

Probation and Parole

Reducing Technical Violations of Community Supervision in the Commonwealth of Virginia



Prepared for Justice Forward Virginia

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FRANK BATTEN SCHOOL
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CLIENT

This report is prepared for Justice Forward Virginia, a non-partisan advocacy group created to bring attention to the urgent need for criminal justice reform in the Commonwealth of Virginia. Justice Forward Virginia seeks to educate Virginian communities about the ongoing injustices within the criminal justice system and the solutions they propose. Justice Forward Virginia additionally provides data and research to convince legislators, district attorneys, and the general public that criminal justice reform is needed in Virginia.

DISCLAIMER

The author conducted this study as part of the program of professional education at the Frank Batten School of Leadership and Public Policy at the University of Virginia. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author, and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency.

HONOR PLEDGE

On my honor as a student, I have neither given nor received unauthorized aid on this assignment.

Lauren Baldwin Considine

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ACRONYMS AND DEFINITIONS

Administrative sanctions: Penalties for someone under community supervision which could include restrictions such as curfew and drug testing, often due to noncompliance with the rules of community supervision.

Community-based Sanctions: Sentences implemented in a community setting rather than in a prison

DOC: Department of Corrections

HOPE: Hawaii Opportunity Probation with Enforcement

Parole: A release to supervision after an incarceration term.

Probation: Supervision implemented by the court generally instead of incarceration.

Revocation: Occurs when individuals who have been sentenced to probation (pre-incarceration) or who have been released from incarceration under probation or parole supervision (conditional release) are reincarcerated as a response to their behavior. Individuals may violate the terms and conditions of their release for many reasons including missing meetings, engaging in drug use, not finding employment, not attending treatment, or failing to register a new address with their supervising officer, among others. These are called *technical violations*.

Revocation cap: A limit on the amount of time a person under community supervision can be incarcerated for not complying with community supervision terms.

Technical violation: A violation of community supervision rules that could result in a sanction.

EXECUTIVE SUMMARY

Community supervision¹ has often been thought of as an “alternative” to incarceration². However, many data suggest that a large portion of prison admissions come from revocations of probation or parole—many of which are due to “technical” violations rather than from committing a new crime. Community supervision is increasingly utilized as corrections budgets continue to rise, and jails and prisons continue to be overcrowded³. However, the increasing reliance upon community supervision violations and sanctions as a means of punishment and surveillance has intensified the crisis of mass incarceration by creating a revolving door for prisoners⁴. In many cases, community supervision acts as a conduit to prisons and jails rather than as an alternative to serving time. On any given day in the Commonwealth of Virginia, 11,239 individuals are incarcerated because of a violation of their supervision terms, costing the state approximately \$309 million⁵. Technical supervision violations account for \$37 million of this total amount, with nearly one in five supervision violators being incarcerated for a technical violation of parole or probation, as opposed to an additional criminal conviction⁶. ***Too many individuals under community supervision are sent to custody due to a technical violation of probation or parole in the Commonwealth of Virginia. The increased use of community supervision and extraordinarily high incarceration rates for nonviolent technical offenses destabilize families and communities, and represents an economic threat to the Commonwealth of Virginia***

To counter the growing community supervision population and decrease instances of incarceration for technical violations of probation and parole, policymakers in Virginia should adopt legislation that prioritizes higher-risk individuals while removing lower risk people from supervision caseloads⁷. A greater focus on rehabilitation rather than retribution and reliance upon

¹ A set of programs that provide for the supervision of individuals convicted of crimes in their local community. The two most common types of community supervision are probation and parole.

²reil0080. “Data Brief: American Exceptionalism in Probation Supervision.” Robina Institute of Criminal Law and Criminal Justice, 23 Mar. 2016, robinainstitute.umn.edu/publications/data-brief-american-exceptionalism-probation-supervision.

³ “Section 6.4: Parole, Probation, and Community Sanctions | Criminal Justice.” Lumenlearning.com, 2012, courses.lumenlearning.com/atd-bmcc-criminaljustice/chapter/section-6-4-parole-probation-and-community-sanctions/.

⁴ Siegel, Jonah. The Author(s) Shown below Used Federal Funds Provided by the U.S. Department of Justice and Prepared the Following Final Report: Document Title: Prisoner Reentry, Parole Violations, and the Persistence of the Surveillance State. 2014.

⁵ “Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets.” CSG Justice Center, 18 June 2019, csgjusticecenter.org/publications/confined-costly/?state=VA#primary.

⁶IBID

⁷ “Probation and Parole Systems Marked by High Stakes, Missed Opportunities.” Pewtrusts.Org, 25 Sept. 2018, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities.

evidence-based practices will help make Virginia's criminal justice system more equitable and safe. Justice Forward Virginia should consider the following policy alternatives when advocating for community supervision reform:

- (1) Let Present Trends Continue
- (2) Advocate for the Implementation of Revocation Limits for Community Supervision
- (3) Advocate for Earned Time Credits for Community Supervision
- (4) Advocate for Administrative Responses to Technical Violations of Community Supervision

This analysis will evaluate each potential alternative based on three criteria: Cost Savings, Political Feasibility, and Recidivism. Based on evaluations of these criteria and projected outcomes of each alternative, Justice Forward Virginia should pursue Option 3: Advocate for Earned Time Credits for Community Supervision. This option is most cost-effective and politically feasible, and would not increase recidivism in Virginia.

PROBLEM DEFINITION

Community supervision has become increasingly utilized as state corrections budgets continue to rise, and jails and prisons become more overcrowded⁸. However, the increasing reliance upon community supervision violations and sanctions as a means of punishment and surveillance has intensified the crisis of mass incarceration by creating a revolving door for prisoners⁹. On any given day in the Commonwealth of Virginia, 11,239 individuals are incarcerated because of a violation of their supervision terms, costing the state approximately \$309 million¹⁰. Technical supervision violations account for \$37 million of this total amount, with nearly one in five supervision violators being incarcerated for a technical violation of parole or probation, as opposed to an additional criminal conviction¹¹. *The increased use of community supervision and extraordinarily high incarceration rates for nonviolent technical offenses destabilize families and communities, and represents an economic threat to the Commonwealth of Virginia.*

BACKGROUND

Community Supervision is Increasing Nationwide

The United States incarcerates more people in total and per capita than any other nation in the world¹². Since the early 1970s, the national rate of incarceration has increased fivefold, with 2.3 million people behind bars across the country¹³. In addition to mass incarceration, the United States also suffers from mass community corrections. The number of Americans now under some form of community supervision¹⁴—more than 4.5 million individuals or

⁸ “Section 6.4: Parole, Probation, and Community Sanctions | Criminal Justice.” Lumenlearning.com, 2012, courses.lumenlearning.com/atd-bmcc-criminaljustice/chapter/section-6-4-parole-probation-and-community-sanctions/.

⁹ Siegel, Jonah. The Author(s) Shown below Used Federal Funds Provided by the U.S. Department of Justice and Prepared the Following Final Report: Document Title: Prisoner Reentry, Parole Violations, and the Persistence of the Surveillance State. 2014.

¹⁰ “Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets.” CSG Justice Center, 18 June 2019, csgjusticecenter.org/publications/confined-costly/?state=VA#primary.

¹¹ IBID

¹² ACLU Staff. “Mass Incarceration.” American Civil Liberties Union, American Civil Liberties Union, 2018, www.aclu.org/issues/smart-justice/mass-incarceration/mass-incarceration-animated-series.

¹³ Trends in U.S. Corrections. 2003, <https://www.sentencingproject.org/wp-content/uploads/2020/08/Trends-in-US-Corrections.pdf>

¹⁴ ¹⁴ A set of programs that provide for the supervision of individuals convicted of crimes in their local community. The two most common types of community supervision are probation and parole.

approximately two percent of all US adults— is twice the number of those behind bars¹⁵.

Although probation has often been viewed as an alternative to incarceration, data suggests that a large portion of all prison admissions come from probation revocations¹⁶—many of which are for “technical” violations rather than from a new criminal conviction¹⁷.

In many cases, probation acts as a conduit to incarceration rather than as an alternative to jail or prison¹⁸. From 1980 to 2000, the number of former inmates returning to the prison system for violation of the conditions of their probation or parole more than doubled from 17 to 36 percent¹⁹. Of the total 4.5 million individuals under community supervision, almost half were sentenced due to minor offenses, and more than three-quarters were on probation or parole for a non-violent offense, ultimately costing taxpayers and imposing long term restrictions on low risk and non-violent individuals²⁰.

Technical Violations of Community Supervision in The Commonwealth of Virginia

The scope of this project is limited to the Commonwealth of Virginia, the region served by the client. Given that states have significant discretion over criminal justice policy, it is important to contextualize the Commonwealth’s practices. In Virginia, once a defendant is sentenced to probation or parole, he or she is supervised by a Department of Corrections probation or parole officer, and must comply with their orders and any terms of probation imposed by the court. Such requirements may include paying probation and court fees, remaining employed and drug-free, avoiding certain locations or people, and permitting probation officers to visit the defendant's home or employment. Probation officers additionally require regular check-ins with defendants, and any time the defendant travels or plans on leaving the jurisdiction, he or she must first obtain permission from the probation officer²¹. If the

¹⁵“Correctional Control 2018: Incarceration and Supervision by State.” Prisonpolicy.org, 2018, www.prisonpolicy.org/reports/correctionalcontrol2018.html.

¹⁶ A probation revocation hearing occurs when you are charged with violating the terms of your probation and are ordered to appear before a judge who will decide, by a preponderance of the evidence, whether you have violated the terms of your probation.

¹⁷ ---, “Data Brief: American Exceptionalism in Probation Supervision.” Robina Institute of Criminal Law and Criminal Justice, 23 Mar. 2016, robinainstitute.umn.edu/publications/data-brief-american-exceptionalism-probation-supervision.

¹⁸ reil0080. “Data Brief: American Exceptionalism in Probation Supervision.” Robina Institute of Criminal Law and Criminal Justice, 23 Mar. 2016, robinainstitute.umn.edu/publications/data-brief-american-exceptionalism-probation-supervision. Accessed 30 Nov. 2020.

¹⁹ The Author(s) Shown below Used Federal Funds Provided by the U.S. Department of Justice and Prepared the Following Final Report: Document Title: Prisoner Reentry, Parole Violations, and the Persistence of the Surveillance State. 2014.

²⁰ Policy Reforms Can Strengthen Community Supervision a Framework to Improve Probation and Parole April 2020 Report.

²¹ “Probation Rules in Virginia.” Legal Beagle, legalbeagle.com/6361254-probation-rules-virginia.html. Accessed 2 Dec. 2020.

defendant does not abide by these stipulations, they could face harsh penalties, such as a significant fine, an extended probation term, or even incarceration²².

The increasing reliance upon the aforementioned sanctions for probation and parole violations as a means of punishment has shown to inhibit ex-offenders from finding and maintaining steady and reliable work²³. Many of those leaving custody are typically already burdened by limited education, few employment skills, and high rates of mental and physical illness²⁴. Only about half of people who exit parole or probation do so after successfully completing their supervision terms; many supervision “failures” result in revocation which in turn can lead to incarceration²⁵. Return to short-term custody as a result of a technical violation creates a “revolving door” between community supervision and incarceration, ultimately leading to loss of employment, difficulty with child care, housing instability, trouble securing healthcare, and several other consequences²⁶.

Virginia Lacks Sufficient Community Supervision Reform

Nationwide, the community corrections population is more than double the incarcerated population, with 2.2 million people in United States jails and prisons and 4.5 million individuals under community supervision²⁷. Virginia mirrors the national trend—in August 2020, the Virginia Department of Corrections probation and parole caseloads were 59,543 and 1,882 respectively, nearly doubling the number of those incarcerated²⁸. Figure 1 below illustrates the size of the corrections population in comparison to the number of individuals incarcerated in a Virginia DOC institution in August 2020²⁹.

²²“§ 19.2-316.4. Eligibility for Participation in Community Corrections Alternative Program; Evaluation; Sentencing; Withdrawal or Removal from Program; Payment of Costs.” Law.Lis.Virginia.Gov, law.lis.virginia.gov/vacode/title19.2/chapter18/section19.2-316.4/. Accessed 2 Dec. 2020.

²³ The Author(s) Shown below Used Federal Funds Provided by the U.S. Department of Justice and Prepared the Following Final Report: Document Title: Prisoner Reentry, Parole Violations, and the Persistence of the Surveillance State. 2014.

²⁴ Duwe, Grant. The Use and Impact of Correctional Programming for Inmates on Pre-and Post-Release Outcomes. 2017.

²⁵ IBID

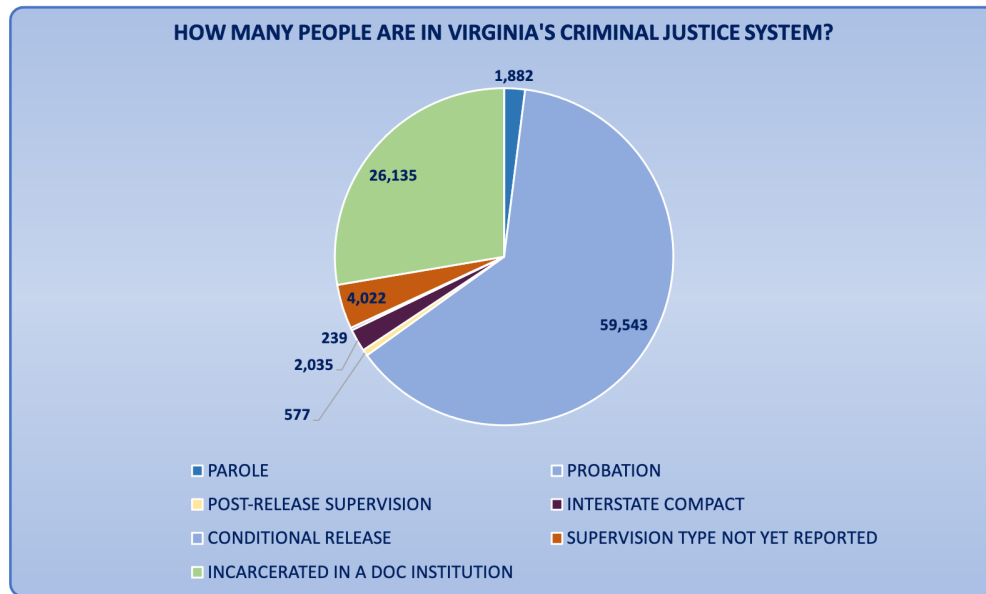
²⁶Prison Policy Initiative. “Correctional Control 2018: Incarceration and Supervision by State.” Prisonpolicy.org, 2018, www.prisonpolicy.org/reports/correctionalcontrol2018.html.

²⁷“Correctional Control 2018: Incarceration and Supervision by State.” Prisonpolicy.org, 2018, www.prisonpolicy.org/reports/correctionalcontrol2018.html.

²⁸Monthly Population Summary, 2020, <https://vadoc.virginia.gov/media/1584/vadoc-monthly-offender-population-report-2020-08.pdf>

²⁹Virginia Department of Corrections. Monthly Population Summary. 2020.

Figure 1



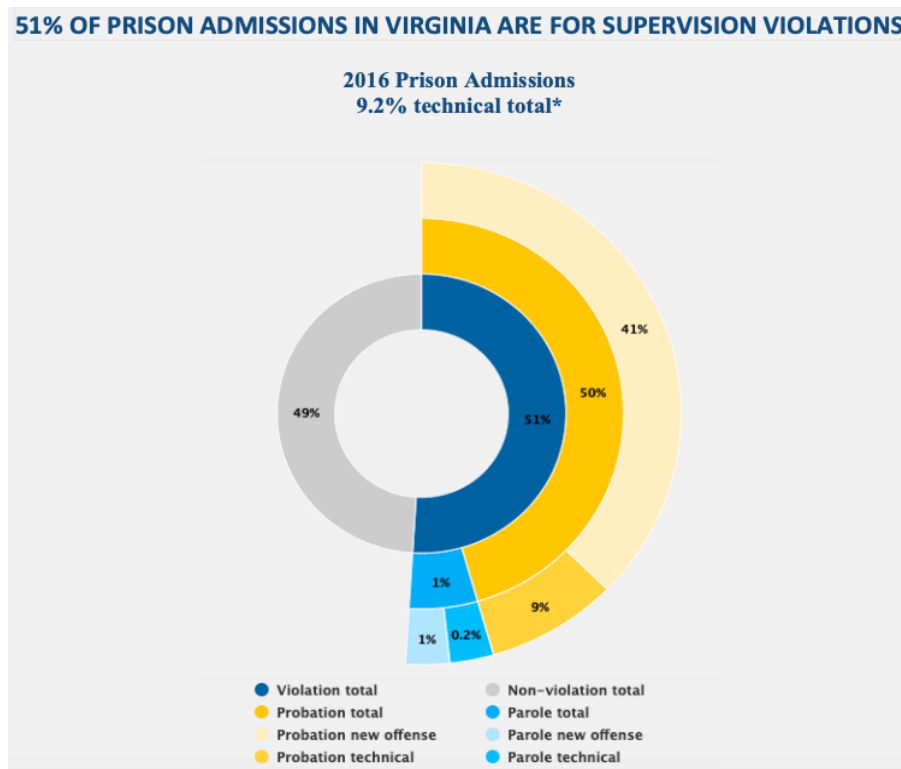
On any given day in the Commonwealth of Virginia, approximately 11,239 individuals are incarcerated due to a supervision violation, with nearly one in five supervision violators being incarcerated for a technical violation of parole or probation, as opposed to an additional criminal conviction³⁰. The Figure 2 below shows that more than 50% of prison admissions are due to supervision violations, and nearly ten percent of all prison admissions in the Commonwealth are due to a technical violation of parole or probation³¹. Notably, parole technical violations are very rare; they only make up 0.2 percent of all prison admissions³².

³⁰ CSG Justice Center. "Confined and Costly." CSG Justice Center, 18 June 2019, csgjusticecenter.org/publications/confined-costly/?state=VA#primary.

³¹ IBID

³² IBID

Figure 2



Parole revocation in Virginia is low compared to other states such as Louisiana or Georgia, where parole technical violations account for 18 and 5 percent of all new prison admissions³³. The primary reason that Virginia’s parole revocation is relatively low is the abolishment of discretionary parole in 1995. “Prior to 1995, extensive good conduct credits combined with parole resulted in many inmates serving as little as one-fifth of their sentence³⁴. Under current truth-in sentencing laws, a felon must serve at least 85 percent of his or her sentence, and prison stays for felons in Virginia are significantly longer than those historically served and are among the longest in the nation³⁵.”

In 1995, the Virginia General Assembly additionally passed the Comprehensive Community Corrections Act, “which established community-based probation as an alternative to

³³“Confined and Costly.” CSG Justice Center, csgjusticecenter.org/publications/confined-costly/?state=LA#primary. Accessed 2 Dec. 2020. and “Confined and Costly”---. CSG Justice Center, csgjusticecenter.org/publications/confined-costly/?state=GA#primary. Accessed 2 Dec. 2020.

³⁴Ncrp.Info, 2010, www.ncrp.info/StateFactSheets.aspx?state=VA.

³⁵ <http://bsalhc.ca.gov/studies/185/sentencing/KernAug06.pdf>.

incarceration for persons convicted of certain misdemeanors or non-violent felonies for which the sentence would be 12 months or less in a local or regional jail”³⁶. “In Virginia, Community Correction agencies are operated by local units of government or private not-for-profit agencies and funded by state general funds through grants administered by the Virginia Department of Criminal Justice Services (DCJS) and local dollars in some instances”³⁷. DCJS provides administrative oversight to local probation and pretrial services. There is also a statewide association, the Virginia Community Criminal Justice Association (VCCJA), which represents and serves local probation and pretrial service agencies throughout the state. The Virginia Department of Corrections’ Division of Community Corrections is responsible for the supervision of offenders, and operates 43 Probation & Parole District Offices, 4 Diversion Centers, 3 Detention Centers, and 6 Contract Residential facilities³⁸.

Virginia lacks certain laws that other states have implemented which would speed up the community corrections process and reduce technical violations of probation and parole. Virginia is an outlier on its probation term laws, as the Commonwealth is one of only five states that do not impose any cap on probation terms for misdemeanors and one of only seven for felonies³⁹. Research reveals there is a point of diminishing returns for long supervision sentences⁴⁰. Additionally, rearrest rates across 30 different states for people released from prison over five years indicates that most recidivism occurs within the first year of release due to issues such as housing insecurity and unemployment⁴¹. Virginia additionally lacks cap periods of incarceration for revocations. States such as Minnesota and Utah have established a cap on the number of days you can return to incarceration for violating community supervision⁴²

Lastly, Virginia has not established earned compliance credit policies that would help people on supervision earn time off of their sentence for complying with supervision conditions. States such as South Carolina and Georgia have reduced their probation populations by using

³⁶ Ncrp.Info, 2010, www.ncrp.info/StateFactSheets.aspx?state=VA. Accessed 30 Nov. 2020.

³⁷ Virginia Community Criminal Justice Association Development of Local Probation Performance Measures. 2013. <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-local-probation-performance-measures.pdf>

³⁸ Ncrp.Info, 2010, www.ncrp.info/StateFactSheets.aspx?state=VA. <http://www.ncrp.info/StateFactSheets.aspx?state=VA>

³⁹ VIRGINIA ‘WORKBOOK:’ Analyses to Inform Public Safety Strategies 50#STATE DATA. 2018.

⁴⁰ Tolliver, Sandy. “Cut Costs and Improve Public Safety with ‘Community Corrections.’” TheHill, 21 May 2020, thehill.com/opinion/criminal-justice/498300-cut-costs-and-improve-public-safety-with-community-corrections. Accessed 11 May 2021.

⁴¹ Alper, Mariel, et al. Special Report 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014). 2018. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

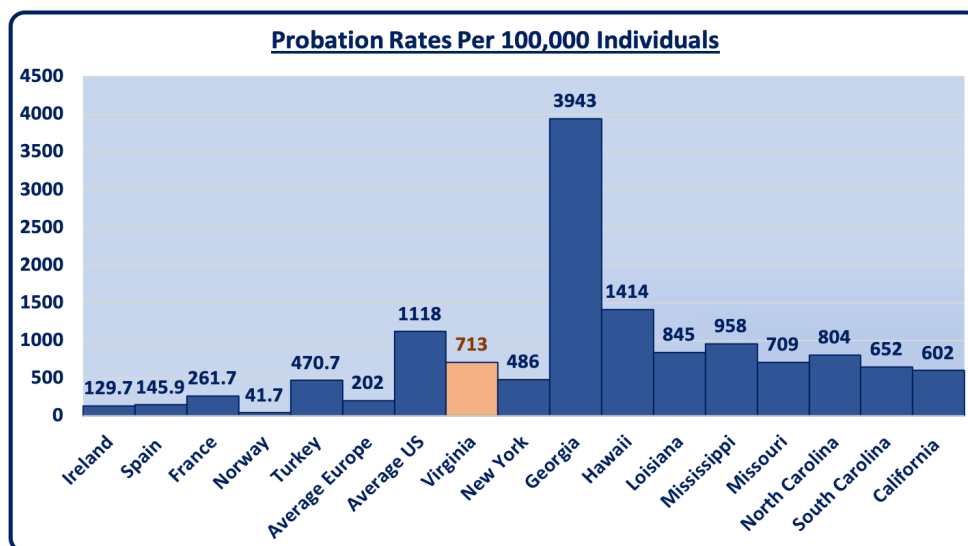
⁴² To Safely Cut Incarceration, States Rethink Responses to Supervision Violations Evidence-Based Policies Lead to Higher Rates of Parole and Probation Success A Brief From. 2019. https://www.pewtrusts.org/-/media/assets/2019/07/pspp_states_target_technical_violations_v1.pdf

“earned discharge,” which allows probationers to earn time off of their sentence for complying with the conditions set, such as paying fines or completing a drug rehabilitation program⁴³.

Virginia’s Probation Rates Are Higher Than Jurisdictions With Comparable Crime Rates

The US leads the world in its high rates of community supervision⁴⁴. Despite many European countries having comparable crime rates to the US, the average probation supervision rate for the US is more than fivefold the average rate for all of Europe⁴⁵. In 2018, Virginia’s total correctional control rate was 1,553 per 100,000 residents⁴⁶, with a parole rate of 19 per 100,000 residents and a probation rate of 713 per 100,000 residents⁴⁷. Despite Virginia’s correctional control rates being lower than some US states, the Commonwealth’s 2018 probation rate was more than three times the average of Europe’s rate of 202 per 100,000 individuals⁴⁸. The figure below illustrates that while exceedingly high probation rates are not specific to Virginia, it is still high in comparison to other states and countries with comparable crime rates⁴⁹.

Figure 3



⁴³ IBID

⁴⁴ www.pacenterofexcellence.pitt.edu/documents/American-Exceptionalism-in-Probation-Supervision_Data-Brief.pdf.

⁴⁵ Bradner, Kendra, et al. “More Work to Do: Analysis of Probation and Parole in the United States, 2017-2018.” Columbia University Justice Lab, Aug. 2020.

⁴⁶ “Correctional Control 2018: Incarceration and Supervision by State.” Prisonpolicy.org, 2018, www.prisonpolicy.org/reports/correctionalcontrol2018.html.

⁴⁷ “American Exceptionalism in Probation Supervision.” Robina Institute of Criminal Law and Criminal Justice, 2016, www.pacenterofexcellence.pitt.edu/documents/American-Exceptionalism-in-Probation-Supervision_Data-Brief.pdf.

⁴⁸ Aebi, Marcelo, et al. Probation and Prisons in Europe, 2018: Key Findings of the SPACE Reports. 2019.

⁴⁹ Bradner, Kendra, et al. “More Work to Do: Analysis of Probation and Parole in the United States, 2017-2018.” Columbia University Justice Lab, Aug. 2020.

COSTS TO SOCIETY

Technical Violations of Community Supervision Costs Millions of Dollars in Virginia Alone

Designed originally as a less punitive alternative to incarceration, community corrections has instead become a leading contributor to mass incarceration in the US⁵⁰. Individuals who do not comply with the conditions of their probation order could face considerable penalties, as judges can extend their probation period, modify the conditions of their probation order, incarcerate them, or revoke their probation as a whole⁵¹. In 2017, failed instances of supervision accounted for nearly one quarter of prison admissions nationally⁵².

In the Commonwealth of Virginia, 11,239 people are incarcerated due to a supervision violation at an annual cost to the state of \$309 million⁵³. 1,498 of these violations (5%) were technical in nature rather than as a result of a new crime committed⁵⁴. In 2018, the average annual operating cost per inmate was \$31,240⁵⁵, meaning that the Virginia Department of Corrections spent approximately \$40 million on incarcerating technical violators of probation or parole⁵⁶.

Opportunity Costs

There are significant opportunity costs for men and women serving time in the US prison system. These include being unable to adequately provide for their families financially, being unable to raise their children if they are parents, and being unable to prosper economically due to unemployment while incarcerated. Pre-incarceration incomes of the imprisoned in 2014 on

⁵⁰ MacKENZIE, D. L. "Corrections and Sentencing in the 21st Century: Evidence-Based Corrections and Sentencing." *The Prison Journal*, vol. 81, no. 3, 2001, pp. 299–312, www.ncjrs.gov/pdffiles1/nij/189106-2.pdf, 10.1177/0032885501081003001.

⁵¹ "Probation." Findlaw, criminal.findlaw.com/criminal-procedure/probation.html. <https://criminal.findlaw.com/criminal-procedure/probation.html>

⁵² "Policy Reforms Can Strengthen Community Supervision." Pew.org, www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision.

⁵³ "Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets." CSG Justice Center, 18 June 2019, csgjusticecenter.org/publications/confined-costly/?state=VA#primary.

⁵⁴ "Confined and Costly. (n.d.). Retrieved September 26, 2020, from CSG Justice Center website: <https://csgjusticecenter.org/publications/confined-costly/?state=VA#primary>

⁵⁵ Compiled by the Budget Office Management Information Summary Annual Report For the Fiscal Year Ending. 2018.

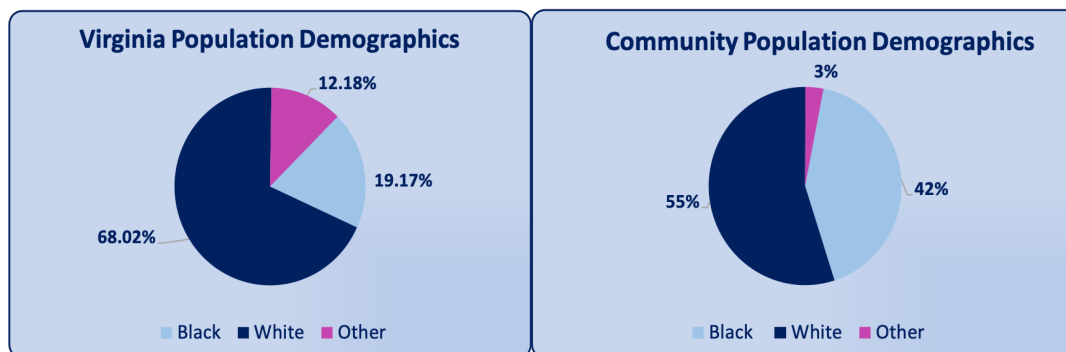
⁵⁶ "Confined and Costly. (n.d.-b). Retrieved from CSG Justice Center website: <https://csgjusticecenter.org/publications/confined-costly/?state=VA#primary>

average was about \$19,185 annually according to a study done by Prison Policy Initiative⁵⁷. This salary in 2014 is equivalent in purchasing power to about \$21,063.66 in 2020⁵⁸. If we multiply that by how many people are incarcerated for technical violations, it totals \$39,831,381 of lost income annually.

Unequal Costs Between Demographics

Black Virginians are disproportionately represented in community corrections in the Commonwealth of Virginia⁵⁹. The figures below illustrate such disparity, showing that while Blacks account for nearly half of those on probation or parole, they make up less than 20 percent of the total state population⁶⁰. Conversely, white people are underrepresented in prisons relative to the total state population⁶¹. Records show that more whites than blacks who are charged with probation violations get off without a charge when they appear before a judge; 13.7 percent of probation violation charges for blacks are dismissed in comparison to 19.2 percent of charges for whites⁶². Additionally, 24.8 percent of blacks who violate probation serve the full amount of time, compared to just 19.5 percent for whites⁶³.

Figure 4



⁵⁷ Prison Policy Initiative. (2015). Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned. Retrieved from Prisonpolicy.org website: <https://www.prisonpolicy.org/reports/income.html>

⁵⁸ \$19,185 in 2014 → 2020 | Inflation Calculator. (n.d.). Retrieved September 26, 2020, from [www.in2013dollars.com](https://www.in2013dollars.com/us/inflation/2014?amount=19185) website: <https://www.in2013dollars.com/us/inflation/2014?amount=19185>

⁵⁹ “Probation and Parole Systems Marked by High Stakes, Missed Opportunities.” Pewtrusts.org, 25 Sept. 2018, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities.

⁶⁰ State Responsible Offender Demographic Profile FY2019. 2020.

⁶¹ Racial Disparity in the Criminal Justice System A Manual for Practitioners and Policymakers. <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>

⁶² Admin, VA ORG. “Racial Disparities Exists in Probation Violation Penalties, Reports Show.” Virginia Organizing, virginia-organizing.org/racial-disparities-exists-in-probation-violation-penalties-reports-show/. Accessed 30 Nov. 2020.

⁶³ IBID

BEST PRACTICES

Best Practices in Community Supervision Reform

To counter the growing community supervision population, policymakers in states such as South Carolina, Missouri, and Louisiana have adopted reforms that prioritize resources for high-risk individuals⁶⁴ while reducing low risk people from supervision⁶⁵. Reforms have included “capping the length of supervision terms, incentivizing compliance and rewarding behavior change, eliminating or capping incarceration for technical violations that do not involve a new crime, and eliminating barriers to successfully meeting with a probation or parole officer. Some states also reduced revocations for technical violations and provided a range of options for addressing noncompliance”⁶⁶.

Missouri: Earned Compliance Credit

In 1990, Missouri’s prison population was 14,074; by 2011, it had risen to more than 30,000. Over the same time frame, corrections costs nearly tripled, exceeding \$660 million⁶⁷. In 2012, Missouri passed Bill HB 1525 which provided earned-time credit for low level offenders who comply with their parole or probation, and imposed a cap on the amount of time that low level offenders served for technical violations of parole or probation⁶⁸. Similar to how good time credits for inmates can help shorten their periods of incarceration, earned discharge policies enable those under community supervision to shorten their supervision by meeting the conditions of their parole or probation term⁶⁹. In an attempt to reduce the community supervision population, Missouri adopted an earned compliance credit policy, allowing probationers and parolees to reduce their supervision term by 30 days for every month they successfully remain in compliance. Additionally, lawmakers capped jail time for technical violation offenses. For first time violators, the length of incarceration under this sanction was capped at two days.

⁶⁴ “Risk” here refers to the probability of reoffending. A low-risk offender is one with a relatively low probability of reoffending (few risk factors), while a high-risk offender has a high probability (many risk factors).

⁶⁵ “Probation and Parole Systems Marked by High Stakes, Missed Opportunities.” Pewtrusts.Org, 25 Sept. 2018, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities.

⁶⁶ IBID

⁶⁷ Bieler, Samuel, et al. Nancy LaVigne (Principal Investigator), Justice Reinvestment Initiative State Assessment Report.

⁶⁸ Approaches to Reducing Recidivism: Model State Survey. 2013.

⁶⁹ “The Potential of Community Corrections to Improve Communities and Reduce Incarceration.” Federal Sentencing Reporter, vol. 26, no. 2, Dec. 2013, pp. 128–144, www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/potential-of-community-corrections.pdf, 10.1525/fsr.2013.26.2.128.

Subsequent violations may be longer, but Missouri law limits the total amount of incarceration for violations to 360 hours per year⁷⁰.

By allowing early termination, Missouri's earned compliance credit program reduced the number of people under community supervision without increasing recidivism⁷¹. In the first three years of the program, approximately 36,000 people reduced their total term by an average of 14 months, cutting the supervised population by nearly 20 percent⁷². People released through the earned compliance credit policy had no statistically significant increase in two-year reconviction rates compared with those released before the policy⁷³.

Louisiana: Revocation Limits

Similar to Missouri, Louisiana implemented revocation limits for technical violations of probation and parole⁷⁴. Such limits ensure that people who are sent to prison due to violating supervision rules serve a limited number of days rather than a long sentence before being released back to community supervision. In 2007, Louisiana capped first-time technical violations at 90 days⁷⁵. An evaluation of the act's impact after five years showed that the average length of incarceration for first-time technical revocations declined from 355 days to 74⁷⁶. The new policy also increased public safety as new-crime revocations fell by 22 percent. Additionally, an analysis of the policy change showed that approximately 2,000 people avoided prison time for technical violations each year, yielding a savings of \$17.6 million in corrections costs each year⁷⁷. As a result of these findings, Louisiana changed its revocation limits to 15 days for the first violation, 30 days for the second, 45 days for a third, and up to the rest of the sentence after a third violation for those on probation⁷⁸. By doing so, the Louisiana Department

⁷⁰ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

⁷¹ Curry, Caitlin, and Michelle Phelps. *Supervision in the Community: Probation and Parole*. Apr. 2017, oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-239#acrefore-9780190264079-e-239-bibItem-0193.

⁷² "Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety." Pew Research, Aug. 2016, www.pewtrusts.org/-/media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf.

⁷³ IBID

⁷⁴ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

⁷⁵ IBID

⁷⁶ "Reducing Incarceration for Technical Violations in Louisiana"---. Bit.Ly, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/11/reducing-incarceration-for-technical-violations-in-louisiana?_ga=2.53903339.2110628586.1603038506-75600535.1603038506. Accessed 21 Oct. 2020.

⁷⁷ "Policy Reforms Can Strengthen Community Supervision"---. Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision.

⁷⁸ IBID

of Corrections saw a drop of more than 6,000 individuals in the correctional system between 2017 and 2018 alone⁷⁹.

South Carolina: Omnibus Crime Reduction and Sentencing Reform Act

In 2010, South Carolina passed the Sentencing Reform Act (SB 1154) in order to reduce the number of people incarcerated for technical violations of parole or probation. The law allowed Department of Probation, Parole, and Pardon Services officers to use administrative sanctions such as verbal or written reprimands instead of incarceration for technical violations⁸⁰. A rigorous Pew Research evaluation of this policy found several positive outcomes, including a 42 percent increase in the use of administrative sanctions, a 46 percent decline in the number of revocations, and a decrease in the proportion of people incarcerated during the first year of supervision, from 10 percent for the fiscal year 2010 cohort to less than 5 percent among the fiscal 2014 cohort⁸¹. After controlling for demographic and case-specific factors, people who began their supervision after the introduction of SB 1154 were about 33 percent less likely to be incarcerated after one year⁸².

A 2017 Urban Institute evaluation using logistic regression models of South Carolina's 2010 reform additionally found that those who began supervision after implementation were 33 percent less likely to return to jail after one year than those who began in 2010⁸³. Additionally, the number of technical violations resulting in incarceration in 2018 was less than half of the 2010 number. By ending supervision for 1,633 more individuals, South Carolina saved over \$39 million⁸⁴. As a result of Act 402, the average length of incarceration after an offender's first technical revocation in Louisiana declined by 9.2 months. Before enactment of the law, offenders who were sent to jail or prison after their first technical revocation spent an average of 355 days in custody, compared with just 74 days on average for those sentenced after the law took effect.

⁷⁹ Times-Picayune, Julia O'Donoghue, NOLA.com | The. "Louisiana's Parole and Probation Population Sees a Surprising Drop." NOLA.com, www.nola.com/news/politics/article_2abec900-caa9-5199-b2c5-1776151d8174.html. Accessed 30 Nov. 2020.

⁸⁰ "2009-2010 Bill 1154: Omnibus Crime Reduction and Sentencing Reform Act - South Carolina Legislature Online." Wwww.Sestatehouse.Gov, www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm. Accessed 21 Oct. 2020.

⁸¹ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

⁸² IBID

⁸³ Pelletier, Elizabeth, et al. "Assessing the Impact of South Carolina's Parole and Probation Reforms." Urban Institute, 21 Apr. 2017, www.urban.org/research/publication/assessing-impact-south-carolinas-parole-and-probation-reforms. Accessed 30 Nov. 2020.

⁸⁴ IBID

Additionally, FBI crime data show that both the violent and property crime rates in the state dropped by almost 20 percent over the same time frame⁸⁵.

Hawaii: Hawaii Opportunity Probation with Enforcement (HOPE)

In 2004, policymakers introduced the Hawaii Opportunity Probation with Enforcement supervision model (HOPE), which used non-severe and graduated sanctions to prevent probationers from violating supervision conditions⁸⁶. HOPE utilizes close monitoring, random drug testing, and swift, certain, and fair sanctioning. Initial yet non-rigorous findings of the effectiveness of the Hawaiian HOPE program suggested large reductions in drug use, arrests, and revocations⁸⁷. According to their data, probationers were 55% less likely to recidivate, 72% less likely engage in drug use, 61% less likely to skip appointments with probation officers, and 53% less likely to have their probation revoked⁸⁸.

However, a subsequent study conducted by Hawken and colleagues (2016) found smaller effects in a 76-month follow up of the original Hawaii HOPE experimental subjects⁸⁹. Additionally, a randomized controlled trial testing the effects of HOPE/SCF in Delaware did not show any positive effects of HOPE over typical probation practices, ultimately suggesting that the initial strong findings for HOPE may not be generalizable⁹⁰.

Georgia: Probation Reporting Contact Center

There is broad consensus among researchers that corrections resources should focus on those at a medium to high risk of reoffending as this population is more likely to benefit from supervision⁹¹. Interventions that address specific criminogenic needs and that target individuals

⁸⁵ “To Safely Cut Incarceration, States Rethink Responses to Supervision Violations.” Pew Charitable Trusts, 16 July 2019, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations.

⁸⁶ Hawken, Scott R., and Chandy Ellimoottil. “Author Reply.” *Urology*, vol. 90, Apr. 2016, p. 81, www.ncjrs.gov/pdffiles1/nij/grants/249912.pdf, 10.1016/j.urology.2015.12.056.

⁸⁷ IBID

⁸⁸ “HOPE: A Swift and Certain Process for Probationers.” National Institute of Justice, nij.ojp.gov/topics/articles/hope-swift-and-certain-process-probationers.

⁸⁹ Lattimore, Pamela K., et al. “Outcome Findings from the HOPE Demonstration Field Experiment.” *Criminology & Public Policy*, vol. 15, no. 4, Nov. 2016, pp. 1103–1141, onlinelibrary.wiley.com/doi/10.1111/1745-9133.12248, 10.1111/1745-9133.12248. Accessed 10 Sept. 2019.

⁹⁰ Cowell, Alexander J., et al. “Economic Evaluation of the HOPE Demonstration Field Experiment.” *Criminology & Public Policy*, vol. 17, no. 4, Nov. 2018, pp. 875–899, 10.1111/1745-9133.12407. Accessed 7 Oct. 2020.

⁹¹ (Andrews 2006; Aos, Miller, and Drake 2006; Austin 2006; Burke 2004; Burke and Tonry 2006; Cullen and Gendreau 2000; Jacobson 2005; MacKenzie 2006; National Research Council 2007; Taxman 2002, 2006, 2007)

with higher levels of risk result in better outcomes⁹². As such, low-risk parolees require less supervision. Research has shown that treatment resources and supervision focused on low-risk parolees tend to produce a minimal effect compared to high-risk individuals⁹³. Other research demonstrates that enrolling low-risk offenders in heavy programming can actually decrease benefits for this group⁹⁴

The available evidence surrounding low-risk offenders and sound correctional practice is exemplified in the Georgia Department of Corrections' Probation Reporting Contact Center⁹⁵. Through this method, low-risk probationers must call into an automated system at a probation reporting contact center (PRCC) rather than directly reporting in person to a probation officer⁹⁶. Reporting by phone rather than in person provides an extra convenience for probationers to comply with the rules of their probation in a technology reliant society. Allowing people on supervision to use technology to remotely check in reduces the amount of time and resources needed to keep probation and parole officers updated, decreases interruptions to individuals' work schedules, and reduces any need for child care and/or reliable transportation⁹⁷. Additionally, the system has allowed Georgia to allocate more resources towards high-risk probationers, ultimately reducing costs associated with in person probation officer meetings. Analysis of the implementation showed that a low-risk individual on probation costs the state \$1.68 per day, whereas the use of mobile supervision reduced that cost to just 45 cents per day.

⁹² Wooditch, Alese, et al. "Which Criminogenic Need Changes Are Most Important in Promoting Desistance From Crime and Substance Use?" *Criminal Justice and Behavior*, vol. 41, no. 3, 23 Oct. 2013, pp. 276–299, www.ncbi.nlm.nih.gov/pmc/articles/PMC4045616/, 10.1177/0093854813503543.

⁹³ (Lowenkamp and Latessa 2004; Petersilia and Turner 1993)

⁹⁴ (Andrews 2006; Aos, Miller, and Drake 2006; Austin 2006; Burke 2004; Burke and Tonry 2006; Cullen and Gendreau 2000; Jacobson 2005; MacKenzie 2006; National Research Council 2007; Taxman 2002, 2006, 2007)

⁹⁵ "Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets." CSG Justice Center, 18 June 2019, csjusticecenter.org/publications/confined-costly/?state=VA#primary.

⁹⁶ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

⁹⁷ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

FINDINGS AND RECOMMENDATIONS

The following section presents four policy options to address the high proportion of technical violations of community supervision faced by those on parole and probation in the Commonwealth of Virginia. I additionally propose four criteria to assess each of the policy options. The following criteria will be used to evaluate policy alternatives that aim to reduce the number of people incarcerated for technical violations of parole or probation, thereby aligning with Justice Forward Virginia’s mission of “promoting criminal justice reform in Virginia through smart, contemporary, evidence-informed policy advocacy”.

EVALUATIVE CRITERIA

Criteria 1: Cost Savings

Cost savings are a key criterion for assessing policy outcomes due to limited state and local budgets necessary for their implementation. Justice Forward Virginia will need to consider the cost savings of each proposed alternative as this will affect the outcome of the policy’s implementation. The cost savings criterion examines the monetary savings associated with implementing the policy. It will account for saved costs as a result of any reduction in recidivism or administrative costs, as well as the cost savings of shorter community supervision terms. This criterion will be measured in dollars saved, with strong policy options having the highest cost savings, and weaker policy options having the lowest costs savings. In the context of this evaluation, cost refers to the monetary savings from implementing the policy option.

Criteria 2: Political Feasibility

This criterion addresses the reality that the Department of Corrections is an Executive Branch agency operating under the Secretary of Public Safety and Homeland Security and is thus bound to the political vision and priorities of the Virginia General Assembly. The primary goal of the Virginia Department of Corrections is to safely provide effective incarceration, supervision, and evidence-based reentry services to returning citizens, parolees, and

probationers⁹⁸. Therefore, this analysis will examine how closely projected outcomes align with this key priority and Virginia political objectives. The political viability criterion will assess the likelihood that the state will implement a given policy proposal offered by Justice Forward Virginia, and will be determined by considering factors including stated views of government officials and the success of similar proposals in other localities. Each alternative will be measured on a Likert scale with the following options: (1) low (2) medium (3) high.

Criteria 3: Recidivism

Recidivism refers to the likelihood that a participant relapses into criminal behavior resulting in a serious offense where an arrest or new criminal charge occurs. As Justice Forward Virginia's ultimate goal is to successfully promote criminal justice reform in Virginia through smart, contemporary, evidence-informed policy, recidivism will be an important outcome for consideration in evaluating the merits and limitations of the policy option. Each option will be evaluated through research conducted on prior implementation in other states and likelihood that they would pass as legislation under the current Virginia General Assembly. They will be measured on a Likert scale with the following options: (1) low (2) medium (3) high. Low denotes a reduction in recidivism, medium denotes no change in recidivism, and high denotes increased recidivism.

ALTERNATIVES

Option 1: Let Present Trends Continue

Under this alternative, Justice Forward Virginia would let present trends continue without advocating for further community supervision reform. Between 2000 and 2018, probation lengths increased more than 56 percent, and the probation population increased nearly 90 percent⁹⁹. By letting present trends continue, the Virginia Department of Corrections would continue operating in this environment without implementing new laws that would speed up the

⁹⁸Richmond, Contact Virginia Department of Corrections P. O. Box 26963, and Va 23261674-3000. "VADOC — about Us." vadoc.virginia.gov, vadoc.virginia.gov/about/. Accessed 9 Mar. 2021.

⁹⁹"States Can Shorten Probation and Protect Public Safety." Pew.org, www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety.

community corrections process or reduce technical violations of probation and parole. If allowed to continue, present trends show no propensity to change without new policy implementation.

Policy Option 1 Evaluation

Cost Savings: Cost savings for this alternative are projected to be **low**. Currently, the Department of Corrections spends \$46 million of its budget incarcerating technical violators of supervision. While present trends would not require implementation of a new program that would require extra funding, it also does not lead to any reductions in corrections costs.

Political Feasibility: Political feasibility is **high** as there are no barriers to maintaining current operations. No legislation needs to be passed and no extra funding needs to be acquired to uphold current practices.

Recidivism: Recidivism would remain **high** at its current level of 23.1% as there would be no reduction in the number of people incarcerated for technical violations of parole or probation.

Pros: The status quo is politically feasible.

Cons: This policy option does not address the high number of individuals incarcerated for technical violations of community supervision.

Option 2: Revocation Limits

This policy option proposes that Justice Forward Virginia advocates for the implementation of revocation limits in the Commonwealth of Virginia. This alternative would limit the length of incarceration a court can impose on a defendant as a result of a revocation hearing for a probation violation. Justice Forward Virginia should propose or support legislation that provides specific limitations on the sentence a court may impose for a first, second or third subsequent technical violation of community supervision. Specifically, the proposed legislation should not impose a term of incarceration upon a first technical violation of community supervision. If multiple technical violations arise from a single incident or are evaluated at the same revocation hearing, they should not be considered separate offenses. Caps on revocation

length will only apply to nonviolent and non-sex offender probationers and parolees who are revoked for violating the terms of their community supervision. It does not apply to violent offenders, offenders in possession of a firearm, or offenders who absconded from probation or parole supervision.

Revocation caps have been shown to be successful in states such as Louisiana, Utah and Minnesota. In Louisiana, jail stays due to probation or parole revocation is 15 days for the first violation, 30 days for the second, 45 days for a third, and up to the remainder of the sentence after the third violation for those on probation¹⁰⁰. By implementing such caps, the Louisiana Department of Corrections saw a drop of more than 6,000 individuals in the correctional system between 2017 and 2018 alone. While other states including Minnesota and Utah have also established revocation caps, Virginia still lacks such legislation.

Policy Option 2 Evaluation:

Cost Savings: On an annual basis, this policy option is projected to reduce public spending on corrections up to **\$31 million** in the Commonwealth of Virginia. See Appendix A for cost savings calculations.

Political Feasibility: Revocation caps are projected to have a **high** political feasibility. Several states including Missouri and Louisiana have not eliminated incarceration for technical violations but instead have implemented revocation caps for probation and parole terms. The political feasibility of revocation caps is projected to be high due prior implementation and success in other states. In Louisiana, House Bill 423 was passed with 90 “Yeas” and just 15 “Nays”¹⁰¹. In the Senate, it was passed unanimously¹⁰². Such precedent in more than one state makes it likely that implementation in Virginia would be successful, encouraging House of Delegate members to vote in favor of a proposed bill.

Recidivism: Revocation caps are projected to reduce recidivism and thus receive a **low** score. As part of Act 402, Louisiana adopted a revocation cap of 90 days for a first-time technical

¹⁰⁰ IBID

¹⁰¹ Yeas, Mr, et al. HJVHB423 0521 268 HB’S on 3RD READING to BE CALLED HB 423 by SMITH, JANE FINAL PASSAGE. <http://www.legis.la.gov/legis/ViewDocument.aspx?d=433865>

¹⁰² HB 3rd Read & Final Passage HB 423 by J H SMITH PROBATION. www.legis.la.gov/legis/ViewDocument.aspx?d=439176. <http://www.legis.la.gov/legis/ViewDocument.aspx?d=439176>

violation. According to an evaluation of the first five years of the act's impact, the policy maintained public safety by decreasing the share of individuals who returned to custody for new crimes by 22 percent. Overall, the policy change in Louisiana reduced technical violations of community supervision by 2,000 people in a given year. Such prior success in Louisiana could likely be replicated in a state like Virginia with a similar corrections and community supervision population.

Pros: Revocation caps would decrease the share of individuals who return to custody for new crimes and technical violations, thus improving recidivism rates.

Cons: This policy option would not save as much in corrections costs as other policy initiatives.

Option 3: Advocate for Earned Time Credits

With this policy option, Justice Forward Virginia would advocate for the introduction of earned time credits (also known as earned compliance credits) for people on parole or probation in the Commonwealth of Virginia. Earned time credits are a process by which an individual on community supervision secures time off their sentence through general compliance or completion of programming. Justice Forward Virginia should advocate for “30 for 30” policies, a type of earned time credit where each individual on probation or parole gets 30 days of credit for 30 days of compliance with probation conditions.

This policy option is based off of Missouri House Bill 1525, which allowed probationers and parolees to earn 30 days off their supervision time for every full calendar month they successfully remained in compliance. By gradually scaling back supervision and allowing individuals to finish their sentence early, Missouri's earned compliance credit program reduced the number of people under community supervision without increasing recidivism¹⁰³. In the first three years of the program, more than 30,000 people reduced their total term by an average of

¹⁰³ Curry, Caitlin, and Michelle Phelps. Supervision in the Community: Probation and Parole. Apr. 2017, oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-239-bibItem-0193.

more than one year¹⁰⁴. Implementing a similar program in Virginia could have similar positive outcomes.

Policy Option 3 Evaluation:

Cos Savings: Over the course of three years, this policy option is projected to reduce public spending on corrections up to **\$61 million** in the Commonwealth of Virginia. See Appendix B for cost savings calculations.

Political Feasibility: Political feasibility is projected to be **high** for this policy option. Following the 2019 election, the Democratic Party has held a majority of seats in the Virginia House of Delegates. Since 2020, the House of Delegates has implemented several criminal justice reform laws. One of such reforms was HB 5148, which established earned sentence credits for incarcerated individuals.¹⁰⁵ The legislation will let inmates reduce their sentences as long as they do not commit a violent offense, follow prison rules, and participate in education and rehabilitation programs. Establishing a similar law for those under community supervision would thus be likely to pass. Additionally, earned time credits for those under community supervision has been successfully implemented in at least 19 other states¹⁰⁶, demonstrating the likelihood that the policy would likely be successful in the Commonwealth of Virginia.

Recidivism: Recidivism is projected to be **medium**, as this would not significantly reduce or increase recidivism. Research on Missouri's earned compliance program (HB 1525) shows no change in recidivism rates. Pew research compared recidivism rates for those who earned compliance credits under the law with rates from those under supervision before the reform and found no increase in recidivism after the policy was implemented.

Pros: Earned time credits have been successful in more than 19 other states and would likely have a high political feasibility.

¹⁰⁴ "Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety." Pew Research, Aug. 2016, www.pewtrusts.org/~media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf.

¹⁰⁵ "LIS > Bill Tracking > HB5148 > 2020 Session." lis.virginia.gov, lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5148. Accessed 9 Mar. 2021.

¹⁰⁶ Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, Oregon, South Carolina, South Dakota, and Texas

Cons: Earned time credits would likely not reduce recidivism.

Option 4: Administrative Responses to Technical Violations

The final policy option is for Justice Forward Virginia to advocate for administrative sanctions as an alternative to incarceration for technical violations. Administrative responses to technical violations enable supervision officers to implement alternatives to revocation without a court or parole board hearing. This policy option would determine the seriousness of the violation as well as the person's risk level to deliver the appropriate sanction. Sanctions could include an early curfew, mandatory community service, greater supervision, or a mandatory class or program that would address any underlying causes of the violation. For drug related violations, officers would use non-punitive responses if the individual tests positive for drug use. Ultimately, this policy option would give the Department of Corrections the ability to use administrative responses to violations instead of prison. However, any sanction imposed by a parole or probation officer may not be more severe than those given by the courts and cannot include revocation.

This option is based off of South Carolina's Sentencing Reform Act (SB 1154). The law enabled Department of Probation, Parole, and Pardon Services officers to use administrative sanctions such as verbal or written reprimands as an alternative to incarceration for technical violations¹⁰⁷. A Pew Research evaluation of this policy found several positive outcomes, including a 42 percent increase in the use of administrative sanctions, a 46 percent decline in the number of revocations, and a decrease in the proportion of people incarcerated during the first year of supervision, from 10 percent for the fiscal year 2010 cohort to less than 5 percent among the fiscal 2014 cohort¹⁰⁸. Even after controlling for demographic and case-specific characteristics, people who began their supervision after implementation of SB 1154 were 33 percent less likely than previous cohorts to be incarcerated after one year¹⁰⁹.

¹⁰⁷ "2009-2010 Bill 1154: Omnibus Crime Reduction and Sentencing Reform Act - South Carolina Legislature Online." www.sstatehouse.gov, www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm. Accessed 21 Oct. 2020.

¹⁰⁸ "Policy Reforms Can Strengthen Community Supervision." Pew.Org, www.livingfacts.org/en/pewtrusts_org/home/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision. Accessed 21 Oct. 2020.

¹⁰⁹ IBID

Policy Option 4 Evaluation:

Cost Savings: Cost savings are projected to be **high**, with estimated correctional savings from implementing Policy Option 4 amounting to at least \$221 million over five years. See Appendix C for cost savings calculations.

Political Feasibility: Administrative sanctions as an alternative to incarceration for technical violations are projected to have **medium** political feasibility. Across the country, “more than 20 states have adopted an administrative response grid for technical violations”¹¹⁰, making it likely that they could be successfully adopted in Virginia. However, current Virginia policies place restrictive sanctions on those who violate their conditions of parole and probation, and lack cap periods of incarceration for revocations. The likelihood of Virginia lawmakers abandoning jail time for technical violations rather than reducing or limiting jail stays is low, as this policy option would be more far reaching.

Recidivism: Recidivism is projected to be **low** for Policy Option #4. In South Carolina, administrative sanctions as an alternative to incarceration for technical violations helped reduce recidivism among those under supervision. Nearly 10 percent of people who started supervision in the 2010 group were incarcerated or reincarcerated after a year. This proportion fell two percentage points to 8 percent for the 2011 group and less than 5 percent for the 2014 group¹¹¹. After controlling for demographic and case-specific factors, people who began their supervision after implementation of South Carolina’s SB 1154 were less likely than people in the control group to be reincarcerated. If implemented in the Commonwealth of Virginia, administrative sanctions are likely to reduce recidivism.

Pros: This policy option would save the most money in corrections costs.

Cons: This policy option has a lower feasibility as it is more politically far reaching.

¹¹⁰ Alabama, Alaska, Arkansas, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Montana, Nebraska, Nevada

¹¹¹ “Policy Reforms Can Strengthen Community Supervision.” Pew.org, www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision.

OUTCOMES MATRIX

Policy Option	Cost (Savings)	Political Feasibility	Recidivism
Policy Option 1	\$0	High	High
Policy Option 2	\$31 million	High	Low
Policy Option 3	\$61 million	High	Medium
Policy Option 4	\$221 million	Medium	Low

RECOMMENDATION

I recommend that Justice Forward Virginia pursue Policy Option 3: Advocate for Earned Time Credits for those under community supervision. This option performs well on the cost savings and political feasibility criteria. Furthermore, it is not projected to increase recidivism rates despite those under community supervision finishing their supervision sentence early. This policy option will not only decrease the overall length of community supervision sentences, but will also reduce technical violations by incentivizing individuals on probation and parole to adhere to guidelines set by their probation officer. Additionally, this policy has been successful in more than 19 other states and would likely have a high political feasibility in the Commonwealth of Virginia.

IMPLEMENTATION

A thoughtful implementation strategy will play a vital role in the recommended alternative's success. Below are key recommendations for implementation of Option 3: Advocating for Earned Time Credits.

1. Disseminate Findings on Earned Time Credit Impact

Pew Research's comprehensive analysis found that Missouri's implementation of earned time credit for community supervision shortens probation and parole terms while also protecting public safety¹¹². Before moving forward, Justice Forward Virginia should gather more quantitative data on the impact of earned time credits for community supervision in other states. Justice Forward Virginia will need to gather this information through submitting FOIA requests to each state's Department of Corrections. States that have successfully implemented earned time credits for community supervision include Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, Oregon, South Carolina, South Dakota, and Texas. These findings should be compiled into an op-ed or a blog post on the Justice Forward Virginia website and partners' websites in order to inform the public about the benefits of this policy option.

2. Advocate for Legislation

Justice Forward Virginia is known for drafting and advocating for criminal justice reform legislation in the Commonwealth of Virginia, and has worked with legislators in the past to draft legislation on topics such as eliminating mandatory minimum sentences, reforming discovery rules, and ending cash bail¹¹³. Justice Forward Virginia should replicate these strategies when advocating for community supervision reform by working with legislators to draft legislation that would legally implement earned time credits for probation and parole. Working with a member of the House of Delegates to introduce legislation implementing earned time credits will be necessary for it to pass both houses and become a law when the Virginia General Assembly opens its legislative session on Wednesday, January 12, 2022.

¹¹²“Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety.” Pew.org, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/missouri-policy-shortens-probation-and-parole-terms-protects-public-safety. Accessed 17 Mar. 2021.

¹¹³ “Who We Are.” Justice Forward Virginia, justiceforwardva.com/who-we-are. Accessed 17 Mar. 2021.

3. Target Stakeholders to Help Support the Proposal

Community Supporters:

Justice Forward Virginia currently has a widespread grassroots base with varying levels of engagement. The organization should continue producing and disseminating advocacy resources that increase levels of engagement among all supporters. These resources include but are not limited to: blog posts, webinars, videos, and social media posts. These materials will be useful for educating a base of supporters about the need for earned time credits for those under community supervision. Justice Forward Virginia should further encourage community members to use these materials to communicate support of this policy to their representatives. Lastly, Justice Forward Virginia should continue support of prioritized legislation by sending action alerts to members letting them know about key votes and when calls to legislators might have an impact.

Public Officials:

It is vital that Justice Forward Virginia continues working with legislators to draft legislation advocating for criminal justice reform. It is recommended that Justice Forward Virginia seek out members of the Senate Judiciary Committee or members of the House Courts of Justice Committee to draft legislation and identify ways in which they can support community supervision reform, specifically a bill implementing earned time credits for those on probation and parole. Virginia State Senator John Edwards (D) from district 21 is just one example of someone on the Senate Judiciary Committee who would support this bill, as he was a senate patron of HB 5148, which established earned time credits for those currently incarcerated.

Partners

Justice Forward Virginia should disseminate its findings on community supervision reform to all organizational partners. Before dissemination, however, the organization can work to strengthen its relationship with partners. It is recommended that Justice Forward Virginia contact several key criminal justice related organizations it would like to partner with in order to identify ways that it can support their efforts. Once developed, the advocacy team should share its strategy with partners and inform them on how they can best support community supervision reform efforts. A list of potential partners is provided in Appendix D.

CONCLUSION

The increasing reliance upon community supervision violations and sanctions as a means of punishment and surveillance has intensified the crisis of mass incarceration by creating a revolving door for prisoners. On any given day in the Commonwealth of Virginia, 11,239 individuals are incarcerated due to a violation of their supervision terms, costing the state approximately \$309 million. Technical supervision violations account for \$37 million of this total amount, with nearly one in five supervision violators being incarcerated for a technical violation of parole or probation, as opposed to an additional criminal conviction. The increased use of community supervision and extraordinarily high incarceration rates for nonviolent technical offenses destabilize families and communities, and represents an economic threat to the Commonwealth of Virginia.

In order to solve this policy issue, it is recommended that Justice Forward Virginia advocates for Earned Time Credits for those under community supervision. This policy option would allow an individual on probation or parole to receive 30 days of credit for 30 days of compliance with probation conditions. This policy option performs well on the cost savings and political feasibility criteria. Furthermore, it is not projected to increase recidivism rates despite those under community supervision finishing their supervision sentence early. This policy option will not only decrease the overall length of community supervision sentences, but will also reduce technical violations by incentivizing individuals on probation and parole to adhere to guidelines set by their probation officer. Additionally, this policy has been successful in more than 19 other states and would likely have a high political feasibility in the Commonwealth of Virginia.

Appendix A: Policy Option 2 Cost Savings Evaluation

Virginia and Louisiana have similar corrections populations, with Virginia having 64,152 and Louisiana having 71,078 probationers and parolees in 2019¹¹⁴. Revocation in Louisiana decreased from 7.9 percent to 6.2 percent, a 22 percent difference¹¹⁵. In Virginia, revocation rates for technical violations are 9.2 percent. A 22 percent decline would put Virginia's revocation rate at 7.2 percent. The total corrections population in Virginia is 61,000 people, with 23,000 in local jails and 38,000 in state facilities¹¹⁶. Thus, a 7.2% revocation rate would translate to approximately 4,392 revocations, down from a 9.2% revocation rate (5,612 persons). Revocation caps in Virginia would thus reduce the corrections jurisdictional population by 1,220 beds (5,612-4,392 persons).

Assuming that revocation for Virginia local jails is similar to that of state operated prisons, a large share of these beds (38 percent) are in jails rather than state facilities. The FY 2018 average operating cost per jail inmate per day was \$87.20¹¹⁷; whereas it is \$80.27 in a state prison¹¹⁸. Supervising an offender in the community through probation and parole costs an average of \$12.03 per day¹¹⁹. With approximately 1,220 people sent back to jail or prison for a supervision violation, about 38% of these are returning to local jails (464 persons), and 62% are returning to prison (756 persons). I multiplied each of these by their respective costs per day (464 persons x \$87.20 x 365 days) and (756 persons x \$87.20 x 365), then added up the costs of jail and prison costs. This total was \$36,916,884, and I subsequently subtracted the costs of leaving these individuals on probation or parole. This total was \$5,356,959 (1220 persons x \$12.03 x 365). By subtracting \$5,356,959 from \$36,916,884, I estimate that revocation limits would save taxpayers approximately \$31,559,925 million in corrections costs every year. Discounting at a rate of 3%, the present discounted value of the cost savings for Policy Option 2 is \$30,640,704.

¹¹⁴“State-By-State Data.” The Sentencing Project, 2016, www.sentencingproject.org/the-facts/#map.

¹¹⁵Reducing Incarceration for Technical Violations in Louisiana. Oct. 2014, www.pewtrusts.org/~media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf. Accessed 9 Mar. 2021.

¹¹⁶Prison Policy Initiative. “Virginia Profile.” Prisonpolicy.org, 2019, www.prisonpolicy.org/profiles/VA.html.

¹¹⁷“RD511 (Published 2019) - FY 2018 Jail Cost Report Annual Jail Revenues and Expenditures Report (Including Canteen & Other Auxiliary Funds) – November 1, 2019.” Rga.lis.virginia.gov, rga.lis.virginia.gov/Published/2019/RD511.

¹¹⁸“Vera Institute of Justice.” Vera, 2015, www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-price-of-prisons-2015-state-spending-trends-prison-spending.

¹¹⁹“Incarceration Costs Significantly More than Supervision.” United States Courts, 2017, www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision.

Appendix B: Policy Option 3 Cost Savings Evaluation

In Missouri, implementing earned time credits for those under community supervision decreased the state supervision population by 18 percent. Virginia and Louisiana have similar corrections populations, with Virginia having 64,152 and Louisiana having 60,149 probationers and parolees in 2019¹²⁰. Virginia has a corrections population of 64,152, meaning that this policy would be projected to reduce the total corrections population by approximately 18 percent, or 14,113 individuals. Supervising an offender in the community through probation and parole costs an average of \$12.03 per day¹²¹. Using the estimated annual corrections savings, and accounting for the costs of supervising those offenders in the community, earned time credits would drive down caseloads for probation and parole officers and save taxpayers approximately \$61,969,477 (14,113 persons x \$12.03 x 365) in corrections costs over a three year period. Discounting at a rate of 3% over three years, the present discounted value of the cost savings for Policy Option 3 is \$56,710,850.

¹²⁰“State-By-State Data.” The Sentencing Project, 2016, www.sentencingproject.org/the-facts/#map.

¹²¹“Incarceration Costs Significantly More than Supervision.” United States Courts, 2017, www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision.

Appendix C: Policy Option 4 Cost Savings Evaluation

In South Carolina, the average daily prison population declined 12 percent within 5 years of implementation¹²². In Virginia, a similar reduction in prison population would mean a reduction of 7,320 inmates (61,000 persons x .12). Assuming that revocation for Virginia local jails is similar to that of state operated prisons, a large share of these beds (38 percent) are in jails rather than state facilities. Thus, 2,760 of these individuals would be from local jails (23,000 persons in local jails x .12) and 4,560 would be from state prisons (38,000 persons in state facilities x .12). The cost per day to jail an inmate is \$87.20 and the cost to incarcerate a state offender is \$80.27. Multiplying costs of each facility per year with their respective population declines, the estimated correctional savings from implementing Policy Option 4 would amount to at least \$221 million over five years. Discounting at a rate of 3% over five years, the present discounted value of the cost savings for Policy Option 4 is \$191,021,841.

¹²²Pelletier, Elizabeth, et al. Assessing the Impact of South Carolina's Parole and Probation Reforms Justice Reinvestment Initiative. , 2017.

Appendix D: Possible Partners

Aging People in Prison: A Human Rights Campaign

Aging People in Prison Human Rights Campaign advocates, educates, and lobbies for the human rights of aging people in prison; and their ultimate release and return of them to their family and community before their natural life expires

<https://www.apphrc.com/>

Legal Aid Justice Center

The Legal Aid Justice Center partners with communities and clients to achieve justice by dismantling systems that create and perpetuate poverty. Justice means racial justice, social justice, and economic justice

<https://www.justice4all.org/>

Resources, Information, Help for the Disadvantaged (RIHD)

RIHD educates and empowers Virginia families and communities on the negative impact of a racially disparate system to mass incarceration and provides educational outreach to reduce the level of societal disenfranchisement of people with a criminal record.

<http://www.rihd.org/>

RISE for Youth

RISE for Youth is a nonpartisan organization committed to dismantling the youth prison model and ensuring every space that impacts a young person's life encourages growth and success.

RISE promotes the creation of healthy communities and community-based alternatives to youth incarceration. Our work centers youth and their communities who together, challenge racial and social injustice in Virginia.

<http://www.riseforyouth.org/>

The Sentencing Project

The Sentencing Project works for a fair and effective U.S. criminal justice system by producing groundbreaking research to promote reforms in sentencing policy, address unjust racial disparities and practices, and to advocate for alternatives to incarceration.

<http://www.sentencingproject.org/>

Vera Institute of Justice

Vera Institute of Justice works with others who share their vision to tackle the most pressing injustices of our day—from the causes and consequences of mass incarceration, racial disparities, and the loss of public trust in law enforcement, to the unmet needs of the vulnerable, the marginalized, and those harmed by crime and violence.

<http://www.vera.org/>

Urban Institute

The Urban Institute helps identify solutions for neighborhoods, cities, states, and national criminal justice systems. They analyze crime trends and evaluate prevention initiatives. A core component of their work is studying how to protect vulnerable people and communities from violence and abuse. They take a close look at new and emerging criminal justice technologies. Our work combines quantitative and qualitative methods to provide objective data grounded in the experiences of victims, offenders, and practitioners.

<http://www.urban.org/research-area/crime-and-justice>