility. Making this worse, these facilities were often located in rural areas of the state where jobs were scarce and for much of the work day, probationers were being transported to larger urban areas for employment. It is not surprising that outcome studies showed very poor success rates



for persons confined in these facilities and that restitution centers were gradually phased out in the early 2000s.

Another example of the negative financial consequences on probationers due to these reform efforts were the number of additional conditions of probation adding to the financial burden on probationers. Henceforth, a trial judge could now impose a condition of probation requiring a probationer to:

- Remain under custodial supervision in a community-based facility . . . and pay a percentage of his income to the facility for room and board;
- Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
- Make a onetime payment in an amount not to exceed \$50 to a local crime stoppers program.
- For probationers convicted of certain sexual offenses, upon a finding that the probationer was financially able to make a payment, require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense.
- In regards to fees and costs as part of the conditions of probation in intoxication offenses, the Legislature provided that if a court required as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence, the court had to require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay.<sup>6</sup>
- Moreover, regarding intoxication offenses, the Legislature authorized the court to require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle was equipped with a device that used a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol was detected in the breath of the operator. The Legislature further provided that the court had to require the defendant to obtain the device at his own cost.<sup>7</sup>

The Legislature did add a provision that a court could not order a probationer to make any payments as a term and condition of probation except for fines, court costs, restitution to the victim, payment to a local crime stoppers program, and other terms and conditions expressly authorized by statute. In 1991 the Legislature amended the language of this provision to clarify that the court could impose a condition ordering the probationer to make a payment if the condition was related personally to the rehabilitation of the probationer.

At this same time the Legislature authorized the trial court to impose a condition ordering a probationer to reimburse a law enforcement agency for the agency's expenses for the confiscation, analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense. In addition, in 1991 the Legislature added a provision that a person in a pretrial intervention program could be assessed a fee that equaled the actual cost to an adult probation department, henceforth re-designated as a community supervision and corrections department

(CSCD), not to exceed \$500, for supervision of the defendant by the department or programs provided to the defendant by the department as part of the pretrial intervention program.<sup>8</sup> Finally, in 1991 the Legislature added a \$30 court cost for persons convicted of driving while intoxicated to reimburse the costs for a breath alcohol testing program.

Since the reforms of 1989 and 1991 the following conditions have been authorized which exposed the probationer to additional fees:

- Providing that if the court grants probation to a person convicted of certain sex offenses, the court had to require as a condition of probation that the person pay to the probation officer supervising the person a probation fee of \$5 each month during the period of probation. This fee was in addition to court costs or any other fee imposed on the person. This fee was to assist in funding a state-wide sexual assault program (1993).
- If a defendant was granted community supervision for an intoxication offense and the person's driver's license was suspended and subsequently reinstated, pay to the Texas Department of Public Safety a \$50 reinstatement fee. (1993).
- Reimburse the crime victims compensation fund for any amounts paid to a victim for the defendant's offense or if no reimbursement was required, make a one payment to the fund in an amount not to exceed \$50 if the offense was a misdemeanor or not to exceed \$100 if the offense was a felony (1995).
- Allowing a judge who granted community supervision to a person charged with or convicted of indecency with a child or sexual assault of a child to order the probationer to make one payment in an amount not to exceed \$50 to a children's advocacy center (1999).
- Providing that if a judge granted community supervision to a person for an offense involving family violence, the judge could require the person to make one payment in an amount not to exceed \$100 to a family violence shelter that received state or federal funds and that served the county in which the court was located (1999).
- Providing that a judge granting community supervision had to fix a fee of not less than \$25 and not more than \$60 per month to be paid as a condition of community supervision, thus raising the maximum supervision fee from \$40 to \$60 (2001).
- Providing that a judge who granted community supervision to a sex offender could require the sex offender as a condition of community supervision to submit to treatment, specialized supervision, or rehabilitation. On a finding that the defendant was financially able to make payment, the judge had to require the defendant to pay all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation (2003).
- Adding a statutorily condition allowing a judge to order a defendant to reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case (2005).<sup>9</sup>
- Increasing the reinstatement fee for the re-issuance of a suspended driver's license from \$50 to \$100. (2007).
- Providing that if a judge granted community supervision to a defendant younger than 18 years of age for certain

possession offenses under the Controlled Substances Act, the judge could require the defendant as a condition of community supervision to attend an alcohol awareness program or a drug education program that was designed to educate persons on the dangers of drug abuse. Moreover unless the judge determined that the defendant was indigent and unable to pay the cost of attending the program, the judge had to require the defendant to pay the cost of attending the program (2015).

- Providing that if a judge granted community supervision to a defendant convicted of certain cruelty to animal offenses, the judge could require the defendant to complete an online responsible pet owner course or attend a responsible pet owner course. Further providing that the Texas Department of Licensing and Regulation could charge a fee for course participation certificates and other fees necessary for the administration of the course or course providers (2017).<sup>10</sup>

Likewise, since the reforms of 1989 and 1991 the following court costs have been added, having an adverse impact on probationers:

- For persons convicted of an intoxication offense the court must impose as a cost of court on a defendant an amount that is equal to the cost of an alcohol or substance abuse evaluation conducted by an adult supervision officer (1994)
- A community supervision and corrections department may assess an administrative fee for each transaction made by the officer or department relating to the collection of fines, fees, restitution or other costs imposed by the court. The fee may not exceed \$2 for each transaction. (Applicable only to Harris County CSCD in 1995 and to all other CSCDs in 1999).
- Providing that a defendant convicted of the offense of graffiti must pay a \$5 graffiti eradication fee as a cost of court (1997). The assessed court cost was later ordered to be placed in a juvenile delinquency prevention fund in 2003.
- An additional \$100 cost of court imposed on a person convicted of an intoxication offense without regard to whether the defendant was placed on community supervision after being convicted of the offense or received deferred disposition or deferred adjudication for the offense to be used for emergency medical services, trauma facilities, and trauma care systems (2003).
- Providing that a person pay \$250 as a court cost on conviction of certain felony sex offenses and \$50 on conviction of certain offenses against a person that is punishable as a Class A misdemeanor or a higher category or certain misdemeanor sex offenses. Thirty-five percent of this court cost is dedicated to the state highway fund and sixty-five percent is dedicated to the criminal justice planning fund (2003).<sup>11</sup>
- Providing that if a court requires that a defendant make restitution in specified installments, in addition to the specified installments, the court may require the defendant to pay a one-time restitution fee of \$12.00, \$6.00 of which the court shall retain for costs incurred in collecting the specified installments and \$6.00 of which the

court must order to be paid to the State operated victims compensation fund (2005).

- In addition to other costs on conviction, a person must pay \$50 as a court cost on conviction of an intoxication offense or an offense under the Controlled Substances Act punishable as a Class B misdemeanor or any higher category of offense. This court cost is to be used to fund specialty courts, include drug and veterans treatment courts, both at the State and local level (2007).<sup>12</sup>
- Providing that a person convicted of certain sex offenses must pay \$100 on the conviction of the offense, without regard to whether the defendant was placed on community supervision after being convicted of the offense or received deferred adjudication. The fund designated by this measure can be used only to fund child abuse prevention programs in the county where the court was located (2009).
- Increase the court cost to fund specialty courts in the state from \$50 to \$60 (2009).

### The Collections Improvement Program (CIP)

In 2005 the Texas Legislature made sweeping changes to the collections improvement program in order to increase collections for fines, fees, and costs assessed throughout the criminal justice system. These changes applied only to a county with a population of 50,000 or greater and a municipality with a population of 100,000 or greater. Under this new law unless granted a waiver,<sup>13</sup> each county and municipality had to develop and implement a program that complied with the prioritized implementation schedule by the Texas Office of Court Administration (OCA). The Legislature specified that the program must consist of:

1. A component that conformed with a model developed by OCA and designed to improve in-house collections through application of best practices; and
2. A component designed to improve collection of balances more than 60 days past due.

This law further specified that the Texas Comptroller of Public Accounts, in cooperation with OCA, must develop a methodology for determining the collection rate of counties and municipalities affected by the law and periodically audit counties and municipalities to verify information reported under this law and confirm that the county or municipality was conforming with requirements relating to the program. Finally the law mandated that each county and municipality affected by the law must at least annually submit to OCA and the comptroller a written report that included updated information regarding the program, as determined by OCA in cooperation with the comptroller.

### Are Changes Coming in Texas regarding the Adverse Effects of Court-imposed Fines, Fees and Costs on Indigent Defendants?

As explained herein, there has been a trajectory over the last four decades in Texas creating more and more costs on criminal defendants, often in the name of criminal justice reform. Unfortunately, Texas is not alone in this long term trend. However, in recent years advocates of reform on the national level have begun to decry the financial burdens placed on indigent defendants

as well as the lack of oversight, training and monitoring of courts at various levels of state and local government in following constitutional mandates regarding the imposition, enforcement and collection of court-ordered fines, fees, and costs on indigent defendants caught in a system that often appears more interested in generating revenue to operate multiple facets of government than seeking justice. Texas is not immune to this new national awareness of the harm caused by unduly burdening indigent defendants with unreasonable fines, fees, and costs.

Despite the existence of the Collections Improvement Program since 2005, the Office of Court Administration has struggled in implementing its terms while also recognizing the substantive and constitutional rights of indigent defendants. The most recent standards to the CIP adopted by the OCA recognize this dilemma.<sup>14</sup> The newest rules acknowledge that the CIP is designed to improve the enforcement of a defendant's compliance with the payment of costs, fees, and fines that have been ordered by the court, without imposing an undue hardship on the defendant or the defendant's dependents. Thus OCA affirms that the CIP components should not be interpreted to conflict with or undermine the protections afforded to defendants of full procedural and substantive rights under the constitution and laws of this State and of the United States.

Hence these rules affirm that CIP does not alter a judge's legal authority or discretion to design payment plans for any amount of time; to convert costs, fees, and fines into community service or other nonmonetary compliance options as prescribed by law; to waive costs, fees, and fines, or to reduce the total amount a defendant owes at any time; or to adjudicate a case for non-compliance at any time. These rules recognize that CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan. Moreover these rules state that CIP does not apply to cases in which: 1) the court has waived all court costs, fees, and fines, 2) the court authorizes discharge of the costs, fees, and fines through non-monetary compliance options; 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course; or 4) the defendant is incarcerated, unless the defendant is released and payment is requested. Finally, the rules provide that CIP does not apply to the collection of community supervision fees assessed as a condition of community supervision.

The changes in rules that the OCA made to the CIP were explicitly effectuated due to certain national incidents that have brought the problem of the burden of financial penalties on indigent defendants to light, such as the situation found in Ferguson, Missouri, and the recent letter from the United States Department of Justice regarding the obligation of the courts in the United States to conform their practices to the decisions of the United States Supreme Court regarding the constitutional rights of indigent criminal defendants. As such, the changes made to the rules to the CIP, effective January 1, 2017, were designed to make the criminal defendant aware of the implications of entering into a payment plan, to require CIP staff to ascertain the ability to make payments in accordance with the plan, to ensure that the payment plan did not result in an undue burden to defendants and their dependents, and to inform defendants who were having difficulties in complying with a payment plan of their right to petition the court and request a hearing for the judge to consider the defendant's ability to pay and any nonmonetary compliance options available for the defendant to satisfy the judgment.

Prior to making the changes to the rules to the CIP, the OCA convened an advisory committee of judges, clerks, collections program staff, and other stakeholders to provide a full review of the CIP rules. Moreover, early in 2016 the Conference of Chief Justices and the Conference of State Court Administrators formed a National Task Force on Fines, Fees, and Bail Practices. Among the members of the task force were the Honorable Nathan Hecht, Chief Justice of the Texas Supreme Court, and the Director of Research and Court Services at OCA.

The Texas Legislature has also started showing a concern about the adverse impact on court-imposed fees on criminal defendants. In 2017 the Legislature passed two similar bills relating to the imposition of certain fines and costs. Both bills amended Article 42.15, Code of Criminal Procedure, by adding a subsection (a-1) to provide that during or immediately after imposing a sentence in a case in which the defendant entered in open court a plea of guilty, "nolo contendere," or refused to enter a plea, the court had to inquire whether the defendant had sufficient resources or income to immediately pay all or part of the fine and costs. These acts further required that if the court determined that the defendant did not have sufficient resources or income to immediately pay all or part of the fine and costs, the court had to determine whether the fine and costs should be:

1. required to be paid at some later dates or in a specified portion at designated intervals;
2. discharged by performing community service;
3. waived in full or in part; or
4. satisfied through any combination of methods under these Acts.<sup>15</sup>

Article 43.05, Code of Criminal Procedure, was also amended by adding a Subsection (a-1) and (a-2) to provide that a court could not issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms unless the court held a hearing on the defendant's ability to satisfy the judgment and:

1. the defendant failed to appear at the hearing; or
2. based on evidence presented at the hearing, the court determined that the *capias pro fine* should be issued.<sup>16</sup>

Newly added Subsection (a-2) stated that the court had to recall a *capias pro fine* if, before the *capias pro fine* was executed:

1. the defendant voluntarily appeared to resolve the amount owed; or
2. the amount owed was resolved in any manner authorized by this code.

The fiscal note to this legislative initiative stated that it would have a negative, but indeterminate, fiscal impact to the state due to anticipated revenue decreases resulting from an unknown number of defendants that would be determined to be indigent or unable to pay receiving a waiver or discharge from fines, fees, and court costs. Despite concerns of revenue losses due to this piece of legislation, that has proven not to be the case. In testimony in August 2018 before the Texas House of Representatives Criminal Jurisprudence Committee, the Director of the Texas Office of Court Administration testified that:

- The number of warrants for failure to appear is declining.
- The number of warrants for failure to pay is also declining.
- The number of cases resolved through jail credit is declining.

## Executive Exchange

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- The number of cases resolved through community service is increasing.
- The number of defendants getting on payment plans has increased.
- Collections per case have increased by 6.7 percent at the local level and 7.3 percent at the state level.

Despite these positive signs, there continues to be resistance to offsetting the reliance on court-imposed probation fees and costs to fund the operation of adult probation departments in Texas. This is due primarily because the state appropriations to fund community supervision and corrections departments across the State as well as the locally generated fees to support these departments relies so heavily on offender fees. It has been estimated that if the State were to replace the probation supervisory fees that support the operation of CSCDs across with State with state generated revenue, the Legislature would have to appropriate between \$320 and \$340 million additional dollars per biennium.

### Actions of the Eighty-Sixth Texas Legislature

If the Texas Legislature in 2017 first began indicating an awareness of the potential adverse consequences of the imposition of court imposed fees and costs on defendants, the Eighty-Sixth Legislature in 2019 for the first time began taking serious actions to address this problem. However while the actions of the 86<sup>th</sup> Legislature can be described as laudable by relieving poor persons caught in the criminal justice system from the overwhelming burden of court imposed costs and fees and bringing Texas statutes more in line with constitutional mandates regarding the imposition of fees and costs on indigent defendants, the actions of the Legislature at the same time created further budgetary hardships on the operation of adult probation departments in the State. It is well and good to relieve probationers of the heavy burden of court-imposed fees and costs, but if the Legislature at the same time does not find a way to supplement adult probation departments for the resulting loss of revenues that are essential to the operation of departments then the Legislature is creating a financial crisis for adult probation departments. By failing to find a new source of funding for adult probation department in Texas, the Eighty-Sixth Legislature created just such a crisis.

The Texas Legislature in 2019 made three distinct changes in statute that provided relief to defendants overburdened by costs, fines and assessments. The first was the elimination of the County Improvement Act. No longer would a county with a population of 50,000 or greater and a municipality with a population of 100,000 or greater feel the pressure from the State to reach a certain rate of collections on fines and costs. This in turn reduced the tactics that county and municipal governments had to employ to collect such amounts from criminal defendants to comply with the mandates of this Act.

The second significant change that the Legislature made in 2019 was to set out in statute a new procedure for courts to review the imposition of payments for indigent defendants and waive, reduce or find other means to satisfy the payments.. Under Senate Bill 346 the Texas Legislature made several changes to the assessment of court costs in a criminal case. The first change was that the Legislature redefined the term “cost.” Costs

are now distinguished by three categories: 1) court costs, 2) reimbursement fees, and 3) fines. Moreover the term “cost” now includes any fee imposed on a defendant by the court at the time a judgment is entered.

The second change was the Legislature established a standard for assessing costs on a defendant and creating a procedure for a defendant to obtain relief if the costs assessed were too onerous. Thus under this new law the Legislature stated that except as otherwise specifically provided, in determining a defendant’s ability to pay for any purpose, the court shall consider only the defendant’s present ability to pay.

In establishing a new procedure for the courts in Texas to follow in considering whether the initial assessment of costs turned out to be too burdensome, the Legislature added a new Article 43.035 to the Code of Criminal Procedure to provide that if a defendant notifies the court that the defendant has difficulty paying the fine and costs in compliance with the judgment, the court shall hold a hearing to determine whether that portion of the judgment imposes an undue hardship on the defendant. For purposes of this new measure, a defendant may notify the court by:

1. voluntarily appearing and informing the court or the clerk of the court in the manner established by the court for that purpose;
2. filing a motion with the court;
3. mailing a letter to the court; or
4. any other method established by the court for that purpose.

The Legislature also stated if the court determines at the hearing that the portion of the judgment regarding the fine and costs imposes an undue hardship on the defendant, the court shall consider whether the fine and costs should be satisfied through one or more methods listed under Article 42.15 (a-1), Code of Criminal Procedure.<sup>17</sup>

The Legislature further stated that the court may decline to hold a hearing if the court:

1. previously held a hearing with respect to the case and is able to determine without holding another hearing that the portion of the judgment regarding the fine and costs does not impose an undue hardship on the defendant; or
2. is able to determine without holding a hearing that:
  - A. the applicable portion of the judgment imposes an undue hardship on the defendant; and
  - B. the fine and costs should be satisfied through one or more methods listed under Article 42.15 (a-1).

The Legislature further amended Article 43.05 (a-1), Code of Criminal Procedure, to provide that a court may not issue a *capias pro fine* for the defendant’s failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant and the defendant fails to:

1. appear at the hearing; or
2. comply with an order issued under a newly created Subsection (a-3) as a result of the hearing.

The Legislature added a new Subsection (a-2) to Article 43.05 to provide that if the court determines at the Subsection (a-1) hearing that the judgment imposes an undue hardship on the



defendant, the court shall determine whether the fine and costs should be satisfied through one or more methods listed under Article 42.15 (a-1). The Legislature further added a new Subsection (a-3) to provide that if the court determines at the Subsection (a-1) hearing that the judgment does not impose an undue hardship on the defendant, the court shall order the defendant to comply with the judgment not later than the 30th day after the date the determination is made. Finally the Legislature stated that the court shall recall a *capias pro fine* if, before the *capias pro fine* is executed, the defendant:

1. provides notice to the court under Article 43.035 and a hearing is set under that article; or
2. voluntarily appears and makes a good faith effort to resolve the *capias pro fine*.

The Legislature added a Subsection (b) to Article 42.091, Code of Criminal Procedure, to provide that a determination of undue hardship made under this measure is in the court's discretion. This new law specifies that in making that determination the court may consider, as applicable, the defendant's:

1. significant physical or mental impairment or disability;
2. pregnancy and childbirth;
3. substantial family commitments or responsibilities, including family commitments or responsibilities, including child or dependent care;
4. work responsibilities and hours;
5. transportation limitations;
6. homelessness or housing insecurity; and
7. any other factor the court determines relevant.

Finally the Legislature added a subsection (c) to Article 43.091, to provide that a court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

1. is indigent or does not have sufficient resources or income to pay all or part of the costs; or
2. was, at the time of the offense was committed, a child.

Finally the Legislature added a subsection (d) to Article 43.091 to clarify that this new standard for determining undue hardship only applied to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs were wholly or partly waived under this article. However the Legislature further stated that at any time during the defendant's period of community supervision, the court, on the court's own motion or by motion of the attorney representing the state, could reconsider the waiver of the fine or costs. Moreover, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court could order the defendant to pay all or part of the waived amount of the fine or costs only if the court determined that the defendant had sufficient resources or income to pay that amount.<sup>18</sup>

The third significant change made in 2019 was that the Legislature repealed the Driver Responsibility Program. In 2003 the Seventy-Eighth Texas Legislature created the Driver Responsibility Program. This new law required the Texas Department of Public Safety to assess each year a surcharge on the license of each person who during the preceding 36-month period had been finally convicted of an offense relating to the operating of

a motor vehicle while intoxicated. The Legislature specified that the amount of a surcharge under this new law was \$1,000 per year, except that the amount of the surcharge was:

1. \$1,500 per year for a second or subsequent conviction within a 36-month period; and
2. \$2,000 for a first or subsequent conviction if it were shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed.

This assessment would be imposed consecutively over a three year period. Finally the Legislature directed that the proceeds derived from this surcharge were to fund trauma hospitals and emergency medical facilities across the state.

This turned out to be one of those laws that had the best of intentions but proved to be highly problematic in practice. In particular the law had a harsh outcome for indigent drivers. A driver who was assessed this surcharge would either have to pay the yearly fee or the person's driver's license would be indefinitely suspended. For indigent drivers who could not pay this surcharge the choice of either to not drive a vehicle or drive a vehicle while the person's license was suspended; hence, facing the prospects of additional criminal charges being filed for driving while license suspended. Needless to say over the years the Drivers Responsibility Program became a very unpopular piece of legislation.

Although for years the Legislature recognized the fallacy of this law, they were reluctant to repeal it because they could not identify a new revenue stream to fund the operation of trauma and emergency centers in the State. However in 2019 the Legislature created three new revenue sources to fund trauma and emergency centers in lieu of relying on the driver surcharge. The Legislature increased the state traffic fine from \$30.00 to \$50.00 and increased a state automobile insurance fee from \$2.00 to \$4.00. Finally the Legislature specified that a person who had been finally convicted of an offense relating to the operation of a motor vehicle while intoxicated pay, in addition to the fine prescribed for the specific offense, a fine of:

1. \$3,000 for the first conviction within a 36-month period;
2. \$4,500 for a second or subsequent conviction within a 36-month period; and
3. \$6,000 for a first or subsequent conviction if it was shown on the trial of the offense that an analysis of the specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed.

Besides the three major changes made by the Eighty-Sixth Legislature as discussed above, the Legislature in 2019 also began eliminating certain costs that had previously been imposed on probationers. The Legislature repealed two conditions of supervision: 1) allowing a trial court to order a probationer placed in a residential facility to pay a percentage of his income as child support and 2) authorizing a trial court to require a probationer to reimburse a county of prosecution for interpreter services. Finally the Legislature allowed local officials in all counties in Texas to request that an unpaid fee be deemed uncollectible if the defendant were deceased or was serving a life sentence or if the fee had been unpaid for at least fifteen years.<sup>19</sup>



### The Future Prospects of Reliance on Court Imposed Fees, Fines, and Costs

Much, if not all, of the driving factors in seeing an increase in the imposition of court-imposed fines, fees, and costs has very little to do with notions of punishment or justice and all too much on the need to generate revenues for the operation of the criminal justice system, as well as other facets of government. And while much of the well-justified criticism of the overreliance on court-imposed fees, fines, and costs to support governmental operations has been based on fairness and sound public policies, another pertinent question worth exploring is whether this practice is economically sustainable in the future.

The economy has been going through profound changes in the last several decades. These changes will only increase exponentially in the years to come. Wages and individual wealth have been shifting in accordance with educational attainment, generational birth, and such demographic factors as gender, ethnicity, and race. Moreover, the modern economy is seeing an acceleration in the use of artificial intelligence, automation, and robotics which will have a serious adverse impact for those at the bottom of earnings potential. Due to the fact that so many persons in the criminal justice system live in poverty, are poorly educated, are disproportionately younger, and overrepresented by racial minorities, the continued reliance on these individuals to fund the operations of probation will not be an economically viable option.<sup>20</sup>

Economists have debated when the post-World War II decline in wage growth and increase in income inequality began. While some economists see this trend as occurring as early as the late 1950s and early 1960s, declining income growth rates and an increase in wealth inequality became a topic of widespread concern beginning in the 1970s. Likewise, economists have long noted the effects of automation on employment. However, it has only been fairly recently that industries, governments, and academics have begun to stress the profound changes that the economy will begin to experience because of emerging technologies that incorporate artificial intelligence, robotics, and new forms of automation.

Although, arguably, these changes in the economy have been occurring for well over fifty years, the second portion of this article will examine changes in income levels since 1980, which is the same period that the phenomena of mass incarceration and the heavy reliance on court-imposed fees to operate the criminal justice system began. One of the best sources to examine income trends over this period is found in several studies by the Federal Reserve Bank of St. Louis, entitled *The Demographics of Wealth*. These reports are based on a series of surveys of income trends of 40,000 families, in three year waves from 1989 to 2018. The three reports for 2015 examine race, ethnicity and wealth; education and wealth; and age, birth year, and wealth.

The first report, dated February 2015 examined race, ethnicity, and wealth. While probably the least surprising, if still not disturbing, of these reports, <sup>21</sup>this report found that, adjusted for inflation, the median wealth of a white family in 1989 was \$130,102 and in 2013 was \$134,008. For an Asian family the two medians were \$64,165 in 1989 and \$91,440 in 2013. For a Hispanic family they were \$9,229 and \$13,900. And for a black family, they were \$7,736 and \$11,184.<sup>22</sup> This report concluded that “viewing the period 1989-2013 as a whole, it would be difficult

to assert that there had been any meaningful change in the relationship among the wealth of typical white, Hispanic, and black families.<sup>23</sup> This report also found that median family incomes for blacks and Hispanics, as opposed to median wealth, “have remained about 40 percent lower than the median white family income since the early 1990s.”<sup>24</sup>

The Federal Reserve of St. Louis’s second report, dated May 2015, examined education and wealth.<sup>25</sup> Not surprisingly, there is a strong correlation to educational attainment and wealth. What is surprising is the vast and growing disparity in educational attainment and wealth over the years. This report noted that adjusted for inflation the median income for a head of family without a high school diploma in 2013 was \$22,320, down one percent from 1989. For those heads of family households with a high school diploma, the median income in 2013 was \$41,190. However, that meant that median income for persons with a high school diploma was down 16 percent from 1989. For heads of families with a two or four year degree, the median income was \$76,293, or down five percent from 1989. Only those heads of families with an advanced degree had seen an increase in income from 1989 by four percent – a median income in 2013 of \$116,265.<sup>26</sup>

However, when this report looked at median wealth (net worth), the numbers were even more drastic. A head of a family without a high school diploma in 2013 was 44 percent down from the same person in 1989. A head of family in 2013 with a high school diploma was down 36 percent from the same education level in 1989. A head of family with two or four year degree in 2013 was up three percent from 1989, and a head of family with an advanced degree in 2013 was up 45 percent from 1989.<sup>27</sup> In all, while much has been made of the wealth of the one percenters in our country, 24 percent of all U. S. families in 2013 owned 67 percent of the economy’s wealth.<sup>28</sup>

Possibly the one bright lining in this report was the acknowledgement that fewer heads of households have less than a high school diploma in 2013 than in 1989. This report states that heads of families without a high school diploma decreased from 31 percent in 1989 to 12 percent in 2013. The share of families headed by high school graduates increased from 44 percent to 50 percent, college graduates increased from 16 percent to 25 percent and graduate-degree holders increased from 10 percent to 13 percent.<sup>29</sup>

Nevertheless, these improvements do not reflect the numbers in the criminal justice system. Twenty-five percent of the probationers being supervised by the Bell/Lampasas Counties Community Supervision and Corrections Department in Texas do not have a high school diploma or a general equivalency diploma (GED). In a survey of women incarcerated in prisons in Texas, conducted by the Texas Criminal Justice Coalition and issued in March 2018, 52 percent of incarcerated women reported that they had a total household income immediately before entering prison of less than \$10,000 per year. Eighty percent reported it was less than \$30,000 per year and only 10 percent of women reported \$50,000 or more per year.<sup>30</sup>

The third report by the Federal Reserve Bank in St. Louis is in many ways the most interesting and makes the most compelling point of the futility of relying on court-imposed fines, fees, and costs in the future to fund the operation of the criminal justice system, especially adult probation. This report, issued in July 2015, examines age, birth year, and wealth.<sup>31</sup> In dividing heads of

households into four age groups, i.e., the silent generation, those born between 1925 to the end of World War II; baby boomers, born from 1946 to 1964; Generation X, those who followed the baby boomers; and Millennials, those born in the twenty-first century; what the researchers have found is that each preceding generation has done better financially than later generations and the Generation Xers doing quite poorly and Millennials projected to do even worse.

It is an obvious economic fact that there is an age curve to wealth creation. Young people finishing school, getting married and starting a family, and purchasing a home, are going to accumulate a lot of debt in their 20s and early 30s. Yet according to traditional economic thought, as they age they will increase their earnings and savings and thus will accumulate wealth into their 60s when they look at retirement. Then after retirement they will tend to spend down at least some of what they have acquired in assets. However, despite the widespread belief that each generation of Americans has generally done better than preceding generations, the opposite is true. This report finds that each past generation has accumulated greater wealth than each following generation with the silent generation actually doing better than the baby boomers, baby boomers doing better than Generation X and Millennials projected to do worse than Generation X.

Thus the median wealth of a family headed by someone at least 62 rose 40 percent between 1989 and 2013, from just under \$150,000 to about \$210,000. However, the median wealth of a family headed by an individual between the ages of 40-61 was 31 percent lower than in 1989, declining from \$154,000 to about \$106,000. Finally the median wealth of a young family dropped more than 28 percent from \$20,000 to just over \$14,000.<sup>32</sup> By comparing growth among these age groups the report found that the median wealth of old families increased from 7.6 times the median wealth of a young family in 1989 to 14.7 times in 2013.<sup>33</sup>

As noted earlier, this decline in generational wealth, as well as declines for persons with less than a graduate level degree and for racial minorities, is not a recent phenomenon and cannot be attributed to the Great Recession of 2008 and the decade long recovery. Instead this report states that the evidence gathered supports the hypothesis that levels of income and wealth rose during the first several decades of the 20<sup>th</sup> century, but then stopped rising for most families around mid-century.<sup>34</sup> Hence the writers of this report conclude that it is “unlikely that baby boomers will accrue the same incomes and wealth that pre-baby boomers received from given demographic characteristics.” Moreover, this report concludes that “the members of Generation X stand out for having low incomes and wealth for a given set of demographic characteristics.” As for Millennials, the authors of this report state that as of 2013, there is no convincing evidence that they will do appreciably better than the members of Generation X.<sup>35</sup>

Nevertheless even though the economic phenomena described in this paper are long in the making, it also appears that certain economic factors are accelerating rapidly, thus making a continued reliance on court-imposed fees, fines and cost a viable option for funding the criminal justice system, including probation, a highly doubtful assumption. Part of support for this argument is the widely uneven distribution of economic growth, wealth, and employment in the United States. For example, the Metropolitan Policy Program at the Brookings Institution has found that since the Great Recession, 53 of the largest metro ar-

reas in the country, (those with populations of over one million residents) have accounted for 93.3 percent of the nation’s population growth since the economic crisis in 2008, even though they only account for 56 percent of the overall population.<sup>36</sup> Moreover, the biggest metros generated two-thirds of economic growth and 73 percent of employment gains between 2010 and 2016. In addition as the economy has improved since the Great Recession, these numbers are not leveling off but actually increasing. Since 2014, economic growth in these metro areas reached nearly 72 percent of the nation’s overall growth and 74 percent of employment growth.<sup>37</sup>

In contrast, smaller metropolitan areas with less than 250,000 people have seen a -6.5 percent economic growth. The decline in rural areas is even greater.<sup>38</sup> Finally even the suburban areas are experiencing an increase in poverty rates. What makes poverty in suburbs particularly troubling is that more of the social services that assist the poor are located in cities than suburbs.<sup>39</sup> What is also increasing the distress for people in these areas is that according to the Hamilton Project in recent decades American workers have become less likely to move to new places and to new jobs. Since 1990, interstate mobility has declined from 3.8 percent to less than two percent in 2016.<sup>40</sup> The Hamilton Project states that under normal economic conditions, job-to-job mobility generates about one percent earnings growth per quarter.<sup>41</sup>

While lack of mobility does not in itself explain the wage stagnation that has been occurring over the last several decades, it does indicate that probation departments in rural and small metropolitan areas are going to have increasingly difficult times relying on probationers tied to their communities but seeing their wages decrease or having difficulty obtaining meaningful employment to fund their departments. Likewise, these same departments cannot rely on an influx of new employees into their communities and an increase in economic growth that would raise the salaries of probationers on whose wages departments depend to fund their general operations.

### The Impact of New Technologies on Wages and Employment

If the last several decades have been fairly grim regarding income inequality, the future will be even more so. This is due to the revolution in artificial intelligence, robotics and automation, which will replace large numbers of traditional forms of employment. These changes will have a particular adverse impact on persons who are generally placed on probation. One of the leading research institutes on how emerging new technologies will impact employment and wages is the Oxford Martin Programme on Technology and Employment at the University of Oxford. Established in 2015, this program is investigating the implications of a rapidly changing technological landscape for economies and societies. The program also provides in-depth understanding of how technology is transforming the economy and helping leaders create a successful transition into new ways of working in the twenty-first century.

In a report issued in January 2016 by Oxford Martin, it was estimated that 47 percent of US jobs are at risk from automation.<sup>42</sup> However, as previously noted, the economic structure in the United States is very unevenly balanced. Just as with uneven economic growth in various parts of the country, this report

points out that not all cities in the United States have the same job risks. While some cities such as Boston, New York, Denver, and San Francisco are least at risk, others such as Houston, Los Angeles, Oklahoma City, Sacramento, and Fresno are most at risk. This greater risk/lesser risk divide should be unsurprising since economic growth in the United States is far greater in those places that heavily rely on technological innovation and labor based cognitive skills and is far less in places that rely on extraction industries, agriculture, and manufacturing.

Much of the work by Oxford Martin is based on earlier work by Carl Benedikt Frey and Michael A. Osborne, whom they cite in *Technology at Work v2.0*. In “The Future of Employment: How Susceptible Are Jobs to Computerisation?” dated September 17, 2013,<sup>43</sup> Frey and Osborne note that with the first commercial uses of computers around 1960 there has been an increasingly polarized labor market, with growing employment in high-income cognitive jobs and low-income manual occupations, accompanied by a hollowing-out of middle-income routine jobs. Moreover, they observe that while historically, computerization has largely been confined to manual and cognitive routine tasks involving explicit rule based activities, following recent technological advances, computerization is now spreading to domains commonly defined as non-routine. As such, the authors state that as a result, “computerisation is no longer confined to routine tasks that can be written as rule-based software queries, but is spreading to every non-routine task where big data becomes available.” It is in this paper that the authors first stated that 47 percent of total United States employment is in the high risk category of being automated perhaps over the next decade or two.<sup>44</sup>

Unlike past trends in computerization in which middle income employees were most at risk of being replaced or downgraded to a lower income level, Frey and Osborne believe that in this new technical revolution lower income employees will be the most adversely impacted group with the first wave affecting “most workers in transportation and logistics occupations, together with the bulk of office and administration support workers, and labour in production occupations” being substituted by computer capital.<sup>45</sup> The authors also believe that a substantial share of employment in services, sales and construction occupations exhibit high probabilities of computerization.

On the other hand, the authors predict that “in most management, business, and finance occupations, which are intensive in generalist tasks requiring social intelligence, are largely confined to the low risk category.” They also state that the same is true of most occupations in education, healthcare, as well as arts and media jobs. They further state that there is a low susceptibility of engineering and science occupations to computerization, largely due to the high degree of creative intelligence they require. Moreover while lawyers are in the low risk category, they state that paralegals and legal assistants are in the high risk category.<sup>46</sup>

Not everyone sees the revolution in artificial intelligence, robotics, and automation as having such dire employment consequences. The McKinsey Global Institute, an American based global management consulting firm, recognizes the profound changes to employment that the rapid development in AI, robotics, and automation will have on employment worldwide. In a discussion paper dated May 2018 the Institute predicts that over the next ten to 15 years, “the adoption of automation and AI technologies will transform the workplace as people increasing-

ly interact with ever-smarter machines.” Moreover, this paper predicts that the demand for technological skills will gather pace in the 2016 to 2030 period. As such the authors state that the need for social and emotional skills will similarly accelerate and by contrast, the need for both basic cognitive skills and physical and manual skills will decline.<sup>47</sup>

McKinsey does not believe that as many jobs as, for example, Oxford Martin estimates are at high risk of being eliminated due to AI, automation, and robotics. However even the Institute believes that between 2016 and 2030 in the United States 166 million workers or up to 32 percent of the work force will need to move out of current occupational categories to find work.<sup>48</sup>

Nevertheless, for those persons who typically are seen caught up in the criminal justice system and for those who rely on them to support the operation of criminal justice agencies, such as probation departments in Texas, the predictions of the McKinsey may be of little comfort. Even the Institute notes that in general the current educational requirements of the occupations that may grow are higher than those for the jobs displaced by automation. The Institute recognizes that “in advanced economies, occupations that currently require only a secondary education or less see a net decline from automation, while those occupations requiring college degrees and higher grow.”<sup>49</sup>

McKinsey’s recommendations, while laudable, seem unrealistic, both for practical and policy reasons. The Institute argues for more job training, that displaced employees obtain higher education degrees, and that lifelong learning should be implemented for most future workers. From a practical standpoint, it is not certain that most of today’s workers have the inclination, much less financial means, to go back to school and obtain a college or technical degree. From a policy standpoint, both at the state level and national level, there is little interest in providing the necessary funding to educate the current workforce. Presently the federal government is currently set to spend a mere \$17 billion on job training.<sup>50</sup> Over the past decade state funding for public education in Texas has declined rather than risen.<sup>51</sup>

Thus criminal justice agencies must make a realistic assessment of the future prospects of a continued reliance on court-ordered fines, fees, and costs for the operation of said agencies. For adult probation departments, the issue of demographics is destiny. When examining the demographic information of the Bell/Lampasas CSCD, as previously noted approximately 25 percent of the offender population does not have a high school diploma. Approximately another 25 percent of the offender population has had at least some college education.<sup>52</sup> Thirty-one percent of the offender population are females and 23 percent of the persons being supervised are between the ages of 17 and 25.

Seventy-nine percent of the probationers in Bell and Lampasas Counties are employed.<sup>53</sup> For those female probationers in who are employed, they generally find work in nursing homes, as home health care providers, in retail, or in food services. For male probationers in the two counties who are employed, they generally find work in construction, manufacturing, retail, truck driving, or food services. For the vast majority of the work force on probation, their occupations would be considered at a high risk of being replaced by automation, either in the near future or in the next decade or two. The only occupations that would be considered low risk would be those in the health care industry, i.e., nursing homes and home health care. With an aging population these last two occupations are deemed to expand in the



future. In addition, these last two occupations are not deemed to be easily replaced by automation. Finally, at least 75 percent of the employed probation population in Bell and Lampasas Counties have occupations whose wages have stagnated or declined in the last three decades and will in all likelihood continue to stagnate or decline.

### Recommended Reforms to Relieve Overreliance on Court Imposed Fines, Fees, and Costs

From an economic standpoint it is hoped that this article has made a convincing case as to why reliance on court-imposed fines, fees, and costs is no longer financially sustainable. Nevertheless, it is unrealistic to believe that the State of Texas will assume the complete cost for funding community supervision and corrections departments across the State. However, perhaps over a more gradual period of time, the State can assume a greater financial obligation. Failure to do so will lead to increased probation caseloads, diminished specialized caseloads, and a decline in programs and services for probationers. The result of this will be that more probationers are revoked and sentenced to prison, especially for technical violations, at a great cost to the State.

The second recommendation is more realistic partly because it is more just and fair. This recommendation is for court-imposed fines, fees, and costs to be tailored to the economic circumstances of the individual. It seems patently unfair that a single mother making a minimum wage is fined for the same amount as a millionaire. Also, what may pose as a minor inconvenience to a wealthy defendant may be economically devastating to a poor one. While there will be those stakeholders who will strongly object to any efforts to make court-imposed fines, fees and costs more equitable, there needs to be a greater effort in Texas, as well as the rest of the country, to not rely on the poor to fund the operations of the criminal justice system.

The third recommendation is based on the assumption that revenues to support the operation of adult probation departments in Texas will continue to decline and those departments must make major changes to their operations. As with any organization that depends on outside revenue to support its functions, there are only three ways to deal with declining revenues, either seek new sources of revenue, decrease costs, or improve productivity. Assuming that there will be no additional revenues either through state appropriations or through offender fees, then an adult probation department must either decrease costs, improve productivity, or both.

While it is not the place for this article to discuss organizational restructuring, it is pertinent to mention that the new technologies described in this paper can streamline the operation of adult probation departments and improve efficiencies in their operations. In 2014 representatives from community supervision and corrections departments in Texas and their state oversight agency held a series of meetings to examine how emerging technologies could assist adult probation in the state. This committee identified new and promising technologies, including potential changes in interactions with probationers via telecommunication, social media, and other electronic interfaces; how to incorporate new technologies to deliver programs and services for probationers and develop new supervision strategies; and

how to use technologies to improve the delivery of training to probation officers.

Based on these series of meetings a report was written with the following recommendations:

- There should be greater reliance placed on technology that allows officers to spend more time in the field. Thus tablets and laptops should be issued to all staff that go into the field with access to WiFi, the department's case management system and the county's computerized criminal justice records.
- Cell phones should be issued to officers to communicate with probationers so that they do not have to rely on personal cell phones. The use of personal cell phones should be discouraged if not outright prohibited.
- Cell phones, lap tops, tablets and PCs should be used for sending text messages to offenders.
- Officers should use laptops or tablets to testify in court. They should be able to mark portions of their electronic files so that they can immediately access information pertinent to the issues at the hearing. Officers should be able to instantly communicate with clerical staff or court officers during a hearing and also be able to instantaneously access information such as eligibility for placements or referrals so that this information can be considered as part of the sentence.
- Telecommunication systems should be used for jail visits, interviewing defendants for presentence investigation reports and conducting assessments in lieu of requiring the defendant to travel to a central location to conduct interviews.
- Officers should have access to remote desk tops so that they can work at any location in their jurisdiction and still be able to access their office computer.
- For safety considerations, liability concerns and the collection of evidence, officers conducting field or home visits should wear a body camera.
- Departments, especially those in remote or rural areas, should consider using a telecommunication system for counseling sessions, treatment, or for tele-health.
- CSCD's state oversight agency's standards and regulations regarding contacts should be revised to reflect that interactions between officers, probationers, collaterals and treatment providers can now be conducted by several forms of telecommunication or technological messaging and not just by face-to-face interactions.
- Emerging technologies should be used to support evidence based practices, such as cognitive/behavioral therapy, motivational interviewing, and core correctional practices. Social media and interface communication devices can be used to reinforce positive behavior, enhance the relationship between the officer and probationer, remind probationers of appointments, follow-up on scheduled events, etc. Social media and interface communication devices can also be used to facilitate and speed up interventions.
- Departments should strongly consider on-line training opportunities in lieu of sending staff long distances for training and incurring expenses. On-line training should also be considered for increasing the variety of training opportunities for staff.<sup>54</sup>

Perhaps the most important recommendation made in this paper may be the most challenging but also most necessary. That is to retrain probationers for jobs of the twenty-first century. This is actually being done in certain parts of the country. There are a number of organizations, both for profit and non-profit, springing up to train people for employment in the new economy. Some of these organizations are training low income, low skill laborers and others are training people involved in the criminal justice system.

One of these organizations is 70MillionJobs, a for profit recruiting firm located in the Silicon Valley for people with a criminal record. Another is Mile High Workshop in Aurora, Colorado. It is an employment and training program for individuals rebuilding from incarceration, addictions, and/or homelessness. Program participants receive job readiness skills, life skills, basic needs resources, hands-on training, and supported future job search. Also, The Last Mile is a non-profit organization founded in San Francisco. In 2014, TLM launched the first computer coding curriculum in a United States prison (Code.7370), in partnership with the California Department of Corrections and Rehabilitation and the California Prison Industry Authority (CalPIA). The men learn HTML, JavaScript, CSS, and Python. In addition to these front end skills, the curriculum will expand to include web and logo design, data visualization, and UX/UI. Finally, Rowdy Orbit Impact in Baltimore, Maryland, trains black and Latino ex-prisoners for programming and quality assurance tech jobs.

Other initiatives are focusing more on policy initiatives to deal with workers at a high risk of losing their jobs due to artificial intelligence, automation and robotics. For example, the nonprofit organization Markle Foundation in 2017 established the Rework America Task Force. Rework America is a coalition of influential leaders with diverse backgrounds and experience who have joined together in service of modernizing the nation's outdated labor market and unlocking economic opportunity for American job seekers, workers, and businesses. The task force seeks to use the same digital technology that is disrupting the economy today to rewire the labor market; connecting relevant stakeholders, trainers and educators, and bringing new clarity and transparency to the job-search process so workers develop in-demand skills. Rework America will highlight successful existing training programs and deploy new training experiments to create practical solutions that will transform America's labor market from one based largely on traditional credentials, such as degrees and work history, to one rooted in the skills valued in the digital economy.<sup>55</sup>

Community supervision and corrections departments alone cannot develop these training opportunities that will assist people in Texas on supervision to transition to the new economy. This will require the support and vision of political leaders and policy makers. However, Texas, especially in its large urban centers, is fortunate to have many high tech industries. There is no reason why these companies could not sponsor a non-profit organization, especially in Houston, Austin, and Dallas to provide training, similar to training described above in other parts of the country to assist those with a criminal record to find employment in the new economy. Moreover, it is imperative that local CSCDs be aware of employment training opportunities that will allow probationers being supervised find meaningful employment in the twenty-first century. These are challenges that are

not unique to Texas. Probation departments in other parts of the country must do the same thing.

### Conclusion

The overreliance on fines, fees, and costs to support the criminal justice system in Texas over the last three decades has also led to worse performance outcomes than before offender payments became such a popular way to finance government operations. In the early 2000s the then Executive Director of the Texas Department of Criminal Justice (TDCJ) sent a survey to all the local adult probation departments in Texas regarding the rising trend in technical revocations to prison. In his cover letter he explained that in 1988, revocations for only technical violations comprised 38 percent of all felony revocations. He further stated that by 1993 the percentage was 42 percent and by 1999 revocations for only technical violations were 55 percent of all revocation. In its report on revocations to prison for fiscal year 2018, the Community Justice Assistance Division (a division of TDCJ and the successor organization of the TAPC) stated that slightly more than one-half (50.9 percent) of all felony revocations were for technical reasons only.

Part of the reason for the increase in technical revocations is that probation in the Texas, especially with its heavy demand for various court-imposed payments, has created a situation where probationers give up and become absconders. Thus even in those circumstances whether the reason for the technical revocation was a failure to report, the underlying motive for not reporting was that the fees had become impossible to pay and for the probationer, the better choice was to not report or leave the jurisdiction instead of having to repeatedly explain to his or her officer why a payment could not be made or face a sanction for failure to pay.

Thus probation has become so onerous that prison has often become a more preferable option for criminal defendants than probation. This is particularly true in misdemeanor cases, where the state as a whole over the last several years has seen a marked drop in the number of misdemeanants on probation. In Bell County, while historically the ratio of felony and misdemeanor probation cases was roughly 50/50, it is now two-thirds felony cases and only one-third misdemeanor cases. The reality is that it is far easier to accept a misdemeanor sentence to the county jail than to abide by all the requirements of community supervision.

A recent study by the Community Justice Assistance Division examining felony probationers who were revoked for technical violations to TDCJ Correctional Institutions Division during FY2017 found that almost a quarter of probationers in the study chose revocation in lieu of having their probation continued.<sup>56</sup> Moreover, in examining the confinement of state jail felons, a category of fourth degree felony offenses created by the Texas Legislature in 1993, one sees that the vast majority of inmates are directly sentenced to state jail prisons. As originally designed, it was contemplated that the vast majority of state jail felons sent to a state jail felony facility would be probationers placed in the facility for a short period of time as an initial or modified condition of probation. However, in the most recent Statistical Report by TDCJ for FY 2018 it states that of the 7,400 new received to a state jail felony facility, only five were sent there on a revocation and only 28 were placed there as a condition of probation.



In other words over 99 percent, mostly through a plea bargain agreement, showed a strong preference to doing upfront jail time instead of accepting probation.<sup>57</sup>

Assuming that the status quo continues in Texas, one can easily predict that there will be an increase in commitments to prison and a decrease in revenue generated to operate adult probation departments in the State. Departments will be diverting more of their resources away from treatment and other services to probationers while devoting much more time grinding out payments from the shrinking number of probationers who have the means to pay. More and more potential probationers will elect prison over probation as the cheaper and less onerous means to be punished. Prison costs will in turn go up and the Legislature will probably search for new ways to generate additional revenue from defendants. This scenario obviously is not sustainable and it is suspected that Texas will not be the only state in the country facing this dilemma.

### Endnotes

- i These statutorily recommended conditions were as follows:
  1. Commit no offense against the laws of this State or of any other State or of the United States;
  2. Avoid injurious or vicious habits;
  3. Avoid persons or places of disreputable or harmful character;
  4. Report to the probation officer as directed;
  5. Permit the probation officer to visit him (sic) at his home or elsewhere;
  6. Work faithfully at suitable employment as far as possible;
  7. Remain within a specified place;
  8. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and
  9. Support his (sic) dependents.
- ii The changes made in 1977 to the 1965 Code added new statutory conditions that the trial judge could impose, to-wit:
  10. Participate in any community-based program;
  11. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him (sic) in the case, if counsel was appointed;
  12. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
  13. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
  14. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustain by the victim as a direct result of the commission of the offense.

In addition, a separate provision for misdemeanor probation continued the first nine statutory conditions, with the assessed fine not to exceed \$1,000 but added a
- tenth recommended condition that the misdemeanor probationer submit a copy of his fingerprints to the sheriff's office of the county in which he was tried.
- iii See 503 F. Supp. 1265 (S.D. Tex. 1980); see also, 550 F. 2d 238 (5<sup>th</sup> Cir. 1977).
- iv See 406 F. Supp. 649 (S.D. Tex. 1975).
- v Both the state and county were eventually found liable for the unconstitutional conditions in the Harris County Jail. See 937 F. 2d 984 (5<sup>th</sup> Cir. 1991); see also, 978 F. 2d 893 (1992).
- vi In this same provision the Legislature also stated that the court could, in its discretion, credit such cost paid by the defendant against the fine assessed.
- vii Subsequent legislation would make the imposition of an interlock device as a condition of community supervision mandatory for certain intoxication offenses.
- viii In 2005 as a result of a Texas Attorney General's opinion, (GA-0114) the Legislature modified this statute to provide that a court that authorized a defendant to participate in a pretrial intervention program could order the defendant to pay the court a supervision fee in an amount not more than \$60 per month as a condition of participating in the program. The Legislature further provided that in addition to or in lieu of the supervision fee authorized under this amendment to the statute, the court could order the defendant to pay or reimburse a community supervision and corrections department for any other expense incurred as a result of the defendant's participation in the pretrial intervention program or that was necessary to the defendant's successful completion of the program.
- ix A previous Texas Attorney General's opinion (DM-245) had opined that a trial court could require a defendant to reimburse the county for paying for a foreign language interpreter in a court proceeding. However the United States Supreme Court's decision in Tennessee v. Lane, 541 U. S. 509 (2004) would probably invalidate the applicability of this provision to hearing-impaired defendants under the Americans with Disabilities Act.
- x Although this condition was enacted into law in 2011, no fees for attendance of this course were specified by the Legislature until 2017.
- xi Since the creation of this new court cost, the Legislature added an additional provision that a person must pay as a court cost \$34.00 on placement of the person on community supervision if the person is required to submit a DNA sample as a condition of community supervision. Moreover this new separate court cost is dedicated to the Texas Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by defendants who are required to pay a court cost under this statute (2009).
- xii At the same time as this court cost was authorized to fund specialty courts, the Legislature also created the first of several statutorily described specialty courts. In creating these specialty courts the Legislature authorized these drug court, veterans treatment court, and prostitution court

## Executive Exchange

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programs to collect from a participant in the program a reasonable program fee not to exceed \$1,000 along with other participant fees.

The Legislature further stated that fees collected under this measure could be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The Legislature also provided that the fees must be:

- (1) based on the participant's ability to pay; and
- (2) used only for purposes specific to the program.

xiii In order to obtain a waiver a county or municipality must provide the Office of Court Administration, in consultation with the Texas Comptroller of Public Accounts, sufficient information in order for OCA to determine whether it was not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

xiv See 1 Texas Administrative Code 174, effective January 1, 2017.

xv Prior to the passage of these bills, judges in Texas had to fine an individual, wait for the person to default, issue a warrant, wait for the person to be picked up or come in voluntarily on the warrant, and then the judge could determine indigence and offer community service. In other words, even though everyone in Court knew that a defendant was indigent and could not pay a fine or costs, the judge was still legally obligated to impose a fine and costs and could not take any further actions until the defendant defaulted on making a payment.

xvi However there was a variance in the language to this new Subsection (a-1) in another bill. This new Subsection (a-1) read as follows:

before a court could issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms:

(1) the court had to provide by regular mail to the defendant notice that included:

(A) a statement that the defendant had failed to satisfy the judgment according to its terms; and

(B) a date and time when the court would hold a hearing on the defendant's failure to satisfy the judgment according to its terms; and

(2) either:

(A) the defendant failed to appear at the hearing; or

(B) based on evidence presented at the hearing, the court determines that the *capias profine* should be issued.

xvii Article 42.15 (a-1), Code of Criminal Procedure states that during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court, the court shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Moreover if the court determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the court shall determine whether the fine and costs should be:

- 1' paid at some later date or in a specified portion at designated intervals;
2. discharged by performing community service;
3. waived in full or in part; or
4. satisfied through any combination of methods as outlined in this article.

xviii This new law states that except as otherwise provided by this Act, the changes in law made by this Act apply only to a cost, fee, or fine on conviction for an offense committed on or after January 1, 2020.

xix See Article 103.0081, Texas Code of Criminal Procedure.

xx In Texas reliance on court-imposed fines, fees and costs to operate a community supervision and corrections department varies from jurisdiction to jurisdiction. For the Bell/Lampasas Counties CSCD, approximately one-half of the funds to operation the department comes from the State and the other one-half comes from probationer paid court-imposed fees.

xxi See The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today's Economy. Essay No. 1: Race, Ethnicity and Wealth, February 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth>

xxii Ibid. page 4.

xxiii Ibid. page 9.

xxiv Ibid. page 9.

xxv See The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today's Economy. Essay No. 2: Education and Wealth, May 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth/essay-2-the-role-of-education>

xxvi Ibid. Page 4.

xxvii Ibid. page 4.

xxviii Ibid. page 3.

xxix Ibid. page 18.

xxx See An Unsupported Population: The Treatment of Women in Texas' Criminal Justice System, dated April 2018 pages 6-7. Texas Criminal Justice Coalition. <https://www.texascjc.org/system/files/publications/TCJC%20Womens%20Report%20Part%202.pdf>

xxxi See The Demographics of Wealth: How Age, Education and Race Separate Thrivers from Strugglers in Today's Economy. Essay No. 3: Age, Birth Year and Wealth, July 2015. <https://www.stlouisfed.org/household-financial-stability/the-demographics-of-wealth/essay-3-age-birth-year-and-wealth>

xxxii Ibid. page 4.

xxxiii Ibid. page 13.

xxxiv Ibid. 17.

xxxv Ibid. page 20.

- xxxvi See The Avenue Geographic Gaps Are Widening while U. S. Economic Growth Increases by Mark Muro and Jacob Whiton, dated January 23, 2018. <https://www.brookings.edu/blog/the-avenue/2018/01/22/uneven-growth/>
- xxxvii Ibid.
- xxxviii Ibid.
- xxxix See Slate Magazine, March 22, 2018. In the Suburbs, social Services Can't Keep Up with Families' Needs by Alieza Durana. <https://slate.com/human-interest/2018/03/in-the-suburbs-social-services-cant-keep-up-with-families-needs.html>
- xl See The Hamilton Project. Thirteen Facts about Wage Growth by Jay Shambaugh, Ryan Nunn, Patrick Lie, and Greg Nantz. page. 7. [http://www.hamiltonproject.org/papers/thirteen\\_facts\\_about\\_wage\\_growth](http://www.hamiltonproject.org/papers/thirteen_facts_about_wage_growth)
- xli Ibid.
- xliv See TECHNOLOGY AT WORK v2.0 The Future Is Not What It Used to Be, January 2016,Citi GPS: Global Perspectives and Solutions, based on the findings of Berger, Frey and Osborne (2015).
- xlvi See "The Future of Employment: How Susceptible Are Jobs to Computerization?" by Carl Benedikt Frey and Michael A. Osborne dated September 17, 2014 at page 38.
- xlvii Ibid. page 38.
- xlviii A World Economic Forum study predicts that by 2025 52% of office tasks could be performed by a machine. See Time Magazine. October 1, 2018 at page 4.
- xlvi See "The Future of Employment: How Susceptible Are Jobs to Computerization?" at pages 40 and 41.
- xlvii See McKinsey Global Institute Discussion Paper dated May 2018. "Skill Shift: Automation and the Future of the Workforce" by Jacques Bughin, Eric Hazan, Susan Lund, Peter Dahlstrom, Anna Wiesinger, and Amresh Subramaniam.
- xlviii Ibid. page 86.
- xliv See McKinney Global Institute Jobs lost, jobs gained: What the future of work will mean for jobs, skills, and wages, dated November 2017 page 8.
- I See Foreign Policy, dated July 11, 2018, "Learning to Work with Robots: AI will Change Everything. Workers must Adapt or Else" by Molly Kinder, page 9.
- li What has happened in Texas is that the portion of funding for education at the state level has drop and the portion of funding at the local level through property taxes has risen.
- lii Approximately 30% of the general population in the United States has a college or post-graduate degree.
- liii The remaining 21% are either unemployed, students, retired or disabled.
- liv I am aware of the irony that the same economic and technological forces affecting the general population and justice involved population will apply equally to staffing of adult probation departments in the future.
- lv See Rework America press release dated September 27, 2017. In addition to support by the Markle Foundation, Rework America Task Force is also supported by Carnegie Corporation, Microsoft Philanthropies, the Pritzker Traubert Foundation, and the Rockefeller Brothers Fund.
- lvi See "Technical Revocations Among Felons:Unraveling the Process," by the Texas Department of Criminal Justice – Community Justice Assistance Division, dated February 9, 2019 at page 11.
- lvii State jail felony offenses comprise mainly low level drug offenses and property offenses. While an offender can spend up to 24 months in a facility, over 15 % will spend six month or less in a facility and 43% will spend seven to twelve months in a facility. Once release there is no form of supervision so it is impractical to enforce the payment of court ordered fees, fines and costs. Therefore there is a really strong incentive to accept prison time in lieu of probation.

**Todd Jermstad, J.D.**, is the retired Director of Bell/Lampasas Counties Community Supervision and Corrections Department in Belton, Texas. He is a former member of the Board of Directors of the National Association of Probation Executives.

## GOVERNANCE NETWORKS: MORE IMPORTANT THAN EVER IN THE TIME OF COVID-19

by

Brian Mirasolo

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Our operating environments have changed significantly over the past few months. Meeting organizational missions, while keeping employees safe has become more of a challenge and there does not appear to be much relief in sight for the near future. If anything, the landscape looks to only become more complicated as the layered impacts of the Covid-19 pandemic begin to take hold. Personal Protective Equipment will remain scarce, face-to-face contact will continue to be limited in most places, and budgets will likely decrease. We will all have to adapt to our new environments to provide the public value community corrections agencies are expected to deliver to communities across our great nation. Streets must remain safe, victims must be protected, and those we supervise must continue to acquire the tools and build the skill sets that will provide healthier, more law-abiding lives. Easy, right? Despite all of these challenges, we simply must find a way. Now, more than ever, governance networks are vital. Without them, it will be impossible for us to get the job done. If you've spent time studying, building, and maintaining governance networks then it is likely your organization will be positioned for success. If you haven't, now is the time to do it. Don't wait another minute, otherwise you won't be able to strategically manage your organization though this predicament.

Governance networks have become more prominent as society and its problems have become more complex. In simpler times societal problems may only have required a single actor, but those days have long passed in the United States. Governance networks have emerged as a way to combat the significant, dynamic societal problems of the present. Like the societal problems they face, governance networks themselves are complex and have the potential to be both beneficial and detrimental to society. Often, governance networks are made up of public and private partners with undefined roles, unmatched interests, broad boundaries and a horizontal authority structure. Eva Sorensen and Jacob Torfing (2009) point out that the lack of accountability in governance networks may negatively affect democracy and benefit the strongest, most resource rich members. On the flip side, governance networks offer the opportunity for private, public and non-profit sector organizations to pool resources and develop powerful, innovative and effective approaches to holistically tackle societal problems. Sorensen and Torfing (2009) are neutral on governance networks and proclaim "network performance depends on the societal context, the institutional design and the political struggles that determine their form and functioning" (p. 235). There are very real risks and rewards that come when engaging in network collaboration which is why it is an obligation that public executives understand the potential benefits and dangers that go with the territory and have the ability to operate within network settings to advance public value, especially in times of crisis (i.e. our current pandemic).

### Operating in Governance Networks

In 1974, Robert Caro wrote one of the more detailed case studies of an unelected public executive ever produced in *The Power Broker: Robert Moses and the fall of New York*. The Pulitzer Prize winning book is about the career of Robert Moses, who was a public servant in New York for decades. At one point in his career, Moses was in charge of the New York City Parks Department and oversaw a huge expansion in the number of playgrounds around the city. He was able to harness his strategic management skills and plug in his governance networks to the benefit of the public. Moses had the ability to create and utilize public sector, private sector and non-profit sector networks to acquire land for the city of New York to build new playgrounds.

New York City Mayor Fiorello La Guardia swore Robert Moses in as "the first commissioner of a citywide Park Department" (Caro, 1974, p. 368) on January 19, 1934. Moses took over a historically lackluster department and immediately got to work strategically managing his organization. He knew a big part of the public value the Parks Department was supposed to provide to the city of New York was playgrounds for children. Unfortunately, there were a lack of playgrounds throughout the city. This lack of playgrounds was clear to Moses and he got the department to work on establishing new playgrounds immediately. He did so by strategically managing the New York City Parks Department's management controls. This strategic management, combined with Moses' vision helped give birth to a historic playground building boom never seen before in New York City. Robert Caro (1974) describes the first year of Moses' prolific playground success, "By July, the eight War Memorial Playgrounds had been finished, by Labor Day, there were fifty-two others... and a city which in its entire history had managed to build 119 playgrounds had seen its stock of that item increased by 50 percent in a single year" (p. 378).

To find unutilized city owned land for playgrounds and parks, Moses had his surveyors make a list of every publicly owned piece of property in New York City. Once the list was complete, he had Parks Department employees inspect every piece of property on the list. If an employee found the property was not being used he then reported it to Moses. From there, Moses would ask Mayor La Guardia if city owned land could be given to the Parks Department for the purpose of building a park or a playground. Another way Moses acquired land for playgrounds was through the state government. Moses sent employees to Albany, New York, the state's capitol, to find unappropriated state land in the city. When found, Moses would write legislation to have the land given to the Parks Department since the city did not have the money to buy the land outright. Four months after taking on the role of commissioner, Robert Moses had helped the New York



City Parks Department acquire almost 70 new playground and park sites (Moses, 1974, pp. 372-377).

Moses, to his credit, went beyond the city and the state's help in acquiring land and funds to get playgrounds built in New York City. Non-profit entities, for-profit entities, and the city's elite were also enlisted in the effort by Moses. Caro (1974) noted, "He seemed to see opportunities everywhere. While being chauffeured around Harlem, he noticed two tennis courts belonging to a Roman Catholic church on 138<sup>th</sup> Street" (p. 377). Moses ended up speaking with the church's pastor. The pastor informed Moses the tennis courts were underutilized. Moses asked the pastor to donate the tennis courts to the city so he would be able to turn the land into a playground for the neighborhood's children. The pastor informed Moses that such a donation could only be arranged through Cardinal Hayes. Moses and Cardinal Hayes worked out an agreement and the land was gifted to New York City. Later, Caro (1974) provides an example of Moses working out a deal with the Consolidated Gas Company for the temporary use of a vacant lot. Once in the city's possession, the vacant lot was made into a playground. Moses also engaged with the city's elite to help the Parks Department's cause. He persuaded John D. Rockefeller, Jr. to donate several pieces of land to the city, and August Heckscher and other prominent citizens to donate funding to build playgrounds for the city's children (Caro, 1974, pp. 372-378).

Moses' awe-inspiring effort on behalf of the city, over the span of one year, did not go unnoticed by the residents or the press of New York City. The praise Robert Moses received for his department's accomplishment was plentiful and well deserved. Editorial pages were filled with letters from the public praising the efforts. As Caro (1974) notes, "it was not unusual at park and playground opening ceremonies for children, prodded by their parents, to break into cheer 'Two, four, six, eight—who do we appreciate? Mr. Moses!'" (p. 379). The city's newspapers were also filled with praise for Moses. During the year of 1934, he was praised in piece after piece. His name was featured in New York newspapers more than that of J. Edgar Hoover and almost as much as Mayor Fiorello La Guardia's (Caro, 1974, pp. 378-379).

This scenario illustrates the potential benefits of operating within governance networks for the advancement of democratic values. Robert Moses was able to operate within network structures that included the Roman Catholic Church, Consolidated Gas Company and John D. Rockefeller, Jr. to the benefit of the citizens of New York City (Caro, 1974, pp. 372-378). While the scenario is far different than the one we face with the pandemic, there are parallels we can draw. Robert Moses built, maintained, and utilized governance networks to help the department he oversaw execute its mission. There is no doubt the need for us to do the same will only be amplified in the pandemic.

### Operational Ignorance in Network Governance

Not having the ability to operate within governance networks stifles the advancement of public value in normal operating environments. The effect only increases in the crisis environments we find ourselves during present times. The University of Washington's Electronic Hallway published a case study titled *Regionalizing Specialized Police Operations: Resistance to Al-*

*tering the Status Quo* which highlights an executive lacking network governance skills.

Joe Friday had recently become the Chief of the Camino Police Department in California and had an idea regarding local Special Weapons and Tactic teams (SWAT) to bring up at the next informal lunch meeting of the West Bay Police Chiefs. The West Bay Police Chiefs consisted of the police chiefs, Friday included, from the nine municipalities in the West Bay area of California. They regularly met for informal lunches to discuss business.

Friday, new to the network of the West Bay Police Chiefs, looked to local data and saw that eight of the nine municipalities making up the West Bay area had SWAT teams. In total, these SWAT teams consisted of 141 officers which was nearly 15% of all officers employed in the area. The 141 officers of the eight West Bay SWAT teams had 18 command and tactical vehicles and responded to an average of 64 incidents a year. In Los Angeles County, an area far more densely populated than West Bay, Friday saw a much more efficient regional SWAT operation. Between the Los Angeles Police Department and the Los Angeles Sheriff's Department there were 125 officers and 17 command and tactical vehicles assigned to SWAT teams. Those SWAT teams responded to an average of 340 incidents a year. The West Bay Swat teams deployed more officers and resources than the Los Angeles SWAT teams and responded to roughly one-fifth the number of incidents a year on average. The case for regionalizing the West Bay SWAT teams was very strong, especially considering the declining economic environment in the area and Friday wanted to make the case at the next lunch.

Friday saw an opportunity to bring efficiencies to the table for the network. However, he did not understand how to operate effectively within the network and lacked the required political ability and knowledge. Friday saw only a technical problem with a technical solution when in reality the issue was far more complex because it entailed network governance. Not surprisingly, his pitch was met with initial silence from his counterparts and then shot down. Part of Friday's issue can relate back to not knowing his environment, but another big part was his lack of political ability in the lead up to his pitch. Friday should have known he would need the support of powerful network members prior to making his pitch if it were to stand a chance. If he had informally brought up the idea in individual conversations leading up to the meeting he would have had a much better sense of how to strategically handle the pitch at the meeting. Talking to network members may have helped Friday understand he may not have been the right person to pitch the idea at the meeting if he really wanted the SWAT regionalization to succeed. Perhaps he would have found a powerful network ally who would have spent his own network capital and gave the idea a better chance of becoming a reality (Electronic Hallway, 2008, pp.1-4).

There is no doubt Joe Friday had a well thought out, reasonable solution to a technical problem the West Bay area police departments faced. Without the political knowledge and ability to operate within a network governance structure, however, Friday was left to ponder what went wrong with the pitch to his fellow police chiefs and the citizens of the West Bay area were left with inefficient SWAT operations. Public executives must have the capacity to operate politically within network environments for the benefit of the public. Otherwise, the public will undoubtedly-

ly be shortchanged by network governance structures. We may not have to worry about SWAT Teams, but we do have to worry about having an adequate supply of PPE for our officers and for services targeting criminogenic needs and responsivity needs to be available in our communities.

### Network Governance Takeaways

Network governance is more important than it has ever been. The societal problems of current times are too complex to be handled by single actors. Networks offer an array of benefits and hazards for the field of community corrections. Innovative, holistic approaches can be effectuated through networks, but so can undemocratic approaches that hurt the welfare of our stakeholders. Robert Moses knew how to operate within network governance structures and acted both for the benefit of society in the example provided. Joseph Friday simply did not know how to act in the network governance situation presented. His not knowing how to act in the situation hurt the local communities involved in the network arrangement. We all have an obligation to understand the benefits and dangers that come with network governance and to know how to act politically within network governance structures. Our actions in network governance must always be on the behalf of societal good.

A lot of what is ahead of us and our organizations is still unknown. One thing we do know is that we simply can't get the job done, especially now, without building, utilizing, and main-

taining governance networks. There are a lot of great community corrections leaders across the United States and, more broadly, across the world. Now is a time for us all to come together and work together. For together, we can make sure our organizations have the resources needed to fulfill our essential missions of positive behavior change. We can also continue working to keep communities safe, victims protected, and probationers' lives, healthier and more fruitful.

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**Brian Mirasolo**, the Deputy Commissioner for Field Services for the Massachusetts Probation Service, serves on the board of NAPE and as the Editor of *Executive Exchange*.

## NEWS FROM THE FIELD

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### LONG TIME CRIMINAL JUSTICE PROFESSIONAL RETIRES IN TEXAS

After a long and distinguished career in criminal justice, **Mike Wolfe**, Director of the Taylor, Callahan, and Coleman Counties Community Supervision and Corrections Department (CSCD) retired at the end of January, 2020. Wolfe began his career in 1978 as a probation officer for Tyler County, Texas. One year later he became a parole officer with the Texas Board of Pardons and Parole. During the years with the Board, Wolfe earned repeated promotions to positions of greater responsibility. In 1989 the Board merged with the Texas Department of Corrections and the Texas Adult Probation Department to become the Texas Department of Criminal Justice – Parole Division (TDCJ-PD). Wolfe eventually became Deputy Director for operations with TDCJ-PD, where he supervised thousands of employees and oversaw budgets in the billions of dollars.

In 1997 Wolfe accepted the position of Chief of Staff in the South Carolina Department of Corrections. Subsequently he became Deputy Secretary in the Florida Department of Corrections under then Governor **Jeb Bush**. In October 2004, Wolfe was named Director of the Taylor, Callahan, and Coleman Counties CSCD. After becoming director of this department, he took a very active leadership role in the State of Texas.

Wolfe was Chair of the Probation Advisory Committee from 2010 to 2016, having served as Vice-Chair from 2006 to 2010; he was a member of the Board of Directors of the Texas Proba-

tion Association (TPA) in 2016 and become President in 2019. He also participated on TPA's Adult Legislative Committee since 2005, and was later named Co-Chair of this important committee. He was actively involved at the state level as a member of the Fiscal Issues Committee of the Texas Department of Criminal Justice – Community Justice Assistance Division.

In 2019 the National Association of Probation Executives presented him the *George M. Keiser Award for Exceptional Leadership*.

Wolfe is an avid golfer and in retirement plans to spend quality time on the golf course. In addition, he and his wife Kappy plan to visit their two daughters and grandchildren often. Because of his expertise not only in community corrections but also parole and prisons, he will continue to provide valuable advice and guidance on issues affecting corrections. According to his good friend **Todd Jermstad**, recently retired Director of the Bell and Lampasas Counties CSCD, "after over forty years in the criminal justice system, Mike Wolfe deserves a nice break."

### COMMUNITY SERVICE MEETS PUBLIC SERVICE: GROUP SUPERVISED BY NEW JERSEY PROBATION SERVICE PITCHES IN DURING COVID-19 CRISIS

Call it community service meets public service. With the implementation of a statewide lockdown in New Jersey to prevent the spread of COVID-19, ISP Officer **Donnie DeStefano** wasn't

sure how her clients in the Judiciary's Intensive Supervision Program would be able to continue performing their required community service.

So she was pleasantly surprised when she learned during one of her visits to a Cape May County sober house that her clients were continuing their community service by helping to make face masks for those on the front lines of the pandemic.

Despite the lockdown, DeStefano and the Judiciary's 1,900 ISP and probation officers across New Jersey continue to perform their duties supervising clients, conducting inspections and overseeing community service. But life after the lockdown has altered how the officers and clients interact with each other and with the community.

"This is a time when they didn't have to do community service but they took it upon themselves to do whatever they can," DeStefano said. "They're working on their recovery and they've never griped or complained to say 'We're stuck in this house 24 hours a day.'"

Several of the housemates had performed community service locally, but some of them lost those opportunities when many businesses were ordered shut during the lockdown.

They found a new opportunity when a housemate told them about a pitch a guest made at a Narcotics Anonymous meeting about making facemasks for Cape Regional Hospital.

Now the men are cutting more than 100 pieces of cloth a week that **Doreen Verity** and her friend **Joe Fiedler** are turning into facemasks and turning over to the hospital. Their church, The Lighthouse Church in Cape May Court House, runs Christians United for Recovery (CURE), a program that has helped get probation clients into treatment and sober living facilities.

"The true measure of success of a supervision program is when clients start taking positive steps on their own initiative," said **Rashad Shabaka-Burns**, Director of Probation Services. "We are very pleased that the individuals we supervise through ISP are making a contribution toward the larger effort of keeping the public safe."

Verity said that because it takes nine stages to make one mask, she's grateful for the help so that she can concentrate on the sewing stage.

"It's a big help. They can be very happy that they were a part of it. It helped me," she said. "It's been a very unorganized team effort but it's really coming through. It's exciting to see the good things coming out of it."

#### ATLANTIC/CAPE MAY VICINAGE EMPLOYEES ORGANIZE FACE MASK DRIVE FOR COWORKERS

In a show of support for their colleagues on the frontline during the COVID-19 pandemic, employees in the New Jersey Judiciary's Atlantic/Cape May Vicinage sewed more than 250 face masks within a matter of days before distributing them on Monday.

**Karen Michael**, an administrative specialist in the court user resource center, had been sewing masks for frontline workers at a local hospital when she proposed the idea of a vicinage-wide face mask drive for Judiciary employees who continue to interact directly with members of the public.

Judges, staff, and their friends and family volunteered materials and their sewing skills to produce washable cloth masks for probation officers supervising clients in the community and employees reporting to the courthouses to facilitate case processing.

"The creative, altruistic idea of one person has resulted in good will and safety for many," said Trial Court Administrator **Howard Berchtold, Jr.** "This mask-making drive, inspired by a desire to assist the Atlantic/Cape May Vicinage family, yielded more than 250 cloth masks to enable employees to continue to leave their homes to serve the public."

The initiative began with a material donation drop-off at the three courthouses in Atlantic and Cape May counties. Michael put the call out for cloth, elastic, thread, large rubber bands, blue shop paper towels and zip-up plastic bags.

Within four days, she received enough material to cut out the 250 masks by hand and assembled the kits that were distributed to the 15 sewing volunteers. The kits also contained "Made by" cards, which contained personal messages from the sewing volunteers, to build a connection between the maker and the recipient.

**Sharnett Clark**, Vicinage Chief Probation Officer, said the masks will help the officers maintain contact with their clients while staying safe. "As essential employees in probation, we are forever grateful for such acts of kindness," Clark said.

#### O'BRIEN TO SUCCEED LARIVEE AS PRESIDENT AND CEO OF CRJ

The Board of Directors of Boston-based Community Resources for Justice (CRJ) is pleased to announce that it has unanimously selected **Deborah M. O'Brien**, RN, MPA, to serve as CRJ's new President and CEO, effective September 1, 2020.

O'Brien brings 25 years of experience working to improve the lives of at-risk individuals, most recently as President and Chief Operating Officer at the Providence Center in Providence, Rhode Island. She will succeed **John Larivee**, who will retire in August after 46 years with the organization and its predecessor, including more than two decades as CRJ's chief executive.

O'Brien is joining CRJ after three years as the President and COO at The Providence Center, a leader in providing treatment and supportive services to children, adolescents, and adults affected by psychiatric illness, emotional problems, or addiction. The organization is the largest provider of substance use treatment in Rhode Island's prison system. She brings to her new role strategic vision, seasoned leadership experience, and a collaborative style, making her ideally suited to lead CRJ forward. Her personal and professional experience align with CRJ's mission of changing lives and building stronger, safer communities. She has both a nursing degree and a master's degree in public administration from the University of Rhode Island.

The board is grateful for the enormous contributions John has brought to CRJ, providing innovative and forward thinking leadership as it grew from a small organization focused on corrections reform to a 750-employee human services provider and public policy workshop.

John was a driving force in the creation of CRJ in its current form. He oversaw the 1999 merger of the Crime and Justice Foundation, where he served as executive director, and Massachusetts Half-Way Houses, creating a unique organization working across the intersection of policy development and direct services.

During his career, John helped to reshape the criminal justice field, working through the transition from the draconian tough-on-crime era into the emergence of evidence-based, data-driven policy work focusing on reducing recidivism and improving out-

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comes for individuals. He was instrumental in the creation of the first day reporting center, revolutionizing community supervision with a model now used around the world. He spearheaded the reemergence of reentry services in Massachusetts and the opening of four centers across the state. And he led efforts to reduce over-incarceration of adults, juveniles, and individuals with developmental disabilities.

At CRJ, John oversaw remarkable growth in the organization's programs and its scope of work. CRJ opened its eighth community-based residential reentry center earlier this year in Buffalo, New York, adding to its programs supporting adults transitioning home after incarceration. The organization also operates 38 group homes for adults with developmental disabilities in Massachusetts and New Hampshire. And the Crime and Justice Institute, the direct descendant of the Crime and Justice Foundation where John spent his early career, now uses its data and policy expertise to further reforms in adult and juvenile justice systems nationwide as a division of CRJ.

### MARIN COUNTY APPOINTS NEW PROBATION CHIEF

**Marlon Washington**, a veteran probation officer and Bay Area native with a breadth of managerial experience, has been chosen as the next Chief of the Marin County Probation Department, headquartered in San Rafael, California.

Washington, a Richmond native who has been Napa County's Juvenile Hall Superintendent since 2015, will replace the retiring **Mike Daly**. Washington's first day on the job will be August 10.

"I'm humbled and excited about this opportunity," Washington said. "I have established relationships in Marin already as

a resource. I believe building upon these relationships and my experience will be beneficial to the county. My philosophy and approach to probation aligns with restorative justice and forging relationships."

In Napa, Washington has administered all operations of the juvenile detention facility for the county probation department and supported the Probation Chief on coordination with other divisions. He managed 37 employees and a \$6.8 million annual budget while developing new training procedures and programs. From 1999 through 2015, he worked with the Contra Costa County Probation Department in supervisory roles with both adult and juvenile divisions.

"Marlon's experience with all ages of probationers and his spirit of collaboration helped us make this choice," County Administrator **Matthew Hymel** said. "His knowledge of emerging trends in restorative justice, cultural competency, and mental health in the justice system were particularly impressive. He has a reputation as a level-headed and transparent professional, and we know he will be an outstanding fit with the Marin public safety community."

Washington earned a sociology degree with emphasis in law at the University of California at Davis and has been active in the California Association of Probation Institution Administrators and the California Probation, Parole, and Correctional Association. After college, he gained experience as an academic outreach coordinator, a residential boys camp supervisor, a case management support counselor, a school/community resource specialist, a youth services program administrator, and a substitute teacher.

Washington's annual salary will be \$182,270 and benefits will be consistent with those received by other County department heads.

### INFORMATION ABOUT EXECUTIVE EXCHANGE

*Executive Exchange*, the journal of the National Association of Probation Executives (NAPE), publishes articles, reports, book and periodical reviews, commentaries, and news items of interest to community corrections administrators. The contents of the articles or other materials contained in *Executive Exchange* do not reflect the endorsements, official attitudes, or positions of the Association, the Correctional Management Institute of Texas, or the George J. Beto Criminal Justice Center at Sam Houston State University unless so stated.

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Submissions for publication consideration should be formatted for letter size paper, double-spaced, with at least one inch margins. Persons submitting articles, commentaries, or book reviews should enclose a brief biographical sketch or resume and a photograph for possible inclusion. Submissions may be sent electronically to Brian Mirasolo, Editor of *Executive Exchange*, at [bmirasolo@gmail.com](mailto:bmirasolo@gmail.com):

Specific questions concerning *Executive Exchange* may be directed to Brian Mirasolo at (617) 909-3102 or to Christie Davidson at (936) 294-3757.

The Correctional Management Institute of Texas at Sam Houston State University serves as the secretariat for the National Association of Probation Executives.



Daly, a Fairfax native, has served as the Chief Probation Officer since 2009 and worked 30 years for Marin County. His final day of work was July 21, and the Board of Supervisors prepared and presented a resolution to honor Daly's significant accomplishments and career.

### NEW JERSEY PROBATION SERVICES USES TECHNOLOGY TO MONITOR SEX OFFENDERS DURING COVID-19 CRISIS

While the COVID-19 pandemic has resulted in many people spending more time online, a special group of probation officers at the New Jersey Judiciary is working to make sure sex offenders are complying with court orders and not viewing sites that include child pornography.

The New Jersey Judiciary's probation officers, who are used to checking on clients in person, have modified some of their monitoring practices to incorporate video conferencing and curbside visits.

Also key to their effort is monitoring the online activity of sex offenders by using an online monitoring system it employed before the pandemic.

The Judiciary continues to monitor sex offenders to protect the public and help the clients meet their court-ordered requirements.

"Probation is still monitoring what they're doing online, and we're checking in with them regularly," said **Brenda Beacham**, Assistant Director for Probation Services at the Administrative Office of the Courts.

The Judiciary's adult sex offender caseload is a specialized one. There are 1,153 active clients in the sex offender caseload, a fraction of the roughly 44,000 adults on probation supervision in New Jersey.

Each of the 58 adult sex offender probation officers statewide has about 50 clients. The officers not only monitor the behavior of sex offenders, they also work closely with substance abuse treatment providers, psychologists and social service agencies.

Not all sex offenders are ordered to have their online usage monitored; nearly 200 offenders are subject to such conditions.

Sex offender officers received extensive training throughout the year on topics such as characteristics of online sex offenders, the dark web, and specialized online search tools. "We have a no-tolerance policy in New Jersey," Beacham said.

**Chad Wentworth**, a probation officer in the Middlesex Vicinage who monitors sex offenders, said he is using applications such as What's App, and Google Duo and Zoom to keep in touch with his clients. He said he also is visiting his clients curbside at their homes.

Those who are required to attend counseling are doing so remotely, said Wentworth, who manages a caseload of 40 sex offenders.

**Angela Gatanis**, who has a caseload of 38 sex offender probationers in the Somerset/Hunterdon/Warren Vicinage, said when she began working from home, she programmed her clients' phone numbers into her cellphone so that they could remain in contact.

She said many of her clients live alone and looked forward to reporting to her in person before the pandemic. "My caseload is compliant," said Gatanis. "They're doing what they're supposed to do and we're checking up on them to make sure."

### PROBATION AND PAROLE IN THE UNITED STATES, 2017-2018

In early August 2020 the Bureau of Justice Statistics released a new report – *Probation and Parole in the United States, 2017-2018*. A summary of this report follows.

In the United States, the adult population on probation or parole declined from 4,508,900 at the end of 2017 to 4,399,000 at the end of 2018. The total community-supervision population (those on either probation or parole, with those on both counted only once) decreased by an estimated 109,900 offenders (down 2%) from 2017 to 2018, and by 694,400 offenders (down 14%) from 2008 to 2018. The total community-supervision population in 2018 was at its lowest level since 1998. It has declined each year since 2007.

#### *Portion of Adults on Community Supervision*

The portion of adults on community supervision fell 1.5% from 2016 to 2017, 3% from 2017 to 2018, and 22% from 2008 to 2018. The adult probation rate fell 25% from 2008 to 2018, while the adult parole rate fell 4%. An estimated 1 in 58 adults in the U. S. were under community supervision at the end of 2018, down from 1 in 45 in 2008. In 2018, the portion of adults on community supervision was at its lowest level since 1990.

#### *Probation and Parole Populations*

Adults on probation accounted for 80% of those under community supervision in 2018, while parolees made up 20%. (Those reported to be on both probation and parole made up less than 1%.) The adult probation population declined 3% from 2017 to 2018 and 17% from 2008 to 2018, while the adult parole population increased 0.3% from 2017 to 2018 and 6% from 2008 to 2018.

The probation population (3,540,000) has declined each year since 2007, when it peaked at 5,115,500. In comparison, the parole population increased 6% from 2008 to 2018, and 2018 marked its fifth consecutive year of growth.

#### *Entries to and Exits from Probation and Parole*

Movements onto (entries) and off of (exits) probation decreased 8% from 2017 to 2018, from an estimated 4,100,300 to an estimated 3,755,700. Probation entries decreased almost 10% in 2018, from an estimated 2,039,500 at year-end 2017 to an estimated 1,845,200 at year-end 2018. Probation exits decreased 7%, from an estimated 2,060,800 in 2017 to an estimated 1,910,500 in 2018. This was the first time since 1998 that entries to and exits from probation were each under 2 million movements.

In 2018, probation exits outpaced entries for the tenth consecutive year, while parole exits in 2017 exceeded entries for the first time since 2009. From 2017 to 2018, the number of offenders entering parole increased from an estimated 442,000 to 447,200 (up 5,200), while exits grew from 445,700 to 453,900 (up 8,200). This marked the first time that parole entries increased since 2015. While both entries to and exits from parole continued to decline from 2008 to 2018, entries exceeded exits eight times over that span.

This report, written by Danielle Kaeble and Mariel Alper, is available at this link:

<https://www.bjs.gov/content/pub/pdf/ppus1718.pdf>.

# NATIONAL ASSOCIATION OF PROBATION EXECUTIVES

## Who We Are

Founded in 1981, the National Association of Probation Executives is a professional organization representing the chief executive officers of local, county and state probation agencies. NAPE is dedicated to enhancing the professionalism and effectiveness in the field of probation by creating a national network for probation executives, bringing about positive change in the field, and making available a pool of experts in probation management, program development, training and research.

## What We Do

- Assist in and conduct training sessions, conferences and workshops on timely subjects unique to the needs of probation executives.
- Provide technical assistance to national, state and local governments, as well as private institutions, that are committed to improving probation practices.
- Analyze relevant research relating to probation programs nationwide and publish position papers on our findings.
- Assist in the development of standards, training and accreditation procedures for probation agencies.
- Educate the general public on problems in the field of probation and their potential solutions.

## Why Join

The National Association of Probation Executives offers you the chance to help build a national voice and power base for the field of probation and serves as your link with other probation leaders. Join with us and make your voice heard.

## Types of Membership

**Regular:** Regular members must be employed full-time in an executive capacity by a probation agency or association. They must have at least two levels of professional staff under their supervision or be defined as executives by the director or chief probation officer of the agency.

**Organizational:** Organizational memberships are for probation and community corrections agencies. Any member organization may designate up to five administrative employees to receive the benefits of membership.

**Corporate:** Corporate memberships are for corporations doing business with probation and community corrections agencies or for individual sponsors.

**Retired:** Retired members are those who have retired in good standing from a full-time professional executive capacity in probation, parole, or community corrections agency or association. The annual fee for retired membership is \$25.

**Honorary:** Honorary memberships are conferred by a two-thirds vote of the NAPE Board of Directors in recognition of an outstanding contribution to the field of probation or for special or long-term meritorious service to NAPE.

## Membership Application

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DATE OF APPLICATION \_\_\_\_\_

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