

CIVIL AND CRIMINAL JUSTICE

Tailoring Conditions of Supervision

Legislative Primer Series on Community Supervision | **No. 1**



Legislative Primer Series on Community Supervision: Tailoring Conditions of Supervision

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Just under 4.4 million people in the 50 states and Washington, D.C., were under community supervision at the end of 2018, according to the Bureau of Justice Statistics. Community supervision encompasses both court-ordered probation and parole following incarceration.

These individuals all have conditions they are required to follow as part of their supervision. Conditions are set by the court, the parole board or a supervision officer. Common supervision conditions include in-person check-ins with a supervision officer, substance use treatment, electronic monitoring and paying supervision fees, among others.

Increasingly, states are recognizing the importance of tailoring these conditions to the people who are being supervised to improve their outcomes and reduce recidivism.

The Pew Charitable Trusts' public safety performance project, in partnership with Arnold Ventures, released a policy framework for community supervision in April 2020. The framework was created by an advisory council that agreed to "three broad goals for the next generation of community supervision: better outcomes for people on supervision, their families and communities; a smaller system with fewer people on supervision; and less use of incarceration as a sanction for supervision violations, particularly breaches of the rules."

"The Pew Charitable Trusts, in partnership with Arnold Ventures, established the Advisory Council on Community Supervision to develop a policy framework for state lawmakers, court officers and community corrections personnel. The council featured a diverse group of representatives from probation and parole agencies, the courts, law enforcement, affected communities, the behavioral health field and academia...

This report details the challenges facing community supervision systems around the country and outlines specific policy changes that states can make to achieve improved outcomes. Although legislative action represents the best vehicle for adopting sustainable reforms, this document also includes a range of administrative changes that officials can make to improve policy and practice at the agency level."

—From *"Policy Reforms Can Strengthen Community Supervision,"*
The Pew Charitable Trusts, April 2020

The objectives of the policy framework include implementing "evidence-based policies centered on risks and needs" and "establishing effective and appropriate supervision conditions." This primer explains what research exists, what it means and how statute can align with the research to hold individuals accountable for their crimes, promote justice, reduce recidivism and ensure public safety.

Tailoring Conditions of Supervision

On average, individuals under supervision must comply with 17 conditions and failure to comply can lead to incarceration. Statutes that lay out a number of conditions that every person on supervision must comply with can make successfully completing supervision less likely.

It may not make sense to require regular drug tests, for example, if people under supervision do not have a substance use disorder and their offense did not stem from substance use. Conditions like these can be financially burdensome and time-consuming.

Further, extra conditions do not support the goals of public safety and recidivism reduction. As stated in an article from The Pew Charitable Trusts' public safety performance project, "[w]e know, for example, that supervision with a large number of conditions can interfere with an individual's progress reintegrating into the community ... Yet despite the growing body of evidence that supervision can be counterproductive, too many jurisdictions continue to emphasize surveillance and impose standard, one-size-fits-all rules rather than utilizing an integrated approach with treatment and conditions tailored to the individual."

Evidence-based Practices

The National Institute of Corrections defines evidence-based practice (EBP) as “the objective, balanced, and responsible use of current research and the best available data to guide policy and practice decisions, such that outcomes for consumers are improved.” Programs are considered by the National Institute of Justice to be evidence-based when “their effectiveness has been demonstrated by causal evidence obtained through high quality outcome evaluations and that have been replicated and evaluated ...”

According to the policy framework, the foundation of effective supervision is evidence-based decision-making. Many state statutes specifically require that programs and practices used in community supervision be evidence-based and one of the primary features of evidence-based decision-making is the allocation of resources according to risk. When resource allocation is based on risk, states are able to assign the appropriate level of supervision and provide suitable treatment and services for individuals under supervision. Science supports less supervision, services and treatment for individuals who are low-risk and low-need, which allows resources to be reallocated to those who require greater supervision and more services.

Mississippi defines evidence-based practices in statute as “supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism” (Miss. Code Ann. § 47-7-2). Michigan’s statute similarly emphasizes the reduction of recidivism, defining EBP as “a progressive, organizational use of direct and current scientific evidence to guide and inform efficient and effective correctional services that have been shown to reduce recidivism” (Mich. Comp. Laws § 791.258a).

As stated in the policy framework, when the principles of evidence-based decision-making “guide supervision operations, outcomes improve.”

Risk and Needs Assessments

One evidence-based practice is to use risk and needs assessments in setting conditions of community supervision. Risk and needs assessment is a tool that can help evaluate the likelihood that an individual will commit another criminal offense. It also helps identify a person’s “criminogenic”—or specific—needs that, if addressed, are likely to reduce the probability of committing another offense.

According to a report from the Congressional Research Service, risk and needs assessments are typically based on answers in an interview with a person on supervision by a probation or parole officer “in order to collect data on behaviors and attitudes that research indicates are related to the risk of recidivism.”

Risk, need and responsivity are “derived from decades of research demonstrating that the best outcomes are achieved in the criminal justice system when 1) the intensity of criminal justice supervision is matched to participants’ risk for criminal recidivism or likelihood of failure in rehabilitation (criminogenic risk) and 2) interventions focus on the specific disorders or conditions that are responsible for participants’ crimes (criminogenic needs).”

Source: SAMHSA’s GAINS Center, 2018

Risk and needs assessment is one of the most common ways legislatures have provided direction to courts and agencies when imposing conditions. Some form of risk and needs assessment is required for setting supervision conditions in 27 states (see Fig. 1). Many state and local agencies use risk and needs assessments without statutory authorization. Requiring it in statute can ensure statewide and consistent use.

Connecticut law requires the development of a risk assessment strategy that will “1) utilize a risk assessment tool that accurately rates [a person’s] likelihood to recidivate upon release from custody, and 2) identify the support programs that will best position the [person] for successful reentry into the community.” The strategy must incorporate both static and dynamic factors, as well as be gender-responsive, recognizing the unique risks and needs of women on community supervision. (Conn. Gen. Stat. § 18-81Z)

Connecticut initially established two strategies pursuant to this law, the “reentry strategy” and the “assess-

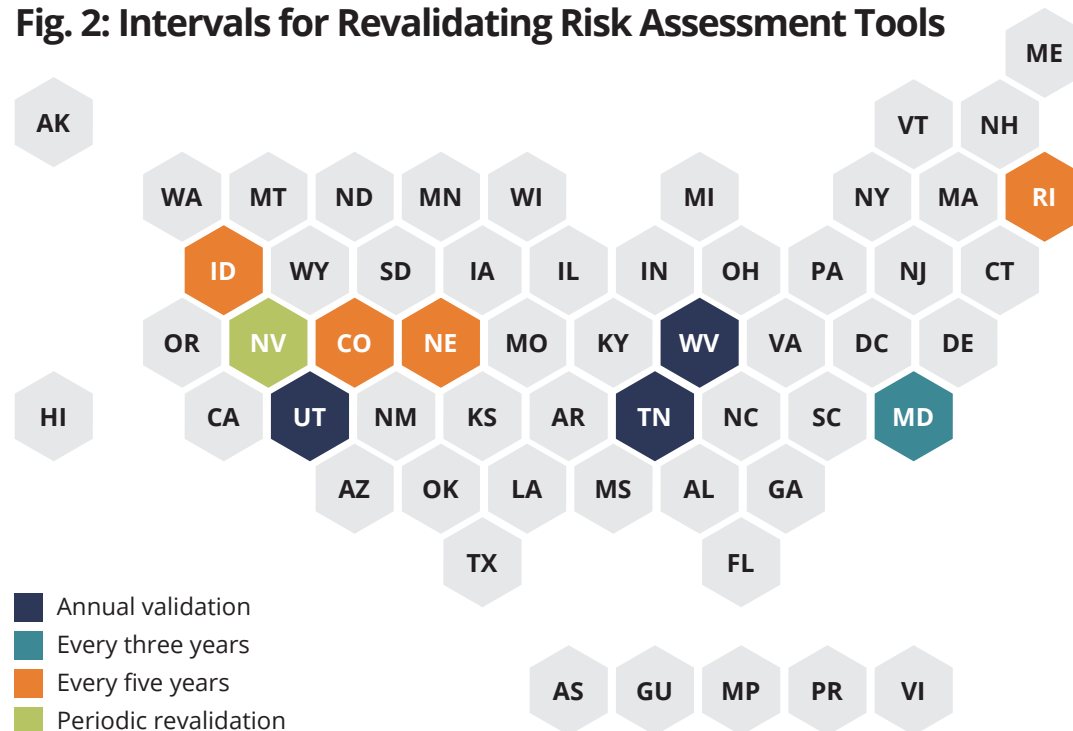
department of corrections to use a risk assessment recommended by WSIPP because it has “the highest degree of predictive accuracy for assessing an offender’s risk of re-offense.” In 2013, the state corrections department requested information on assessments that incorporate responsivity and subsequently transitioned to the use of risk-need-responsivity assessments. These assessments assist supervision officers in providing “amounts of services in accordance with the individual’s risk for re-offense (risk principle), provide types of services based on the individual’s unique assessed needs (need principle), and determine a treatment method that is appropriate for the individual based on individual abilities and motivation levels (responsivity principle).”

Fidelity of Risk and Needs Assessments

A number of provisions are put into law to ensure fidelity of risk and needs assessment tools. The quality control measures include validation and revalidation of assessments, training on the use of the instruments, and flexibility in policy to allow for new and emerging research.

Validation of assessments is a process that ensures the specific instrument being used is appropriate for the people for whom it is being used. Revalidation ensures the continued accuracy of these tools. Most statutes require a validated risk assessment be used while few address the revalidation of the tool. At least nine states require in statute that reviews of risk and needs assessments occur on an annual or recurring basis. Fig. 2 shows the various timeframes for revalidation that have been enacted into law.

Fig. 2: Intervals for Revalidating Risk Assessment Tools



Source: NCSL, 2020

A risk assessment tool is only useful if the person administering the tool knows how to use it. For this reason, it is important for the officers administering the assessments to be trained in their use. The statutory provisions vary, but many of the states that use these assessments, whether mandated or not, require staff to be trained on their use.

States that require training include Alabama, Colorado, Connecticut, Delaware, Idaho, Maryland, Mississippi, Missouri, Montana, Nebraska, Ohio, Rhode Island, South Carolina and West Virginia. In states such as Delaware and South Carolina, the training is conducted annually. Training is semiannual in Colorado and Montana requires initial training on risk assessment and evidence-based practices as well as regular training.

South Carolina also requires parole board members to complete comprehensive training within 90 days of their appointment. Training includes using evidence-based practices to determine the “risk, needs and motivations to change” for people on supervision. Parole board members must also complete eight hours of annual training that includes a “review and analysis of the effectiveness of the assessment tool used by the parole agents” (S.C. Code Ann. § 21-24-10).

In Nebraska, chief parole officers must be trained to become trainers, ensuring “long-term and self-sufficient training capacity in the state” (Neb. Rev. Stat. § 83-1,100.02). Similarly, Rhode Island requires that some probation and parole officers become trainers in order to ensure the sustainability of the state’s training requirements.

Some state laws require that risk assessments be used while providing flexibility for the supervision agency to implement the tool as it sees fit. This flexibility is important for managing costs, ensuring safety, and allowing agencies to make adjustments and changes based on the latest research. By limiting how prescriptive the statute is, lawmakers provide agencies the ability to ensure that risk assessments are used appropriately and successfully.

Idaho requires the board of correction to create rules ensuring the use of risk assessments in setting conditions for parole supervision (Idaho Code Ann. § 20-224). The corrections department in Missouri must adopt a policy for administering risk and needs assessment tools to guide case management practices and supervision level (Mo. Rev. Stat. § 217.361). New Jersey law requires the use of a risk assessment to determine the level of supervision for parolees (N.J. Rev. Stat. § 30:4-123.52).

Conclusion

By employing evidence-based practices, such as setting conditions based on risk assessments, states can promote the success of people under community supervision. Excessive conditions can lead to failure on probation and parole. Instead, as discussed in the policy framework, conditions “should be limited and used only to address an individual’s needs, foster behavior change and support positive outcomes.” States can ensure that laws align with the research to hold individuals accountable, promote justice, reduce recidivism and ensure public safety.

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