Probation and Parole Violations
State Responses
This report is prepared under a partnership project of NCSL’s Criminal Justice Program in Denver, Colorado and the Public Safety Performance Project of the Pew Charitable Trusts’ Center on the States, based in Washington, D.C. The NCSL project is designed to help states tap the best research and information available to put a fiscal lens to sentencing and corrections policy options and reforms.
Preface and Acknowledgments

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INTRODUCTION

Offenders sent to prison for probation and parole violations contribute substantially to state prison populations. Thirty-five percent of all state prison admissions in 2006 were offenders returned to incarceration as a result of parole violations, not for new convictions, according to a Department of Justice report. California led the nation; nearly two-thirds of its prison admissions were attributed to parole violations. Another 2006 Department of Justice report notes that 9 percent of all offenders who exited probation supervision were incarcerated in state or local facilities due to rule violations. These admissions contribute to the increasing costs of corrections.

Although some violators must be returned to prison to protect public safety, a growing number of states are exploring options to manage these offenders in the community. State responses to offenders who violate conditions of their probation or parole, also known as technical violators, are governed by various policies or laws, including agency policy, administrative code or statutory law.

This report examines the strategies state lawmakers have used to hold offenders accountable for breaking the rules of their supervision and to maintain public safety, while preserving expensive prison beds for more dangerous criminals.

PROBATION

State and local probation agencies supervised more than 4 million offenders in 2006. Offenders on probation are supervised in the community, must abide by certain requirements, and must not commit a new crime. This frequently includes submitting to drug tests, attending probation officer meetings, participating in treatment, notifying the probation office of any change in employment or living arrangements, and performing community service. When an offender violates probation requirements, the court—or the probation officer under direction of the court—must decide what action to take to address the violation and sanction the offender.

Many state statutes afford courts the authority and discretion to dispose of a technical violator as they believe appropriate. Kentucky statute, for example, authorizes the court to modify conditions or revoke the sentence. Some state laws provide more direction on responding to probation violations, including:

- Placing restrictions on incarceration;
- Authorizing community options; and
- Creating specialized violator facilities and programs.

Placing Restrictions on Incarceration

Some state laws define when technical violators should be returned to prison for the remainder of their sentence and when community or other sanctions can or should be imposed. Georgia law, for example, stipulates that probationers who violate a general condition of probation may be incarcerated for up to the remaining balance of the sentence or not more than two years, whichever is less.

Other states limit incarceration for certain violations of probation. Vermont statute prohibits
the court from ordering incarceration absent a finding that community safety is in jeopardy or if the offender needs treatment that can most effectively be provided while he or she is incarcerated. Oregon sets a cap of six months as part of the intermediate sanctions program.

A Pennsylvania statute stipulates the type of confinement a probationer can receive for a violation of conditions. Violators may be re-sentenced to incarceration if they have committed another crime, the conduct of the offender indicates he or she may commit another crime, or it is essential to maintain the authority of the court. Otherwise, a probationer can be re-sentenced to confinement only if he or she is permitted to leave the facility for work, school or other activity approved by the court, such as medical treatment.

As an alternative to revocation, some states permit periods of incarceration while the offender remains on probation. Wyoming’s administrative sanction statute allows confinement of 30 days in a county jail or 60 days in a residential community correctional program. Iowa provides a judge with the option to order an offender to serve a period of jail time. Iowa judges and the probation department have discretion over the amount of time a probationer will be sent to jail.

**Authorizing Community Options**

Some states list specific sanctions that may be imposed on probation violators, short of a revocation and return to prison. Intermediate sanctions can include community service, substance abuse treatment, electronic surveillance, work release, fines, home detention, increased monitoring and reporting, or short periods in jail. Such graduated sanctions typically are designed to:

- Hold offenders accountable for breaking the rules;
- Address the issues causing the violations;
- Minimize interruption to the offender’s work and family life; and
- Minimize the cost of incarceration to the state.

Although laws in some states authorize courts to use intermediate sanctions, others give agencies authority to impose sanctions. Agency actions, which tend to be more certain and swift, save local jail space and court time. Maine and Montana give the probation officer permission to implement specific intermediate sanctions in lieu of a formal revocation hearing. Delaware also gives its probation agency authority to implement intermediate sanctions, including short-term incarceration, instead of revocation.

Minnesota law instructs the probation department how to proceed with a probation violation. A list of sanctions is provided, including electronic monitoring, intensive probation, day reporting, substance abuse or mental health treatment or counseling, community work service, remote electronic alcohol monitoring, random drug testing, and educational or restorative justice programs. Detention and incarceration are not administrative op-
tions in Minnesota. The law also addresses the process for imposing sanctions.

Oregon law provides detailed instructions for the Department of Corrections to create a “…system of structured intermediate probation violation sanctions … taking into consideration the severity of the violation behavior, the prior violation history, the severity of the underlying criminal conviction, the criminal history of the offender, protection of the community, deterrence, the effective capacity of the state prisons, and the availability of appropriate local sanctions.”

Georgia lawmakers created a pilot program that instructed the Department of Corrections to use administrative sanctions in lieu of revocation for condition violations. As in Minnesota, the Georgia law listed options for and a process of implementing sanctions. This statute has since expired, but county courts and probation departments continue to follow this template for administrative sanctions.

Creating Specialized Violator Programs and Facilities

Several state statutes also create or guide specialized facilities and programs for offenders who have violated conditions of supervision. Louisiana, Maine, Nevada, Tennessee and Texas are among the states that have laws pertaining to such facilities.

Louisiana statute authorizes the corrections department and the sheriff of New Orleans Parish to build and operate community rehabilitation centers for offenders who have a “strong rehabilitation potential.” The legislature placed a six-month maximum limit for those admitted to the centers due to a probation violation.

The Maine Department of Corrections created a pre-release center as the last step in a “progressive incarceration system.” A Community Corrections Fund created by the Legislature, which designates a specific percent of funding for community corrections purposes, is tapped for this facility.

Laws in Nevada and Tennessee authorize boot camp-like programs as an alternative to incarceration for probation violations. The Nevada Department of Corrections runs a 190-day “regimental discipline” program, and the Tennessee Department of Correction has a “technical violator unit” that requires a minimum stay of 120 days. These programs are housed in existing correctional facilities.

As part of a major reform package passed in 2007, the Texas Legislature expanded a network of specialized facilities as an alternative to revocation of probation for offenders with substance abuse issues. The facilities must provide offenders with a three- to 12-month treatment program carried out by qualified professionals, as defined in the law. An evaluation component and quarterly reports to the Legislature also are required.

Parole

Parole entails supervision of an offender who has been released to the community after a period of incarceration. Offenders on parole must remain crime-free and abide by certain requirements and conditions established by a parole board or correctional agency. Similar to
probation violations, a technical violation of parole occurs when a parolee does not comply with his or her supervision conditions, such as being employed; attending parole officer meetings, substance abuse or other treatment sessions; or fulfilling community service requirements.

Parole boards and corrections departments establish regulations and policies for disposition of parole violators, guided by state statutes. The laws governing parole authority actions can be general or very specific.

A South Carolina statute authorizes the parole board to determine if a parole violator will be returned to prison; the length of incarceration (up to the remaining portion of the sentence); and if the violator will be eligible for parole in the future. Vermont statute also gives the parole board broad discretion to continue, revoke or enter an order that it determines is necessary or desirable.

In several states, laws give more direction for the disposition of violators, including provisions that:

• Place restrictions on incarceration;
• Authorize community options;
• Create specialized violator facilities.

Placing Restrictions on Incarceration

In some states, legislatures have set restrictions on the amount of time a parole board or department of corrections can incarcerate an offender for violating the conditions of supervision, but still allow the offenders to remain on parole. Louisiana law limits incarceration to 90 days for a first technical violation of parole. The Washington statute sets a maximum of 60 days’ confinement for minor violations. Upon the third violation, the Washington Department of Corrections can return an offender to incarceration for up to the remainder of his or her sentence.

Lawmakers in California created guidelines that define the length of time an offender can be revoked to prison. Incarceration is limited to 12 months, although it can be extended if the offender commits subsequent acts of misconduct while incarcerated. The Nevada State Board of Pardons Commissioners can order an offender to six months’ incarceration or residential confinement for a parole violation, in lieu of revoking parole.

Authorizing Community Options

State laws also encourage supervising agencies to continue working with offenders in the community rather than revoking parole for rule violations. Community options allow the violator to continue living in the community, working, and paying restitution and child support.

Oregon law authorizes the Department of Corrections and the Board of Parole and Post-Prison Supervision to develop a “continuum of administrative sanctions” that includes community service, house arrest, electronic surveillance, restitution and work release centers. It also authorizes up to 15 days of incarceration. The statute provides guidance for agency development of a structured sanctions grid that guides parole officer response to a violation.
The grid, which provides immediate and consistent punishment for offenders, is based on individual offender characteristics and particular violations.

When parole conditions are violated in West Virginia, the parole board determines whether to hold a revocation hearing. If the parole board has a hearing, sanctions may be imposed in lieu of revocation. The statute lists the potential sanctions as probation supervision, day fines, community service restitution, home confinement or “house arrest,” substance abuse treatment, sex offender containment programs, domestic violence treatment, day reporting, educational or counseling programs, or drug court.

Creating Specialized Violator Facilities

In addition to limiting incarceration and authorizing community options, lawmakers have created special facilities for offenders who violate parole conditions. Colorado statutes authorize construction and operation of a 300-bed, privately owned and operated pre-parole and revocation facility. An offender who has violated the terms of his or her parole can serve no more than 180 days in the facility, and programs will address challenges the parolee faced in the community. In Tennessee, lawmakers required that the Parole Technical Violators Diversion Program be based on a therapeutic community model; offenders must participate in treatment along with work or education.

Violator facilities in states include separate facilities such as in Colorado, or units within an existing facility. Tennessee’s program is located at a boot camp facility. New York’s statute authorizes the Division of Parole to create a community-based residential parole transition program to help offenders adjust to community living. The statute allows parole violators to be placed in the facility, but does not preclude a revocation hearing.

CONTROLLING COSTS

Arizona and Kansas enacted legislation that monetarily rewards local governments that decrease the percent of probationers who are returned to prison for technical violations. Connecticut law requires the Department of Corrections and the Judicial Branch to create plans to reduce by 20 percent the number of people incarcerated for parole and probation violations. In Pennsylvania, lawmakers recently added policies to their sentencing guidelines for more effectively disposing of probation and parole violations.

These and other state laws aim to more efficiently and cost-effectively manage probation and parole violators. They have become an increasingly important part of state efforts to reduce prison admissions and control corrections costs without compromising public safety.
NOTES


2. Ibid.

ABOUT THE AUTHOR

Alison Lawrence is a policy specialist in NCSL’s Criminal Justice Program. She is NCSL’s lead staff liaison to the Public Safety Performance Project of the Pew Charitable Trusts’ Center on the States, working on sentencing and corrections issues. Before working at NCSL, she worked in community corrections in Denver, Colo., and in probation in Boulder, Colo. Ms. Lawrence received her Master’s of Public Administration from the University of Colorado.

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