

# Federal PROBATION

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## IN THIS ISSUE

### [This Issue in Brief](#)

#### [1937 Revisited: "Is There a Measure of Probation Success?"](#)

*By Bennet Mead*

#### [Year-in-Review Report of the Federal Probation and Pretrial Services System](#)

*By the Office of Probation and Pretrial Services*

#### [Evidence of Professionalism or Quackery: Measuring Practitioner Awareness Of Risk/Need Factors and Effective Treatment Strategies](#)

*By Anthony W. Flores, Amanda L. Russell, Edward J. Latessa, Lawrence F. Travis III*

#### [Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism](#)

*By William Bradshaw, David Roseborough*

#### [Motivational Interviewing for Probation Staff: Increasing the Readiness to Change](#)

*By Michael D. Clark*

#### [Getting Serious About Corrections](#)

*By Vincent D. Basile*

#### [Personal Ads From Prisoners: Do Inmates Tell the Truth About Themselves?](#)

*By Richard Tewksbury*

#### ["Looking at the Law" — Update to Legal Developments in the Imposition, Tolling, and Revocation of Supervision](#)

*By Joe Gergits*

### [Juvenile Focus](#)

### [Reviews of Professional Periodicals](#)

[Your Bookshelf on Review](#)

[It Has Come to Our Attention](#)

[Contributors to This Issue](#)

[Index of 2005 Articles and Reviews](#)

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## This Issue In Brief

### [1937 Revisited: "Is There a Measure of Probation Success?"](#)

In 1937, when the federal system of probation was still quite new, U.S. Department of Justice Statistician Bennet Mead wrote an article that reveals how our system was even then seeking objective means of measuring success. The approaches he describes may sound primitive, but the desire to find a credible standard of measurement and basis for critique is quite contemporary.

*Bennet Mead*

### [Year-in-Review Report of the Federal Probation and Pretrial Services System](#)

We provide primarily statistical excerpts from the 2004 fiscal year report of the Federal Probation and Pretrial Services system.

*The Office of Probation and Pretrial Services*

### [Evidence of Professionalism or Quackery: Measuring Practitioner Awareness Of Risk/Need Factors and Effective Treatment Strategies](#)

While the principles of effective correctional intervention are well established in the correctional literature, there is a growing suspicion that correctional practitioners remain unaware of this knowledge base. The authors examine the level of knowledge that correctional practitioners have of the "what works" literature by asking them to identify empirically relevant criminogenic needs and empirically supported treatment modalities.

*Anthony W. Flores, Amanda L. Russell, Edward J. Latessa, Lawrence F. Travis III*

### [Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism](#)

In a time of accountability, tight budgets, and closing of restorative justice programs, restorative justice practitioners and policy makers need to utilize effectiveness data to make decisions about program development and funding. Measuring the effect of restorative justice practices on recidivism is one clear way of doing so.

*William Bradshaw, David Roseborough*

### [Motivational Interviewing for Probation Staff: Increasing the Readiness to Change \(Part 1\)](#)

In the field of criminal justice, evidence-based practice has recommended that justice staff be responsive to motivational issues with offenders. This first of a two-part article demonstrates practical ways to respond to that recommendation.

*Michael D. Clark*

### [Getting Serious About Corrections](#)

"Getting Serious" means identifying evidence-based practices for defendant/offender conditions and then "front-loading" treatment to address conditions from the point of entry to the criminal justice system.

*Vincent D. Basile*

### [Personal Ads From Prisoners: Do Inmates Tell the Truth About Themselves?](#)

Training for corrections professionals and volunteers universally includes warnings about the attempts of inmates to mislead staff and gain some form of personal advantage. However, those outside of corrections may also be susceptible to the manipulations and scams of prison inmates. This study of personal ads from prisoners attempts to determine the level of prisoner believability when prisoners communicate with “outsiders.”

*Richard Tewksbury*

[“Looking at the Law” — Update to Legal Developments in the Imposition, Tolling, and Revocation of Supervision](#)

*Joe Gergits*

[Juvenile Focus](#)

[Reviews of Professional Periodicals](#)

[Your Bookshelf on Review](#)

[It Has Come to Our Attention](#)

[Contributors to This Issue](#)

[Index of 2005 Articles and Reviews](#)

---

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## Is There a Measure of Probation Success?

*Bennet Mead*

*Statistician, U.S. Department of Justice*

*This article, originally published in 1937, shows the Federal Probation system's awareness very early on of both the need to measure outcomes and the problems doing so. Mr. Mead's discussion of how to define "successful" probation and how to grapple with self-report dilemmas also reminds us that measuring outcomes has always presented inherent challenges.*

**IS THERE** A measure of probation success? Before attempting to answer this question let us first define its meaning. This may best be done by first determining what constitutes probation success, and then considering possible methods of measuring such success.

In defining the meaning of probation success, it should first be emphasized that success is positive in its nature. Most people undoubtedly conceive of success as something far more vital than mere absence of failure. The sort of success which is no more than absence of failure, becomes a pale shadow of success, a mediocre thing scarcely better than failure.

It follows, that no satisfactory measure of probation success can be obtained merely by counting up those definite and obvious failures who are customarily referred to as probation violators, or by determining the ratio of such violators to the entire group handled on probation. This may be illustrated by some recent statistics from the experience of the Probation System of the United States Courts. During the year ending June 30, 1936, there were 997 Federal probationers who were officially declared violators, either by revocation of their probation, by their arrest, or by issuance of warrants for their arrest on charges constituting violation of the terms or their probation. During that same year, a total of 29,821 persons were at one time or another under the supervision of United States Probation officers. If we calculate the ratio of violators to the total number handled on probation, we find that in the fiscal year 1935-36, the violators formed 3.3 per cent, of the total handled.

Now this percentage does measure, after a fashion, the frequency of failure on probation, and thus it affords a crude negative measure of probation success. That is, we may say that during the year under consideration, and so far as official records are concerned, the entire group of probationers supervised, exclusive of those formally declared violators, are to be considered as probation successes. On this basis, the United States Probation System might rashly claim that 96.7 per cent of its cases on probation were handled successfully, and we might then go further and jump recklessly to the conclusion that all is well with us, and that the federal probation system is discharging as effectively as possible its task of rehabilitating the probationers under its care.

If, however, we keep in mind the true concept of success, as positive achievement rather than dead-level mediocrity, we must admit that this 96.7 per cent of alleged success does not and cannot reveal the actual extent of our achievement or lack of achievement. So long as we do not

actually know whether our so-called "successes" involve any real improvement in the behavior of the probationers, we must not allow ourselves to become complaisant about the situation.

On any realistic basis, then, success must be considered as relative and variable. If therefore, we propose to measure success, we need to determine not only the bare fact of improvement in behavior, but also the degree of improvement.

Our analysis thus far has led to the definition of success as positive achievement, varying in degree. We have also incidentally discussed one unsatisfactory measure of probation success, the percentage of non-violators.

It remains now to consider what better methods are available for measuring probation success, that is, the degree or extent of improvement. Nearly three years ago, in the Central Office of the United States Probation System, we began to experiment with a very crude and approximate device for measuring the degree of probation success. This device consists in asking the probation officers to estimate for each probationer passed from supervision the degree of his improvement while on probation.

In undertaking this experiment, we frankly recognized that this device was in no sense an accurate or scientific measuring device. But it seemed to us that it would be worth while to experiment with it, primarily as a means for insuring some systematic self-criticism by the federal probation officers of their own work and its results. There is no question that this plan has been of value from this point of view.

Up to the present time, however, we have hesitated to publish any actual statistics based upon these reports on outcome. It has been apparent from our critical examination of them, that no uniform standards have been applied by the various officers in forming their judgment as to the degree of improvement in their charges. While this advice has had considerable educational value, we must admit that it has not served as an accurate measure of success.

Perhaps we can gain some idea of the inadequacies of this measuring device by looking at some of the results obtained by it for the fiscal years ending June 30, 1936. Probation officers were asked to rate the outcome of probationary treatment for those passed from their supervision in one of five degrees, as showing striking improvement, moderate improvement, slight improvement, no improvement, or as violating probation. Out of a total of 6,298 cases thus classified 1,685, or 26.8 per cent, were classed as having achieved striking improvement, and 2,183, or 34.7 per cent, were classed in the moderate improvement group. It would, however, be most unsafe to accept these figures as giving a true picture. Rather do they indicate over-optimism on the part of the probation officers making the evaluation.

The greatest deficiency of this method of measuring success is its subjective quality, for it suffers two-fold in that it relies not only on a man's judgment of another man, but also on a man's judgment of himself and his own work. In this connection, it is interesting to note, that over-optimism in regard to results is not limited to the less trained and qualified probation officers. In order to check this point, we compared the rating of outcome for fourteen selected probation units. The comparison for these selected units and for all other units is very interesting, because it shows no marked variation.

In the totals we find that the selected units reported 24.2 per cent of their cases as showing striking improvement. The remaining units classified 27.5 per cent of their cases in this group. The figures for the "moderate improvement" group reveal a similar situation, with 34.1 per cent of the cases reported by the selected units in this group, and 34.8 per cent of the cases for the remaining units in this group. Thus we see that the mass results obtained with this device differ only slightly whatever may be the quality of the personnel. It is apparent that the difficulty lies in basic weaknesses of our measuring instrument, in that ratings are made on a subjective or "hunch" basis.

It is probable that this method could be improved by making the classification of outcomes the

special responsibility of some one member of each probation staff, who would be more capable of a judicial viewpoint than the officer in charge of a particular case. I believe that we should continue to experiment with this device, if possible introducing changes which will lead to greater uniformity and accuracy in the results. But even if we were successful in refining this procedure of self-evaluation which I have just described, it would still be far from adequate.

Before a reliable evaluation of outcomes can be made, it is necessary that probation departments institute a thorough system of case study for each individual who comes under supervision. No plan of evaluation can be considered accurate which does not reveal what types of cases are better and worse in terms of social adjustment at the end of the probation period. The individual offender, then, must be the unit of evaluation, and it follows that the case study method should be used whenever possible.

Many probation departments may have been frightened away from this method of approach because of a mistaken view as to the minimum requirements in personnel and organization for this type of work. Any department which has a trained and qualified staff could at least experiment with the case study method of evaluation, by selecting a part of its cases for intensive supervision and study.

In order to use the case study method to best advantage, it is necessary to design a special form of case summary to bring together data which will show the status of the probationer at various times. This progress record should start at the time he is placed on probation, with records of his physical and mental condition, education, recreational habits, industrial experience, and family and community conditions. Similar analyses should be made at various intervals during the probation period, at the time of discharge, and if feasible, a year or more after discharge. The progress record should also cover the facts about the treatment program, as it was attempted and as it was actually executed, and any changes in the behavior of the probationer.

The purpose of such a progress record as the one outlined will be to compare the status of an individual at various times during the probation period rather than to compare two individuals at any given time. At first, it will probably be necessary to treat every personality phase separately. In this way, we may be able to record changes in the personality of the probationer, and also to compare individuals in regard to social attitudes and usefulness. Some psychologists now claim to have developed personality rating scales which test emotional as well as intellectual factors.

We must bear in mind that even after the progress record has been made available for practical use, it will not work automatically. On the contrary, a high degree of technical skill will be necessary to secure accurate and consistent results. Likewise the analysis and interpretation of these records will require much statistical training and experience. The task of evaluation will require effective collaboration between a number of professional groups, including experts in vocational guidance and education, psychologists, psychiatrists, doctors, prison and probation administrators, as well as experts in social research. It is only through this many-sided approach that we can hope to achieve a truly significant evaluation, for no one professional group is capable of fulfilling this task without the assistance of many others.

The system of classification in the federal prison system follows the general theory I have outlined, in dealing with offenders admitted to the institution. But no such procedure has as yet been instituted for the Federal Probation System. However there are in the country some few probation departments which attempt this type of work. I understand that the Probation Department in the Court of General Sessions of New York City follows in general the principles here outlined, as do the Probation offices of the Essex County, New Jersey, Court of Common Pleas and the Westchester County, New York, Probation Department, to mention only a few.

Agencies and institutions dealing with crime and delinquency have generally lagged far behind certain other social organizations in the use of measuring devices, specifically in the creation of adequate evaluation techniques. We must recognize that the approximate methods of evaluation in use at the present time have serious limitations. All probation workers are aware of the complexity of the crime problem. They have ample opportunity to know from actual experience

that economic insecurity and unemployment, low incomes, poor housing, degrading family and neighborhood life and their surrounding conditions foster the growth and the spread of crime and delinquency.

It is necessary that we see probation in its proper relation to all the other essential elements in a program of crime control. We must not expect too much from this device, nor must we be content with too little. It seems to me reasonable to hope that thorough, scientific evaluation of probation work may disclose further facts about the underlying social and economic causes of crime and thus stimulate action for crime prevention. Even though as yet we have not put into practice methods of probation evaluation which can be relied upon, the ultimate ends to be gained in devising a satisfactory system of this kind warrant all the effort and attention which we can give it.

At the time when we introduced the reporting of degree of improvement in the United States Probation System, we realized clearly the need for providing some yardstick or standard which would help the probation officers to make their estimates of improvement on the basis of the specific nature of the improvement needed in each case. Accordingly we introduced at the same time, beginning in July, 1934, the plan of having the probation officers report, for each probationer received for supervision, the particular obstacles and handicaps affecting the probationer, which need to be overcome if the case were to be successfully handled.

For the fiscal years ending June 30, 1935 and 1936, we have tabulated and included in our annual reports summaries of the information furnished by probation officers concerning handicaps and obstacles. This appraisal of handicaps and obstacles should in the course of time enable the probation officers to make more accurate judgments as to the degree of improvement, since the information concerning the initial obstacles and handicaps should be available in the case records for increasing numbers of probationers who are passed from supervision. Up to the present time, however, the record of obstacles and handicaps has not been available for the large majority of probationers passed from supervision. This condition may help to explain some of the deficiencies in rating the degree of improvement.

In conclusion, we may summarize by saying that we have undertaken to define the meaning of probation success and to determine what methods are available for measuring probation success. We have defined success for the purposes of this discussion as being positive in its nature and decidedly variable in its degree. This has led us to the conclusion that we cannot measure success by counting up the percentage of failure, and that mere probation violation rates are therefore of very little use for measuring probation success.

We have briefly reviewed the experience of the United States Probation System in attempting to measure probation success by classifying probationers at the end of their periods of supervision according to the degree of improvement in their behavior, as judged by the federal probation officers. This experimental procedure we have found to be of educational value, but of no real scientific value. The failure of this device to yield satisfactory results has apparently been due to the unavoidable tendency of our probation officers, in common with other mortals, to be over-optimistic in appraising the results of their own work. None the less, this device has proven of sufficient value to suggest that it should be refined and improved rather than abandoned.

Ultimately the measurement of degree of improvement needs to be done by persons other than the officers responsible for case supervision and the rating needs to be done in terms of careful appraisal of the improvement made in terms of specific traits of personality and specific phases of conduct.

Some progress has been made, but a tremendous amount of work remains to be done before we can hope to make any scientific evaluation of outcomes. The keeping of systematic and detailed records of the status and the progress of each probationer from the time he is placed on probation will pave the way for increasingly accurate measurement of the degree of success of individual probationers.



\* This article was originally published in the May-June 1937 issue of Federal Probation; it was originally presented as a speech before the annual meeting of the National Probation Association, on May 21, 1937, in Indianapolis IN.

[back to top](#)

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[Home](#)

## Year-in-Review Report (Fiscal Year 2004)

[Endnotes](#)

*[The following is taken from the Fiscal Year 2004 report of the United States Probation and Pretrial Services System. The full report, including figures 1-9 and 11, and introductory matter about the Federal Probation and Pretrial Services System, is available on the [www.uscourts.gov](http://www.uscourts.gov) web site.]*

[National Statistics—Pretrial Services](#)

[National Statistics—Probation](#)

### NATIONAL STATISTICS— PRETRIAL SERVICES

#### *Pretrial Services Case Activations*

There were 90,725 pretrial cases activated during fiscal year 2004. This represents a nearly five percent decrease from the previous year.

#### *Nature of the Charge*

Drug offenses represent the largest single type of charge filed followed by immigration and fraud. With the exception of immigration cases (up 3 percent), the proportional representation of each charge type is within one percentage point of the charge profile for fiscal year 2003.

#### *Demographics*

The fiscal year 2004 defendant population is 85 percent male, which represents no change from the previous fiscal year. There is minor change in the population's race and ethnicity, with white Hispanics increasing three percent and white non-Hispanics decreasing two percent. The largest percentage of defendants (23 percent) is in the 18-25-age range, with lower percentages in older age groups *Pretrial Services Supervision* Title 18 § 3142 requires judicial officers to order the release or detention of federal defendants pending trial. If a defendant is released, it is done under conditions determined to be the least restrictive necessary to reasonably assure that the defendant will appear in court for all further proceedings and not endanger the safety of any other person or the community. Among the release conditions that may be imposed is pretrial services supervision.

#### *The Supervision Population*

During fiscal year 2004, the number of defendants received for pretrial services supervision was 31,223. An additional 1,313 were placed on pretrial diversion [1](#) supervision, for a total population of 32,536. This represents an 8.4 percent decrease over the number received for supervision in fiscal year 2003.

The number of defendants under pretrial services supervision is considerably lower than the number of pretrial case activations because approximately 20 percent of the defendants are

released on their own recognizance (without a condition of pretrial services supervision) and the others are detained in custody.

Of the 89,362 cases closed during the year, 68 percent were never released at any time between arrest and the conclusion of their cases. The detention rate was the highest in 13 years, as there has been a small but steady increase since fiscal year 1992 when the rate was 38 percent.

### *Other Alternatives to Detention*

In addition to pretrial services supervision, the court may order other release conditions. By far the most common of these is testing for the use of drugs or alcohol, a condition imposed on 18,959 defendants. Further, this year 5,587 defendants received substance abuse treatment from local providers under contract to federal probation and pretrial services offices. Fewer defendants (3,069) received mental health treatment, but the number represents a 100 percent increase from fiscal year 2003. Other types of additional release conditions implemented by pretrial services this year included the electronic monitoring of home confinement restrictions imposed on 3,802 defendants and the placement of 1,477 defendants in shelter facilities.

### *Pretrial Release Outcomes*

In fiscal year 2004, pretrial services closed 37,749 cases of defendants who had been released to the community and their cases reached final adjudication. Of the defendants released pending trial in fiscal year 2004, the large majority appeared in court as required and was not rearrested. Eighty-six percent of those released to the community satisfactorily completed their term of supervision.

Only two percent failed to appear (FTA) for a court proceeding and two percent each were revoked because they were (a) rearrested for a new felony charge or (b) rearrested for a new misdemeanor. The release of eight percent of defendants was revoked for “technical” violations of their release conditions.

In these cases, the pretrial services officer reported to the court violations of conditions such as home confinement, refraining from drug or alcohol use, or travel conditions.

[back to top](#)

## **NATIONAL STATISTICS— PROBATION**

### **Presentence Investigations**

Selection of an appropriate sentence is one of the most important decisions made in the criminal justice system. The primary tool for helping the court fulfill this responsibility is the presentence investigation report. The Federal Rules of Criminal Procedure assign the task of conducting presentence investigations to United States probation officers.

During fiscal year 2004, probation officers completed 65,860 presentence investigations for the courts, a decrease of two percent from fiscal year 2003.

### **Supervision**

#### **Population Size and Composition**

Federal probation officers had a total of 150,742 offenders under supervision during the fiscal year. As of September 30, 2004, the population stood at 112,189, an increase of one percent over the end-of-year count in fiscal year 2003.

#### *Type of Supervision*

When compared to last year, the number of supervised releasees—offenders sentenced to a term of supervision to follow a determinate sentence to imprisonment—grew at a rate of two percent.

The number of probationers decreased by two percent.

Of the offenders under supervision on the last day of the fiscal year, 70 percent were serving terms of supervised release, 26 percent were sentenced to probation, and 3 percent were on parole. Over the years, the proportion of offenders under supervision who had served time in prison increased from less than one-third in 1986 to more than two-thirds of the population in 2004. This long-standing trend in the changing nature of the supervision population reflects a combination of full implementation of the Sentencing Reform Act (effective November 1, 1987) and legislation in the mid-1980s that established mandatory minimum prison terms for many drug offenses. [2](#) *Nature of the Offense* The distribution of offense types in fiscal year 2004 was nearly the same as that in 2002 and 2003. The largest percentage of offenders committed drug offenses and just under one-third were convicted of fraud or other property crimes. Immigration cases comprise a significantly smaller proportion of the post-conviction population than the pretrial services population—3 versus 24 percent—because many immigration defendants are deported rather than released to post-conviction supervision.

### *Demographics*

The demographic distribution of offenders under supervision on the last day of fiscal year 2004 is essentially the same as last year's profile. The offender supervision population is 79 percent male and 50 percent white. Hispanic offenders represent a considerably smaller proportion of this population than of pretrial defendants because they are more likely than non-Hispanics to be charged with immigration offenses and thus more likely to be deported than released to supervision.

Sixty percent of the offenders under supervision were 35 or older.

### **Treatment Services**

In 2003, the Administrative Office refined methodologies for differentiating between substance abuse testing and treatment cases. The refined methodologies have been applied back to 1999 in [figure 10](#). Comparisons with past years should use the more refined numbers.

*Substance Abuse:* This year, 38,192 offenders—25 percent of the supervision population—received substance abuse treatment from local providers under contract to federal probation offices. Over the last year, the post-conviction substance abuse treatment population increased by 18 percent. For pretrial defendants, the substance abuse treatment population increased 12 percent.

*Mental Health:* A total of 10,216 offenders—nine percent of the supervision population—received mental health contract services during the year. Over the last year, the post-conviction mental health treatment population increased by three percent. For pretrial defendants, the mental health treatment population increased by 67 percent.

### **Supervision Outcomes**

In fiscal year 2004, 62,617 offenders were terminated from supervision, up 24 percent from the number removed in fiscal year 2003. Of these, 71 percent successfully terminated supervision (a 6 percent decrease over last year), 11 percent were terminated from active supervision or revoked due to a new offense, [3](#) and 18 percent were revoked for a “technical violation” of release conditions such as remain on home confinement, refrain from use of drugs or alcohol, or participate in substance abuse or mental health treatment.

### **National Initiatives**

Fiscal year 2004 was a year of tremendous challenge but also a year of considerable accomplishment for the federal probation and pretrial services system. Although all activities and aspects of the work felt the impact of the severely limited budget, the system made progress in many important areas. [See details of the year's initiatives and events, as well as tables and

charts, at [www.uscourts.gov/publications/probationyear\\_in\\_review.htm](http://www.uscourts.gov/publications/probationyear_in_review.htm).]

[back to top](#)

## [Endnotes](#)

---

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## Figure 10: Number of Offenders Receiving Treatment

Description	Fiscal Year 1999	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004
Substance Abuse Offenders Treated	23,458	26,387	28,312	31,839	32,419	38,192
Substance Abuse Offenders Tested	26,946	31,053	34,533	39,076	40,678	39,276
Mental Health Offenders Treated	5,301	6,148	7,597	9,340	9,905	10,216
<b>Alternatives to Detention (ATD)</b>						
ATD/Substance Abuse Treated	5,376	5,327	5,816	6,626	6,188	6,984
ATD/Substance Abuse Tested	6,112	6,932	8,463	9,905	9,359	9,937
ATD/Mental Health Treated	724	861	1,116	1,454	1,599	2,679
	12,212	13,120	15,395	17,985	17,146	19,319

[Home](#)

## Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies

[References](#) | [Endnotes](#)

*Anthony W. Flores, ABD*  
*California State University—Bakersfield*

*Amanda L. Russell, B.A., Edward J. Latessa, Ph.D., and Lawrence F. Travis III, Ph.D.*  
*University of Cincinnati*

[Literature in Review](#)

[Method](#)

[Results](#)

[Discussion](#)

**THE LAST TWO** decades of research have supported the need to reaffirm rehabilitation as a viable and primary goal of corrections. Most recently, research in the area of correctional intervention has shifted from examining whether or not treatment is effective at reducing recidivism to the more specific task of identifying attributes and conditions effecting reductions in recidivism (see Cullen & Gendreau, 2001). Findings from this body of research have identified a core set of principles that, when adhered to, provide correctional programs the greatest promise for crime reduction (see Gendreau, 1996a). However, even with this knowledge of how to most effectively treat offenders, there is a growing suspicion that the practitioners responsible for providing rehabilitative services remain unaware of the empirical findings regarding effective interventions, thus engaging in what Latessa, Cullen, and Gendreau (2002) refer to as “correctional quackery”—often relying on common sense or traditional practices in place of scientific evidence. If there is any validity to the above suspicion, our correctional system is failing to correct offenders, and more importantly, failing to protect the public.

According to Steinberg, Chung, and Little (2004), approximately 2.5 million juveniles are arrested annually. Furthermore, the Federal Bureau of Investigation (FBI) cites that in 2002, for all violent crime arrests, individuals under the age of 18 were responsible for 15 percent of those crimes, while juveniles accounted for 17 percent of all arrests (Snyder, 2004). Because juveniles are responsible for a significant portion of the offenses committed in the U.S., juvenile crime is at the forefront of social policy, consequently precipitating the dilemma of how to effectively treat young offenders.

Divergent to the evidence on deterrence-oriented practices and programs, researchers examining the effectiveness of rehabilitative interventions have observed recurring and considerable positive treatment outcomes (Andrews, Zinger et al., 1990). Specific to juveniles, Lipsey, Wilson, and Cothorn (2000) analyzed 200 experimental and quasi-experimental studies and found an average 12 percent reduction in recidivism for juveniles exposed to rehabilitative services. Because more

than one million young offenders are adjudicated delinquent annually (Mears & Travis, 2004), the importance of targeting empirically supported risk factors of juvenile delinquency with the most empirically supported treatment modalities cannot be overstated.

Juvenile correctional workers have many duties, two of the most important being supervision and service delivery. As a result, practitioners need to utilize empirical knowledge in their decision making because they constitute the front-line of those responsible for creating and implementing programs to treat youths. Unfortunately, as Latessa (2004) states, “it is important to remember that corrections often operates under the modus operandi of ‘if nothing bad happened yesterday, do the same thing today’” (p. 548). Consequently, if correctional practitioners are targeting inappropriate predictors of recidivism and therefore implementing ineffective treatment programs, it is logical to assume that juvenile delinquency will continue to be a pervasive social problem.

This paper investigates the level of awareness that juvenile correctional workers have of the most current research relevant to juvenile correctional strategies. More specifically, this research examines practitioner knowledge of risk factors for delinquency and knowledge of empirically supported treatment modalities.

[back to top](#)

## **Literature Review**

Practitioners often employ “common sense” principles in their decision making, rather than embracing the ever-increasing body of knowledge on correctional treatment (see Latessa et al., 2002). Equally common are decisions based on maintaining the status quo, where practitioners defer to traditional procedure rather than referring to scientific evidence (Holsinger & Latessa, 1999). Providing empirically unfounded services to correctional clients produces no change in the propensity to offend, and at worst, can actually increase the propensity for antisocial behavior (Lowenkamp & Latessa, 2005). Thus, because public safety is ultimately a byproduct of the level of antisocial tendency of its residents, ignoring empirical research can detrimentally affect both the offender and society (Cullen, 2005). Essentially, evidence suggests that “correctional quackery” persists in spite of the numerous studies identifying risk/need factors of antisocial behavior and effective programming techniques.

### *Principles of Effective Intervention.*

Considering the numerous strategies and types of programming used in corrections, it is not surprising to find a large degree of heterogeneity in programmatic strategies. However, given what is known about effective rehabilitative programming, such heterogeneity should not exist. At the most basic level, efficacious programs are based on the fundamentals of risk, need, treatment, and responsivity, which lay the groundwork for the principles of effective intervention (Gendreau, 1996a). Programs adhering to the principles of effective intervention [1](#)) are highly structured and behavioral in nature; 2) have services that match offender risk level to service intensity; 3) provide services that address an offender’s individual characteristics, such as learning style and personality; 4) address criminogenic needs; 5) have contingencies which are enforced in a “firm but fair” manner; 6) employ trained staff that relate to offenders in positive ways; and 7) provide aftercare services and have community- based relapse prevention strategies (Gendreau, 1996a). Numerous evaluations of program characteristics have found a significant correlation between the implementation of these principles and positive offender outcomes (see Latessa, Jones, Fulton, Stichman, & Moon, 1999; Lowenkamp & Latessa, 2005; Matthews, Hubbard, & Latessa, 2001; Pealer & Latessa, 2004). Thus, adhering to the principles of effective intervention promotes a certain level of homogeneity in programming; this would imply that the more unique a correctional program is, the less effective it will be at reducing antisocial behavior (Cullen, 2005). Keeping in mind the importance of adhering to all of the principles stated above, addressing criminogenic needs and providing theoretically based rehabilitative programming constitute two of the most crucial steps toward implementing the principles of effective intervention.



### *Risk/Need Factors*

To be considered a risk factor, a given attribute must be empirically linked to antisocial behavior (Bonta, 1996). Risk factors can be either static or dynamic in nature, with static risk factors constituting historical and primarily unchangeable attributes (such as whether an individual has ever used illegal substances). On the other hand, dynamic risk factors, also referred to as criminogenic needs, are those attributes that can be changed (such as whether an individual is currently using illegal substances). The research shows that if correctional efforts are to achieve any success at reducing recidivism, services must address the criminogenic needs of high risk offenders (Andrews, Bonta, & Hoge, 1990; Dowden & Andrews, 2000). The most relevant criminogenic needs have been empirically identified and are fairly well established in the literature for juveniles and adults (see Andrews & Bonta, 2003; Gendreau et al., 1996b) as well as across sex (see Simourd & Andrews, 1994). Specifically, the most relevant risk factors are criminal history, antisocial attitudes, associates, and personality (with the latter three being criminogenic needs). These are referred to as the “Big Four” (Andrews and Bonta, 2003). A working knowledge of criminogenic factors by program staff in any given rehabilitative program is essential, since adhering to the principles of effective intervention requires that these factors serve as the primary targets of rehabilitative service.

### *Types of Treatment*

Effective programs are based on sound theoretical principles “derived from the treatment literature” (Latessa, 1999, p. 422). While many different treatment strategies are utilized by correctional interventions, cognitive-behavioral based programs consistently show positive treatment effects (Lipsey & Wilson, 2000). The premise underlying cognitive behavioral treatment modalities is that thoughts and feelings provide the precursors to behavior. Thus, cognitive behavioral strategies target criminogenic thought-processes in an effort to correct antisocial behaviors (Wilson, Bouffard, & Mackenzie, 2005). More specifically, cognitive behavioral-based therapies that use role playing, modeling, interpersonal skills training, reinforcement, and problem solving skills are the most potent strategies for reducing criminal behavior (Andrews, Zinger et al., 1990; Izzo & Ross, 1990). In fact, Izzo & Ross (1990) observed that programs based on a theoretical model were, on average, five times more effective at reducing recidivism than a theoretical programs. In spite of these findings, a majority of correctional programs utilize atheoretical programming techniques that lack empirical support for their ability to reduce recidivism (Latessa, 1999; see also Matthews et al., 2001; Pealer & Latessa, 2004).

Additional evidence showing that rehabilitative services tend to be a theoretical and empirically unsupported can be found in research assessing correctional programs using the Correctional Program Assessment Inventory [1](#) (CPAI). This research found that more than 66 percent of the 105 programs assessed were scored as either “satisfactory but needs improvement” or “unsatisfactory” by the CPAI (Latessa, 1999). More important, the CPAI assessments demonstrated that correctional agencies were most deficient in the area of programming, which suffered from a systemic lack of structure, wherein staff was allowed to devise their own treatment programs without regard to existing research (Latessa, 1999).

### *Practitioners*

An increasing number of academicians and researchers acknowledge that successful interventions are attributable to “what is delivered to whom in particular settings” (Andrews, Zinger et al., 1990, p. 372). Likewise, Izzo and Ross (1990) echo similar sentiments, stating, “whether a program works depends on who does what to whom, why, and where” (p. 140). Consequently, because it is ultimately the practitioners who create and implement correctional interventions, it is absolutely necessary for them to be educated in and have a working knowledge of empirically supported practices. Yet, more often than not, treatment is blindly administered due to a lack of awareness of identified risk/need factors and appropriate treatment strategies.

In questioning correctional professionals “who work with offenders day in and day out” about

their perceptions on what are “the major risk factors associated with criminal conduct,” Latessa (2004) states, “they are often all over the map, and needless to say, I am often amazed with the list they come up with” (p. 551). Similarly, in an analysis of need scales utilized in juvenile probation agencies in California, Illinois, Montana, and Wisconsin, researchers found substance abuse, emotional stability, family problems, school problems, and intellectual impairment to be the most commonly stated needs of juvenile offenders (Baird, Storrs, & Connelly, 1984). Although these needs do play a small role in the cause of delinquency, they are not among the most potent drivers of antisocial behavior (the “Big Four”).

While research evidencing what constitutes effective programming is fairly well established, the translation of this research into practice has been and is stunted. Knowing “what works” in offender rehabilitation is essentially useless if practitioners are unaware of established principles and, in effect, unable to translate them into programmatic practice. There is recent suspicion that correctional practitioners are not utilizing available research (Latessa et al., 2002), opting instead to overlook scientific evidence in favor of “correctional traditionalism” (Cullen, 2005). This survey research examined the familiarity that practitioners have with the “what works” literature by measuring their knowledge of criminogenic needs and effective treatment strategies.

[back to top](#)

## **Method**

### *Participants*

Three distinct juvenile justice correctional agencies in a large Midwestern state were surveyed for the current research. These settings included: 1) the state department of youth services that operates juvenile institutions and aftercare services and provides institutional programming for approximately 2,000 youth adjudicated as delinquent in that state each year, 2) a county-level juvenile probation department that receives approximately 1,500 youths ordered to probation by the county juvenile court each year, and 3) a separate county-level juvenile rehabilitation center. This center is a 36-bed residential program for both males and females, with an additional ten beds located in a nearby halfway house that brings program capacity to a total of 46 youth. The average length of stay for youth in the juvenile rehabilitation center is about seven months. These three agencies agreed to participate in the research and agency administrators welcomed the opportunity to have their staff surveyed regarding both classification and treatment practices.

In combination, these three agencies represent a continuum of correctional treatment for delinquent youth, ranging from traditional probation supervision to secure, long-term, institutional placement. It is important to note that prior to completing the surveys, all staff members from each of the agencies attended, at minimum, a twoday classification and assessment training seminar emphasizing empirically identified criminogenic needs and how to effectively address those needs.

### *Materials*

A survey was created that asked staff to provide information about the current treatment and classification strategies used by their agency. In addition, the surveys also asked staff to list what they thought were the most important criminogenic needs of juvenile delinquents, and to list what they thought were the most effective treatment strategies. The questions were open-ended; respondents were provided space to record their own viewpoints rather than merely choosing from a list of possible responses.

### *Procedure*

Information concerning practitioner awareness of criminogenic needs and treatment strategies was collected through a practitioner survey. Packets of surveys, along with an envelope for each completed survey and a larger return envelope for all of the surveys, were mailed to an administrator at each research site. The coordinating administrator distributed the surveys to all treatment staff and agreed to be responsible for ensuring staff completion. Responses were kept

anonymous to assure confidentiality. Upon completion, each staff member was instructed to seal his or her survey in the provided envelope and return it to the coordinating administrator. Once all treatment staff completed the surveys, the administrator mailed them back to the researchers whereupon the responses were coded and entered into a database.

### *Measures*

The variables of interest in this study were practitioner awareness of criminogenic needs and practitioner awareness of effective treatment types. Responses to the survey question which asked staff to list the most important criminogenic needs of juvenile delinquents were compared to the empirically well established “Big Four” risk factors of antisocial attitudes, associates, personality, and criminal history (Andrews & Bonta, 2003). Because respondents were asked to identify needs, their answers were compared to only three of the “Big Four” (as criminal history is a static risk factor, not a changeable criminogenic need).

Responses to the survey question that asked staff to identify effective treatment types were compared to what meta-analytic inquiries have revealed as being the most promising approaches for reducing antisocial behavior, namely behavioral, cognitive- behavioral, or social learning based treatment modalities (Andrews, Zinger et al., 1990; Lipsey, 1995; Losel, 1995). Responses to each of these questions were coded dichotomously (e.g., yes or no) as to whether or not the respondent was able to identify the need or treatment type. If the respondent was in fact able to identify one of the “Big Four” risk factors or an empirically supported treatment type, the specific response was also recorded.

In addition to the variables of interest, demographic information for the survey respondents was collected in this research. Specific demographic information included sex of the respondent, number of years with the current agency, number of years in the current position of employment, and education level.

[back to top](#)

## **Results**

The results for all analyses are reported in two sections. The first section presents the descriptive statistics for agency response rates and information about individual staff. The second section presents the percentages of agency staff that identified criminogenic needs of their client population and percentages of staff that identified effective treatment types.

### *Demographic Characteristics*

An examination of [Table 1](#) reveals that 100.0 percent of the treatment staff employed by all three of the agencies included in this study returned a survey. The respondents were nearly equally divided by sex and had been employed by their respective agencies, on average, approximately 10 years, while serving an average of 6.5 years at their current position. Additionally, [Table 1](#) reveals that more than 60 percent of the treatment staff have a baccalaureate degree and more than 30 percent have an advanced degree (either an M.A./M.S. or Ph.D.). In sum, [Table 1](#) indicates that the three agencies participating in this research employ an essentially equal number of male and female, well-educated and considerably experienced staff.

### *Staff Awareness of Criminogenic Needs and Effective Treatment Types*

[Table 2](#) provides information on staff awareness of empirically identified criminogenic need factors of juvenile delinquents as well as staff awareness of empirically relevant effective treatment types. An examination of [Table 2](#) reveals that of the 171 staff that provided a response to the question asking what they thought the most important criminogenic needs of juvenile delinquents were, 0.0 percent were able to identify all three of the criminogenic needs stated in the “Big Four” risk factors. The results were not much more encouraging when examining the number of staff able to identify two of the three criminogenic needs identified in the “Big Four.” Indeed, only 6.4 percent successfully identified two of the three criminogenic needs contained in

the “Big Four” risk factors. Slightly more encouraging however—but not adequate by any means—was the observation that nearly 36 percent of respondents were able to identify at least one of the criminogenic needs contained in the “Big Four.”

Of the 42.1 percent of respondents that correctly identified at least one criminogenic need, 81.9 percent listed personality, 10.5 percent listed attitudes, and 3.5 percent listed associates as a criminogenic need of juvenile delinquents. Interestingly, these data indicate that of the practitioners identifying at least one criminogenic need, only 14 percent listed one of what research consistently finds to be the two most potent predictors of delinquency: attitudes and associates. It should be noted that some of the most common responses did include criminogenic needs empirically identified as moderate predictors of delinquency (specifically substance abuse, education, and family needs), with substance abuse being the modal response given.

The findings relevant to practitioner awareness of effective treatment types reveal similar results. Of the 181 staff responding to the question asking what they thought were the most effective treatment types, only 27.6 percent were able to identify cognitive, cognitive-behavioral, or social learning based treatment types. Interestingly, the modal response to this survey question was coded as “vague” for this research. Some of the most common open-ended responses given which were later coded into the “vague” category included psychoanalysis, mental health, self-esteem enhancement, and victim awareness.

[back to top](#)

## **Discussion**

Several decades of research examining differing strategies for reducing delinquent behavior indicate that the provision of rehabilitative service provides the only consistent method of effecting behavioral change and, more specifically, indicates that only cognitive behavioral treatment strategies addressing the criminogenic needs of high-risk clients yield consistent and positive treatment effects. The implications are very clear: for programming to be effective, it must adhere to the principles of effective intervention. The current research examined the level of awareness that front-line practitioners have of two of the principles of effective intervention: the needs principle (e.g., what needs to target) and the treatment principle (e.g., how to target the identified needs).

The findings of this research make a very important point regarding the implementation of treatment strategies based on the principles of effective intervention. The agencies surveyed represented a continuum of juvenile correctional agencies, including probation, institution, and residential treatment settings. The practitioners employed by the participating agencies were experienced and well-educated. However, a large majority of practitioners were unable to identify the empirically well-established “Big Four” predictors of future delinquency. Unfortunately, it should come as no surprise that many rehabilitative efforts fail to produce positive treatment effects when those responsible for delivering the interventions are largely unaware of the most relevant criminogenic needs to target with such services.

This research came to the same conclusion when examining practitioner awareness of effective treatment strategies. For this sample of survey respondents, little more than one-fourth was able to identify at least one of the three empirically well-established effective treatment modalities. This finding is particularly troubling given that the main distinction between the juvenile and criminal justice systems is the emphasis on rehabilitation.

While these findings are based on a large number of juvenile practitioners from diverse settings, it must be noted that the results only describe the level of practitioner awareness in this sample. Additionally, responses provided were open-ended in nature. While considerable effort was made to carefully examine each response and to ensure it was coded into the appropriate criminogenic need or effective treatment category, it is possible that there was some discrepancy between what a respondent wrote and actually meant.

Despite the limitations discussed, the results of this research make a strong case for the expanded use of interventions. Ironically though, a case is made for the expanded use of interventions aimed at improving practitioner knowledge. Correctional agencies should begin by subscribing to discipline- specific journals which report research findings concerning rehabilitative efforts. Such information can be used to educate staff as to the latest and most effective treatment strategies for addressing client needs. Additionally, agencies should seek to bridge the gap between empirical and practical knowledge by establishing closer relationships with researchers. Collaborating with researchers to package the latest research findings into seminars or workshops, in particular, would prove to be a beneficial means of further educating staff.

In sum, researchers and practitioners are so identified because of their primary role as either researcher or service provider. The existing body of literature relevant to effective interventions demonstrates that researchers are fairly well informed regarding what constitutes effective correctional practice. The findings from this study demonstrate that practitioners are largely uninformed when it comes to knowing their trade, and are ultimately providing service that could be classified as “quackery.” Furthermore, these findings are particularly troublesome given that it is ultimately practitioners that are responsible for rehabilitating juvenile delinquents.

Consequently, if research identifying the components of effective interventions is to have any utility, it must find its way into the common language and practice of those that can put it to good use: practitioners.

[back to top](#)

[References](#) | [Endnotes](#)

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**Table 1: Descriptive Statistics of Practitioner Surveys (N=96)**

Variable		%
Agency response		
	State institution (n=185)	100.0
	County probation (n=10)	100.0
	County rehabilitation center (n=1)	100.0
Sex		
	Male	50.8
	Female	49.2
		M
Years With Agency		10.2
Years At Current Position		6.5
		%
Education		
	H.S.	3.2
	Some College	3.7
	A.A	0.5
	B.A./B.S.	61.6
	M.A./M.S.	24.7
	PhD.	6.3

**Table 2: Practitioner Awareness of Criminogenic Needs and Treatment Principles**

<b>Awareness of Criminogenic Needs (n = 171)</b>	<b>%</b>
Identified 1 criminogenic need only	35.7
Identified 2 criminogenic needs only	6.4
Identified 3 criminogenic needs	0.0
<b>Awareness of Effective Treatment Type (n = 181)</b>	<b>%</b>
Identified appropriate treatment type	27.6

[Home](#)

## Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism

[References](#)

*William Bradshaw, Ph.D.*  
*University of Minnesota*

*David Roseborough, MSW*  
*University of St. Thomas*

### [Methodology](#)

**THE DEVELOPMENT OF** effective programs and interventions to reduce juvenile recidivism is a national priority. Juvenile criminal offenses are a significant societal problem with great financial and social costs. Adolescent boys commit higher rates of criminal acts than any other age group and use much of the resources of youth services systems (National Council of Juvenile and Family Court Judges, 1996). Antisocial behavior has significant negative emotional, physical, and financial effects on victims, their families, and communities. Child mental health, youth services, juvenile justice, and child welfare systems have been involved in providing a range of correctional, rehabilitative, and psychological approaches to reduce juvenile recidivism.

Traditionally, the juvenile justice system in the United States has been dominated by two different approaches in responding to juvenile offenses, the retributive justice model and the rehabilitation or treatment model. The retributive model defines a juvenile offense as a crime against the state and the state provides suitable punishment to the offender. The assumption of the retributive model is that punishment will deter future offenses. However, the retributive model often creates situations that increase the likelihood of further delinquent activity (Crouch, 1993; Link, 1987; May & Pitts, 1999). The juvenile offender is also at high risk of lowered educational and occupational opportunities and delinquent behavior is a strong predictor that the offender himself will be victimized (Lauritsen, Laub, & Sampson, 1991).

The rehabilitative model focuses on the treatment of the offender with the assumption that interventions such as probation supervision, work readiness training, cognitive skills training, and behavior therapy will change behavior and reduce the frequency of juvenile offenses. Historically, however, there has been little evidence for the success of these methods in reducing recidivism. Henggeler (1989), in his review of two decades of juvenile justice system attempts to reduce recidivism, concluded that “nothing works.” Lipsey’s (1995) meta-analysis of 400 outcome studies that involved 40,000 juvenile offenders showed only a small average reduction of 10 percent in recidivism.

Restorative justice is an increasingly important alternative approach to responding to criminal offenses (Bazemore & Umbreit, 1995). While the retributive and rehabilitative models focus on the punishment or rehabilitation of the offender, they neglect the needs of the victims. In contrast, for hundreds of years, indigenous populations in New Zealand, the United States, and



Canada used rituals to bring together family and friends of both victims and offender to search for a resolution to the problem that was acceptable to all involved. Initial restorative justice programs focused largely on victim offender mediation and on providing restitution to victims. The conceptualization of restorative justice has expanded both its initial formulation and program services over the last 20 years with a broader range of policies and practices being adapted by an increasing number of jurisdictions (Bazemore & Schiff, 2001; Umbreit, Coates & Voss, 2002). Restorative justice assumes that criminal offenses are first a violation of people and relationships and not just in the domain of the state. The restorative model reconceptualizes the purpose of justice by focusing on the three major stakeholders in the process of restoration and healing: the victim, offender, and community (Zehr, 2002).

The aim of restorative justice is to repair the harm done by the crime by bringing together the people most affected by the offense to determine how to deal with the offence. Dialogue, reparation, and accountability are critical components of all restorative interventions (Bazemore, 1996; Umbreit, 2000; Zehr, 1990). This process aims to benefit victim, offender, and the community. The victims are able to express their feelings, get questions answered regarding the crime, and have input into the reparation plan. The offender is held personally accountable in providing restitution and the restorative process also promotes the support and reintegration of the victim and offender into the community.

There are currently three types of uniquely restorative justice dialogue programs that receive a good deal of attention: victim-offender mediation, family group conferencing, and peacemaking circles. Victim-offender mediation (VOM) is the most established intervention model of the restorative justice movement, with more than 1300 VOM programs in 18 countries (Umbreit & Greenwood, 1999). The practice of VOM is grounded in restorative justice theory that emphasizes that crime first should be perceived as an act against individuals within the context of community. While not denying that the state clearly has an interest in preventing and resolving criminal conflict, restorative justice offers a process by which those most directly affected by crime—the victim, community, and offender—have an opportunity to be involved directly in responding to the offense, holding the offender accountable, offering emotional and material assistance to the victim, and working toward the development of a safe and caring community for victim and offender.

The heart of VOM is a guided face-to-face meeting between a crime victim and the person or persons who victimized him or her, along with parents or other support people, if desired by the victim or offender. The goal of these meetings is to provide a safe place for genuine dialogue between the involved parties that can address emotional and informational needs and develop a restitution plan. VOM programs typically involve victims and perpetrators of juvenile property offenses and minor assaults, and their parents. Some programs have expanded the focus of VOM and provide mediated dialogue for crimes of severe violence (Umbreit, 1994).

Current research on VOM has focused primarily on specific victim and offender outcomes, satisfaction, fairness, and restitution completion. Numerous studies have found uniformly high levels of satisfaction with mediation for both victims and offenders. Umbreit, Coates, and Voss (2002) review two decades of research in VOM and note that typically 80-90 percent of participants report being satisfied with the process and 90 percent of these meetings resulted in restitution agreements. Of these restitution agreements 80 to 90 percent have been reported as completed. These findings are consistent across sites, cultures, and severity of offence. Similarly, in a study that examined the experience of fairness in the justice system, 80 percent of burglary victims who participated in VOM reported they experienced the criminal justice system as fair, compared with only 37 percent of victims who did not participate in VOM (Umbreit, 1989).

Family group conferencing (FGC), also called community conferencing, originated in New Zealand as a means of diverting young offenders from formal adjudication. FGC was based largely on the ancient tradition of indigenous people of New Zealand, the Maori. It later evolved in Australia into police-based conferencing that allowed police to bring together juvenile offenders, their families, and supporters on the one hand, and the crime victim and their family and supporters. The goals of the conference are to help offenders understand the impact of the

offense on the victims and take responsibility for their actions. The conference provides victims with the opportunity to move toward forgiveness and empowers the community to resolve the problem in ways fitting the situation and stakeholders (McCold & Wachtel, 1998). FGC has become increasingly popular in the United States, Canada, Europe, and South Africa.

The philosophy of restorative conferencing is based on Braithwaite's (1989) theory of reintegrative shaming, control, and deterrence (Hirschi, 1969) and problem-oriented policing (Goldstein, 1990). Although there are different models of restorative justice conferencing, there are four fundamental assumptions of conferences. These include 1) family and extended family are respected and the focus must be on strengthening family and social supports; 2) power must be given to all participants; 3) conferences must be culturally sensitive and respectful to families; and 4) victims must be involved in the process and get what is needed to repair the harm done to them (McGarrell, Olivares, Crawford, & Kroovand, 2000). Several studies have reported high levels of victim satisfaction (over 90 percent), offender satisfaction, and victim and offender experience of fairness with the conference process (McCold & Wachtel, 1998).

The primary goal of peacemaking circles is to promote accountability, healing, and compassion through community participation in resolving conflicts. Peacemaking circles are based on the process of dialogue, relationship building, and the communication of moral values in order to accomplish the key outcomes of reparation of harm and improvement in social well being (Presser & Van-Voorhis, 2002). Peacemaking circles, sometimes referred to as sentencing circles, have been used in Canada to empower Native peoples and to transfer some aspects of the judges' role to Aboriginal communities (Jaccoud & Walgrave, 1999). Jaccoud and Walgrave (1999) have also suggested that sentencing circles may provide a restorative justice solution to what some consider two limitations of victim offender mediation: the lack of concern for larger community safety and the limitations of voluntary settlements.

The literature on peacemaking and sentencing circles is primarily descriptive (Morris, 2000; Green, 1998; Umbreit, Coates & Voss, 2002; Stuart, 2001, 1996). There are only two known studies of Circles (Umbreit, Coates & Voss; Stuart, 1996). Both studies report many positive impacts of peacemaking circles. Neither study, however, examined the effect of peacemaking circles on recidivism.

Restorative justice principles have broad appeal and advocates of restorative justice practices point to many benefits of restorative interventions. Victim needs are more fully met, offenders are held more directly accountable for their actions and there is the possibility of enhanced support for victims and offenders in the community. To what extent are restorative justice programs effective in achieving their goals? McCold and Wachtel (1999) have recommended that measures of restorative justice include 1) the percent of victims and offenders expressing satisfaction with the way their case was handled, 2) the percent of victims and offenders who rate their experience as fair, and 3) the balance of ratings between victims and offenders. In this regard, restorative justice literature routinely shows high levels of satisfaction and fairness with the process across different restorative approaches, VOM and FGC, as reported by both victims and offenders. Unfortunately the concept of "measures of restorative-ness" is significantly limited by the exclusion of the clearly essential variable of recidivism. The goals of healing and restoration for victims, offender, and community are limited if there is no change in criminal behavior and increased community safety.

Is restorative justice an effective response to juvenile criminal behavior? There have been several comprehensive literature reviews of VOM that report varied effects of VOM on juvenile recidivism (Umbreit, Coates, Voss, 2002; Latimer & Klienkecht, 2001; Braithwaite, 1999; Marshall, 1999). These studies have investigated the impact of VOM on juvenile recidivism, primarily by comparing re-offense rates of VOM participants with non-participants (Umbreit, Coates, & Voss, 2001). Much of this research is limited by the lack of control groups, nonequivalent control groups, and self-selection bias of those who choose to participate in VOM and varied definitions of re-offense. In addition, these narrative reviews are limited due to the lack of clarity and inconsistency of how the literature was selected, and their inability to aggregate the empirical knowledge regarding recidivism and interpret discrepant findings in the

literature.

Nugent, Umbreit, Winamaki, and Paddock (2001) conducted a rigorous reanalysis of recidivism data reported in four previous well-designed studies. The sample consisted of 1,298 juvenile offenders (619 participated in VOM and 679 did not). Results of the logistic regression showed that VOM youth recidivated at a statistically significant rate, 32 percent lower than non-VOM youth. In addition, when VOM youth did re-offend they did so for less serious offenses than non-VOM youth. This replication study is an important step in the literature in substantiating the effectiveness of VOM in reducing juvenile recidivism.

There have been four research studies evaluating the effectiveness of FGC on juvenile recidivism. The Wagga Wagga study by Moore and Forsythe (1995) used a single group pre-test/post-test design with 693 subjects to evaluate changes in re-offense in this sample. Results show statistically significant reductions in re-offense at nine months follow-up. However, when controlling for time, there was no treatment effect on re-offense.

McCold and Wachtel (1998) report on the results of a random assignment of 150 juveniles with property offenses to FGC or a control group and 75 juveniles with violent offenses similarly assigned to FGC or control. Although there was random assignment, there was non-equivalence between groups that limit the study results. Results indicate that juveniles with property offenses who participated in FGC actually had greater rates of recidivism than the control group at one year follow-up. Regarding violent offenses, there was a statistically significant reduction in re-offense for FGC participants. Further analysis of this data found a self-selection process that negated the hypothesis of a significant FGC treatment effect.

The McGarrell, Olivares, Crawford, and Kroovand (2000) study used an experimental design with random assignment of juveniles to experimental intervention, FGC (232 subjects), or control group (226), diversion programs. Results at six months found a statistically significant reduction in recidivism in FGC participants: re-offense 20 percent and diversion 34 percent. At twelve months, FGC participants had a 30 percent re-offense rate compared to diversion programs (41 percent), which was also statistically significant.

Sherman, Strang, and Woods (2000) used four experimental studies to evaluate the effectiveness of FGC compared to a control group. These studies examined 1) driving while intoxicated (N=900), 2) juvenile property offenses (N=249), 3) juvenile shoplifting (N=143), and 4) violent offenses (N=110). Results found a reduction of 38 crimes (in a 100 per year in driving while intoxicated) for FGC. For property crimes, there was a small increase of 6 crimes in 100 per year for FGC participants. There was no significant difference between groups in juvenile shoplifting. Regarding violent offenses, there was a reduction of 38 (in a 100 per year) for FGC.

The overall methodological quality of restorative justice research shows considerable variety in the quality of studies, which makes it difficult to compare results across studies (Bradshaw & Roseborough, 2003; Latimer, Dowden, & Muise, 2001; Nugent et al., 2003). Meta-analysis, however, is a useful method for summarizing research findings across studies and synthesizing these findings in a more objective manner than expert opinion that leaves reviewer bias essentially uncontrolled (Rosenthal, 1999).

In a meta-analysis, the strength of the intervention effect on the outcome is described by the effect size. An effect size is a statistical method that was developed to evaluate in a standardized manner how much, on the average, a given treatment program reduced the severity of the target symptoms. The effect size method enables us to compare the efficacy of different types of treatment across studies. For example, an effect size of +.10 can be interpreted as the intervention accounted for 10 percent of the change in outcome.

Latimer, Dowden, and Muise (2001) conducted a recent meta-analysis on restorative justice interventions. However, adults and juveniles were included together in the analysis and there was no differentiation of the types of restorative justice interventions that were used in the study. Due to the lack of evaluative data regarding peacemaking circles, this study focuses on the

effectiveness of victim offender mediation and family group conferencing.

The purpose of this meta-analytic study is 1) to synthesize the results of existing studies of the effectiveness of restorative justice dialogue practices on juvenile recidivism to determine the overall intervention effect of restorative justice, 2) to compare intervention effects between VOM and FGC on recidivism, and 3) to examine moderating variables that might affect rates of re-offense.

[back to top](#)

## **Methodology**

### *Sample*

A literature search was conducted following the guidelines described by Sowers, Ellis, and Meyer-Adams (2001). Two procedures were used to search for studies. First, computer searches were done of PsychInfo, Social Sciences Abstracts, Dissertation Abstracts, and the National Criminal Justice Reference Service databases. Key words included victim offender mediation, victim offender reconciliation, restorative justice, mediated dialogue, victim-offender mediation programs, peacemaking circles, sentencing circles, family group conferencing, community conferencing, police conferencing, and problem-oriented policing. Second, reference lists from each study were examined and experts in the field were contacted to identify unpublished research in this area.

To be included in the meta-analysis, each study had to 1) focus on juvenile offenders, 2) examine restorative justice intervention outcomes on recidivism, and 3) utilize a restorative justice intervention group and a comparison group. The search identified 33 articles in the area of restorative justice and recidivism. Of these, 19 studies met the selection criteria. Studies were excluded because they did not have a comparison group or included both adults and juveniles in the sample. The sample for this study included 11,950 juveniles from 25 different service sites.

### *Outcome Measure*

The outcome measure in the study was reoffense. Re-offense was defined differently in these studies. Some defined re-offense conservatively as an offense for which the youth was adjudicated guilty during a one-year period after the original offense (Umbreit, 1993, 1994; Nugent & Paddock, 1996; Winamaki, 1997; Sneider, 1990). The other studies used a broader, more liberal definition of re-offense that was defined as any other contact with the criminal justice system.

### *Moderating Variables*

Several variables were identified that might moderate the impact of restorative justice on re-offense. These include 1) quality of Restorative Justice and Juvenile Recidivism 17 research design, 2) type of comparison group, 3) type of offense, 4) definition of re-offense, 5) source of the study, 6) sample, and 7) length of follow-up. Differences in re-offense rates between groups could be caused by the lack of equivalence in the initial formation of the groups. Therefore it is important that methodological procedures such as random assignment, matching, and use of statistical evaluation of equivalence between groups are used in the study. Quality of research design was coded 1 = use of methodological procedures to ensure equivalent groups, and 2 = no methods were used.

Some comparison groups consisted of youth who refused to participate in restorative justice programs, while other youth were assigned to and participated in other traditional justice treatment programs. Differences in re-offense rates could be influenced by the nature of the comparison group. Comparison groups of youth who refused participation were coded 0 and groups that were assigned to other treatments were coded 1. Type of offense, property offense vs. person related offense, could moderate rates of re-offense. Samples that had only property offenses were coded 0 and those with property and person offenses were coded 1. Definition of

re-offense was coded 1 if adjudicated guilty during the follow-up period and coded 0 if re-offense was defined as any official contact with law enforcement, court, or arrest. Research that reports negative or non-significant results, program evaluation reports, master's theses, and dissertations are frequently not published and can bias results due to their exclusion from the literature. Published articles were coded 1 and unpublished research was coded 0. Samples in some studies consisted of only restorative justice program referred clients. This could bias toward re-offense rates if persons with more serious history of offenses were excluded. If a study contained all restorative justice referrals, they were coded 1 and if the sample included not all restorative justice referrals it was coded 0.

### *Analysis*

The primary analyses consisted of computation of effect sizes as outlined by Cohen (1977). Effect sizes were computed as the mean of the criterion group, cognitive behavioral treatment, minus the mean of the contrast group, divided by the pooled standard deviation of the treatment and contrast groups. For studies that reported percentages, the effect sizes were computed using the probit transformation of differences in proportion to effect size calculations (Glass, 1981). For those studies that reported non-significant differences, but did not report means and standard deviations, a zero was entered for the effect size of that outcome measure. Effect sizes were adjusted to correct for bias attributable to studies with small sample sizes and to ensure these studies did not inflate overall effect sizes. Weighting procedures described by Hedges and Olin (1985) were used to combine effect sizes from different studies to give greater weight to studies with larger sample sizes that provide greater reliability.

The effect size reflects the distance the average restorative justice client was from the average contrast client expressed in standard deviation units. An effect size of 1.00 would indicate that the average restorative justice client would have been one standard deviation higher than the contrast group. Effect sizes approximating zero would indicate no differential advantage for either treatment. Negative effect sizes would suggest that restorative justice treatment was less effective than the contrast treatment.

The unit of analysis for this study was conceptualized in two different ways (Durlak, 1995). First, separate effect sizes were calculated for each study. Second, effect sizes were calculated across studies. In addition to the computation of effect sizes, comparisons of group means were done based on the moderating variables: 1) quality of research design, 2) type of comparison group, 3) type offense, 4) definition of re-offense, 5) source of the study, and 6) sample. Length of follow-up was correlated with re-offense effect sizes.

### *Results*

The inter-observer agreement for assessing the inclusion criteria for the studies was good (ICC = .96). The sample consisted of 11,950 juveniles who received service in 25 different sites and four countries. The duration of follow-up ranged from nine months to 48 months with an average of  $M = 17.08$ ,  $SD = 9.01$ .

### *Effect Size Analysis*

The average effect size for all studies was  $M = .26$ ,  $SD = .39$ . Restorative justice dialogue programs, VOM and FGC, contributed to a 26 percent reduction in recidivism. There were 15 studies with positive effect sizes, five studies with no treatment effect, and three studies with negative effect sizes. See Figure 1 for graphic depiction of the effect sizes. The comparison between VOM and FGC effect sizes found higher effect sizes for VOM ( $M = .34$ ,  $SD = .46$ ) than for FGC ( $M = .11$ ,  $SD = .12$ ). This difference was statistically significant ( $t(20) = 2.79$ ,  $p < .05$ ).

### *Moderating Variables*

Following the primary analysis of effect sizes, the first step was to test the homogeneity of effect sizes combined across all of the studies. As Durlak (1995) has noted, the Q statistic assesses

whether the effects in the meta-analysis vary primarily due to sampling error or due to systematic differences among the studies and sampling error. If the effects of the group of studies are homogenous, it suggests that they come from the same population and analysis of group means and correlations is warranted. The Q statistic for all studies was  $Q=18.45$ ,  $p > .05$  ns, indicating homogeneity of the reviewed studies. The influence of six moderating variables on effect sizes was then examined. These variables were 1) quality of research design, 2) type of comparison group, 3) type of offense, 4) definition of re-offense, 5) source of the study, 6) sample, and 7) length of follow-up. Analysis of group means was done by t-tests. There was a significant difference in effect sizes based on type of control group. Studies that utilized a control group consisting of juveniles referred to a restorative justice intervention but who refused participation had significantly higher effect sizes ( $M = .46$ ,  $SD = .41$ ) compared to those control groups that were made up of juveniles participating in an alternative treatment, e.g. diversion programs ( $M = .11$ ,  $SD = .31$ ). This difference was statistically significant ( $t(21) = 2.36$ ,  $p < .05$ ). There were no significant differences in overall effect sizes between groups based on comparison group, quality of design, type offense, definition of re-offense, source of the study, or sample. There was also no significant correlation between length of follow-up and overall effect size.

Results from meta-analyses can be positively biased in the estimation of treatment effects because journals rarely publish papers that report on non-significant or negative results. This enhances the possibility of Type I error in finding more positive results than would be the case if all existing studies were included in the review. Fail-Safe Ns for each group of effect sizes were calculated using the formula outlined by Rosenthal (1979). The Fail-Safe N represents the number of additional studies in a meta-analysis that would be necessary to reduce the mean effect size to .20, a small effect size (Wolf, 1986). The Fail-Safe Ns reported in this study indicate that confidence can be placed in the findings of the effect sizes (cf. [Table 2](#)).

### *Discussion*

This is the first meta-analysis that examined the effectiveness of the two most prominent restorative justice dialogue programs in reducing juvenile recidivism. The use of meta-analytic methods provides a useful means for summarizing diverse research findings across restorative justice studies and synthesizing these findings in an objective manner. The use of an effect size is an easily interpreted way of assessing the strength of an intervention effect.

The average effect size of .26 found in this study represents an intervention effect that is double that of the previously reported effect sizes of .10 found in traditional justice programs (Lipsey, 1995). These results are particularly meaningful given the typical brevity of restorative justice dialogue interventions. They add to the empirical base of the effectiveness of restorative justice dialogue programs in reducing juvenile recidivism and support the use of restorative justice programs as empirically supported interventions for juvenile offenses.

The empirically supported practice movement is an international attempt to identify the best practices in a field of service that is based on the researched efficacy of an intervention. This movement is also grounded in the right of clients to know about and have access to effective treatments (Thyer & Meyers, 1999).

The significant difference in effect sizes between VOM (.34) and FGC (.11) have important implications for the future development of restorative justice practices. The effect of VOM on recidivism has been researched in 15 studies of which 11 show positive intervention effects on reducing recidivism, two show no treatment effect, and two show negative effect sizes. There is sufficient data to support VOM as a well-established, empirically-supported intervention for reducing juvenile recidivism (Chambless et al., 1998).

FGC research is currently limited to the four studies previously reviewed, of which only two show positive intervention effects. Using similar criteria of efficacy, FGC would be considered as a promising, but experimental, intervention for juvenile re-offense. FGC proponents need to continue research efforts to evaluate its effectiveness in reducing juvenile recidivism in order to make FGC more feasible and broaden the empirically supported options available in the field of

restorative justice.

The type of control group has a moderating effect on intervention effect size. Studies that utilized a control group consisting of juveniles referred to a restorative justice intervention but who refused participation had significantly higher effect sizes than those control groups that were made up of juveniles participating in an alternative treatment such as diversion programs. This is in contrast to Latimer, Dowden, and Muisen's (2001) findings that alternative treatment control groups had higher mean effect sizes compared to non-participation control groups. Further research on the potential moderating influences of type of control is needed.

Three issues of the methodological quality of these research studies create difficulties in interpreting the results reported in this set of studies. First, only ten studies used random assignment, matching, or statistical methods to create equivalent groups. Second, half of the studies included in the meta-analysis used the broader definition of re-offense: arrest, contact with police, or violation of probation. This definition may increase the number of false positives regarding re-offense. The other studies used a narrowly defined measure of re-offense, adjudicated guilty. Use of this more conservative measure may decrease the number of false positives in re-offenses. Third, due to the voluntary nature of participation in most restorative justice dialogue programs, there is an inherent self-selection bias that makes interpretation of results difficult. The addition of measures that assess the youth's motivation for participation may provide a means to control for differences in motivation and openness to mediation.

There are several issues that need to be addressed in future research in juvenile recidivism. First, it is essential to do more evaluation of restorative justice dialogue programs, particularly FGC and peacemaking circles, using random assignment and other methodological procedures to enhance equivalence of initial treatment and comparison groups. Second, the use of quantified measures of the severity and number of previous antisocial behaviors is needed to increase the validity of results and identify more accurately subgroups that may have differential responses to different restorative justice programs. For example, in most studies, the sample is described by property or person/violent offenses. If two juveniles are referred to restorative justice dialogue programs for similar property offenses, but one has a significant history of severe and frequent offenses and the other is a first time offender, they may look equivalent as a property offense, but the likelihood of re-offense is greater for the youth with the prior history. Use of a severity rating system (Nugent & Paddock, 1995) allows for greater accuracy in describing offense histories. Third, the use of other self-report and multi-informant approaches such as the Child Behavior Checklist (Achenbach, 1991) to measure juvenile behavior is important to broaden the scope of measuring delinquent behavior beyond re-offense. Fourth, while there were no significant moderating effects by type of offense, definition of re-offense, source of the study, and sample on effect size, further research using other types of designs are needed to identify potential moderating variables and begin to describe what works for whom in different restorative justice programs. Fifth, criminal justice programs or psychologically based treatment interventions are the common responses to delinquent behavior. It is an unfortunate dichotomy given the fact that many juveniles adjudicated guilty who participate in restorative justice programs also have co-morbid psychiatric conditions that need treatment. For those juveniles who are receiving treatment and participate in restorative justice, there is a potential factor of multiple treatments that confound interpretation of research results. On the other hand, it may be an important area of research to evaluate the effectiveness of a combination of restorative justice approaches and empirically supported psychological treatments.

In traditional retributive and rehabilitative models of justice, reduction of recidivism is the gold standard of outcomes. However, within the field of restorative justice there are concerns regarding which outcomes are truly restorative. Some authors have described a model for the evaluation of restorative justice programs that is more congruent with restorative justice values (Presser & Van-Voorhis, 2002). This model focuses on the process of restorative justice and less on traditional outcomes, as well as utilizing qualitative methods of inquiry. Others have emphasized that in restorative justice programs, recidivism is important, but not central, to the practice of restorative justice (McCold & Wachtel, 1998). They note that even if recidivism is not reduced, restorative justice programs could be justified if they meet other needs of victims,

offenders, and the community.

In a time of accountability, tight budgets, and closing of restorative justice programs, restorative justice practitioners and policy makers need to utilize effectiveness data to make decisions regarding program development and funding. As McCold and Wachtel (1998) have concluded, “Restorative justice programs which reduce recidivism are to be preferred over programs which have no measurable effect on recidivism.”

[back to top](#)

## [References](#)

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**Table 2: Practitioner Awareness of Criminogenic Needs and Treatment Principles**

<b>Awareness of Criminogenic Needs (n = 171)</b>	<b>%</b>
Identified 1 criminogenic need only	35.7
Identified 2 criminogenic needs only	6.4
Identified 3 criminogenic needs	0.0
<b>Awareness of Effective Treatment Type (n = 181)</b>	<b>%</b>
Identified appropriate treatment type	27.6

[Home](#)

## Motivational Interviewing for Probation Staff: Increasing the Readiness to Change

[References](#) | [Endnotes](#)

Michael D. Clark, MSW  
Center for Strength-Based Strategies

[Across the Criminal Justice Field \(macro\): What Business Are We In?  
Within Probation Departments \(mezzo\): The Obstacle of the “Either/Or”  
Into the Individual Pairing of Officer and Offender \(micro\): A Helpful Mix  
Postscript  
Credits](#)

*“Motivational Interviewing makes a lot of sense to me—I mean, it seems to be a lot like banking. We’ve got to make a deposit before we can expect to make a withdrawal.” (Training participant, 2005)*

**THIS ARTICLE BEGINS** a two-part series on increasing motivation with “involuntary clients,” focusing on mandated offenders placed under probation supervision by court orders. Motivational Interviewing (Miller & Rollnick, 1991) is an approach that was first developed and applied in the field of addictions but has broadened and become a favored approach for use with numerous populations across a variety of settings (Burke, Arkowitz & Dunn, 2002). In our own field of criminal justice, evidence-based practice as outlined by criminologists has recommended that justice staff be responsive to motivational issues with offenders (Andrews & Bonta, 2003). This series demonstrates practical ways to respond to that recommendation.

Probation staff clamor for “how to’s” and seek knowledge as they work hard to manage high-volume caseloads. The second article of this series will address such strategies and techniques for the line officer. But patience is necessary; Motivational Interviewing (MI) is not just a collection of techniques to apply *on* an offender. Raising motivation levels and increasing an offender’s readiness to change requires a certain “climate”—a helpful attitude and a supportive approach that one takes *with* an offender. This climate becomes hospitable to developing a helping relationship—and this relationship must occur between agent and probationer for enduring change to take place. This article will examine this type of climate across the criminal justice field (the macro perspective), within probation departments (the mezzo perspective), and within the individual pairing of any officer and offender (the micro perspective).

[back to top](#)

### **Across the Criminal Justice Field (macro): What Business Are We In?**

Duncan, Miller and Sparks (2004), promoting outcome-informed efforts, recall a landmark article by Theodore Levitt, a Harvard business professor. Levitt (1975) recounted the rise of the railroad industry throughout much of the 1800s and into the next century. The railroad industry

vaulted to tremendous success as it laid track from city to city, crisscrossing and connecting our continent. Millions of dollars were pocketed by those laying the track and building this nation's rail infrastructure. The pace of life quickened and demand rose for speedy travel.

However, as the first baby-boomers began to leave their nests in the 1960s, the railroads were in trouble—actually in serious decline. Why? Railroad executives would answer that it was due to the need for speedier transportation and faster communication that was being filled in other ways (i.e., cars, trucking industry, telecommunications, etc.). That reasoning made no sense to Levitt. To this business professor it begged a question. Duncan, Miller & Sparks (2002: 80) note the irony:

The railroad industry, Levitt (1975) argued, was not in trouble “because the need was being filled by others...but because it was *not* filled by the railroads themselves” (p. 19). Why did the industry *not* diversify when it had the chance? Because, as it turns out, railroad executives had come to believe they were in the *train* rather than the *transportation* business.

Due to this limiting conception, trucking and airfreight industries prospered while locomotive engines fell into disrepair, parked on rusted track in the back of neglected railroad yards. The railroad industry had come to believe they were in the railroad business instead of the transportation business.

It would seem that probation, as a criminal justice entity, is much like the railroad industry of our past century—for it has come to believe that it is in the *probation business* rather than the *behavior change business*. Our field seems primarily concerned with the process of probation—insuring adequate supervision, compliance with probation orders and the completion of mounds of attendant paperwork. Process takes center stage rather than a principal focus on strategies and techniques that will encourage positive behavior change (outcomes).

The problem lies in the mindset that pervades the probation and parole field that allows outcomes to take a back seat to process. Consider a recent lament by a deputy director who manages a fairly large community corrections division. He offered his state's “probation officer of the year award” as an example of the “business of probation.” This annual contest awards much more than a certificate or a new wristwatch—the prize is a week-long vacation in the Caribbean! As can be imagined, staff work hard to win the prize. However, this deputy director noted that the field is so process-oriented that the agents who win this trip do so because of timely paperwork completion, more face-to-face meetings than required, comprehensive report writing and punctual court appearances. Yet if *outcomes* were considered, this same officer, enjoying the sun and waves from a relaxing beach-side cabaña, might be embarrassed to know that his or her caseload detailed a 30 percent absconding rate or a 60 percent recidivism rate. Sadly, this situation is not one-of-a-kind. Another state's “officer of the year” award is even easier to determine: it is awarded to the staff member who has the highest rate of collection of *court fees*. Process is king. The business of probation occupies the limelight.

For those who might bristle at this implication, a quick inventory is telling: If your department requires new-agent training, how much of this orientation curriculum involves motivational enhancement training or strategies/techniques to encourage positive behavior change? Consider any continuing education training recently conducted by your department. More often than not, training titles would have included phrases such as, “Managing the...,” “Supervising the...,” “Officer Safety,” “Computer Training,” “Risk Assessment” or the ubiquitous phrase, “How To Deal With the...(sex offender, dually-diagnosed, hostile client, etc.)” This is not to imply that these training topics are unimportant, but rather to point out the sheer absence of any tactical curiosity regarding positive behavior change. The business of probation proliferates. Managing trumps motivating. Supervision obscures relationships. Intimidation overshadows encouragement. Compliance remains in ascendancy.

Looking to our past may help us to understand the present. The correctional world we operate in has always known tension between the ideals of punishment and treatment. Our field seems

unable to extricate itself from a seemingly hypnotic hold of a “tough-as-nails” approach. To try and understand how the probation field became mesmerized is to appreciate two swings of the crime-control pendulum that have occurred over the last 50 years. Psychological and sociological theories of criminal behavior gained prominence in the 1940s and helped the principle of rehabilitation of offenders (offender treatment) to flourish throughout the 1950s and 1960s. (Gendreau & Ross, 1987) However, evidence to support the treatment paradigm did not keep pace by tracking outcomes and building supportive evidence, so the pendulum swing of correctional policy started to move back to the punishment and “just desserts” approach. Rehabilitation lost favor by the late 1970s and began to recede during the 1980s.

One swing followed another as the ideal of punishment lost ground. Clive Hollin (2000) notes, “If the 1980s saw the fall of the rehabilitation ideal, then the early 1990s witnessed a spectacular resurrection... (this) resurrection of treatment can be directly traced to the impact of a string of meta-analytic studies of the effects of offender treatment published towards the end of the 1980s and into the 1990s.” The predominance of punishment had not demonstrated effectiveness, and in many instances, was shown to increase recidivism. With the advent of the 1990s, supervision and treatment has enjoyed more certainty of success (Andrew & Bonta, 2003; Bernfield et al., 2001). With the current pendulum swing back to treatment comes a call for motivational enhancement of offenders. With the rise of evidence-based practice, Andrews, et al. (1990) details “three principles of effective intervention”: 1) risk assessment, 2) targeting criminogenic needs, and 3) responsivity. The rubric of “responsivity” is defined as an effort that will “insure that individuals are suited to the treatment intervention. Be responsive to temperament, learning style, motivation, culture and gender of offenders undergoing treatment when assigning and delivering programs” (emphasis added - pps. 374-375).

How then, can probation staff respond to motivational issues and work to enhance offender readiness to change, when a good portion of our criminal justice culture (macro) remains stuck in an adversarial “get-tough” atmosphere? Anthropology may offer an explanation. Steven Pinker, in his 1997 landmark book, *How the Mind Works*, notes there are parts of the human brain and body that once served a survival purpose in our primordial cave-dwelling past—yet today these same body parts no longer serve any real function. These anthropological remnants become an appropriate analogy for the “tough-as-nails” stance that many embrace within our probation field. What “worked” for the sole emphasis on punishment and penalty (stopping negative behavior), endures only as an obstacle for increasing motivation and assisting change (starting positive behavior).

### *A Second Pendulum Swing?*

We’ve witnessed the pendulum swing between the punishment and treatment camps in our field, yet could there actually be *two* pendulums? I propose that there is one research-based pendulum and another practice-based pendulum. The research pendulum swings in the foreground, set in motion by criminologists who suggest what course-of-action will reduce crime. However, I believe there is a second pendulum, moving in the background, much more slowly and shadowing the first. This pendulum swing involves the atmosphere and attitudes of those who work within the probation field. This article calls attention to this “practice pendulum” that is created by—but not always in sync with—the research pendulum. To understand this second pendulum is to understand that our field seems shackled by a lag-effect; out-of-date attitudes held by many in the field who seek not only compliance from offenders but dominance and primacy over them as well. This hold-over from the “just desserts”/punishment era remains alive, suppressing behavior change as it limits an offender’s involvement to passive and submissive roles. The brain is dead, but the body continues.

An example of how shackled our field has become can be seen in a recent discussion I had with a training participant following a Motivational Interviewing session. The probation agent approached my podium at the conclusion of a session: Agent: Interesting training session, but now you’ve got me thinking.

MC: What’s on your mind?

Agent: Well, I'm thinking that I should probably shake hands with my probationers.

MC: You don't? Agent: No. I was hired out of the prison.

There's a "no touch" policy inside facilities.

We [staff] can't touch, they [inmates] can't touch. Nothing's allowed, not even hand-shaking.

MC: But... [pause] you're working probation now, you're not working in the prison any longer.

Agent: Yea. That's why this training's got me thinking. I mean, yesterday I was walking a new case to the lobby door and he stuck out his hand to shake with me. I got a little angry and said, "I don't shake hands! When you get dismissed, maybe then I'll shake your hand."

MC: Wow. Pretty hard to make the kinds of connections we've been talking about in this training session if you won't even shake hands.

Agent: Yea. That's what's got me thinking.

MC: Must be hard to make the transition over from prison. But, hey, don't be too hard on yourself. How long have you been in this job [community-based probation]?

Agent: Four years.

Four years! I was left speechless. I understood—at that moment—that I had been wrong to assume even the most basic conditions of a helping relationship might be in place across our field. Allow me to draw an analogy to this agent's response. This interchange could well be akin to hiking many miles into a barren desert only to cross paths with someone who was sweltering in a thick winter jacket. Incredulous, you might ask, why would one wear such bizarre attire in the blazing heat of the day? You would be shocked to hear the nonsensical answer, "Four years ago I use to hike in the cold northern latitudes!"

The Center for Strength-Based Strategies began an inquiry to assess other probation departments, only to find that this practice of refusing to shake an offered hand is not uncommon. A basic act of respect like returning an overture to shake hands can be denied. How has this "business of probation" become an enterprise so belligerent to behavior change? There are two facts about those we work with: 1) offenders are human, and 2) offenders have committed a crime. It is of grave concern that some officer attitudes and behaviors might seem contentious to the first of these two immutable facts.

[back to top](#)

### **Within Probation Departments (mezzo): The Obstacle of the "Either/Or"**

Despite such obstacles, what about this recent pendulum swing that is refocusing our field toward treatment? How does this business of behavior change occur? And more important to our field, how can department policy and a probation officer's efforts increase an offender's readiness to change? These questions can guide our departments toward a fundamental alteration in both attitude and objectives.

Change often takes time. Though it can occur by sudden insight or dramatic shifts (i.e., epiphanies, "wake up calls"), the vast majority of changes take place slowly and incrementally. The Stages of Change theory (Prochaska & DiClemente, 1983) has even mapped out these incremental steps, lending support to the idea that change is a "process" rather than a point-in-

time event. When working with probationers new to our system (or those returning) who may pose harm to themselves or others, initial objectives must begin with offender stabilization. Those who are out-of-control must be brought into control; hence, compliance becomes an all-important first step in offender supervision. If we skipped that step, we would be neglecting our primary mission of social control at the community's peril.

It's time to expose a form of "either/or" conceptualization by probation staff as a stumbling block for improved outcomes. This block is analogous to brewing tea. To enjoy a cup of tea, we need not hot water alone *or* tea leaves alone, but rather hot water *and* tea leaves, the key combination that allows the brew to be served. However, some would strip this sensibility from our own field of probation. They would have us believe that we *either* secure compliance *or* increase the readiness to change; *either* impose sanctions *or* establish a helping relationship. This contrast is so pervasive that it is seldom noticed or examined. Motivational Interviewing contends that objectives of control and motivation can exist side-by-side. This "both/and" inclusiveness will be sketched-out later in this article.

Those who show little respect to offenders and adopt an adversarial style only succeed in imposing (once again) another type of unproductive either/or contrast: Either one is tough or soft. A tough, unyielding approach could be characterized as "holding the line." Those who take it justify their harsh attitudes and abrasive conduct towards offenders as a necessity for control. To do otherwise would constitute a soft approach that is merely "wanting to be liked" or "trying to be friends." While heavy-handed advocates may not achieve acceptable levels of success, they feel relief that (at least) they will never be accused of acting indulgently or pandering to the offender. It has long been a reaction in our field to merely blame the offender when change does not occur ( Clark, 1995). Rather than examine our own efforts, we explain away a lack of improvement as more evidence of the intractable nature of probationers.

The "us vs. them" mindset hampers the officer/probationer relationship, department objectives, offender improvement, and ultimately the safety of our communities. Space prohibits a comprehensive review of the multitude of studies (Miller & Rollnick, 2002; Hubble, Duncan & Miller, 1999) that find a confrontational counseling style limits effectiveness. One such review (Miller, Benefield and Tonnigan, 1993) is telling. This study found that a directive-confrontational counselor style produced twice the resistance, and only half as many "positive" client behaviors, as did a supportive, client-centered approach. The researchers concluded that *the more staff confronted , the more the clients drank at twelve-month follow up* . Problems are compounded as a confrontational style not only pushes success away, but can make matters worse.

It is at this juncture that many probation staff may protest, "We're not counselors!— our job is to enforce the orders of the court." This claim only underscores our field's, fixation on the business of probation—not the business of behavior change.

Staff who do not adopt this abrasive style must work around those who do. These department colleagues and supervisors witness the insensitive attitudes and disrespectful treatment of offenders; however, much like a crowd that shrinks back in a bully's presence, they fall silent and fail to challenge this callous conduct. In a recent discussion with a deputy chief of a large probation department, this manager bemoaned that his department was rife with those who refused to shake hands with probationers —yet defended this beleaguered tolerance as proof that he was *progressive* in allowing diversity of officer styles (!).

It is understandable why many are reluctant to confront, because they realize they are likely to be labeled as "soft"—and staff thought to be soft lack authority and substance with those favoring a "tough" approach. The criticism, or the person criticizing, would be dismissed—a priori—as lacking integrity.

I am reminded of a probation supervisor who tried to confront a staff member known for intimidation tactics and for bragging in back-office chatter about his ill-treatment of probationers. When the supervisor argued that his use of intimidation was both unethical and

ineffective, the officer retorted, “So, what you’re saying is that I should mollicoddle them [probationers]?” “No,” the supervisor answered, “But you can’t use the stick all the time, there are times to use the carrot as well.” The officer retorted sarcastically, “So, I’m supposed to be their friend, right?” “No,” the supervisor replied again, “But I speak of basic respect.” “Respect?” cried the officer, “Respect *these* people after what they’ve done?” “Look,” the supervisor pleaded, “it’s just not effective to constantly go after them.” The officer rejoined with a rhetorical question, “So, you’re telling me that hugging them is more effective?” After several go-rounds the exasperated supervisor finally stated, “I guess what I’m trying to say is that you just need to be a little more ‘touchy-feely’ with those you supervise.” The probation officer finished the exchange with the mocking statement, “That’s right! When I *touch* them, I want them to *feel* it!” Frustrated by the officer’s closed-mindedness, the supervisor withdrew.

A clarification is necessary. MI considers “confrontation to be the goal, not the counselor style.” That is, the goal of all helping is to create a “self-confrontation” that prompts offenders to “see and accept an uncomfortable reality” (Miller & Rollnick, 1991, pg. 13). This awareness, of coming face-to-face with a disquieting image of oneself, is often a prerequisite for intentional change. However, one would not try to force this awareness upon someone through a confrontational *style*. To do so often makes matters worse. Multiple research studies (Rollnick, Mason & Butler, 1999, Tomlin & Richardson, 2004) repeatedly demonstrate that a harsh, coercive style often prompts a “paradoxical response” –the more one is directive and presses, the more the other person backs away. Rather than evoking change it causes an offender to become more entrenched in the problem, arguing and defending his or her current negative behavior. Probation agents are familiar with this “backing away.” It can take the active form, of arguing and tense opposition, or the passive form of shutting down, as with passive-aggressive silence—a “Who cares?” dismissal.

How probation officers can help offenders to see and examine their situation clearly and change accordingly—all while avoiding the active or passive forms of this paradoxical response—will be outlined in the next article.

### *Finding the Middle Ground*

To understand and further behavior change is to understand the interpersonal climate between officer and probationer that encourages change. Motivational enhancement steers clear of both the hard and soft approach. The “hard” approach is overly-directive and places offenders in passive, recipient roles. A “soft” approach correspondingly places the officer in a role that is too passive. A soft approach is also vulnerable to a condition characterized as “professional dangerousness” (Turnell & Edwards, 1999), where an officer, in attempting to keep a hard-won relationship at all costs, refuses to bring violations to the court’s attention when he or she should (“I won’t tell this time—but don’t do it again”). Here the officer has swung too far to the opposite extreme and is not directive enough. The hope and belief that the officer can build an alliance and work together with an offender to make things better is not the same as ignoring violations. Believing that offenders are worth doing business with is not at all the same thing as adopting the easiest way of doing business with them.

Neither side wins this debate, because both approaches reduce offender outcomes—each for a different reason. <sup>1</sup> An emerging motivational approach finds middle ground by those who understand the “both/and” inclusion. Using Motivational Interviewing, probation officers are taught to cooperate with the offender, not with the criminal behavior. Probation staff can examine how to impose sanctions *and* build helpful relationships, and with training, agents can build the skills to supervise for compliance *and* increase the offender’s readiness for change.

This is not new to our field. Start your own single-subject research by asking any probation supervisor to offer a frank (but discreet) evaluation of department staff they supervise. Many supervisors can easily walk down their department hallways and point to the offices of agents who are able to build helpful alliances with offenders while not compromising probation orders. These staff seem to understand that compliance and behavior change are not mutually exclusive efforts. What traits and skills make these agents so different? With an eye to encouraging the

effective relationships that are so essential for change, why are not more probation departments hiring with these inclusive (therapeutic) abilities as criteria for employment?

As noted, an abundance of research has established that a confrontational approach repels those we work with and becomes an obstacle to change. Probation departments must speed-up this “practice pendulum swing” by finding their voice; labeling the “tough” approach for what it is— an obstacle. Departments must become empowered to establish a climate that will both ensure compliance and foster hoped-for behavior change.

[back to top](#)

### **Into the Individual Pairing of Officer and Offender (micro): A Helpful Mix**

There is room for optimism as movements are occurring both outside our field and within our own ranks help that second pendulum swing of officer attitudes to keep pace. Efforts are underway to sketch how to “hold the line” with offenders, while at the same time encouraging positive behavior change in probation work (Clark, 1997; Mann et al., 2002).

A further contribution involves a critical look at the power attributed to a probation agent and how that power is used. I have argued elsewhere (Clark, 2001) and repeat my contention that a therapeutic relationship in probation work can be established through 1) perspective, 2) role-taking by the officer and 3) skillful negotiations with the probationer.

#### *Perspective*

To utilize MI, probation staff must adopt a “lens” or a way of viewing the offender that is consistent with the Strengths Perspective (Clark, 1997, 1998). The Strengths Perspective in the justice field is first and foremost a belief in the offender’s ability to change. Although it would be naïve and disingenuous to deny the reality of the harm inflicted by those we work with, Saleebey (1992) cautions:

If there are genuinely evil people, beyond grace and hope, it is best not to make that assumption about any individual first...even if we are to work with someone whose actions are beyond our capacity to understand and accept, we must ask ourselves if they have useful skills and behaviors, even motivations and aspirations that can be tapped in the service of change and to a less-destructive way of life?  
(pg. 238)

This Strengths perspective embraces the science of “getting up.” For the previous 40 years, criminal justice has focused on the science and classification of “falling down,” as evidenced by our sole focus on deficits, disorders and failure. [2](#) The Strengths perspective pays attention to what strengths, resources, and assets probationers might turn to as they attempt to manage and overcome their troubles. Any probation officer could easily bemoan, “But so many offenders don’t care to overcome, they don’t believe change is important—they don’t seem ready or willing to change.” The reader will see in the next installment in this series the techniques that can prompt an offender into taking steps towards positive behavior change—seeing change as something they should do and can do.

#### *Role-taking*

There is great power attached to a court. When used appropriately, it can help change the trajectory of someone’s life, bringing health and improvements that radiate throughout a family (and across the larger community). But when this power is abused or misapplied, the resulting trauma and pain can continue long after court documents yellow with age. Who wields this power that holds such potential for benefit or harm? A helpful motivational perspective answers, “Not the officer!” The locus of power is actually centered in the judicial bench rather than on any individual officer. To locate this in the officer is not only incorrect but can limit or stifle the very relationship that becomes the conveyor of positive behavior change. Take for example a short passage included in a chapter entitled “Ethical Considerations,” found within the latest



edition of Miller and Rollnick's text on Motivational Interviewing (2002: 166):

...consider a counselor who works with offenders on parole and probation and who has the power at any time to revoke that status and order incarceration. (emphasis added)

Although this excerpt speaks to the power of "counselors" who work with offenders, it could be argued that the power attributed to the supervising probation officer would be even greater. However, accurately stated, no officer is truly vested with the power to jail an offender, apply new consequences, or increase consequences by personal decision or whim. This is not a case of "splitting hairs" with a play on words. An agent must petition the court. The court then works to substantiate the alleged violations of probation in a formal hearing and *it is the court* that determines guilt or innocence and imposes additional sanctions where appropriate.

This is not an attempt to disparage those who may not understand the judicial process, only to point out how pervasive this misperception has become across our culture. The statement that the probation officer "...has the power at any time to revoke that status and order incarceration..." demonstrates something akin to an unfounded "urban legend" that gains credibility only through the endless retelling. This mistaken attribution of power is not only limiting for the motivational-inclined officer, but an incorrect understanding of probation jurisprudence.

### *Skillful Negotiation*

Misperceptions are understandable and easy to overlook when proffered from outside the criminal justice field, but far more troublesome when furthered by criminologists within the field. Consider this short treatise from criminal justice academician Robert Mills (1980: 46)

The distinguishing feature of corrections that differentiates it from other helping professions is the large amount of socially sanctioned authority, both actual and delegated, carried by the corrections official...The officer must learn to become comfortable with his authority, and to use it with restraint in the service of the officer and client's objectives.

The reaction of some inexperienced officers is to banish the "big stick," and go hide it in the judge's chambers or in the warden's office. Such officers seem to believe that social casework and counseling can proceed in corrections in the same basis as in an outpatient clinic, that their "good guy in the white hat" image is somehow tarnished by the possession of so much power over their clients. Officers who conduct investigations and counseling while denying their own authority are usually perceived as being weak, and are subject to easy manipulation by their clients.

With all due respect, my suggestion is that officers do exactly what Mills cautions against! Motivational Interviewing, as utilized within the field of probation, is determined not to personally assume the "big stick." It furthers an officer's ability to influence change when they place the "stick" with the judge, their supervisor, or even "agency policy." Motivationally-inclined officers lament to the probationer who might be considering a violation of probation orders, "You can certainly ignore that order (refuse to obey, avoid this mandate), but my (supervisor, judge, responsibilities, policy, position) will force me to assess a consequence. It's your choice, but is there anything we can do to help you avoid those consequences?" Many find that *not* exerting force at this juncture improves the likelihood that a decision for compliance will eventually overtake the emotions of the moment.

This role-taking becomes not a "weakness," as purported by Mills, but rather a strength. When using MI with mandated clients, I am mindful of the distinction of "power versus force." [3](#) Force, for all its bluster, can often make a situation worse, compelling an offender to defiance where skillful negotiation could well de-escalate the situation. MI-inclined officers choose power over force to increase readiness to change and improve outcomes by establishing "fit" with a

probationer (“How can we come together on this?”), rather than using adversarial force from the “me vs. you” nexus of dominance (you have no choice, you *will* do this!). I believe the ability to create and maintain a helping relationship—so essential to the spirit of Motivational Interviewing—can only be realized by placing the “big stick” with others.

Miller and Rollnick (2002: 173-174) detailed a helpful example of this skillful negotiation with probationers. It begins with an honest explanation of the duality of an officer’s roles: certainly to supervise and report compliance to probation orders but also to act as a helper and lend assistance:

I have two different roles here, and it is sometimes tricky for me to put them together. One of them is as a representative of the court, to ensure that you keep the conditions of probation that the judge set for you, and I have to honor this role. The other is to be your counselor, to help you make changes in your life that we agree would be beneficial. There are also likely to be some areas we’ll discover, where I am hoping to see a change that you’re not sure you want to make. What I hope is that by talking together here (when you report), we can resolve some of those differences and are able to find areas of change we can agree on.

I’m sure I’ll be asking you to consider some changes that right now don’t sound very good to you, and that’s normal. We’ll keep exploring those issues during our time together, and see if we can come to some agreement. How does that sound to you?

Should compliance become an issue, the officer negotiates “How do we (you, significant others and myself) keep them (the judge, the court, agency policy) off your back?”

In training, I find staff new to Motivational Interviewing have a hard time negotiating these dual roles. Concrete thinking of either/or tends to dominate. “I either supervise or seek compliance (applying sanctions for failure to comply) or I practice Motivational Interviewing and try to motivate and establish a therapeutic alliance.” It’s not “tea leaves *or* water,” it’s a good-enough blend that creates the brew. Helping staff to adopt a both/and conception is central to the business of behavior change.

Our field’s ambivalence regarding intimidation and heavy confrontation must be systemically addressed. If behavior change is truly paramount, then intimidation and heavy-handed treatment is inappropriate and must be openly denounced across our field and within our departments. Only then will we stop the false dichotomy of “tough/ soft” which continues to drain our field of its effectiveness. Only then will probation departments be populated with staff that can enforce orders and increase the readiness to change. Only then will a true decision be made as to whether we’re in the business of probation or whether we’re in the business of changing behavior.

[back to top](#)

## **Postscript**

Ward and Brown (2004) note a probation officer’s attitudes towards an offender will emanate from their conception of the nature and value of probationers as human beings— and to what extent engaging in harmful actions diminishes that value. There is a question that looms for all probation departments that may want to embrace a change focus: Is an offender entitled to be treated with basic respect for no other reason than that he or she holds intrinsic value as a person? This issue is not as straightforward as it might seem. Some officers feel the need to act out society’s anger towards those they are assigned to, believing anything less would condone their wrongdoing—motivated, one might suspect, by the idea that at least they’ve “done something” by conveying their disgust for illegal behaviors. It would not be far-fetched to assume that if the process of arrest, court appearances, and conviction did not instill a sense of shame or deviance, then any disgust shown by a supervising officer could be pointless. Viets,

Walker & Miller (2002) note, “People do not respond warmly to being shamed, coerced, berated, or deprived of choice. There is little evidence for the belief that ‘if you can make them feel *bad* enough, they will change.’ (emphasis in original). Confrontation and disrespectful behavior pushes change further away. These behaviors are staff-focused (engaged in to make the probation officer feel better) rather than change-focused (creating a climate that will assist change).

With overwhelming research in hand that a confrontational style inhibits outcomes, allowing the voice of those who say the world is flat to coexist with those who know it to be round brings assurance and honor to no one. Will our field intervene? Will departments continue to allow a hostile, confrontational style to be tolerated as an acceptable way of “doing business?”

For those who conceptualize our “business” of probation as the sole mission of enforcing the court’s orders, the debilitating answer is “yes.” Turnell and Edwards (1999) caution, “Very few people will listen to or allow themselves to be influenced by someone who seems unresponsive to them and is simply forcing them to conform.” Externally-imposed compliance is the least enduring type of change, with negative behavior returning once the coercive force is withdrawn. Could the sole focus on compliance and the ensuing “business of probation” actually create more “business”—via the revolving door of repeat offenders?

It is appealing to excuse our field any goals beyond the status quo of compliance. The higher ambition to increase an offender’s readiness to change could be considered an unattainable ideal. Research (Clark, 2004) notes that there is a wide disparity of caseload numbers, which allows some staff the luxury of over thirty (plus) minutes for an offender “check-in” while some are afforded only seven minutes (on average) to gather information. Just how practical can embracing a motivational style be when one considers such short time frames? The depressing fact is that pushing change aside does not take long—an officer can easily *decrease the likelihood of offender change* — choking hoped-for goals all in brief office visits.

To borrow a phrase from quantum physics, there is an “alternate universe” emerging within our field. Progressive departments are importing training to teach officers the strategies and techniques for increasing the likelihood of change, even in constrained and limited time frames. “Making the most” of what one has conveys the relevancy of Motivational Interviewing for probation staff and convenes the next article in this two-part series.

[back to top](#)

## Credits

In accordance with Federal monograph #109, the United States Probation & Parole Services-Western Michigan District undertook an extensive Strength-based and Motivational Interviewing initiative (2005). This author wishes to thank and extend his appreciation to this Western Michigan district as this training initiative lent both insights and impetus for this article.

[back to top](#)

[References](#) | [Endnotes](#)

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[Publishing Information](#)

[Home](#)

## Getting Serious About Corrections

[References](#)

Vincent D. Basile

Consultant, Essex, Massachusetts Sheriff's Department

**DURING THE PAST** several years much has been written and said about the importance of prisoner re-entry. The sheer numbers of exiting inmates are staggering, with some quarters predicting 1,000,000 ex-convicts to be released annually within the next decade.

Certainly, the problems associated with offender re-entry are great, especially when one looks at the demographics and the criminogenics of this segment of society. For example, it is well-known that the majority of offenders lack either a secondary education or a vocational skill. They are either unemployed or underemployed. Additionally, since a criminal record precludes many from attaining gainful and meaningful employment, there is the tangential need for job development and placement.

Moreover, a high percentage of offenders have a history of alcohol and/or drug abuse, and a majority of these have at least one identifiable mental health problem. One study of a national sample conducted in 1994 found that 52 percent of those with a history of alcoholism and 59 percent of those with a history of illegal substance abuse issues had a dual diagnosis of mental illness.

Other issues common to many offenders include a lack of anger management, a propensity for domestic violence, and a deficiency of parenting skills. A study of 40 inmates randomly selected from those released during calendar year 2001 from the Essex County Correctional Facility in Massachusetts revealed that while 22 (or 55 percent) were determined to be recidivist, they accounted for 45 subsequent *convictions* of which 32 resulted in *incarcerations*. More striking is the fact that 15 offenders were the defendants in 54 restraining orders sought by 36 different plaintiffs.

If we are truly serious about eliminating crime, reducing recidivism, and rehabilitating the offender, we need to address all of the criminogenic needs of the individual holistically at the point at which they are first brought to the attention of the justice system.

Pre-trial or probation supervision needs to include meaningful special conditions of probation and strict accountability. In essence, unsupervised probation is an oxymoron, and probation without conditions is fantasy at best and farcical at worse.

Whether placed on probation or sentenced to a correctional facility, a trained clinician should be part of the assessment or classification team. This is especially necessary since the initial assessment/classification is the basis for the type of supervision provided and the appropriateness of the proposed supervision/reintegration plan.

While effective re-entry programs are important and necessary, another component is equally

important. That is the quality of service provided to offenders or potential offenders at the point at which they first become involved with the courts or the criminal justice system, be they male or female, juvenile or adult, a child in need of service, or a youngster who is the product of an abusive and/or dysfunctional home.

In too many instances, first-time petty offenders, especially juveniles, are neither classified nor supervised. Juvenile status offenders frequently proceed through the legal system without any therapeutic determination as to why they are running away, not responding to parental supervision, or chronically truant at school. The issuance of a care and protection order for abused or neglected children should serve as a warning flag that there is dysfunction at home and these children may be at risk for committing illegitimate behavior as they get older. If you bear in mind that at present approximately 1.6 million children have at least one parent incarcerated, you can see the potential scope of the problem.

The Urban Institute in its August 2005 white paper on *The Economics of Juvenile Jurisdiction* generally found early intervention combined with “treatment programs based on cognitive behavioral approaches were more cost-beneficial than traditional probation...” A few months earlier, Dr. Felton Earls (a professor of human behavior and development at the Harvard School of Public Health) and a team of researchers reported in the May 27, 2005 issue of *Science* that a five-year study of violent behavior showed that youngsters who witnessed violence were more than twice as likely to commit violent crime than were non-witnesses. The findings of Earls and his team complement that of Dr. Deborah Prothrow-Stith, former Massachusetts Commissioner of Public Health and now a Professor of Public Health Practice at the Harvard Medical School, who concluded that “the outcome of violence is determined by environmental, cultural, and social factors: Kids learn to use violence.”

Two cases pointing to the benefits of early intervention come to mind. Recently, while sitting on a classification board at the Essex County Correctional Center (ECCF), I met a 42-year-old inmate who was serving time for his sixth OUI offense. What I found most disturbing was the fact that at age 14, this same individual was arrested for being a Minor in Possession of an Alcoholic Beverage. The disposition was a small fine. There was no early intervention.

Another inmate, 22 years of age, appeared before the board having been sentenced for Assault and Battery with a Dangerous Weapon. Coincidentally, his brother had been sentenced to the same facility a short time before for a similar but unrelated offense. His father had from time to time been an inmate at the ECCF, and his grandfather had once done a 20-year stretch for Armed Robbery. Here is an example of an unattended dysfunctional family with three generations of criminal activity.

Certainly, dealing with these problems before they escalate requires an abundance of resources in terms of money, personnel, and time—resources that may be especially scarce given current criminal justice budgets. However, I believe the return on such an investment would be much greater than trying to correct a major problem years later. While there is no disagreement that re-entry programs are vital, they are also expensive, and their efficiency ratio has yet to be determined.

I suggest that criminal justice administrators take a page from the handbook of successful corporate executives. Success should not be measured simply by output, but rather by the quality of the outcome. For the criminal justice practitioner, quality of supervision, care, and service needs to be provided to each offender or potential offender from the moment an individual is first exposed to the criminal justice system. In essence, I propose that we front-end load the services and cognitive skills necessary to change behavior rather than back-end loading the same services at a time when they are usually more costly and less effective.

The delivery of the appropriate service (as determined by careful assessment) and the implementation of a treatment plan as early as possible provide a better opportunity for the offender’s successful reentry into the community and his self-betterment.

Let's take a look at an example of the difference. The age that an individual enters the criminal justice system has long been a predictor of risk to offend. The younger a person is exposed, the more at risk he or she is. Family and peer relations, education and employment, substance abuse and past criminal history are representative of other predictors of risk. Moreover, they are symptomatic of offender needs that must be addressed if we are truly committed to changing behavior.

Re-entry programs, while necessary in order to provide a degree of offender supervision, accountability, and rehabilitation, take place when an individual has completed at least one period of incarceration. Since most offenders are not incarcerated for their first, and more often their second and third offenses, it is safe to assume that the released individual is no stranger to the criminal justice system. Rather she or he has been around the track several times. This means that the public has already expended funds for police and court time and personnel, community corrections supervision, and for the cost of incarcerating the offender. The incarceration cost alone usually reaches somewhere in the vicinity of \$30,000 per year. Meanwhile, if the offender profile is typical, the chances of his or her recidivating are fair to very good.

In essence, quality service needs to be provided at the point of entry and continued throughout the individual's passage through the system and back into the community. An example of this need for early intervention is evidenced in research conducted in 1998 by the Massachusetts Office of the Commissioner of Probation and in a follow-up report issued in 2000 by the Citizens for Juvenile Justice. The 1998 probation document reported that almost 50 percent of the more than 8,500 juvenile cases placed under probation supervision in 1997 were for status offenses—truancy, runaway, stubborn child, or habitual school offender—or Children in Need of Services (CHINS) cases, while slightly more than 36 percent were placed under supervision for delinquency complaints. The same study also tracked for three years the 6,548 children for whom a CHINS petition was entered into a statewide, computerized database from January 1, 1994 through December 31, 1994. It concluded that 54.3 percent of all CHINS cases evolved from status offenders to delinquent and/or adult criminal offenders, with school offenders identified as most likely to demonstrate delinquent and criminal behavior. Moreover, almost 24 percent of these CHINS cases had prior court involvement for delinquency. Of those with a prior delinquency appearance, 64 percent had been arraigned at least once for a property offense while 41 percent had at least one prior crime of violence offense. The study also determined that “a typical CHINS is not usually one isolated incident or behavior but a pattern of different types of acting out over a period of time.” It also found that a majority of CHINS children have a host of non-addressed personal and behavioral problems.

The Citizens for Juvenile Justice Report issued in 2000 found that “considerable systemic objectives remain unaccomplished, *particularly service delivery to CHINS youth*,” while recommending “treatment and assessment to correct long term family and youth development issues.” It goes on to advocate for system accountability and improvement, while supporting increased funding for diversion, early intervention and mediation programs.

During the late 1980s and early 1990s, the Orange County (California) Probation Department came to a similar conclusion when it determined that a small group of first time offenders, some *8 percent*, were arrested a minimum of four times in a three-year follow-up period. This small cohort of juveniles was also responsible for 55 percent of the recidivism cases. It was also determined that these 8 percenters differed in many respects from the other first-time offenders. Most, if not all, were given little if any court imposed supervision. They also tended to be younger when they committed their first offense. Most important, they evidenced clearly defined risk factors, such as abuse, neglect, poor family role models and a lack of parental supervision, poor peer associates, and school problems. Drug and alcohol abuse and a total lack of self-control were also evident. By identifying these risk factors early on, while simultaneously addressing the youth's needs and deficiencies, the Orange County probation officers came up with the 8 percent solution.

The need for an early identification of those individuals with a predilection for criminal behavior risk is evident because most recidivists return to criminal behavior within a year of their release

from prison/ jail, or the termination of their community supervision. Thus, the argument for early intervention becomes clear. If we hope to reduce the level of criminal behavior and the predisposition to recidivism by most offenders, then we are much better off attacking the root causes of the dysfunctional behavior immediately, once they have manifested themselves. All the literature tells us that the younger a person is at the time he or she evidences illegitimate behavior, the more at risk to continue on this delinquent and criminal path. However, the same literature also tells us that the younger a person is when first exposed to behavior modification through supervision and structure, the better the opportunity for turning his or her life around.

If this holistic approach is to be successful, the criminal justice community not only needs a complete and comprehensive collection of data concerning the offender, but a willingness to share that information with all agencies involved in the reclamation process. To this end I would propose the creation of a social service registry that would compile data from every human service agency, public and private, with which an individual has had contact. Moreover, workable protocols need to be established to allow for the necessary sharing of mental health histories.

Public safety agencies need to develop working relationships with public housing agencies so that those individuals deemed to be lesser risks could have some means of transitional assistance. Also, public funds need to be diverted from prison/jail construction and spent on rehabilitative halfway houses and transitional living accommodations.

The public wants sanctions to be imposed upon individuals who break the law, and victims deserve some restitution and retribution. But, as Timothy Flanagan and Dennis Longmire note in their 1996 work, *Americans View Crime and Justice: A National Public Opinion Survey*, they expect the sanction to be utilitarian. However, if sanctions are to truly meet this criterion, the public must redefine its priorities and redirect its resources, i.e., tax dollars, to other areas.

The agencies tasked with reducing crime and recidivism need to stop competing with each other for the scant dollars available. If partnerships are unattainable, then at a minimum these same agencies should be collaborating on special projects. One such effort should be the development of a uniform risk assessment instrument that can meet the needs of the courts, the corrections people, and the human service providers. Such an instrument would be updated as necessary and would follow the offender throughout his involvement with the system.

Another collaborative effort should be the pooling of agencies' resources whenever possible so as to provide for more efficient public safety initiatives and rehabilitative services. In far too many instances offenders are being released under both parole and probation supervision, while many others are sent back to society without any post-release supervision.

This effort will require new paradigms; inter-agency turf struggles will have to be abandoned and more innovative methods will need to be contemplated and employed. Agencies will need to reduce the stovepipe and reframe the organization. Above all, such an effort requires a public that is willing to fund both public and private agencies capable of providing the resources necessary to adequately address the offender's behavioral ineptness.

Substance abusers need extensive treatment programs, not draconian prison sentences. Returning convicts require post-release supervision. Any period of probation supervision must include at least one special condition of probation that addresses one of the offender's prevalent needs. Moreover, the only "break" that should be given to first-time offenders, whether they are juveniles or adults, is to be spared a permanent criminal record if they comply with the imposed conditions of supervision.

Finally, if we are to measure the quality of the public safety and offender services that we provide—the outcomes—we need to agree on a universal definition as to what constitutes recidivism and recidivistic behavior. This is vital if we are to have a meaningful instrument to evaluate our performance, and our needs. It is also necessary if we are to have an honest and transparent dialogue with the constituencies that we serve.

Let's not wait for someone to appear before the system several times and then try to rehabilitate him or her—history is not on our side. Rather, let's put our resources and efforts up front, at the point of entry, and *reclaim* the offender the very first time that he or she comes into the system. Then we can truly claim to be serious about corrections.

[back to top](#)

## [References](#)

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[Home](#)

## Personal Ads From Prisoners: Do Inmates Tell the Truth about Themselves?

[References](#)

*Richard Tewksbury, Ph.D.  
University of Louisville*

[Methods](#)
[Findings](#)
[Discussion](#)

**POPULAR DISCOURSE**, MANY scholarly reviews/theories, and professional practices (i.e., Fleisher, 1989; Johnson, 1996; Sykes, 1958) emphasize that prison inmates are manipulative, cunning, untrustworthy, and dishonest. Training for corrections professionals and volunteers universally includes warnings about the attempts of inmates to mislead staff and gain some form of personal advantage. However, it is not only those working in corrections who may be susceptible to the manipulations and scams of prison inmates.

Researchers (Bond, Malloy, Arias, Nunn and Thompson, 2005) have previously demonstrated that prison inmates operate from a “lie-bias” in which they are disposed to believe messages they receive are lies. As a result, such immersion leads inmates to be skilled detectors of lies (but not necessarily of truthful messages) (Bond, et al., 2005; Hartwig, Granhag, Stromwall, and Andersson, 2004). However, drawing on responses to questionnaires, Marquis and Ebener (1981) reported that comparisons of inmates’ self-reports of their arrest and conviction records with official records did not reveal under-reporting of one’s record. Prisoners reported their convictions with a moderately high level of reliability, but not so for arrests. However, to date no research has directly assessed the popular assumption that prison inmates frequently do not tell the truth in social situations. This is a curiously under-investigated area of inquiry.

One such arena offering the possibility of manipulations and scams is in the area of inmates seeking contacts (presumably for social and psychological support) outside of prison. The value of maintaining contacts with friends and family members is well established (Casey-Acevedo and Bakken, 2001; Wooldredge, 1997); it is also believed by the public (Applegate, 2001; Hensley, Miller, Tewksbury and Kocheski, 2003) and correctional staff (Tewksbury and Mustaine, in press) to be among the most important components of an inmate’s successful adjustment to incarceration. However, not all inmates have a support system or even one supportive individual on the outside of prison, and hence many prisoners may be motivated to seek out such a relationship. One means for doing so is advertising for pen pals for the inmate, essentially through the posting of a personal ad. Many means are available for placing such personal advertisements, including numerous websites today providing access to a wide range of persons interested in such a relationship. This may be a highly effective means of establishing a supportive relationship, as personal ads are known to be successful for persons seeking to meet others (Jason, Moritsugu and DePalma, 1992).

However, as both popular and professional beliefs center on inmates' lack of trustworthiness and honesty, it may be necessary to view the information provided by inmates in advertisements seeking pen pals with skepticism. Inmates may be motivated to dishonestly report personal information, in an effort to make themselves appear more attractive to potential support persons or to establish a social identity and persona to aid in manipulating outsiders to provide social, economic, or other kinds of benefits to the inmate.

The goal of the present study is to examine the accuracy of information provided by inmates posting personal advertisements on websites devoted to promoting positive relationships between inmates and persons in free society. As stated on one such website, "We are a website helping inmates find friendship while incarcerated....Our service offers inmates a chance to establish a positive correspondence that serves many purposes besides the passing of time; the encouragement offered through pen pal friendships has turned many a life around" ([WriteAPrisoner.com](http://WriteAPrisoner.com)). Specifically, this study examines the information reported by inmates as to their conviction offenses, projected release dates, and age, and assesses the veracity of this information in comparison to that reported for the inmate by the Department of Corrections incarcerating the individual.

[back to top](#)

### *Methods*

Data for the present analysis are drawn from two varieties of sources: websites that post prison inmates' personal ads seeking pen pals and websites at state departments of corrections that provide information on specific inmates.

Three different inmate pen pal advertisement websites provide the data for this study ([WriteAPrisoner.com](http://WriteAPrisoner.com), [Inmate-Connection.com](http://Inmate-Connection.com) and [Inmate.com](http://Inmate.com)). These three websites were selected for use based on their size and the information included in each advertisement. Specifically, each of these websites publishes (along with other information) date of birth, projected release date, and conviction offenses for each inmate. At the time of data collection (August, 2005), these three websites included a total of 4,149 advertisements.

To assess the accuracy of information provided in these personal advertisements, it is necessary to also access official data on each of the three central variables. The websites for all state (as well as federal and District of Columbia) departments of corrections were reviewed. Of the 52 websites, 32 provide a publicly-accessible search engine for locating individual inmates. From this list of 32 possible states for inclusion, each site's search mechanism was examined and those that provided an inmate's date of birth, release date, and conviction offenses were selected. A total of 18 departments are included in the final sample ( Arizona, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, Oklahoma and South Carolina).

Data collection involved reviewing all inmate personal advertisements soliciting pen-pals in each of the 18 included states and recording the inmate's name, date of birth, release date and conviction offenses. Then, for each of these inmates the same information was extracted from the website of the department of corrections in which the inmate is incarcerated. The final sample includes 1,051 cases.

Analysis draws on descriptive statistics and comparisons of inmate self-report data (on the personal advertisement website) and official data (from departments of corrections).

[back to top](#)

### *Findings*

Initial examination of the data shows that inmates who place personal ads are primarily (87.4 percent, n=919) male (although not in numbers disproportionate to national incarceration rates) and report an average age of 33. Additionally, these inmates are primarily violent offenders and

drug offenders. [Table 1](#) reports the most serious conviction offense for the sample, drawing on both what inmates self-report in their personal ads and what departments of corrections report as the official data.

Overall, 14.3 percent (n=150) of inmates do not accurately report their most serious offense on their personal ads. Nearly one in five (18.9 percent, n= 199) do not accurately report their projected/anticipated release date. However, only 3.3 percent (n=35) do not accurately report their age. Inmates who do not accurately report their most serious offense tend to be individuals whom official records show are serious, violent offenders. Fully one-third (32.0 percent) of those inaccurately reporting their offenses are officially reported to have homicide convictions, 28 percent have a rape or other sex crime conviction and 10.7 percent have a robbery conviction as their most serious conviction offense.

Those who inaccurately report their release date report a mean age 2.5 years younger than that reported by the state incarcerating them. 1 Among those who do not accurately report their age, 88.8 percent report an age that is younger than their officially recorded age. There are no statistically significant differences in the likelihood of male and female inmates to accurately report their conviction offenses, release dates or ages.

Additionally, in their personal advertisements, some inmates specifically state that they are seeking correspondence with individuals willing to provide legal and/or financial assistance to the inmate. Across the sample a total of 11.6 percent (n=122) of personal ads request legal assistance and 14.0 percent (n=147) request financial assistance. Female inmates are more likely than male inmates to request both forms of assistance in their personal ads. Fully 47 percent (n=62) of personal ads from female inmates request financial donations and 23.5 percent (n=31) of female inmates' ads request legal assistance. This contrasts with only 9.3 percent and 9.9 percent respectively of ads from male inmates.

One of the websites (WriteAPrisoner.com) provides a boilerplate form for the provision of inmates' personal information, including places to note whether inmates are "seeking legal help" or "seeking donations." Of the 737 personal ads drawn from this website, 26.3 percent make a specific request for some form of assistance. Nearly one in every six personal ads (15.5 percent, n= 114) includes a request for legal assistance, and 19.8 percent (n=146) request financial donations. Interestingly, 14.9 percent (n=17) of inmates seeking legal assistance do not accurately report their conviction offenses. And, 13.7 percent (n=20) of the inmates requesting financial donations do not accurately self-report their conviction offenses. One of every eleven (9.2 percent) inmates specifically request both legal and financial assistance in their personal ads.

Nearly one-third (31.5 percent, n=331) of all inmate personal ads contain at least one inaccurate reporting of the three pieces of basic personal information (age, release date, conviction offense). Contrary to what some might expect, only 2 inmates (0.2 percent) inaccurately report all three pieces of information. More commonly, 4.9 percent (n=52) of inmates inaccurately report two of the three pieces of information and 26.4 percent (n=277) provide inaccurate information on one of the three assessed data points. As reported above, the information most likely to be inaccurately reported is release date and conviction offense.

[back to top](#)

### *Discussion*

While far from definitive as a response to the common suggestion that "inmates lie" and "you cannot trust what an inmate says," the results of this study suggest that personal information provided by inmates must be viewed with a healthy dose of skepticism.

An analysis of self-report data provided by a sample of inmates placing personal advertisements for the purpose of attracting pen pals shows that a significant minority of inmates inaccurately report at least one piece of basic personal information. Numerous inmates also specifically request legal or financial assistance.

The results of this study can be interpreted as empirical support for the common notion among both corrections professionals and the public that prison inmates cannot be trusted, even with basic information. However, it is also important to keep in mind that fully two-thirds of inmate personal ads reviewed in this study did not contain inaccurate information. As Marquis and Ebener (1981) reported, at least in certain types of reporting circumstances, the criminal history information provided by inmates is likely to be accurate and reliable.

There are two general implications of the results of this small study. First, individuals interested in establishing and pursuing personal relationships with prison inmates should view the information provided by an inmate with a skeptical eye. Clearly, many inmates not only offer inaccurate information about themselves to potential pen pals, but also see (and in many cases openly acknowledge) personal ads and pen pal relationships as ways of gaining material and legal assistance. While many corrections professionals may acknowledge this as “common sense,” this study now provides an empirical backing to such anecdotal knowledge. Second, this study also suggests that at least some forms of inmate self-report research should be viewed with a skeptical eye as well. If and when inmates believe there may be something to be gained from misreporting personal information, many may be likely to do so.

This study is not without limitations, however. Data are drawn from only three websites, and include inmates from only 18 states (where comparison data was available). Generalizing from these results should be done with caution. Additionally, while these results do provide initial empirical support for common beliefs about the veracity of personal/criminal information provided by inmates, it is important for future research to examine inmate-provided information in alternative forms and a broader range of types of information. Finally, some of the inaccurately reported information (especially regarding most serious conviction offense) may be the result of inmates applying different criteria for determining what offenses are more or less serious or more or less valuable for potential pen pals to know.

In the end, however, the answer to the question posed in the title of this article, “Do inmates tell the truth about themselves?” appears to be “some do, sometimes.”

[back to top](#)

## [References](#)

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**Table 1: Self-Report and Official Conviction Offense**

<b>Characteristic</b>	<b>Inmates' Self-Report</b>	<b>Official Report</b>
Homicide	29.6% (311)	33.1% (348)
Rape	0.5% (5)	0.6% (6)
Robbery	18.7% (197)	18.5% (194)
Assault	9.0% (95)	7.3% (77)
Burglary	9.0% (95)	9.0% (95)
Larceny/Theft	2.3% (24)	2.4% (25)
Auto Theft	1.5% (16)	1.4% (15)
Arson	0.6% (6)	0.7% (7)
Drug Offense	12.9% (136)	10.8% (113)
Sex Offenses	2.4% (25)	6.0% (63)
Weapons Offense	1.8% (19)	1.2% (13)
Other	10.2% (107)	8.7% (92)
No offense listed	1.4% (15)	0.3% (3)

[Home](#)

## Looking At The Law

[Endnotes](#)

Joe Gergits

*Assistant General Counsel, Administrative Office of the U.S. Courts*

[I. Imposing Supervision](#)

[II. Tolling Supervision](#)

[III. Termination and Revocation](#)

### **Update to *Legal Developments in the Imposition, Tolling, and Revocation of Supervision***

Catherine M. Goodwin's December 1997 article, "Legal Developments in the Imposition, Tolling, and Revocation of Supervision" [1](#) ("Legal Developments"), remains a useful and exhaustive reference for probation and supervised release issues up to 1997. Nonetheless, there have been significant legislative and case law developments in the intervening years that justify the following supplement to discrete topics discussed in the original article.

[back to top](#)

#### **I. Imposing Supervision**

There have been no marked changes to imposition of a term of probation for a conviction since 1997, but there have been significant legislative changes to 18 U.S.C.

§ 3583 concerning supervised release. The most substantial changes came about due to the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act ("21<sup>st</sup> Century Act") [2](#) and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 ("PROTECT Act"). <sup>3</sup> Most provisions of the two Acts did not include effective dates. Thus, they took effect on their dates of enactment, unless applying specific provisions would violate the Ex Post Facto Clause of Art. 1, § 9, cl. [3](#) of the United States Constitution.

#### **A. Clarification of the Length of Supervised Release Terms in Controlled Substance Cases**

Section 3005 of the 21<sup>st</sup> Century Act amended subsections of 21 U.S.C. §§ 841(b)(1) and 960(b), which provide for the mandatory imposition of terms of supervised release in drug cases, by clarifying that the maximum terms of supervised release set out in 18 U.S.C. § 3583(b) do not limit the length of supervised release called for in §§ 841(b)(1) and 960(b). [4](#) This clarifying amendment removed the limitation on courts' authority to impose terms of supervised release greater than the minimum terms provided in §§ 841(b)(1) and 960(b) that had been prescribed by Fourth and Fifth Circuit precedent. [5](#) The minimum terms of supervised release in §§ 841(b)(1) and 960(b) are expressed by the phrase "at least" a number of years depending on the subsection, with maximum terms of life. Because this amendment expressly stated that it simply clarified the existing statutes, it should have no effect outside the Fourth and Fifth Circuits, where it overrules case law that had confined supervised release terms for §§ 841(b)(1) and

960(b) convictions to the limits expressed in § 3583(b).

## **B. Supervised Release in Juvenile Cases**

Section 12301 of the 21 st Century Act extensively revised 18 U.S.C. § 5037, thereby revamping juvenile delinquency sentencing. Most significantly, it authorized district courts to impose a term of post-release supervision on juveniles sentenced to imprisonment. <sup>6</sup> Prior to this amendment, 18 U.S.C. § 5037 only permitted the court to impose as a juvenile delinquent sentence either a term of official detention without post-detention supervision or probation. The amendment also preserved the court’s authority to order restitution in juvenile delinquency cases and clarified that an order of restitution could be imposed with one of the three dispositional options of suspension, probation, and official detention. The disjunctive language in the prior version of the statute could have been read to imply that restitution could not be combined with probation or official detention.

The 21 st Century Act also incorporated the Supreme Court’s holding in *United States v. R.L.C.* <sup>7</sup> in revised § 5037(c)(2)(A) and (B), by limiting a juvenile sentence to a term of imprisonment no longer than the sentence that the court could impose on a similarly situated adult under the sentencing guidelines.

Subsection (c)(2)(A), which deals with incarceration for more serious offenses, previously limited incarceration to five years, with no reference to the adult maximum. To be consistent with other provisions of section 5037, periods of incarceration for juveniles falling under this subsection now may not exceed those that would apply to a similarly situated adult under the sentencing guidelines. The period of incarceration may be increased if the guidelines would allow an upward departure for a similarly situated adult. Subsection 7 of the 21 st Century Act created new § 5037(d), which sets forth the details of the new juvenile delinquent supervision term. Subsection 5037(d) confines the length of delinquent supervision terms within the previous maximum terms and ages for juvenile probation and detention. Terms of probation for juveniles may not now extend past the juvenile’s twenty-first birthday if the juvenile is under eighteen at the time of sentencing and for more than four years if the juvenile is between the ages of eighteen and twenty-one at the time of sentencing. <sup>8</sup> Under no circumstances, therefore, may a juvenile’s probation extend beyond the juvenile’s twenty-fourth birthday. Terms of official detention may not extend past the juvenile’s twenty-first birthday if the juvenile is under eighteen at the time of sentence, or past the juvenile’s twenty-fourth birthday if the juvenile is between the ages of eighteen and twenty-one at the time of sentencing. If an older juvenile is found to have committed an act of juvenile delinquency that would have been a Class A, B, or C felony had the juvenile been convicted as an adult, however, the term of official detention may not exceed five years. <sup>9</sup> Accordingly, under no circumstances may detention extend until the juvenile’s twenty-sixth birthday. The amendment limits any sentence that includes a term of juvenile delinquency supervision to the currently existing maximums.

New subsection 5037(d)(3) provides that the provisions of 18 U.S.C. § 3563, which set out mandatory and discretionary conditions of probation, and section 3564, which provides rules for the commencement and running of a term of probation, apply to juvenile delinquent supervision. New section 5037(d)(4) authorizes the court to modify, reduce, or enlarge the conditions of juvenile delinquency supervision.

[back to top](#)

## **II. Tolling Supervision**

The statutory bases for tolling (18 U.S.C. § 3564(b) for probation and 18 U.S.C. § 3624(e) for supervised release) are unchanged. Nonetheless, there have been several case law developments that merit mention.

### **A. Incarceration**

The Sentencing Reform Act <sup>10</sup> codified the common law rule that supervision is tolled if an

offender makes himself unavailable for supervision by his wrongful act. The relevant text from the statutory tolling provisions provides that supervision does not run “during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.” <sup>11</sup> While the precise meaning of “imprison[ment] in connection with a conviction” remains vague, several cases have addressed disputed categories of confinement that arguably constitute imprisonment.

Because section 3624(e) provides that supervised release begins when an offender is “released from imprisonment,” but does not run when the offender is thereafter “imprisoned in connection with a conviction,” most circuit courts refused to credit offenders for excess time served in prison notwithstanding the reason. <sup>12</sup> The Ninth Circuit, however, held in *United States v. Blake* <sup>13</sup> that supervised release commences on the date defendants “should have been released, rather than on the dates of their actual release.” Under the Ninth Circuit’s rationale, tolling would not occur during any excess imprisonment on a revocation sentence. This circuit conflict, which also bore on the propriety of tolling for excess prison time, was essentially resolved by the Supreme Court in *United States v. Johnson*. <sup>14</sup> The defendant in *Johnson* had been convicted of multiple crimes and sentenced to 171 months’ imprisonment and three years’ supervised release. Two of Johnson’s convictions were vacated when he prevailed on a motion filed pursuant to 28 U.S.C. § 2255, which reduced his sentence to fifty-one months. Johnson was immediately released because he had already been imprisoned longer than required by his remaining convictions. Johnson then sought a reduction in his supervised release term for the extra time that he had served in prison. He contended that his term of supervised release should be deemed to have started at the conclusion of his lawful prison term, and not when he was actually released. The Supreme Court rejected this argument, and held that supervised release begins on the date of actual release, and not on the date that a defendant should have been released. Relying upon the plain language of § 3624(e), the Court noted that the statute states that supervised release does not begin until an offender is “released from imprisonment,” and not when the offender should have been released. While *Johnson* directly addressed only the commencement, but not the tolling, of a term of supervised release, the holding logically would require tolling to continue until release from imprisonment. <sup>15</sup>

The Supreme Court’s analysis in *Johnson* of § 3624(e)’s commencement provision should inform a court’s analysis of the statute’s tolling provision. The Fifth Circuit affirmed the district court’s reliance on this analysis for tolling calculations in *United States v. Jackson*. In *Jackson*, an offender placed on parole for a state robbery conviction was arrested on federal drug charges one month before his parole term was due to expire. Jackson pled guilty to the federal drug charges, served his sentence, and began his three-year term of supervised release. While on supervised release, state authorities revoked Jackson’s parole based on his federal drug conviction. Jackson filed a habeas corpus petition in state court challenging the validity of his parole revocation. The state court found a procedural due process violation that warranted a sentence reduction, but did not otherwise alter the state revocation sentence. Jackson was released from state custody after approximately eight months of unconstitutional detention. After Jackson was released, he violated numerous conditions of his federal supervised release, prompting the government to petition for revocation. Jackson responded by challenging the district court’s jurisdiction. He contended that his term of supervised release had been improperly tolled under § 3624(e) during his state incarceration as a result of the unconstitutional parole revocation. Jackson argued that, absent the lengthy tolling period attributable to his unconstitutional state revocation sentence, his federal term of supervised release would have expired well before the alleged violations had taken place.

The district court held that Jackson’s eight-month imprisonment on his state parole revocation tolled his federal supervised release pursuant to § 3624(e), notwithstanding that the state court had ruled in the habeas proceeding that his parole revocation sentence should be reduced because of a procedural due process violation. <sup>16</sup> The court stated that the plain language of § 3624(e), which requires tolling whenever an offender is imprisoned (and not simply when he is *lawfully* imprisoned) for thirty consecutive days or more, mandates tolling so long as the offender’s conviction remains valid. <sup>17</sup> The court observed that reducing supervised release



because of an error resulting in excess prison time would frustrate the purposes of supervised release: rehabilitation and assistance in the transition to community life. [18](#)

## **B. Administrative Detention and Civil Commitment**

“Legal Developments” advised, and at least one court has held, that INS administrative detention does not toll supervised release because § 3624(e) does not expressly provide for tolling other than for “imprisonment.” [19](#) This logic would preclude tolling for any form of civil commitment even if it is “in connection with a conviction.” A number of states have enacted statutes, and the U.S. House of Representatives has passed a bill, [20](#) that subject sexual offenders to involuntary commitment under some form of “Sexually Violent Predator Act” (“SVPA”). [21](#) Such statutes typically establish procedures for the civil commitment of persons who, due to a “mental abnormality,” are likely to engage in “predatory acts of sexual violence.” [22](#) In the event the offender is committed under an SVPA (typically following the conclusion of a state prison sentence for committing a sexual offense), a federal court with supervision jurisdiction would have to determine whether § 3624(e) would continue to toll the offender’s term of supervised release. While no published case yet addresses the issue, courts would likely determine that commitment under an SVPA does not toll supervision because such confinement is not “*imprisonment* in connection with a conviction.”

## **C. Pretrial Detention**

“Legal Developments” advised that time spent in pretrial detention was clearly imprisonment “in connection with a conviction” that should result in tolling under § 3624(e). [23](#) While one could persuasively argue that time spent in pretrial detention should toll a term of supervised release pursuant to § 3624(e), the only court of appeals to consider the issue disagreed. In an opinion issued after “Legal Developments” advised that pretrial detention could toll a term of supervised release, the Ninth Circuit held in *United States v. Morales-Alejo* [24](#) that a person in pretrial detention is not “imprisoned” in connection with a conviction so as to toll a term of supervised release. As a result, the Ninth Circuit held that the district court lacked jurisdiction to revoke a one-year term of supervised release that, absent tolling, had expired prior to the issuance of a warrant or summons. *Morales-Alejo* is binding precedent in the Ninth Circuit and for all cases supervised elsewhere in which a Ninth Circuit district court has retained jurisdiction. [25](#) Because *Morales-Alejo* is the only case to directly address the propriety of using pretrial detention to toll supervised release pursuant to § 3624(e), it merits consideration as persuasive authority in evaluating whether to toll under sections 3564(b) for probation and 3624(e) for supervised release.

## **D. Deportation**

If an alien offender is deported and therefore is not subject to supervision, no statute authorizes termination or tolling of his term of supervised release. [26](#) In 1994, the AO recommended that courts not impose any condition designed to toll supervision while an offender is absent due to deportation, instead suggesting that courts allow the term to run as inactive supervision. [27](#) In 1997, the Sixth Circuit held that a condition tolling an alien defendant’s period of supervised release after his deportation was appropriate, notwithstanding the absence of statutory authorization for such a condition. [28](#) The Second, Eighth, and Eleventh Circuits subsequently held to the contrary. [29](#)

[back to top](#)

## **III. Termination and Revocation**

The statutory options to terminate supervision after one year for probation under § 3564(c) and supervised release under § 3583(e)(1) remain unchanged since “Legal Developments” was published in 1997, but the 21st Century Act clarified the application of specific supervision provisions for drug offenses set forth in the statute of conviction as opposed to the supervision statute. The 21st Century Act also created juvenile delinquent supervised release and a corresponding revocation provision. The Sixth Circuit’s decision in *United States v. Spinelle* [30](#)

remains the only case on point. *Spinelle* holds that a district court sentencing a defendant to the mandatory minimum three-year term of supervised release for a drug conviction under 21 U.S.C. § 841(b)(1)(C) retains its separate discretionary authority in 18 U.S.C. § 3583(e)(1) to terminate supervised release after completion of one year. The court reasoned that the imposition of the supervision sentence and consideration of post-sentencing modification were two chronologically separate phases governed by different statutes. <sup>31</sup>

Legislative changes to 21 U.S.C. §§ 841 and 960 in 2002 strengthened the *Spinelle* court's holding that congressional mandates regarding imposition of sentences do not mandate full service of such sentences when different statutes allow early termination of the mandatory term. Section 3005 of the 21st Century Act amended those subsections of §§ 841 and 960 that provide for the mandatory imposition of terms of supervised release by clarifying that the maximum terms of supervised release set out in 18 U.S.C. § 3583(b) do not limit the length of supervised release that may be imposed in drug cases. In addition, the amendment stated that, notwithstanding any other statutory provision, courts were precluded from placing a person sentenced for the specified drug offense on probation or suspending their sentence, and "no person [so] sentenced shall be eligible for parole during the term of imprisonment." As one district court observed, Congress specifically limited post-incarceration discretion to provide relief from sentences imposed under § 841, but consciously "left untouched the possibility of early termination of supervised release allowed by § 3583(e)." <sup>32</sup>

### A. Delayed Revocation

The ability to conduct a delayed revocation simply means that a court's jurisdiction to revoke probation and supervised release survives the expiration of a supervision term. Judicial authority to conduct delayed revocations has varied over the years, and was created first by case law and then by statute. Under 18 U.S.C. § 3653 (repealed), a court could issue a warrant for a violation that occurred within the probation term at any time within the 5-year statutory maximum probation period (and thereby preserve jurisdiction to revoke after the term had ended) even if the term actually imposed was less than the maximum. When Congress amended 18 U.S.C. § 3583(e) to allow for revocation of supervised release, it initially failed to allow for delayed revocation. While some inferred that this oversight meant that courts might not have jurisdiction to conduct revocation hearings any time after the term ended, <sup>33</sup> several courts held that the inherent authority to conduct delayed revocation hearings was necessary to enforce supervision conditions for the full term of supervision. <sup>34</sup>

The Sentencing Reform Act of 1984 and the 1994 Crime Bill created essentially identical statutory delayed revocation provisions for probation and supervised release. Sections 3565(c) and 3583(i) of Title 18 preserve a court's power to revoke a probation or supervised release and to impose another sentence after the term expires if the delay is "reasonably necessary" to adjudicate matters that arose before expiration, so long as a warrant or summons "has been issued" on the basis of the alleged violation. <sup>35</sup> Because the delayed revocation provision for probation is more lenient than the case law that preceded it, and the supervised release provision essentially reflected pre-existing case law, courts have applied sections 3565(c) and 3583(i) to cases in which the offenses occurred prior to enactment. <sup>36</sup>

Preserving a court's jurisdiction under §§ 3565(c) and 3583(i) requires issuance of a *valid* warrant or summons, however. In a case of first impression, the Ninth Circuit held in *United States v. Vargas-Amaya* <sup>37</sup> that jurisdiction to revoke supervised release can be extended beyond the term of supervision under 18 U.S.C.A. § 3583(i) based upon a warrant issued during the term only if the warrant was issued upon probable cause, supported by oath or affirmation, as required by the Fourth Amendment Warrant Clause. Of course, this holding would apply equally to warrants issued for the arrest of probationers. To address the Ninth Circuit's holding, and to preclude any future warrant challenges in other circuits, the AO revised Probation Form 12C to include a 28 U.S.C. § 1346 certification. The Parole Commission did not alter procedures for preparing warrant requests in response to *Vargas-Amaya*, because the parole statutes and cases interpreting parole warrant requirements regard a parolee as "already under arrest" and subject to the control and care of the Parole Board. The parole statute itself specifically stated <sup>38</sup> that a

parolee is “in the legal custody and under the control of the Attorney General.” <sup>38</sup> In addition, the warrant provision of parole statutes was enacted for the purpose of “retaking of the parolee.” Courts therefore interpreted a commissioner’s warrant for retaking as different from a judicial warrant for arrest. Thus, a warrant for retaking did not have to be supported by an oath.

If the basis for issuing the invalid warrant was that the offender had become a fugitive, however, the absconder doctrine would allow a new warrant to issue upon *sworn* allegations. On August 29, 2005, the Ninth Circuit, in *United States v. Murguia-Oliveros*, <sup>39</sup> reaffirmed the common law absconder doctrine, holding that offenders who abscond from supervision thereby toll their terms of supervised release. The *Murguia-Oliveros* panel stated that because the offender was an absconder, the district court had jurisdiction to revoke the offender’s term of supervised release, “and on the basis of an unsworn warrant [sic]. See 18 U.S.C. § 3582(e); *Vargas-Amaya*, 389 F.3d at 907.” The quoted phrase appears contrary to the *Vargas-Amaya* court’s declaration that all such warrants are invalid, unconstitutional, and cannot preserve a district court’s jurisdiction.

As a practical matter, *Murguia-Oliveros* simply reaffirms the common law absconder doctrine, which provides that if an offender absconds before his predicted expiration date, he tolls his period of supervision. Historically, the Office of Probation and Pretrial Services and the Office of General Counsel have recommended that when an offender absconds, an officer should petition for an arrest warrant to document that the defendant had absconded during the term of supervision. The warrant was not deemed necessary to preserve the court’s jurisdiction under 18 U.S.C. §§ 3565(c) (delayed revocation for probation) or 3582(i) (delayed revocation for supervised release), because the avoidance of supervision itself tolled the term and extended the court’s jurisdiction. *Murguia-Oliveros* can be read consistently with *Vargas-Amaya* if one regards the original warrant issued on an unsworn petition as no more than evidence that the offender had absconded before supervision was due to expire. If an offender absconds, he thereby tolls the term, and the court continues to have jurisdiction to issue a new warrant even though the predicted supervision expiration date has passed.

While the delayed revocation provisions and the absconder doctrine resolve some of the exigencies of addressing violations that occur towards the end of a supervision period, a serious logistical challenge is unavoidable if an officer learns of violations immediately before supervision terminates. Although issuance of a summons or warrant will preserve the court’s jurisdiction, there often is not enough time to arrange for the clerk’s office to *issue* the summons or warrant even when the officer petitions for the warrant with dispatch and the court orders issuance of a warrant. “Legal Developments” had suggested that a court in such a situation might find that an officer who “initiates” the process with a timely petition thereby “issues” the functional equivalent of a warrant or summons. <sup>40</sup> The cases cited in support of this proposition, however, simply dealt with the “reasonable necessity” of delay for conducting the revocation hearing after expiration of the term. They involved a predecessor statute to § 3565 or an earlier version of § 3583 that did not include a delayed revocation provision and a requirement that a summons or a warrant issue before expiration. <sup>41</sup> Cases interpreting the plain language of §§ 3565(c) and 3583(i) requiring that a summons or warrant “has been issued” to preserve jurisdiction are unanimous in holding that this means a summons or warrant must actually issue, and that completion of any preliminary step is not the functional equivalent of issuance. <sup>42</sup>

One solution for insuring the immediate issuance of warrants in response to the officer’s petition and court’s order is for the court to direct that the probation officer, rather than the clerk, issue the warrant. In *United States v. Bernardine*, <sup>43</sup> the Eleventh Circuit endorsed this procedure, after noting that 18 U.S.C. § 3603(10), the “catch-all” provision requiring officers to “perform any other duty that the court may designate,” is sufficient authority for a district court to order the probation officer to perform the ministerial act of issuing a summons or warrant. <sup>44</sup> The court noted that this could not be construed as an improper delegation of a judicial function, “because by ordering the issuance of a summons, the court directed the probation officer to perform a ministerial act or support service” and the court itself ultimately determined whether the revocation proceedings should go forward and a warrant be issued. <sup>45</sup>

## **B. Revocation of Juvenile Supervision**

## 1. Revocation of Juvenile Delinquent Probation

The 21st Century Act deleted the previous cross-reference in § 5037(b) to the adult probation revocation authority at 18 U.S.C. § 3565 in favor of a probation revocation procedure specific to juvenile probation. By eliminating the reference to the adult revocation provision, the revised § 5037(b) avoided the mandatory revocation provisions of adult supervision. To treat adult offenders consistently, however, the amendment preserved the mandatory revocation provisions for those persons who have been adjudicated juvenile delinquents, but who are over 21 years of age at the time of the revocation proceeding.

The new probation revocation provision allows a court to impose any disposition appropriate under § 5037 upon revoking a term of probation. Since the current statute provides different probation ranges for different ages, but fails to state at what point the age determinations are to be made, specifying that the age referred to is the age of the juvenile at the time of reimposition of disposition averts the potential for illogical results. [46](#)

## 2. Revocation of Juvenile Delinquent Supervised Release

The 21st Century Act created a new § 5037(d)(5), providing for the revocation of juvenile delinquent supervision. The new revocation authority is similar to the new probation revocation provision. As with the probation revocation amendments, this section avoids the mandatory revocation provisions of adult supervision for persons under 21, but preserves them for persons over 21 at the time of the violation proceeding.

New subsection 5037(d)(6) permits the court to order a term of juvenile delinquent supervision to follow a term of detention that was imposed as a result of a violation of supervision. To avoid an inordinate term of juvenile supervision and detention, any combination of supervision and detention, including sanctions following revocation, may not extend beyond the periods available in § 5037. For example, a juvenile delinquent who committed an act that would have been a Class C felony if committed as an adult would not continue under juvenile detention or supervision beyond the juvenile's twenty-sixth birthday, no matter how many times his supervision has been revoked.

This section has no effective date, and the Office of General Counsel originally opined that the provisions could apply to juveniles who committed the act of delinquency prior to November 2, 2002, but were sentenced after that date, or who were facing probation revocation. This initial interpretation observed that applying this provision retroactively would not offend the *ex post facto* clause because the total amount of time a juvenile may be sentenced to any combination of incarceration and supervision was limited to the same amount of time juveniles could previously have been subject to incarceration. In other words, a juvenile who committed a delinquent act before November 2, 2002, would be no worse off than if she received an original or revocation sentence based on the revised version of § 5037. While this analysis may have accorded with Congress' *unspoken* intent that the revisions would govern sentencing proceedings that took place after the law's enactment (particularly because juveniles sentenced under the new provisions would likely be better off), it overlooked the independent threshold requirement that Congress clearly express that it intended retroactive application. [47](#)

In *United States v. J.W.T.*, [48](#) the Eighth Circuit considered this threshold requirement when it reviewed a district judge's determination that the new supervised release provision applies when revoking a juvenile's probation even if the underlying act of delinquency occurred before November 2, 2002. The district court undoubtedly applied the new supervised release provision because the maximum length of a juvenile revocation sentence was the same under the original and amended versions of § 5037, except that under the amended statute part of the sentence could be supervised release in lieu of detention. Presumably, a court imposing detention as a component of a revocation sentence that included a period of supervised release would impose a shorter period of detention because this *combination* was subject to the same limits as detention under the old statute.

The Eighth Circuit, however, held that because nothing indicated that Congress intended the law to apply retroactively, the presumption against retroactive application meant that it could not apply to a juvenile whose delinquent act occurred before enactment. The court's reasoning was straightforward: there is a presumption that legislation should not be applied retroactively absent an express statement to the contrary by Congress; such a statement was absent regarding the revocation provisions; therefore, the November 2002 amendments to § 5037 could not be applied retroactively. <sup>49</sup> In reaching its conclusion, the Eighth Circuit invoked the Supreme Court's holding in *Johnson v United States* <sup>50</sup> that a term of supervised release must be considered as part of the penalty for the original criminal act (or in this context, the act of juvenile delinquency). The Eighth Circuit, like the Supreme Court in *Johnson*, essentially held that the case did not turn on whether J.W.T. was worse off under the revised statute (in other words, whether the statute passed muster under the *ex post facto* test). Instead, the statute could not be applied retroactively because of the "longstanding presumption . . . [that new statutes] appl[y] only to cases in which the initial offense occurred after the effective date of the amendment." <sup>51</sup> Absent this presumption against retroactivity, the statute likely would have passed the test recited in *Johnson* for determining whether retroactive application violates the *ex post facto* clause, which requires that an offender show "both that the law he challenges operates retroactively... and that it raises the penalty from whatever the law provided when he acted." <sup>52</sup>

### **C. Mandatory Revocation of Probation and Supervised Release for Failing a Drug Test**

Section 2103 of the 21st Century Act amended 18 U.S.C. §§ 3565(b) and 3583(g) to require mandatory revocation if an offender "as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year." The amendment left the provision requiring revocation for the possession of drugs undisturbed. For purposes of revocation, the statute now arguably distinguishes between "possession" and a positive drug test. In the case of a positive drug test, the statute does not require action by the court until the fourth positive test within one year. In *United States v. Hammonds*, <sup>53</sup> however, the Tenth Circuit nonetheless held that the provisions mandating revocation of supervised release for more than three failed drug tests within a single year do not preclude a finding that a *single* failed drug test, combined with proof of culpable state of mind, equals "possession" and thus mandates revocation.

The 21st Century Act did not revise the provisions in 18 U.S.C. §§ 3563(e) and 3583(d) that allow the court to consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the [mandatory revocation provisions in] section 3565(b) [or 3583(g)], when considering any action against a defendant who fails a drug test. <sup>54</sup>

The 21st Century Act amendment to §§ 3565(b) and 3583(g), combined with the alternative of treatment available under §§ 3563(e) and 3583(d), appear to allow a court to consider treatment in lieu of revocation after the fourth positive drug test. As a practical matter, since the court is no longer *required* to revoke or to order treatment after every positive drug test, this new language allows the probation officer to work with the offender for the first three positive drug tests without being required to involve the court.

### **D. PROTECT Act Amendments Concerning Revocation of Supervised Release**

Section 101 of the PROTECT Act, "Supervised Release Term for Sex Offenders," made two significant amendments to § 3583 that, upon revocation, greatly increase the length of incarceration and the reimposed term of supervised release. First, the Act amended 18 U.S.C. § 3583(h) to delete the italicized language in the first sentence:

When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment *that is less than the maximum term of imprisonment authorized under subsection (e)(3)*, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term

of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

Striking the italicized language permits a court revoking supervised release to impose another term of supervised release regardless of the length of imprisonment imposed. The length of the term of imprisonment upon revocation is still limited by the maximum terms in section 3583(e), however. Before the statute was amended, an additional period of supervised release upon revocation could not be imposed if the court imposed the maximum term of imprisonment permitted under (e)(3).

Section 101 also amended § 3583(e)(3), which sets forth the maximum revocation prison sentences, by inserting after the phrase, “required to serve,” the phrase, “on any such revocation.” Before the amendment, section 3583(e)(3) stated that “a defendant whose term is revoked under this paragraph may not be required to serve more than” a specified maximum prison term depending on the class of offense. The new language means that the maximum prison sentences only apply to each revocation, thereby removing the requirement that sentences of imprisonment imposed in multiple revocations be aggregated in calculating the term of supervised release available. [55](#) Thus, each time a court revokes supervised release and imposes a term of imprisonment, the term of supervised release available is the difference between the maximum term of supervised release for that offense and the term of imprisonment just imposed without reference to any terms previously imposed.

[back to top](#)

## [Endnotes](#)

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## Juvenile Focus

Alvin W. Cohn, D. Crim.  
*Administration of Justice Services, Inc.*

### **OJJDP Home Page**

OJJDP has launched a redesigned home page on its Web site. Enhancements include expanded coverage of news, publications, and events and links to tools designed to assist specific users, such as first-time visitors and students. Aids for those seeking funding information and the latest data are also provided. Access the site at <http://www.ojp.usdoj.gov/ojjdp>.

### **Disproportionate Minority Confinement**

The Building Blocks for Youth has released its final report, *No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in The Justice System*. The report discusses the Casey Foundation's Juvenile Detention Alternatives Initiative and the campaign across the country. The report can be obtained at [http://www.buildingblocksforyouth.org/noturningback/ntb\\_fullreport.pdf](http://www.buildingblocksforyouth.org/noturningback/ntb_fullreport.pdf).

### **Search**

The National Consortium for Justice Information and Statistics and the Bureau of Justice Assistance announce that registration is now open for the *2006 Symposium on Justice and Public Safety Information Sharing*, which will be held March 13-15, 2006 at the Grand Hyatt in Washington, DC. For details see [www.search.org](http://www.search.org).

### **Federal Coordinating Council Agenda**

The Federal Coordinating Council on Juvenile Justice and Delinquency Prevention and OJJDP will sponsor the national conference *Building on Success: Providing Today's Youth with Opportunities for a Better Tomorrow*, January 9, 2006, where there will be pre-conference workshops. Plenary sessions will address four themes identified by the White House Task Force on Disadvantaged Youth. Registration for the conference deadline is December 9, 2005. See <http://www.juvenilecouncil.gov/2006NationalConference/index.html>.

### **Youth Birthrate**

The birthrate among American girls ages 10 to 14 has fallen to its lowest level since 1946, according to the Centers for Disease Control and Prevention. The number dropped 38 percent from 1994 to 2002, even though the number of girls ages 10 to 14 climbed 16 percent. Researchers attributed the decline to effective sex education. In 2002, 7,315 babies were born to this group, a birth rate of 0.7 live births per 1,000 females, about the same as 60 years ago.

### **Premature Births**

More than 12 percent of U.S. babies, a record, were born prematurely in 2003 as a result of delayed childbirth and doctors arranging for inducing labor, especially among older women. A total of 499,008 premature infants were born in the U.S. in 2003, according to researchers at the March of Dimes.

## **Sexual Violence**

Substantiated incidents of sexual violence occur at a higher rate at state-run juvenile facilities than at any other type of correctional facility, reports the Bureau of Justice Statistics (BJS). The report found a total of 2,100 substantiated incidents of sexual violence in 2004 at 2,700 state and federal prisons, local jails, and juvenile facilities, which covered a population of 1.7 million inmates, representing 79 percent of adults and juveniles incarcerated in the U.S. at midyear 2004. Out of every 1,000 juveniles at state-run facilities, 5.15 were subjected to such violence. The rate is about 10 times greater for adults, where one out of every 2,000 inmates was a victim of sexual violence. A total of 8,210 allegations were reported at all of the facilities studied, where 55 percent were found to be false or unable to be substantiated. About one-third of all allegations were substantiated and about 15 percent were still under active investigation.

The report also found: æ Staff sexual misconduct accounted for 32 percent of the allegations; 37 percent involved inmate-on-inmate nonconsensual sexual acts; 11 percent were staff sexual harassment allegations; and 10 percent involved abusive sexual contact.

- Males were the victims and perpetrators in 90 percent of the substantiated inmate-to-inmate nonconsensual sexual acts in prisons and jails.
- Females were the perpetrators in 67 percent of staff sexual misconduct incidents in state prisons, while 69 percent of the victims were male.

Details can be obtained at [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs).

## **Teenage Drivers**

Teenage drivers tend to take more risks and drive more dangerously when other teenagers — especially boys—are sitting in the passenger seat, according to a study conducted by The National Institute of Child Health and Human Development, where observations were made near 10 high schools in suburban Washington. Of the teenage boys who were observed driving dangerously, one in five had a teenage male passenger, but only one in 20 had a female. Overall, 14.9 percent of teenage boys and 12.1 percent of teenage girls were seen driving dangerously, which included speeding and tailgating. In all, the researchers tracked 471 teenage drivers and compared their driving with a large sample of adult drivers.

## **Childhood Vaccines**

Contrary to some fears, childhood vaccines do not appear to overwhelm the immune system and make youngsters prone to other infections, according to a study by the Statens Serum Institute, near Copenhagen, of 805,206 children who received the standard setoff vaccinations. Researchers studied data of these children born in Denmark between 1990 and 2001 for their first five years of life, examining whether six standard vaccines children received increased the risk of seven other major infectious diseases. They found no significant increased risk of being hospitalized with other infections: viral and bacterial pneumonia, bloodstream infections known as septicemia, meningitis, diarrhea, upper respiratory infections, and viral central nervous system infections.

## **Prison Population**

The number of prisoners in the U.S. rose 1.9 percent during 2004, according to the Bureau of Justice Assistance. This was lower than the average annual rate of growth during the last decade (3.2 percent) and just below the growth rate in 2003 (2.0 percent). For the report, see <http://www.ojp.usdoj.gov/bjs/abstract/p04.htm>.

## **School Safety**

The Office of Community Oriented Policing (COPS) has released a CD-ROM, *School Safety*, which provides 50 resources related to school safety, including documents published by COPS, OJJDP, and other federal agencies, and also with links to school safety Web sites. Topics covered include bullying, gangs, school crime prevention, and youth violence. The content of *School Safety* is available online at <http://www.cops.usdoj.gov/html/cdrom/schoolsafety/index.htm>.



### **Child Death Rate**

The adolescent birthrate has reached another record low: the death rate for children between ages one and four is the lowest ever, and young children are more likely than ever to get their recommended immunizations, according to the National Center for Health Statistics. But white children are healthier than black or Hispanic children, and black children are much more likely to die violently, be assaulted, or suffer some other violent crime. About 83 percent are reported by their parents to be in very good or excellent health. In 2002, there were 31 deaths for every 100,000 children in the one-to-four age group, down from 33 deaths per 100,000 in 2001. The adolescent birthrate for 2003 was 22 for every 1,000 girls ages 15 to 17, down from 23 in 2002 and down from 39 births for every 1,000 girls in 1991. The rate of births to black or Hispanic teenagers is about double that of births to white teenagers, the report found.

### **Loaded Weapons**

A study conducted by *Pediatrics* found that 1.7 million children live in homes with loaded and unlocked weapons. Nationally, 32.6 percent of adults reported having weapons in their homes, but the median for homes with children was a lower median rate of 5.4 percent. Alabama had the highest proportion of homes with loaded and unlocked guns and children (7.3 percent), followed by Alaska and Arkansas (6.6 percent).

For more details see <http://pediatrics.aapublications.org/contents-by-date.O.shtml> (in search window, type 2005 for year, 116 for volume, "guns" for key word).

### **Drugs and Juveniles**

The Substance Abuse and Mental Health Administration's Office of Applied Studies has released a short report dealing with mental health concerns among youth, based on data from the latest National Survey on Drug Use and Health. See *Suicidal Thoughts among Youths* at <http://oas.samsha.gov/2k5/suicide/suicide.cfm>.

In another National Survey on Drug Use and Health, a report finds Hispanic youth are the least likely of any racial or ethnic group to use drugs or alcohol. Among Hispanics, immigrant youth are less likely to use substances than native-born youth. See <http://oas.samsha.gov.2k5/HispanicYouth/HispanicYouth.cfm>.

### **Student Numbers**

A record 49.6 million students filled U.S. schools in 2003, breaking a mark set by their baby boomer parents. The growth is largely due to the children of those born in the late 40s to early 60s, who have since become parents themselves, according to the Census Bureau. Rising immigration played a part, too, pushing enrollment past the 1970 record of 48.7 million. During the peak enrollment year during the baby boomers' time in school, almost 80 percent of students were non-Hispanic whites. By 2003, that number had dropped to 60 percent. Enrollment is expected to drop slightly through 2010 due to a decline in births from 1991 to 1997, but then pick up again.

### **Children and Exercise**

Children should get an hour of exercise over the course of each day, reports the Center for Disease Control and Prevention, which based its advice on the recommendations of 27 different advisory groups. A research panel reviewed more than 850 studies on child physical activity and found that most recommended 30 to 45 minutes of continuous activity. The panel decided that 60 minutes of exercise was more appropriate because children typically are active in "fits and spurts" rather than in a continuous manner.

### **Mother Statistics**

The U.S. Census Bureau released a series entitled *Facts for Features* on Mothers, including:

- 82.5 million is the estimated number of mothers in the U.S.
- 4 million women have babies each year, of which 425,000 are teens, ages 15 to 19, and more than 100,000 are age 40 and over.

- 10 million single mothers are living with children under age 18, up from 3 million in 1970.
- Only about 10 percent of women today ended their childbearing years with four or more children, which compares with 36 percent in 1976.
- 35,000 births occurred in 2002 attended by physicians, midwives, or others outside of hospitals.
- Two is the average number of children that women have today.
- Fifty-five percent of mothers with infant children in 2002 are in the labor force, down from a record 59 percent in 1998.

### **TV Exposure**

Three new studies provide fresh evidence that children who watch a lot of television do poorly in school. The first study, by the University of Washington at Seattle, analyzed data from a national survey of 1,797 children and found that the more television children watched before age three, the more poorly they performed in school when they were six or seven. TV viewing from ages three to five, however, appeared to have a beneficial effect on reading and short-term memory. The second study, by the University of Otago in New Zealand, examined 1,000 children born in Dunedin, New Zealand and found that those who watched the most TV during childhood and adolescence were the least likely to finish school or go on to earn a university degree. The third study, by Johns Hopkins University and Stanford University, studied 348 third-graders and found that those with a TV in their bedrooms tended to score lower on standardized tests while those with a home computer scored higher.

### **Foster Care**

Foster children are so handicapped by their experiences in the child welfare system that four out of five fail to thrive as adults, and more than half experience clinical mental health problems, according to a comprehensive study by the Northwest Foster Care Alumni, as reported in *Improving Family Foster Care*. The study found that foster care alumni lack the hallmarks of a successful adulthood, such as high school diplomas and jobs with adequate pay. Each year, 20,000 youth between ages 18 and 21 leave foster care and various studies find that most are woefully unprepared for adulthood. Among some of the findings:

- 22 percent experienced homelessness after foster care.
- 25 percent experienced post-traumatic stress disorder after foster care.
- 33 percent earn below the federal poverty line.
- 33 percent don't have health insurance.
- 15 percent don't have a high school diploma.
- 84 percent don't have a vocational degree.
- 98 percent don't have a bachelor's degree.

The study can be found at [www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm](http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm).

### **Whooping Cough**

The U.S. Food and Drug Administration has approved a one-time booster shot for 10-18 year-olds to protect them against pertussis, also known as whooping cough. Although an initial vaccine and four boosters are given to most children before age six, scientists have discovered that the protection provided by those early inoculations diminishes over time. The additional vaccine will be added to a combined booster for diphtheria and tetanus that is already

recommended for adolescents.

### **Meningitis Vaccination**

U.S. health officials at the Centers for Disease Control and Prevention report that teenagers and pre-teenagers should be routinely vaccinated against meningitis, a disease that can kill within hours. It is recommended that youths ages 11 and 12, as well as enrolled high school and college students, especially those living in dormitories, should get the shots. Bacterial meningitis kills about 10 percent of patients and others are permanently disabled by it. As many as 3,000 Americans become ill with meningitis each year and about 300 die.

### **Minimum Wage**

According to new data from the U.S. Bureau of Labor Statistics, young workers were the most likely to be paid the prevailing federal minimum wage (\$5.15 per hour) or less in 2004. Among the statistics:

- 51 – percentage of minimum-wage workers who were under 25.
- 25 – percentage of minimum-wage workers who were ages 16 to 19.
- 6 – percentage of hourly paid workers under 25 who earned the minimum wage or less.
- 9 – percentage of hourly paid workers ages 16 to 19 who earned the minimum wage or less.

### **Missing Children**

Between January 2000 and December 2004, police departments across the country failed to report nearly 4,500 missing children to the FBI's National Crime Information Center, as required by the National Child Search Assistance Act of 1990. Seventeen of those children are dead and 131 remain missing.

Scripps Howard compared FBI records with 37,665 missing child reports filed with the National Center for Missing and Exploited Children and found that 12 percent of cases nationwide went unreported to federal authorities. The five states that failed to report most often include Hawaii (41 percent), Louisiana (23 percent), New York (20 percent), Mississippi (19 percent), and South Dakota (18 percent). Police officials across the U.S. blamed ignorance, confusion, and case backlogs for noncompliance with the reporting requirement. See [www.shns.com](http://www.shns.com).

### **Suicidal Behavior**

Suicidal impulses and attempts are much more common in teenagers who think they are too fat or too thin, regardless of how much they actually weigh, according to a study published in *Archives of Pediatric and Adolescent Medicine*. Using actual body size based on teens' reports of their height and weight, researchers found that overall, overweight or underweight teens were only slightly more likely than normal-weight teens to have suicidal tendencies. But teens who perceived themselves at either weight extreme—very fat or really skinny—were more than twice as likely as normal-weight teens to attempt or think about suicide. The study was based on a nationally representative 2002 survey involving 13,601 students in the ninth through 12th grade. About 19 percent of respondents said that they had considered suicide in the previous year and about nine percent said that they had attempted it, reports the Centers for Disease Control and Prevention.

### **Parent Centers**

Research from the Technical Assistance Alliance for Parent Centers (the Alliance) shows that more than 1.7 million parents of children with disabilities and professionals contacted parent centers across the U.S. during 2003-2004. They sought help in obtaining appropriate education and other services for their children with disabilities; training and information to help their children; help with resolving school-based issues and with other agencies; and community resources for their children. According to Alliance research, 81 percent of parents said that their child received appropriate services; 92 percent said that parent centers helped them via telephone

with the information they needed to make decisions about their children with disabilities; and 83 percent of parents reported that the help they received helped to resolve school problems. For information about parent centers, see [www.taalliance.org](http://www.taalliance.org).

### **Crime Rate**

The crime rate in the U.S. remains at a 30- year low, according to victims' surveys by the Bureau of Justice Statistics (BJS). In 2004, there were 21.4 victims of violent crime for every 1,000 people older than 12. With the exception of sexual assaults, BJS found that black men and young Americans were victimized more than any other groups.

*Correctional News* is a free publication that is concerned with statewide and national coverage of construction efforts, correctional people in the news, and also provides reader service online. For free subscription information, see <http://www.correctionalnews.com/subscribenow.html>.

### **Drug Use**

The Office of National Drug Control Policy has announced the availability of *Predicting Heavy Drug Use: Results of a Longitudinal Study, Youth Characteristics Describing and Predicting Heavy Drug Use by Adults*. The report draws on data from the Department of Labor's National Longitudinal Survey of Youth to describe the movement of adolescents and young adults between marijuana and cocaine use and identify early predictors of heavy cocaine use. The report can be obtained at [http://www.whitehouse.drugpolicy.gov/publications/predict\\_drug\\_use](http://www.whitehouse.drugpolicy.gov/publications/predict_drug_use).

### **Second Language**

Brain scientists have found evidence to explain why people who learn a second language when they are very young tend to be more proficient bilingual speakers—learning two languages early in life appears to bulk up a key language center in the brain. A researcher at the University College in London performed brain scans on 25 people who spoke only English, 25 English speakers who learned a second language before the age of five, and 33 who learned another language between ages 10 and 15. The researchers then performed scans on 22 Italians who learned English as a second language and subjected them to detailed proficiency testing, and found the same thing: with those who were most proficient having the most dense gray matter in that area.

### **ACT Test**

Fewer than one in four high school graduates who took the ACT test had taken the course work necessary to succeed in college. The report by ACT, Inc. showed that only 22 percent of the 1.2 million graduates who took the exam this year were ready for college courses in math, English, and science.

### **Busy Children**

Public Agenda reports that almost 80 percent of students from kindergarten through 12th-grade participate in after-school activities. About 75 percent of children say their schedule is "just right, not too hectic." More than 600 children and 1,000 parents were asked questions for a study on how children spend their time after school. Almost nine out of 10 youths said they need to be pushed by their parents to do things that are good for them; while the same percentage grumbles when their parents push.

For middle and high school students, 79 percent report they regularly participate in activities after school and on weekends. In addition, 57 percent participate in nonschool activity almost daily. Seven in 10 parents surveyed rate their child's latest organized activity as high quality, and 79 percent of the students believe that program organizers care about them. During the summer, 56 percent of students say they were interested in academic programs to help them keep up with school work. Only 37 percent of low-income parents say they feel that their child is productively occupied after school, compared with 60 percent of higher-income parents. In addition, 20 percent of low-income and 23 percent of minority parents think the best reason for children to be involved in organized afterschool activities is to improve academically, compared with only nine percent of higherincome and eight percent of white parents. This may reflect dissatisfaction with schools in low-income and minority neighborhoods, the researchers state.

## **Juvenile Arresting Data**

OJJDP has published a Bulletin which summarizes and analyzes national and state juvenile arrest data as presented in the FBI report, *Crime in the United States: 2003* .

The juvenile violent crime arrest rate in 2003 was the lowest since 1980, and has declined steadily since the 1990s, as has the rate for property crimes. Other key findings include:

- 45 percent of the 1,550 juveniles murdered were killed with a firearm.
- 1,130 juveniles were arrested for murder, down 70 percent from the peak year, 1993.
- Females accounted for nearly one-quarter of juvenile arrests for aggravated assault and 32 percent of other assaults.
- The ratio of black to white disparities in violent crime arrest rates declined from 6-to-1 in 1980 to 4-to-1 in 2003.
- Between 1994 and 2003, juvenile arrests for drug abuse violations increased 19 percent.

The report can be obtained at [www.ncjrs.org/pdffiles1/ojjdp/209735.pdf](http://www.ncjrs.org/pdffiles1/ojjdp/209735.pdf).

## **Mental Health**

The National Institute of Mental Health reports that half of all individuals who experience mental illness during their lifetimes report the onset of the disease by age 14, and three-fourths report onset by age 24. The Institute surveyed more than 9,000 adults nationwide between February 2001 and April 2003 as a follow-up to its 1990 National Comorbidity Study. Earliest onset of mental illness was associated with failing to make initial treatment contacts and with treatment delays. Experts say youth with untreated mental illnesses may suffer debilitating symptoms during their most productive years, compromising their academic achievement, career prospects, and family relationships. Many also develop more severe illnesses, or co-occurring disorders, such as substance abuse. The report can be obtained at <http://jama.ama-assn.org/cgi/content/full/294/3/293?ct>.

## **National Indicators**

*America's Children: Key National Indicators of Well-Being* , 2005 profiles the condition of children in America, including nine contextual measures that describe the changing population, family, the environmental context in which children are living, and 25 indicators that depict the well-being of children in the areas of economic security, health, behavior and social environment, and education. See <http://childstats.gov/americaschildren/index.asp>.

## **Home Schooling**

The number of home-schooled students through grade 12 increased from 850,000 in 1999 to about 1.1 million in 2003, according to the National Center for Education Statistics.

## **Job Stress**

The National Institute of Justice reports in a research study that job-related stress is common among probation and parole officers, which affects job performance and relationships with supervisors, support staff, and family members. The report explores the causes and effects of stress and identifies promising practices used in nine sites to reduce its effects. Researchers found a number of major benefits from stress reduction programs, including cost savings to the agency, improved job performance, and increased safety for staff and the public. See <http://www.ojp.usdoj.gov/nij/pubs-sum/205620.htm>.

## **Youth Courts**

The American Youth Policy Forum announces the availability of *Youth Court: A Community Solution for Embracing At-Risk Youth—A National Update* . The report provides an overview of youth court programs, including their characteristics and benefits. See <http://www.aypf.org/pubs.htm>.

## OJJDP Publications

The following are OJJDP publications as well as those sponsored by OJJDP:

- *State Ombudsman Programs* , written by Judith Jones and Alvin Cohn, is a Bulletin that describes the role of an ombudsman and examines how various states have designed diverse programs to serve the needs of children and youth. See <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11991>.
- *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, by J. Robert Flores and Mary Mentaberry. This reports on a collaborative effort by the National Council of Juvenile and Family Judges and OJJDP to identify comprehensive and effective practices for juvenile delinquency courts, guidelines that define key principles for a court of excellence, and essential elements of effective practice, as well as implementation issues. See <http://www.njcfcj.org/content/blogcategory/346/411/>.
- *The Mathematics of Risk Classification: Changing Data into Valid Instruments for Juvenile Courts* , by Don Gottfredson and Howard Snyder is a report that can assist juvenile courts in developing and using risk classification instruments. It compares statistical methods for classifying risk and offers recommendations for selecting classification procedures. See <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=12183>.
- *Sustainability Planning and Resource Development for Youth Mentoring Programs* is a guide prepared by the National Mentoring Center. It features a comprehensive look at how youth mentoring programs can create their own custom resource development plans. Subjects covered include planning strategies, corporate giving, foundations, government grants, individual giving, local events, the ethics of fundraising, and board involvement. See <http://www.nwrel.org/mentoring/pdf/sustainability.pdf>.
- *Alternatives to Secure Detention and Confinement of Juvenile Offenders* . While secure detention and confinement is an option for last resort for serious, violent, and chronic offenders and for those who repeatedly fail to attend scheduled court appearances, effective community-based alternatives enable the judicious use of costly detention and confinement programs. To decrease reliance on secure detention and confinement, this Bulletin recommends developing objective, valid, and reliable tools to make placement decisions among alternative programs with varying levels of restrictiveness and types of services are available. See <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=208804>.
- *The Juvenile Justice Professional's Guide to Human Subject Protection and the IRB Process* is an online guide to the laws and regulations that govern research involving human subjects. It was prepared by the National Center for Juvenile Justice. The guide offers a comprehensive explanation of human subject protection legislation that can be found in the Common Rule for the Department of Justice, Title 28 part 46 of the Code of Federal Regulations. See <http://ncjj.servehttp.com/irb/index.html>.
- *Planning Community-Based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanction* , by Shelley Zavlek, presents essential information regarding planning community-based or regional facilities to provide secure confinement for serious, violent, and chronic juvenile offenders and outlines a process for their development within a comprehensive juvenile justice plan. See <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=12226>
- *Screening and Assessing Mental Health and Substance Use Disorders Among Youth in the Juvenile Justice System: A Resource Guide for Practitioners* , by Thomas Grisso And Lee Underwood is a guide that offers comprehensive, user-friendly information on instruments that can be used to screen and assess youth for mental health- and substance use-related

disorders at various stages of the juvenile justice process. It includes profiles of more than 50 instruments, guidelines for selecting instruments, and best practice recommendations for diverse settings and situations. See

<http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11936>.

[back to top](#)

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## REVIEWS OF PROFESSIONAL PERIODICALS

[Crime and Delinquency](#)

[The Prison Journal](#)

### **Crime and Delinquency**

Reviewed By Christine J. Sutton

*Criminogenic Effects of the Prison Environment on Inmate Behavior: Some Experimental Evidence*” by Scott Camp and Gerald G. Gaes (2005).

Criminologists have long debated whether prisons are criminogenic or rehabilitative. Proponents of both positions have considered three influences on inmate behavior: criminal propensity, inmate culture in the prison, and the actual prison regime, with the latter two being regarded as environmental influences. Criminal propensity is reflected in the inmate’s criminal history and includes the individual inmate’s characteristics. Prison inmate culture is predominately developed by the inmates and referred to as the informal structure of the prison. The formal organization of the prison is the prison regime and includes policies and types of inmate programs offered.

The authors of this article theorized that if prisons are criminogenic, the probability of misconduct should vary with the different security levels assigned to inmates. The authors set out to examine what happens to inmate behavior, specifically misconduct, when inmates with similar criminal histories are placed in different prison environments. Their aim was to discover whether the different assigned levels of incarceration caused them to be more criminally oriented while in prison.

“Misconduct” included violations of prison rules that can result in disciplinary actions, such as prisoners not cleaning their living areas, having personal property that is prohibited, misusing phone calls and the U.S. mail, as well as criminal acts, such as assaults and murders. For their empirical analysis, the authors used the research conducted on new classifications of felon inmates in the California Department of Corrections prison system during a six month period ending in April 1999 (Berk, Ladd, Graziano and Beck). That research compared a new classification system to the old one used for male inmates.

During the six months ending in April 1999, there were 140,000 male inmates in California prisons. There were 9,656 newly committed inmates assigned to an institution based on the old security classification system and 9,662 inmates assigned based on the new classification system. The designation to a prison was done randomly, determined by the identification number the inmate received; those receiving even numbers were designated by the old system.

For purposes of the Camp and Gaes study, 561 inmates who were classified as Level I under the old system were classified as Level III under the new system. Of those, 297 inmates went to Level I prisons and the other 264 inmates went to Level III prisons. The sample groups were tracked for two years and an equal number in each group remained in custody for that period. Although the Level I and Level III prisons have separate facilities and no contact with one



another, they were in the same location.

After analyzing the misconduct data, the authors found that the Level III inmates randomly assigned to Level I and III security environments acted like other inmates in Level III environments. The results also demonstrated that the percentage of inmates with misconduct did not significantly differ whether the inmates were placed in Level I or Level III prisons. The misconduct rate was close to Level III inmates: 62 percent. If we presume that these differently placed groups of inmates had about the same propensity to misconduct, at least according to the California prison classification system, we can conclude that the Level III prisons did not seem to encourage inmates to greater participation in prison misconduct. Alternatively, the less violent or criminogenic environment of Level I institutions did not seem to lower the misconduct level of Level III inmates. If the prison environment had an effect on Level III inmates housed in Level I facilities, we would expect to find misconduct rates lower than those for Level III inmates housed in Level III institutions.

The original study by Berk et al. demonstrated that the new California classification system was justified on the grounds of providing greater precision in predicting undesirable behavior. The Camp and Gaes study in *Crime and Delinquency* indicates that the new method of segregating inmates was benign in its effect on the behavior of inmates who moved up in security from Level I to Level III in prisons. Camp and Gaes' results also suggest that the classification of inmates for housing may not be as important as often thought, or at least that the possible negative effect can be overcome with adequate security and custody measures. In California, different prison environments did not alter the behavior of inmates in ways not already predicted by the propensity toward crime demonstrated by the inmates before entering prison. Inmates with similar histories in the study were equally likely to commit misconduct in prison, regardless of whether they were assigned to a Level I or a Level III facility.

## **The Prison Journal**

Reviewed By Sam Torres

"*Wardens' Perceptions of Prison Sex*," by H. Hensley and R. Tewksbury (2005)

This study by Hensley and Tewksbury sought to assess whether and to what degree individual demographic variables and institutional characteristic variables were related to wardens' perceptions of the prevalence of sexual assault in their institutions, the prevalence of inmates' consensual sexual activities, and wardens' assessment of sexual assaults that come to their attention. Data was gathered from anonymous questionnaires of 226 male and female wardens from state-operated institutions. Of the 441 respondents, 226 participated in the study, yielding a response rate of 52.4%.

Wardens were asked three questions regarding their knowledge of coerced and consensual sex in their prisons. First, "What percentage of inmate sexual assaults do you believe you personally know about?" Second, "In the past 12 months, what percentage of the inmates in your institution do you believe have engaged in sexual activities with other inmates because of pressure and/or force?" Finally, "In the past 12 months, what percentage of the inmates in your institution do you believe have engaged in sexual activities with other inmates consensually?" Demographic characteristics of the wardens (age, gender, and race) were recorded for the study. In addition, data were also collected on education, number of years as warden, overcrowding of facility, sex of prison inmates, security level, current number of inmates, and ratio of inmates to correctional staff.

The study found that female and nonwhite wardens were more likely to report that a higher percentage of inmates had consensual sex in their institutions compared to male and white wardens. Wardens of all female and male/female prisons were more likely to report that a higher percentage of inmates had consensual sex in their institutions compared to wardens of all-male facilities. Prisons with a higher inmate-to-correctional-staff ratio were more likely to report that a higher percentage of inmates had consensual sex compared to prisons with a lower inmate-to-correctional-staff ratio.

The authors conclude that the results demonstrate the need for education and training of correctional administrators. Generally speaking, prison wardens do not believe that there is a significant level of sexual activity, consensual or coercive and/ or assaultive, occurring in their institutions. Prior research, according to Hensley and Tewksbury, has established that sexual activity among inmates does occur and is often associated with institutional misconduct and violence. Hence, it is critical that wardens be clearly aware of the extent and type of sexual activities that occur in their facilities and respond accordingly.

Wardens as a whole do not believe a high percentage of the inmates in their facilities engage in sexual activity, especially of a coercive and/or assaultive nature. While female and non-white wardens estimated a greater prevalence of consensual sexual activities among inmates, this is to be expected because women and minorities are known in the social science literature to be less homophobic and therefore more likely to accept and expect same-sex sexual activities to occur. Likewise, wardens in women's and male/female sexual institutions estimate a greater percentage of their inmates are engaged in sexual activities. Again, according to the authors, this is to be expected because the scientific literature has emphasized female inmates' sexuality over that of male inmates.

Hensley and Tewksbury indicate that the higher estimates of the prevalence of sexual activities among inmates where there is a higher inmate-staff ratio is to be expected because with a lower concentration of staff present it is logical to expect that sexual misconduct will not be detected by staff.

In 1934 Joseph Fishman reported that the study of sex in prisons is shrouded in silence, and 70 years later, this continues to hold true as few, if any, well-known research institutions dare to explore this subject. Hence, any research into this forbidden area can only enhance our knowledge of this activity within prison walls. Hensley and Tewksbury seek to explain the reasons that female and non-white wardens estimate a greater prevalence of consensual sexual activities in their prisons in contrast to white male wardens and wardens of all male prisons. Furthermore, they explain why wardens of all female and male/female institutions also estimate a greater level of sexual activity than do wardens of all male prisons. Conspicuously absent, however is any attempt at explaining why wardens do not believe that there is a significant level of sexual activity, consensual, coercive and/or assaultive occurring in their institutions. In other words, wardens seem to be saying that while "yes" sexual activity may be occurring in their prisons, if it does occur, it is minimal, and largely consensual. That the chief managers of prisons minimize the activity, or that there may be coercive/assaultive sex occurring, must be understood in the context of how these wardens speculate that they would be perceived as managers if they admitted widespread sexual activity and/or sexual victimization in their institution. Acknowledging that these prohibited sexual activities occur, possibly at high rates, is to acknowledge their own ineffectiveness in running the institution. Hensley and Tewksbury should have explored this denial as an administrative defense mechanism.

Furthermore, by definition, wardens are administrators in contrast to the "line workers" that have day to day contact with inmates. Since they tend to lack the daily contact that correctional officers and other staff have with the inmates, one has to question how much information regarding inmate sexual activity actually finds its way to the warden's desk. In addition, if many correctional officers overlook and/or ignore what they perceive to be consensual sexual activity, and such behavior is frequently not "written up" as violation of institutional rules, then such under-reporting of the activity might support the wardens' conclusion that little sexual activity is occurring in their facilities. By its nature, sexual activity occurs in private, and as an abundance of studies demonstrate, coerced sexual victimization frequently goes unreported. It can furthermore be expected that coerced sexual victimization in the hyper-masculine atmosphere of all-male prisons is even less likely to be reported. The authors should have explored further the potential reasons for the extreme naivete and denial demonstrated by the wardens in this study.

[back to top](#)

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## YOUR BOOKSHELF ON REVIEW

### A Juvenile Justice Primer

Review of *Juvenile Justice: The System, Process, and Law* (First Edition), by Rolando V. del Carmen and Chad R. Trulson. Belmont, California: Wadsworth Publishing, 2005, 512 pp., \$80.95 (cloth).

Reviewed By Dan Richard Beto  
Huntsville, Texas

Perhaps one of the most widely recognized and respected scholars in the field of criminal justice is Rolando V. del Carmen, the Distinguished Professor of Criminal Justice at Sam Houston State University, who has produced countless texts, book chapters, and articles over the past several decades.

A few of his more recent books, some with coauthors, include *Community-Based Corrections*, *Criminal Procedure: Law and Practice*, *Briefs of Leading Cases in Corrections*, *Briefs of Leading Cases in Law Enforcement*, *Briefs of Leading Cases in Juvenile Justice*, *Civil Liabilities in American Policing: A Text for Law Enforcement Personnel*, and *Civil Liabilities and Other Legal Issues for Probation/ Parole Officers and Supervisors*.

His most recent effort is *Juvenile Justice: The System, Process, and Law*, written with Chad Trulson, Assistant Professor of Criminal Justice at the University of North Texas and one of Dr. del Carmen's former students. In this text the authors provide a comprehensive and scholarly overview of the American juvenile justice system. In their preface, which is particularly noteworthy, the authors provide a justification for writing this book:

Anyone who teaches undergraduate juvenile justice with some legal orientation finds the market devoid of a usable textbook. Most juvenile justice books focus on delinquency theories, with a few chapters or sections devoted to the juvenile justice system and process. In many cases, juvenile law is an afterthought and an almost unwelcome add-on that is usually squeezed into one chapter, which makes student comprehension difficult. Thus, the legal dimension of juvenile justice is often marginalized. Adding to the problem is the absence of materials that blend social science and the legal approaches to juvenile justice. Social science research is crucial to juvenile justice, but so are law and the courts, because they set the framework and operational environment for juvenile justice. The gap between the two must be bridged if the whole juvenile justice system and process is to be better understood. This book is written to fill the need for a textbook that:

- Integrates systems, process, and law in clear and lucid language;
- Is comprehensive and bridges the gap between theory and practice in juvenile justice;
- Discusses juvenile justice substance but does not neglect formal or informal procedure;

- Focuses on juvenile justice as a system and as a process based on social science research, statutory law, and court decisions;
- Identifies the latest social science research and court cases on an array of juvenile justice topics;
- Contains logical and proper sequencing of the juvenile justice process to make it easier to understand and remember; and
- Focuses on important information and data about juvenile justice and is not cluttered with details that apply only to a few jurisdictions.

In *Juvenile Justice: The System, Process, and Law* the authors certainly have achieved their identified objectives.

The book, comprised of fourteen chapters, in addition to providing the reader with a sufficient theoretical and historical foundation, explains in detail the various stages of the juvenile justice system through a rational progression. The chapters cover such topics as: theories and measurement of juvenile offending; the role of police in addressing juvenile crime; intake and diversion; status offenders, dependent and neglected youth, and juvenile victimization; the detention process and certification as an adult offender; the national court system; adjudication, disposition, and appeals; juvenile probation and parole; institutional corrections; the death penalty for juveniles; students' rights and school crime; and a look to the future.

Missing from this text — which is a blessing — is the clutter of unnecessary pictures. Rather, the authors have included tables and exhibits that bear a strong relationship with the subject matter. They have also included occasional scenarios designed to promote student discussion.

Each of the book's chapters begins with an outline, along with points to be learned, and is concluded with a summary of relevant points, review questions, and a list of key terms and definitions. In addition, relevant websites are provided for further research.

The text contains three appendices relevant to the study of the juvenile justice system. Appendix A provides U. S. Supreme Court decisions relating to juveniles, and Appendix B lists state by state where juvenile laws are found. Appendix C offers guidance on accessing and interpreting court cases.

*Juvenile Justice: The System, Process, and Law* is an excellent undergraduate text. The approach taken by the authors in crafting this book will enhance the learning experience of those who use it. Rolando V. del Carmen and Chad R. Trulson are to be commended for their contribution to criminal justice scholarship.

**Dan Richard Beto**, is Chair of the Governing Board, Texas Regional Community Policing Institute, Huntsville, Texas.

[back to top](#)

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## It Has Come To Our Attention

### Probation and Parole in the U.S., 2004

In November the Bureau of Justice Statistics released its report on “Probation and Parole in the United States, 2004.” The total of federal, state, and local adults incarcerated or under community supervision during that year teetered on the brink of 7 million, an all-time high, with 4,151,125 on community probation, 765,355 on parole, 713,990 in jail and 1,421,911 in prison. This was a rise of just 0.9% over 2003, which is only one-third of the average annual increase since 1995—the smallest annual growth rate since BJS began doing the survey in 1979. Approximately 3.2% of the adult population in this country was incarcerated or on probation or parole at the end of 2004.

Looking more closely at the breakdowns by state, BJS finds four states with an increase of 10% or more in their probationers: Kentucky (15%), Mississippi (12%), New Mexico (11%), and New Jersey (10%). Twenty-one states record decreases in adult probationers, with Washington State showing a doubledigit decrease of 27%.

The parole population in the U.S. grew by 2.7%, which is more than twice the annual average (of 1.3%) since 1995. In a breakdown of probation offenses, 50% of all probationers in 2004 had been convicted of a misdemeanor, 49% of a felony, and 1% of other infractions. Twenty-six percent were serving a probation term for a drug violation, and 15% had been found guilty of driving while intoxicated.

The probation population increased by 0.5% nationally in 2004, a decline from the annual average of 3.0% since 1995. Probationers were 59% of all persons under correctional supervision in 2004 (down from 61% in 1990); prisoners were 20% (up from 17% in 1990); and those in jail were 10% (up from 9% in 1990). Five states made up nearly a third of the growth in probation population from 1995 to 2004. In order of increase, they are California, whose probation population grew by 104,300; Pennsylvania, which grew by 60,400; Michigan (34,700), Illinois (34,400), and Minnesota (30,400).

Three states, the Federal system and the District of Columbia showed decreases of at least 2,000 adult probationers between 1995 and 2004: New York (–46,000), Federal system (–7,100); D.C. (–2,700); Connecticut (–2,400); and Kansas (–2,200).

Absconders accounted for about 1 in 11 probationers in 2004—a rate of 9% that has remained constant since 1995. Sixty percent of the 2.2 million people discharged from probation last year had met the conditions of their supervision; 15% were re-incarcerated before discharge due to violations or new offenses (down from 21% in 1995); 4% of those scheduled for discharge in 2004 had absconded; and 10% had probation revoked without incarceration.

The number of those on parole grew 2.7% in 2004, which was more than twice the average annual increase since 1995, but down from the 3.1% increase in 2003. Thirty-nine states recorded increases in adults on parole in 2004; nine reported decreases.

These and other statistics, along with tables and graphs, are available online at [www.ojp.usdoj.gov/bjs/abstract/ppus04.htm](http://www.ojp.usdoj.gov/bjs/abstract/ppus04.htm)

## Death Row Statistics for 2004

The Bureau of Justice Statistics announced in Nov. that the count of state and federal death-row inmates on the last day of 2004 was 3,315—which was 63 fewer than the year before. There were 59 executions involving 12 states in 2004 (6 fewer than in 2003). On average, those executed had been on death row for 11 years. California led the list for prisoners sentenced to death (637), followed by Texas (446), Florida (364), and Pennsylvania (222). Those under a Federal sentence of death numbered 33.

Of the 59 executed in 2004, 36 were white, 19 were black, 3 Hispanic (all white), and 1 Asian. Fifty-eight prisoners received lethal injections; one was electrocuted. Texas led the states in number of executions (23), followed by Ohio (7), Oklahoma (6), Virginia (5), and the Carolinas (each of which had 4).

Fifty-two women were on death row in 2004, up from 43 in 1994. For more information, including tables and graphs, visit the bureau of justice statistics web site at [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs).

[back to top](#)

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## Contributors to this Issue

**Vincent D. Basile**

Consultant, Essex (Massachusetts) Sheriff's Dept. Previously, Regional Supervisor, Massachusetts Office of the Commissioner of Probation. M.A., Northeastern University, Boston, MA. Author of "A Model for Developing a Reentry Program," *Federal Probation* (Dec. 2002).

**William Bradshaw**

Associate Professor, University of Minnesota. Ph.D., University of Southern California. Author of "An Empirical Review of Family Group Conferencing in Juvenile Offenses" (2005).

**Michael D. Clark**

Director, Center for Strength-Based Strategies.

**Anthony W. Flores**

Department of Criminal Justice, California State University–Bakersfield. M.S.

**Joe Gergits**

Assistant General Counsel, the Administrative Office of the U.S. Courts. Previously, trial attorney, U.S. Department of Justice, Washington, D.C. J.D., University of Illinois College of Law. Author of "Criminal Law & Criminal Procedure," 18 S. Ill. U.L.J., 747 (1994).

**Edward J. Latessa**

Professor and Division Head, University of Cincinnati. Ph.D., Ohio State University. Author of *Practitioners' Guide to Understanding Offender Risk Assessment* (2001).

**Bennet Mead**

Statistician, U.S. Department of Justice.

**David Roseborough**

Assistant Professor, University of St. Thomas, Ph.D., University of Minnesota.

**Amanda L. Russell**

University of Cincinnati, Division of Criminal Justice, B.A.

**Lawrence F. Travis III**

University of Cincinnati, Division of Criminal Justice, Ph.D.

**Richard Tewksbury**

Professor, Department of Justice Administration, University of Louisville, KY. Ph.D., The Ohio State University. Author (with Christopher Hensley) of *Sexual Deviance* and (with Elizabeth Ehrhardt Mustaine) of *Controversies in Criminal Justice Research* (both 2003).

### REVIEWERS OF PERIODICALS

**Christine Sutton**

California State University, Long Beach.



**Sam Torres**

Professor of Criminal Justice, California State University, Long Beach.

## **BOOK REVIEWER**

**Dan Richard Beto**

Chair, Governing Board of the Texas Regional Community Policing Institute, Huntsville, TX.

[back to top](#)

---

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## Index of Articles

Volume 69, January To December 2005

### Automation

Electronic Monitoring: Positive Intervention Strategies,  
Ralph Kirkland Gable, Robert S. Gable, No. 1

### Criminal Justice System

Bridging the Gap Between Theory and Practice—A Call to Action  
Kimberly Gentry Sperber, Martha Henderson-Hurley, Dena Hanley, No. 1

### Court Management in an Environment of Scarcity

Michael Eric Siegel, No. 1

### Electronic Monitoring: Positive Intervention Strategies

Ralph Kirkland Gable, Robert S. Gable, No. 1

### Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies,

Anthony W. Flores, Amanda L. Russell, Edward J. Latessa, Lawrence F. Travis III, No. 2

### Getting Serious About Corrections

Vincent D. Basile, No. 2

### Mental Retardation and the Death Penalty

Laurence Armand French, No. 1

### Drugs

#### Motivational Interviewing for Probation Staff: Increasing the Readiness to Change

Michael D. Clark, No. 2

### Juveniles

#### Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism

William Bradshaw, David Roseborough, No. 2

### “Looking at the Law”

#### Update to Legal Developments in the Imposition, Tolling, and Revocation of Supervision

Joe Gergits, No. 2

### Management

#### Court Management in an Environment of Scarcity

Michael Eric Siegel, No. 1

### Mental Health

Mental Retardation and the Death Penalty  
Laurence Armand French, No. 1

Prisoner Reentry  
Families and Children of Offenders Who Return Home  
Jeremy Travis, No. 1

Improving the Employment Rate of Ex-Prisoners  
John Rakis, No. 1

Prisons  
Improving the Employment Rate of Ex-Prisoners  
John Rakis, No. 1

Personal Ads From Prisoners: Do Inmates Tell the Truth About Themselves?  
Richard Tewksbury, No. 2

Prison Chapel Volunteers  
Richard Tewksbury, Sue Carter Collins, No. 1

Probation and Pretrial Services  
Electronic Monitoring: Positive Intervention Strategies  
Ralph Kirkland Gable, Robert S. Gable, No. 1

Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need  
Factors and Effective Treatment Strategies  
Anthony W. Flores, Amanda L. Russell, Edward J. Latessa, Lawrence F. Travis III, No. 2

Is There a Measure of Probation Success?  
Bennet Mead (originally published in 1937), No. 2

“Looking at the Law”—Update to Legal Developments in the Imposition, Tolling, and  
Revocation of Supervision  
Joe Gergits, No. 2

Motivational Interviewing for Probation Staff: Increasing the Readiness to Change  
Michael D. Clark, No. 2

Year-in-Review Report of the Federal Probation and Pretrial Services System, the Office  
of Probation and Pretrial Services, No. 2

Program Evaluation  
Bridging the Gap Between Theory and Practice—A Call to Action  
Kimberly Gentry Sperber, Martha Henderson-Hurley, Dena Hanley, No. 1

Electronic Monitoring: Positive Intervention Strategies  
Ralph Kirkland Gable, Robert S. Gable, No. 1

Families and Children of Offenders Who Return Home  
Jeremy Travis, No. 1

Improving the Employment Rate of Ex-Prisoners  
John Rakis, No. 1

Is There a Measure of Probation Success?  
Bennet Mead (originally published in 1937), No. 2

Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile  
Recidivism, William Bradshaw, David Roseborough, No. 2

## Restorative Justice

Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism,

William Bradshaw, David Roseborough, No. 2

## Training

Motivational Interviewing for Probation Staff: Increasing the Readiness to Change

Michael D. Clark, No. 2

## Volunteers

Prison Chapel Volunteers

Richard Tewksbury, Sue Carter Collins, No. 1

## Index of Book Reviews

Volume 69, January to December 2005

Interviewing Theories, Techniques, and Practices. (5th Edition). By Robert A. Shearer.

Reviewed by Todd Jermstad, No. 1

Juvenile Justice: The System, Process, and the Law (First Edition).

By Rolando V. Del Carmen and Chad R. Trulson.

Reviewed by Dan Richard Beto, No. 2

## Index

[back to top](#)

---

The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and review is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts, or the Federal Probation and Pretrial Services System.

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[Home](#)

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## **EDITORIAL STAFF**

**Timothy P. Cadigan**, Executive Editor  
**Ellen Wilson Fielding**, Editor

**Federal Probation**  
Administrative Office of the U.S. Courts  
Washington, DC 20544  
telephone: 202-502-1600  
fax: 202-502-1677

**Postmaster:** Please send address changes to the editor at the address above.

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[back to top](#)

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## Endnotes

[Year-in-Review Report \(Fiscal Year 2004\)](#)

[Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies](#)

[Motivational Interviewing for Probation Staff: Increasing the Readiness to Change](#)

[Looking At The Law](#)

### **Year-in-Review Report (Fiscal Year 2004)**

<sup>1</sup> Pretrial diversion is an alternative to prosecution that seeks to divert certain candidates from traditional criminal justice processing into a program of community supervision administered by the pretrial services or probation office.

<sup>2</sup> The Sentencing Reform Act (Pub. L. 95-536) created a guidelines-based determinate sentencing system, abolished parole, made probation a sentence in its own right, and created terms of supervised release that could be imposed to follow imprisonment.

<sup>3</sup> “Minor” offenses represent convictions for offenses for which the sentence is 90 days or less imprisonment, one year or less probation, or a fine. “Major” offenses are violations that include involvement in or conviction of serious offenses (including absconding from custody), arrest on another charge, or convicted and sentenced to more than 90 days imprisonment or more than one year probation.

[back to top](#)

### **Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies**

<sup>1</sup> The Correctional Program Assessment Inventory (CPAI) (Gendreau & Andrews, 1994) is an evaluative assessment tool used to rate the integrity of correctional programs according to six related areas (program implementation, client pre- service assessment, characteristics of the program, characteristics of staff and practices, evaluation, and miscellaneous). Because research is mounting on the relationship between program integrity and program effectiveness (see Holsinger, 1999), the CPAI is beneficial, given that its design allows program administrators to observe the areas where improvement is needed.

[back to top](#)

### **Motivational Interviewing for Probation Staff: Increasing the Readiness to Change**

<sup>1</sup> This is similar to Bazemore & Terry's (1997) treatise on viewing offenders in a dichotomy as either villains or victims. Those adopting a "tough" approach may well be influenced by the villain view while those adopting a "soft" approach may do so if they view offenders through only a victim lens. A villain lens would reduce outcomes as villains "don't care" and "don't want to change." A victim lens would hold progress back since as victims, they're not responsible and since they didn't cause the trouble, they shouldn't be involved in the resolution. These authors suggest adopting a third view (or lens). Since offenders will come to us as villains or victims, we need to move beyond these limiting views to see offenders with a third lens—as capable and as a resource in the process of change. This "third lens" as proposed by Bazemore & Terry corresponds with a motivational approach (middle ground) that lies between the extremes of "tough" and "soft."

<sup>2</sup> A good example of this sole focus is evidenced by our field's skewed use of "risk" factors. The terms "Risk and Protective factors" came from resiliency research, started in the 1950s. Risk and protective factors were thought to be indivisible, much like the natural pairing of two eyes or two ears—they came as a pair, inseparable from each other yet complimentary to each other. One could not speak of risk factors without noting protective factors as well. However, as evidenced in our field, "risk factors" came to the forefront and now exclusively dominate, while "protective factors" are seldom mentioned—much less assessed and integrated in probation plans.

<sup>3</sup> This contrast of power vs. force, so pertinent to which type of influence should be applied by probation staff, can also be found as a book title by David Hawkins (2002) *Power vs. Force: The Hidden Determinants of Human Behavior*. In this book Hawkins states, "Whereas power always results in a win-win solution, force produces win-lose situations...the way to finesse a (solution) is to seek the answer which will make all sides happy and still be practical. ...Successful solutions are based on the powerful principle that resolution occurs not by attacking the negative, but by fostering the positive." Hawkins concludes, "Only the childish proceed from the assumption that human behavior can be explained in black and white terms." (pps. 138-139) I would contend the "either/ or" conception is similar to the "black and white terms" as noted by Hawkins.

[back to top](#)

## Looking At The Law

<sup>1</sup> 61 Fed. Probation 76 (1997).

<sup>2</sup> Pub. L. 107-273, 116 Stat 1758 (Nov. 2, 2002).

<sup>3</sup> Pub. L. 108-21, 117 Stat. 650 (April 30, 2003).

<sup>4</sup> See *United States v. Johnson*, 331 F.3d 962, 967 n.4 (D.C. Cir.2003) (Finding that the 21st Century amendment "resolved the circuit conflict by adding the words 'Notwithstanding section 3583 of title 18' to the supervisory release provision of § 841(b)(1)(C)...thus making it clear that the term of supervised release for a conviction under that section can exceed 3 years.").

<sup>5</sup> See *United States v. Pratt*, 239 F.3d 640, 647 n.4 (4th Cir. 2001); *United States v. Good*, 25 F.3d 218, 221 (4th Cir.1994); *United States v. Kelly*, 974 F.2d 22, 25 (5th Cir.1992).

<sup>6</sup> See 18 U.S.C. § 5037(d).

<sup>7</sup> 503 U.S. 291 (1992) (maximum sentence that can be imposed on a juvenile is the maximum sentence that could be imposed if sentenced after application of United States Sentencing Guidelines).

<sup>8</sup> 18 U.S.C. § 5037(b).

<sup>9</sup>



*Id.* § 5037(c).

<sup>10</sup> *Id.* §§ 3551-3673, 28 U.S.C. §§ 991-998.

<sup>11</sup> 18 U.S.C. §§ 3564(b) & 3624(e).

<sup>12</sup> *United States v. Jeanes* , 150 F.3d 483, 485 (5th Cir. 1998) (supervised release cannot run during any period of imprisonment); *United States v. Joseph*, 109 F.3d 34 (1st Cir. 1997) (same); *United States v. Douglas* , 88 F.3d 533, 534 (8th Cir. 1996) (same).

<sup>13</sup> 88 F.3d 824, 825 (9th Cir. 1996).

<sup>14</sup> 529 U.S. 53 (2000).

<sup>15</sup> Even though prison time is not interchangeable with a term of supervised release, and tolling continues until release from excess incarceration, an offender could attempt to diminish the effect on the length of unserved supervised release by seeking a modification or early termination of her supervised release term under 18 U.S.C. § 3583(e)(1) and (2).

<sup>16</sup> *Id.* at 778-79.

<sup>17</sup> *Id.* at 778.

<sup>18</sup> *Id.* at 778-79.

<sup>19</sup> *See Abimobola v. United States* , 369 F. Supp.2d 249, 253 (E.D.N.Y. 2005) (“The statute... does not expressly authorize the tolling of a term of supervised release during a period of detention by immigration authorities, and such tolling would be inconsistent with other statutory provisions.”); cf. *United States v. Balogun*, 146 F.3d 141, 147 (2d Cir.1998) (“In light of ... Congress’s express provision for a suspension of the supervised-release term in one instance without providing for a similar suspension while a defendant is excluded from the United States, ...we conclude that Congress did not intend to authorize the courts to toll the supervised-release term after the defendant’s release from prison for a period during which he is deported or excluded from the United States.”); *see also* Catharine M. Goodwin, *Legal Developments in the Imposition, Tolling, and Revocation of Supervision* , 61 Fed. Probation 76, 78 (1997) (“Legal Developments”) (surmising that civil administrative detention awaiting deportation would not toll supervised release under § 3624(e)).

<sup>20</sup> *Children’s Safety Act of 2005* , H.R. 3132, 109th Cong. § 511 (2005).

<sup>21</sup> *See, e.g.* , Mo. Rev. Stat. §§ 632.480 to 632.513 (2005).

<sup>22</sup> *See Kansas v. Crane* , 534 U.S. 407, 409 (2002); *Kansas v. Hendricks* , 521 U.S. 346, 361 (1997); *see also* Julia C. Walker, *Freedom is to Confinement as Twilight is to Dusk: The Unfortunate Logic of Sexual Predator Statutes* , 67 Mo. L. Rev. 993, 1003 n.74 (2002).

<sup>23</sup> *Legal Developments* , 61 Fed. Probation, at 78.

<sup>24</sup> 193 F.3d 1102 (9th Cir. 1999).

<sup>25</sup> In the event a case sentenced by a district court in the Ninth Circuit is transferred for supervision under 18 U.S.C. § 3605, *Morales-Alejo* would not be binding precedent for the transferee court. No case law has interpreted the deference that a transferee court must pay to a transferor court’s interpretation of federal law in the context of a § 3605 transfer. Nonetheless, all circuits interpreting similar civil transfer statutes have concluded that transferee courts are obliged to apply their own interpretation of federal law. *See Temporomandibular Joint Implant Recipients v. E.I. DuPont De Nemours & Co.*, 97 F.3d 1050, 1055 (8th Cir. 1996) (“When analyzing questions of federal law, the transferee court should apply the law of the circuit in which it is located.”); *Newton v. Thomason* , 22 F.3d 1455, 1460 (9th Cir. 1994) (same); *Menowitz v. Brown*, 991 F.2d 36, 40-41 (2d Cir. 1993) (same); *In re Korean Air Lines Disaster*

of September 1, 1983, 829 F.2d 1171, 1173 (D.C. Cir. 1987) (same); see also *Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1171 n.4 (8th Cir. 1998) (the consolidated issues that the court is considering were controlled by the law of its circuit and not the law of the various circuits from which the cases were transferred). Under Federal Rule of Criminal Procedure 21, which provides for change of venue in criminal cases, the possibility that a court in another circuit will interpret federal law differently is not among the factors to be considered when ruling on a transfer motion. See *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240 (1964); *United States v. Spy Factory, Inc.*, 951 F. Supp. 450, 455 (S.D.N.Y. 1997); C. Wright, 2 Fed. Prac. & Proc. Crim.3d § 346 (2004). This implies that the transferee forum's interpretation of federal law should generally apply after the transfer of a criminal case. C. Wright, 2 Fed. Prac. & Proc. Crim.3d § 346; see also *United States v. Barrientos*, 485 F. Supp. 789, 791–93 (E.D. Pa. 1980).

<sup>26</sup> See *United States v. Williams*, 369 F.3d 250, 252 (3d Cir. 2004) (The language of § 3583(d)(3) establishes that Congress “was aware that some defendants sentenced to supervised release would be deported yet [it] chose not to provide for automatic termination of supervised release when the defendant was deported.”); *United States v. Ramirez-Sanchez*, 338 F.3d 977, 981 (9th Cir.2003) (“Had Congress intended for deportation to terminate a term of supervised release, it could have provided so”); *United States v. Brown*, 54 F.3d 234, 238 (5th Cir.1995) (“If Congress intended for deportation to terminate this sentence, it could have specifically provided for such to occur. However, Congress has not done so.”).

<sup>27</sup> April 13, 1994, Administrative Office memorandum to chief probation officers on tolling of supervision terms.

<sup>28</sup> *U.S. v. Isong*, 111 F.3d 428, 429-31 (6th Cir.1997); see also *U.S. v. (Mary) Isong*, 111 F.3d 41, 42 (6th Cir.1997) (affirming condition of supervised release that defendant remain under supervision for three years, not including any time she is not in the country if she is deported).

<sup>29</sup> *United States v. Okoko*, 365 963 (11th Cir. 2004) (“[S]upervised release is to commence immediately upon an alien defendant’s release from imprisonment. [I]ts tolling during deportation as a condition of the release would circumvent the policy underlying that provision.”); *U.S. v. Juan-Manuel*, 222 F.3d 480, 485-88 (8th Cir.2000) (“Congress did not intend to authorize sentencing courts to suspend a defendant’s period of supervised release upon deportation and during any period of exclusion from or unknown presence in the United States.”); *U.S. v. Balogun*, 146 F.3d 141, 144-47 (2d Cir.1998) (“[W]e conclude that Congress did not intend to authorize the courts to toll the supervised release term after the defendant’s release from prison for a period during which he is deported or excluded from the United States.”).

<sup>30</sup> 41 F.3d 1056 (6th Cir. 1994).

<sup>31</sup> *Id.* at 1059-61.

<sup>32</sup> *United States v. Scott*, 362 F. Supp.2d 982, 985 (N.D. Ill. 2005).

<sup>33</sup> See, e.g., Toby D. Slawsky, *Counting the Days: When Does Community Supervision Start and Stop?*, Fed. Probation 71, 73 (Sept. 1992).

<sup>34</sup> *United States v. Schmidt*, 99 F.3d 315, 318 (9th Cir.1996); *United States v. Morales*, 45 F.3d 693, 696-97 (2d Cir.1995) (court retains jurisdiction to extend or modify as well as to revoke supervision); *United States v. Barton*, 26 F.3d 490, 491-92 (4th Cir.1994); *United States v. Neville*, 985 F.2d 992, 995 (9th Cir.1993). See also *United States v. Schimmel*, 950 F.2d 432, 435-6 (7th Cir.1991) (authorizing delayed revocation for probation without the issuance of a warrant, but based on notice otherwise provided to the defendant).

<sup>35</sup> The only difference between 18 U.S.C. §§ 3563(c) and 3583(i) is that § 3583(i) allows for imposition of a further term of supervised release following a revocation sentence of imprisonment.

<sup>36</sup> *United States v. Schmidt* , 99 F.3d 315 (9th Cir.1996); *United States v. Throneburg* , 87 F.3d 851 (6th Cir.1996); *United States v. Kosth* , 65 F.3d 170 (7th Cir.1995) (unpublished).

<sup>37</sup> 389 F.3d 901 (9th Cir. 2004).

<sup>38</sup> 18 U.S.C. 4210(a); *see United States v. Polito* , 583 F.2d 48, 54-56 (2d Cir. 1978) (sworn allegations were not required to issue a warrant for the arrest of a parolee); *see also Story v. Rives*, 97 F.2d 182, 188 (D.C. Cir. 1938) (distinguishing for Fourth Amendment purposes between retaking of parolee and arrest of individual charged with a crime); *Jarman v. United States* , 92 F.2d 309, 311 (4th Cir. 1937) (same).

<sup>39</sup> *United States v. Murguia-Oliveros* , No. 04- 50612, 2005 WL 2063858 (9th Cir. Aug. 29, 2005).

<sup>40</sup> *Legal Developments* , 61 Fed. Probation at 79.

<sup>41</sup> *Legal Developments* cited three cases in support of the proposition that “[s]ome delayed revocation cases find no error where the ‘petition’ for revocation was filed within the term of supervision.” *Id.* at n.54. All of these cases, however, involved an earlier version of § 3583 and a predecessor to 3565 (18 U.S.C. § 3563 (repealed)) that did not include the present “delayed revocation” provisions requiring issuance of a warrant or summons prior to the termination of supervision. *See United States v. Morales* , 45 F.3d 693, 697 (2d Cir. 1995) (court issued summons seven days before supervision was due to expire; offender challenged court’s jurisdiction to conduct revocation hearing after supervision expired); *United States v. Barton* , 26 F.3d 490, 491-92 (4th Cir. 1994) (by filing petition for revocation within supervision term, probation officer preserved the court’s jurisdiction to conduct a revocation hearing within a reasonable time after supervision expired); *United States v. Schimmel* , 950 F.2d 432, 435-36 (7th Cir. 1991) (repealed 3563, which applied to probationer, allowed a court to issue a warrant at any time within the maximum allowable probation period even if the probation sentence imposed was less than the maximum).

<sup>42</sup> *See United States v. Hondras* , 176 F. Supp.2d 855 (E.D. Wis. 2001) (Neither the pre-termination petition to order an arrest warrant nor order that a warrant issue satisfied the requirement that a warrant “issue” to extend a court’s jurisdiction to revoke supervised release); *United States v. Crusco* , No. 90 CR 945 JES, 2000 WL 776906, \*2 (W.D.N.Y. June 15, 2000) (court lacked jurisdiction to revoke supervised release; neither a petition for a warrant or summons nor the judge’s signature approving the petition extends the court’s jurisdiction). *See also United States v. Rivard* , 127 F. Supp.2d 512, 516 n. 10 (D. Vt. 2000) (citing *Crusco* for the proposition that “where no summons or warrant has issued before the expiration of the supervised release period, the court does not have jurisdiction to hear claims of such violations”).

<sup>43</sup> 237 F.3d 1279 (11th Cir. 2001).

<sup>44</sup> *Id.* at 1282-83.

<sup>45</sup> *Id.*

<sup>46</sup> *See United States v. A Female Juvenile* , 103 F.3d 14 (5th Cir. 1996).

<sup>47</sup> *See Johnson v. United States* , 529 U.S. 694, 701 (2000) (“Quite independent of the question whether the *Ex Post Facto Clause* bars retroactive application of § 3583(h), then, there is the question whether Congress intended such application. Absent a clear statement of that intent, we do not give retroactive effect to statutes burdening private interests.”).

<sup>48</sup> 368 F.3d 994 (8th Cir. 2004).

<sup>49</sup> *Id.* at 995-97.

<sup>50</sup>

529 U.S. 694 (2000).

[51](#) *Id.* at 702-03.

[52](#) *Id.* at 699.

[53](#) 370 F.3d 1032 (10th Cir. 2004).

[54](#) There is a minor difference between the exception provisions for probation and supervised release. Section 3563(e) refers to a drug test “administered in accordance with subsection (a)(5).” This variation reflects that the supervised release exception appears in the same subsection as the mandatory testing condition, whereas the probation exception does not.

[55](#) See *United States v. Tapia-Escalera*, 356 F.3d 181, 188 (1st Cir. 2004) (Discussing the pre-PROTECT Act aggregation rule, rejecting the government’s contention that revocation penalties do not aggregate, but acknowledging that “Congress *has* altered the statute to adopt the government’s position for the future. The 2003 PROTECT Act adds to subsection (e)(3) the phrase ‘on any such revocation’ so that the statute now reads ‘a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years.’”).

[back to top](#)

## [References](#)

---

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[Publishing Information](#)

[Home](#)

## References

[Endnotes](#)

[Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies](#)

[Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism](#)

[Motivational Interviewing for Probation Staff: Increasing the Readiness to Change](#)

[Getting Serious About Corrections](#)

[Personal Ads From Prisoners: Do Inmates Tell the Truth about Themselves?](#)

### **Evidence of Professionalism or Quackery: Measuring Practitioner Awareness of Risk/Need Factors and Effective Treatment Strategies**

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[back to top](#)

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[back to top](#)

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[back to top](#)

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[back to top](#)

[Endnotes](#)

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