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# Preliminary Validation of the Community Supervision Decision-Making Framework

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**COMMUNITY SUPERVISION PROGRAMS** in Canada, like those of the United States, are designed to foster law-abiding behavior and to reintegrate individuals into the community following incarceration (Correctional Services Canada [CSC], 2019a). Individuals may be supervised in the community by Community Service Officers (CSOs) while they are on probation or conditional release (i.e. parole), where they serve the duration of their sentence in the community in lieu of custody. The number of individuals under community supervision in Canada has held steadily high for years, with almost 100,000 supervised in the community (Public Safety Canada, 2020), a majority of whom are on probation. In the United States, according to the Bureau of Justice Statistics, there remain just under 4.4 million adults under community supervision in the 50 states and Washington, D.C. (Oudekerk & Kaeble, 2021). Presented differently, this represents 1 in 59 adults in the U.S. who report to probation or parole officers and must abide by certain supervision conditions to avoid incarceration. Probation is over-represented, accounting for about 80 percent of those under community supervision, compared to parolees who represent the remaining 20 percent. Further, the Council of State Governments (2019) has reported that technical violations account for nearly one quarter of all state prison admissions, at an annual cost of $2.8 billion dollars. Clearly this is an area requiring further study.

## Current Decision-Making Practices

In order to manage risk, CSOs are tasked with making decisions at key points in community supervision (Center for Effective Public Policy, 2017). Minor violations, such as missing an appointment or breaking curfew, may be overlooked. However, serious events warrant a formal response to mitigate potential threats to public safety (Klingele, 2013; Taxman et al., 1999). Discretionary decision-making has come under criticism as "unguided" (Klingele, 2013).

Violations of supervision conditions are met with a variety of sanctions that vary due to CSO discretion (Klingele, 2013). Increasingly, jurisdictions in North America are employing structured decision-making to standardize decision-making in community supervision practice. In the United States, at least five states have employed decision-making frameworks to standardize responses to community supervision violations by CSOs and judges (e.g., Iowa Behavioral Response Matrix and Missouri Offender Management Matrix). These approaches are well considered and tend to include factors of risk level in combination with the type and seriousness of the violation in guiding decision-making.

A new model, developed on theory and practice, was developed to standardize decision-making in community supervision practice by focusing CSO attention on factors that play an important role in an individual's success on supervision beyond risk level and violation seriousness alone.

## Community Supervision Decision-Making Framework

The Community Supervision Decision-Making Framework (CSDF; Serin, 2021) is a structured professional judgment tool designed to guide CSOs' decision-making in response to supervision violations by accounting for factors that empirically relate to success on supervision. It includes eight factors designed to be rated as Mitigating, Neutral, or Problematic. CSOs can use a holistic analysis of these ratings to guide their response strategy for violations. See Figure 1, next page.

### *Decision Event*

Individuals on community supervision must follow conditions set forth by the courts or CSO. These conditions may be standard (e.g., curfew, regular meetings with CSO, no criminal activity) or specific to risk management for that individual (e.g., substance abuse treatment). CSOs must assess the type and seriousness of a violation in order to determine the appropriate response. A key consideration is whether the event was serious in nature and whether it was related to

the individual's previous pattern of criminal behavior (i.e., offense analogous). The more similar the event is to the offenders' prior criminality, the more directive action required by the CSO (Gordon & Wong, 2011).

### *Current Risk*

There are various standardized risk scales used to predict the likelihood that an individual will commit a crime after release. This can be an important indicator of an individual's risk, relative to that of others with similar characteristics and criminal histories (Monahan & Skeem, 2016). Actuarial risk assessment is limited, however, in that it is designed to provide group-level prediction of risk, and many of these risk assessments primarily rely on static, historical factors. In order to assess a specific individual's risk, other factors beyond risk assessment should also be considered, as described below.

### *Response to Community Supervision*

Within the context of community supervision, an individual demonstrating current or previous noncompliance with supervision conditions can indicate greater risk for future failure on supervision (Hanson, Harris, Scott, & Helmus, 2007; Honegger & Honegger, 2019). Honegger and Honegger (2019) found that participants with prior probation or parole violations were rearrested 1.49 times more than offenders without this history. An offender can be seen as problematic if the offender commits multiple minor violations or a few serious violations. The type and context of previous violations is also important. Minor violations relating to the individual's struggle with transportation from work to meet curfew would be less indicative of future risk of criminal behavior than violations due to drug possession.

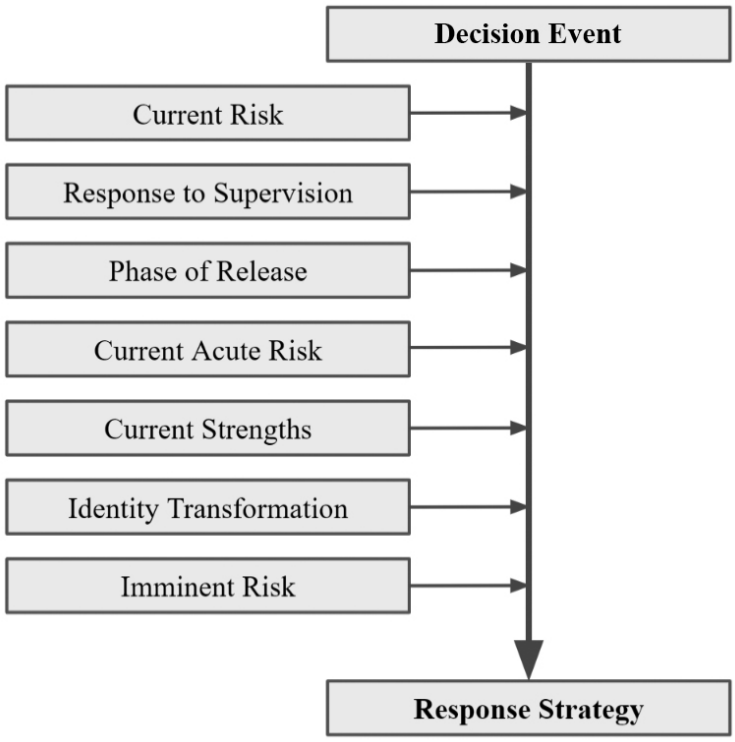
### *Phase of Release*

The months at the start of the community supervision sentence are the most important for implementing appropriate programs to prevent reoffending (Berecochea, Himelson, & Miller, 1972), as the largest percentage of community supervision failures happen in the first six months after release (Brown, St. Amand, & Zamble, 2009; Gray, Fields, & Maxwell, 2001; Rydberg & Grommon, 2016).

### *Current Acute Risks*

Acute risk factors are defined as dynamic risk factors that change quickly (e.g., hours), such as negative affect, and are related to the timing of recidivism (Hanson & Harris, 2000). Research by Lowenkamp and colleagues (2016) examined the relationship between acute risk factors and recidivism. They found that offenders with greater anger, victim access, and negative mood increased the likelihood of a violent rearrest by 26 percent, 25 percent, and 9 percent, respectively. More recently, Stone et al. (2021) demonstrated that acute risk factors are related to the likelihood and imminence of recidivism; higher acute scores increase the likelihood of and decrease the time to violent failure.

**FIGURE 1**
**Community Supervision Decision-Making Framework**




### *Current Strengths*

Strength factors are features of an individual that are consistent with non-offending and prosocial behavior (DeLisi, Drury, & Elbert, 2021). Strengths may indicate reduced likelihood of criminal behavior. These factors can either be external (e.g., employment, prosocial relationships) or internal (e.g., motivation to change; Serin, 2021). Strengths can be predictors of successful community supervision completion (Brown et al., 2020, Evans, Jaffe, Urada, & Anglin, 2011; DeLisi et al., 2021; Wanamaker & Brown, 2021). Evans and colleagues (2011) found that strengths, such as greater education, employment, and social support were related to a higher likelihood of success on community supervision. In addition, a more recent study examining the characteristics of compliant community supervision clients found that individuals with no drug history had a 793 percent increase in odds for successful completion of supervision (DeLisi et al., 2021).

### *Identity Transformation*

When offenders start to realize that being involved in crime is more harmful than beneficial, their identity changes slowly to be more law-abiding (Bachman et al., 2016; Maruna, 2010). The Identity Theory of Criminal Desistance states that a change in an offender's identity sets off other types of changes that reorder preferences for a more prosocial life (Paternoster & Bushway, 2009). Bachman et al. (2016) examined the role of identity change in desistance from crime by following serious drug offenders after they were released from prison. They found the majority of the offenders who successfully desisted from crime (80 percent) had transformed to a non-offender identity (Bachman, Kerrison, Paternoster, & O'Connell, 2016).

Domains are scored according to whether the individual's disposition on that domain is Mitigating, Neutral, or Problematic. First, CSOs rate the technical violation that occurred, the Decision event, as either Neutral (minor event) or Problematic (serious event related to previous criminal behavior). CSOs then rate the additional domains of Current risk status, Prior and current response to community supervision, Phase of release, Current acute risks, Current strengths, Identity transformation, and Imminent risk as either Mitigating, Neutral, or Problematic, with different characteristics to designate each rating. Current risk status is rated according to current risk as assessed by a validated risk instrument (Mitigating = Low, Neutral = Moderate, Problematic = High). Prior and current responses to community supervision are rated according to an individual's prior compliance or noncompliance with supervision (Mitigating = successful completion, Neutral = minor violations, Problematic = frequent failure). Phase of release is rated to reflect time on supervision (Mitigating = more than 24 months, Neutral = 6 - 24 months, Problematic = within 6 months). Current acute risks are rated to flag deterioration that may warrant intervention to manage risk (Mitigating = no acute risks, Neutral = acute risks inconsistent with prior criminal behavior, Problematic = acute risks consistent with prior criminal behavior). Current strengths are rated to account for the presence of strength factors that can mitigate risk (Mitigating = evidence of social capital and prosocial identity present, Neutral = any strength present, Problematic = no strengths present). Identity transformation is rated to reflect a shift away from criminal thinking (Mitigating = evidence of accepting responsibility, future orientation, Neutral = ambivalence towards others or limited goal orientation, Problematic = deflects responsibility, sees benefits of criminal activity). Lastly, Imminent risk is rated to flag behaviors and circumstances in line with previous criminal activity that suggest further criminal behavior is imminent (Mitigating = unlikely, Neutral = uncertain, Problematic = likely). See Appendix A for CSDF rating criteria.

The CSDF is designed to be a structured professional judgment instrument. For the purposes of the current study, however, ratings were assigned numeric values in order to examine relationships quantitatively (Mitigating = -1, Neutral = 0, Problematic = 1). Decision event was rated with three options instead of two (Mitigating = successful completion, Neutral = technical violation or nonviolent recidivism, Problematic = violent recidivism). Total CSDF scores are summed and can range from -8 to +8, with greater scores indicating higher risk.

### *Recidivism*

Recidivism was coded as violent recidivism. Individuals who did not violently recidivate could have either successful completion, technical violation, or non-violent recidivism. The small sample did not allow us to further differentiate between non-violent outcomes. The outcomes were coded based on reported information found on the OMS.

### *Procedure*

The cases were extracted from a dataset that was used in a previous study (McLaren, 2021). Participants were selected as a pilot dataset to examine violent versus nonviolent outcomes on community supervision. Half of the sample ($n$ = 29) failed violently. Individuals who did not fail violently were somewhat matched on SIR-R1 score. SIR-R1 scores range from -30 to +27, wherein lower scores reflect greater risk of reoffense. Those who did not fail violently were considered for selection if their SIR-R1 score was below -7 in order to somewhat match those with violent outcomes whose SIR-R1 scores were more likely to be higher than -7. The offender cases used in this study were then coded using the CSDF by reading various reports from OMS (e.g., Correctional Plan Updates, Assessment for Decision). The lead researcher coded all of the cases with the CSDF. To calculate an interrater reliability, another researcher coded 5 out of the 58 cases. The second rater was a research assistant experienced in using OMS for research and in coding other frameworks. SIR-R1 and CRI scores for the sample were previously recorded into the dataset; thus they did not have to be reassessed for the current study.

## Results

### *Descriptive Statistics*

Descriptive information for the CSDF, SIR-R1, and CRI scores is presented in Table 1 (next page). For the Phase of Release domain, only those with the outcomes of violent recidivism before WED and technical violation were coded ($n$ = 27). Descriptive frequencies of supervising officer response strategies used in the current cases are reflected in Table 2 (next page).

### *Interrater Reliability*

The calculated IRR of the individual domains of the CSDF was found to be excellent, $ICC$ = 1.00, $p < .001$, 95% $CI$ [1.00, 1.00]. Likewise, the IRR for the total CSDF scores were excellent, $ICC$ = .99, $p < .01$, 95% $CI$ [0.85, 1.00]. These findings demonstrate that the two raters agreed on the domain and total scores for five cases.

### *Convergent Validity*

The Pearson Correlation Coefficient, $r$, was used to assess the strength of the correlation between CSDF, SIR-R1, and CRI total scores exclusive of Current Risk Status. Nonsignificant correlations were found between all scores.

### *Group Differences in CSDF Domain and Total Scores*

We examined if violent recidivists score differently than nonviolent or non-recidivists on the CSDF's domains. Assumptions for a Chi-square Test of Independence were met for CSDF domains. Differences between domains that violated the assumptions (Phase of Release, Prior and Current Response to Community Supervision, and Current Acute Risks) were examined with Fisher's Exact Test. Descriptive results are presented in Table 3 (page 8).

A Chi-square test was computed to determine if the domains of Decision Event, Current Risk Status, Current Strengths, Identity Transformation, and Imminent Risk were related to outcome (i.e., violent versus non-violent). A significant result was found for the domains of Decision Event, $\chi 2(2, N = 58) = 58.00$, $p < .001$, $V = 1.00$, Current Strengths, $\chi 2(2, N = 58) = 10.80$, $p = .005$, $V = .43$, and Imminent Risk, $\chi 2\ (2, N = 58) = 20.89$, $p < .001$, $V = .60$. A non-significant result was found for Current Risk Status and Identity Transformation, indicating proportions of individuals with different outcomes scored similarly on this domain.

Fisher's Exact Test revealed significant differences in proportions of violent recidivists and nonviolent or non-recidivists in scoring on the CSDF domains of Current Acute Risks, $p < .001$, $V = .61$. Nonsignificant differences were found for the domains of Prior and Current Response to Community Supervision or Phase of Release.

To determine if the violent and nonviolent or non-recidivists scored differently on the CSDF, a Mann-Whitney U test was conducted. There was a significant difference

between violent recidivists and nonviolent or non-recidivists in CSDF total scores, $U(N_{nonviolent} = 29, N_{violent} = 29) = 709.5$, $z = 4.5$, $p < .001$. The results demonstrated that the individuals with a violent outcome (*Mdn* = 5.0) had greater total scores on the CSDF than those with a successful or non-violent outcome (*Mdn* = -1.0).

A point-biserial correlation was conducted to examine the strength of the relationship between CSDF total scores and violent recidivism. A large significant association was found between violent recidivism and the total CSDF scores, whereby greater total scores were related to violent outcome, $rpb(58) = .60$, $p < .001$, 95% *CI* [.41, .75].

### Predictive Validity

To analyze the predictive validity of CSDF total scores on time to violent recidivism, a Harrell's *C* test was calculated (Harrell, Califf, Pryor, Lee, & Rosati, 1982). The result demonstrated that the CSDF has an excellent ability to predict time to violent recidivism, $C = .72$, $SE = .05$. Harrell's *C* can range from 0.5 to 1.0, with 0.5 meaning no predictive ability and 1.0 meaning perfect prediction. Interpretations of magnitude will follow recommendations by Helmus and Babchishin (2017): .539 is considered low, .639 is moderate, and .714 is a high relationship.

Cox Regression was conducted to examine CSDF total scores effect on time to violent recidivism. The average time to failure for those with a violent outcome was 61.7 weeks (*SD* = 46.9). All else held constant, a 1-point increase in CSDF scores increased the hazard of time to failure by a factor of 1.29, $b = 0.25$, $SE = .06$, $HR = 1.29$, *CI* 95% [1.15, 1.45]. Figure 2 illustrates a survival curve of violent outcome by time to failure for those with low versus high median CSDF scores. (See Fig. 2, next page.)

Hierarchical Cox Regression was conducted to examine if CSDF total scores predict time to violent recidivism over and above SIR-R1 and CRI scores. A significant model was found. See Table 4 for full results. At Step 1, SIR-R1 scores significantly predicted time to violent recidivism, though the effect was small with a hazard ratio of only 1.01. At Step 2, CSDF scores were included in the model. After controlling for SIR-R1 and CRI scores, SIR-R1 no longer predicts time to violent recidivism, while CSDF scores do. All else held constant, a 1-point increase in CSDF scores increased the hazard of time to failure by a factor of 1.28. (See Table 4, page 9.)

**TABLE 1**
**Descriptive Statistics on Assessment Results**

| Variables | *n* | Range | *M* | *SD* |
|---|---|---|---|---|
| Decision Event | 58 | [-1, 1] | 0.2 | 0.9 |
| Current Risk Status | 58 | [0, 1] | 0.6 | 0.5 |
| Prior and Current Response | 58 | [-1, 1] | 0.8 | 0.5 |
| Phase of Release | 27 | [0, 1] | 0.7 | 0.5 |
| Current Acute Risks | 58 | [-1, 1] | 0.5 | 0.7 |
| Current Strengths | 58 | [-1, 1] | -0.1 | 0.8 |
| Identity Transformation | 58 | [-1, 1] | -0.2 | 0.8 |
| Imminent Risk | 58 | [-1, 1] | 0.0 | 0.8 |
| CSDF Total | 58 | [-5, 8] | 2.0 | 3.8 |
| Violent Recidivism | 29 | [-4, 8] | 4.3 | 3.0 |
| NonViolent or No Recidivism | 29 | [-5, 6] | -0.2 | 3.1 |
| SIR-R1 | 49 | [-19, 6] | -9.8 | 5.9 |
| CRI | 58 | [3, 33] | 20.5 | 6.5 |

**TABLE 2**
**Frequencies of Response Strategies Used with Outcome**

| Outcome/Response Strategy | *n* | % |
|---|---|---|
| Successful Completion | | |
| No Response | 16 | 100 |
| Technical Violation | | |
| Curfew | 1 | 7.7 |
| Increased Reporting Requirements | 2 | 15.4 |
| Jail Incarceration | 2 | 23.1 |
| Monitoring | 5 | 38.4 |
| No Response | 3 | 23.1 |
| Violent Recidivism After WED | | |
| Jail Incarceration | 15 | 100 |
| Violent Recidivism Before WED | | |
| Jail Incarceration | 14 | 100 |

Note: "No Response" was coded if the CSO did not respond to an event or if the offender successfully completed their sentence. Iowa Department of Corrections—Behavioral Response Matrix was used as a guide for the coding.

## Discussion

As community supervision is becoming a more common alternative to incarceration, research on case management intervention models is expanding. Currently, however, there is little research surrounding decision-making guidelines (Serin, Bourgon, Chadwick, & Lowenkamp, 2022). Without standardized frameworks to guide and track decision-making, CSOs cannot easily provide a transparent rationale for their responses to violations, particularly in the event of subsequent client failure. This limits any response to criticism of their decision-making and fails to provide guidance for improvement in decision-making.

The CSDF was developed to be a guide for CSOs in making community supervision decisions. The current study was a preliminary pilot study to using archival data to examine the CSDF's predictive accuracy, in

terms of discriminating between violent and non-violent/successful outcomes on community supervision.

### *Convergent Validity*

The CSDF, exclusive of Current Risk Status, did not display a relationship with the risk assessment tools used in this sample, SIR-R1 and CRI. The lack of a relationship between SIR-R1 assessments with CRI and CSDF assessments is expected, due to the matching in this sample. While previous research has found a relationship between the SIR-R1 and CRI (Motiuk & Vuong, 2018), the sampling method for this study intentionally matched individuals on expected SIR-R1 score range. This limits the validity of these results as SIR-R1 scores were relatively stable across individuals in this sample.

Interestingly, CRI scores were not limited (*min* = 3, *max* = 33) and reflected almost the whole potential range of scores; yet it still did not correlate with CSDF scores, exclusive of Current Risk Status. This could be explained by the nature of the instruments. CRI assessments include only static criminal history items assessed at intake into federal custody. In contrast, the CSDF is intentionally dynamic in nature to better reflect an individual's *current* state for the purposes of risk management in the community. It includes domains designed to flag imminent risk according to an individual's acute risk factors. Hence, the CSO can use this information to intervene proactively.

### *Group Differences in CSDF Ratings*

Differences in the CSDF's domain and total scores between non-violent and violent outcomes were examined. Significant differences were found within the domains of Current Acute Risks, Current Strengths, and Imminent Risk. There were many more violent outcome individuals with acute risks present ($n$ = 25) than those with a non-violent outcome ($n$ = 8). This finding aligns with research looking at acute risks and violent recidivism (Lowenkamp et al., 2016; Stone et al., 2021). The presence of acute risks, both at the individual and overall level if multiple acute risks are present, should trigger a response by the CSO to manage these risks. In relation to the Absence of Current Strengths, its differences were consistent with recent findings (Brown et al., 2020; DeLisi et al., 2021; Evans et al., 2011), whereby those who did not reoffend violently were more likely to have mitigating strength factors ($n$ = 16) than those who reoffended violently ($n$ = 6), despite being comparable in terms of risk. Lastly, violent offenders ($n$ = 18) were more likely than non-violent offenders ($n$ = 2) to have this rated as problematic. This supports the idea that imminent risk is important to consider in predicting short-term likelihood of crime.

The domains of Current Risk Status, Response to Supervision, Phase of Release, and Identity Transformation did not yield significant differences among violent and non-violent individuals, which was contradictory to previous research (e.g., Leonard, 2004; Honegger & Honnegger, 2019; Bachman

**TABLE 3**
**Crosstabulation of CSDF Domain Ratings with Outcome**

| | Mitigating *n* | Neutral *n* | Problematic *n* | *p* |
|---|---|---|---|---|
| Decision Event | | | | |
| Violent | 0 | 0 | 29 | < .001*** |
| NonViolent | 16 | 13 | 0 | |
| Current Risk | | | | |
| Violent | — | 12 | 17 | |
| NonViolent | — | 12 | 17 | |
| Response to Supervision | | | | |
| Violent | 1 | 5 | 23 | |
| NonViolent | 0 | 6 | 23 | |
| Phase of Release | | | | |
| Violent | — | 2 | 12 | |
| NonViolent | — | 7 | 6 | |
| Current Acute Risks | | | | |
| Violent | 2 | 2 | 25 | < .001*** |
| NonViolent | 3 | 18 | 8 | |
| Current Strengths | | | | |
| Violent | 6 | 10 | 13 | .005** |
| NonViolent | 16 | 10 | 3 | |
| Identity Transformation | | | | |
| Violent | 9 | 11 | 9 | |
| NonViolent | 17 | 9 | 3 | |
| Imminent Risk | | | | |
| Violent | 4 | 7 | 18 | < .001*** |
| NonViolent | 16 | 11 | 2 | |

Note. *p < .05, **p < .01, ***p < .001. N = 58 for all domains except Phase of Release (n = 27).

**FIGURE 2**
**Survival Plot of CSDF Scores by Time to Violent Recidivism or End of Study in Weeks**


Note: Cut-off score between low and high CSDF was set at the median value of 2.5.

et al., 2016). A likely explanation to why Current Risk Status was not significantly different between the two outcomes is that the majority of the sample had SIR-R1 scores less than -7 (74.1 percent). As mentioned, the smaller the SIR-R1 score, the greater the risk of recidivism is (Nafekh & Motiuk, 2002). The majority of the sample were classified as moderate to high risk, explaining the homogeneity within the sample. Ratings on Prior and current responses to supervision and Identity transformation domains were similar across individuals in this sample. Also, the Phase of Release was similarly short for all individuals in this sample, due to the short follow-up time. Future research could examine the relationship between these factors on a larger, less homogenous sample in terms of risk.

Regarding CSDF total scores, individuals who violently reoffended had a much greater median CSDF score than individuals who did not violently reoffend, and greater total scores on the CSDF were strongly related to violent outcome.

### *Predictive Accuracy*

This pilot research was intended to provide initial validation of the CSDF for use in predicting violent recidivism for adults on community supervision in Canada. The CSDF demonstrated excellent levels of predictive validity in predicting violent recidivism in this sample ($C = .72$).

CSDF scores also predicted time to violent recidivism. The effect is considered small according to Cohen's criteria (Chen, Cohen, & Chen, 2010; Cohen, 1988). This is especially encouraging for this pilot research, as the CSDF was examined as a statistical tool, but in a real-world context, there will be more variation as it is meant to be a structured professional judgment framework.

CSDF scores demonstrated the ability to predict time to violent recidivism, over and above that of risk assessment instruments in this sample, although this effect is limited. Because there was limited variation in SIR-R1 scores in this sample, further research should be conducted on a more heterogeneous sample regarding risk to replicate the results.

## Conclusion

The CSDF is a new structured professional judgment framework intended to guide CSOs in making decisions regarding violations that routinely occur in community supervision. The purpose of the current study was to examine two main research questions: 1) Does the CSDF discriminate between offenders with and without a violent outcome? The analyses examined differences between these two outcome groups within the individual domains of the CSDF and the total score of the framework. It was found that, even in this matched sample, violent offenders were significantly different from non-violent individuals in the CSDF total score and in domains of Current Acute Risks, Current Strengths, and Imminent Risk. 2) Can CSDF total scores predict violent recidivism? This framework was able to strongly predict violent reoffending and time to violent re-offense. Overall, the current study demonstrated promising findings regarding the validity and utility of the CSDF. As this is an initial pilot study, these findings are promising towards the further development and validation of the CSDF.

### *Limitations & Future Directions*

The present research was a pilot study with a limited, matched sample. This provided an excellent glimpse into the potential of the CSDF; however, the sample was not sufficiently varied to generalize across other samples. Future research should expand on this pilot study to replicate the findings across larger and more varied samples.

Another important limitation of this study is the scoring of the Decision Event. The intended way to rate this domain is that it would be scored as neutral if the event warranting a decision was minor, and as problematic if it was a serious event related to the individual's offence chain. In the current study, the Decision Event was rated as the following: individuals who successfully completed their supervision received a mitigating score, those who had a technical/administrative violation were neutral, and offenders who reoffended violently were scored as problematic. Thus, the current study did not consider the participants' offense cycle in rating the Decision Event. This could be considered a limitation, as offenders might have had a different total score if this domain was rated as it is intended to be rated. More specifically, the true range for the CSDF's total score should be -7 to +8, not -8 to +8, as it was in the current study. As well, 61 percent of Canadian recidivists under a federal warrant reoffended with a less severe crime than their previous offenses (Stewart, Wilton, Baglole, & Miller, 2019). This may indicate that the majority of the recidivists in this study would have received a score of neutral for the domain of Decision Event, which would possibly have reduced their total score. The scoring of the Decision Event was also a consequence of the archival methodology of the current study which yielded limited information in some cases.

Furthermore, the scoring of the Phase of Release domain may also be a limitation. In the current study, cases did not receive a score in this domain if they committed violent recidivism after the end of their sentence. They were rated this way since their outcome was after their supervision sentence was over. This could be seen as a limitation, since total scores reflected follow-up only to end of sentence.

A final limitation of this study is that, given its archival design, some offender cases were lacking sufficient information to code all domains. Various electronic corrections and parole reports were examined to retroactively code the CSDF for this research. For a few cases, there was a lack of files dated after the release date and prior to their event date, and some reports did not contain enough detailed information for coding the CSDF. Therefore, some domain scores may not have been rated properly, despite the excellent inter-rater reliability in this study. Overall, this

**TABLE 4**
**Hierarchical Cox Regression**

| | *HR* | *CI* 95% [LL, UL] | *Est.* | *SE* | *p* | *-2LL* |
|---|---|---|---|---|---|---|
| Step 1 | | | | | | 196.17 |
| SIR-R1 | 1.01 | [1.00, 1.02] | 0.01 | 0.00 | .019* | |
| CRI | 0.98 | [0.93, 1.04] | -0.02 | 0.03 | .552 | |
| Step 2 | | | | | | 176.95*** |
| SIR-R1 | 1.00 | [1.00, 1.01] | 0.00 | 0.00 | .276 | |
| CRI | 0.98 | [0.93, 1.03] | -0.02 | 0.02 | .504 | |
| CSDF | 1.28 | [1.14, 1.44] | 0.25 | 0.06 | < .001*** | |

* $p < .05$, *** $p < .001$

could be considered a limitation, as the total and domain CSDF scores might have been different if more recent and more detailed information were available (e.g., closer to the event date).

Future research should use various and larger samples to build upon these findings to further our understanding of the CSDF's predictive validity. It would also be helpful to examine the incremental validity of the CSDF beyond current risk instruments such as the SIR-R1. An important consideration for future research is to use a prospective design and to have a fixed follow-up time. In the current study, certain analyses could not be used, as there was no fixed follow-up. Therefore, this change could provide stronger findings. Furthermore, as Phase of Release was not coded for some cases (for example, successful completion and offense after end of sentence), future research could make certain that all events occurred prior to the participants' WED to allow consistency in scoring. Future research could also test and develop guidelines for scoring for response strategy options. In the current study, the response strategies used in the various cases were noted to get a sense of the most common responses relating to risk. Overall, the findings are promising that using a more time-dependent and structured approach may assist CSOs to better identify risk situations for individual cases and to respond accordingly, thereby promoting public safety and enhancing confidence in community supervision practice.

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## APPENDIX A

### Community Supervision Decision-Making Framework Rating Sheet

| Domains | Mitigating (-1) | Neutral (0) | Problematic (1) |
|---|---|---|---|
| **Current Risk Status** | Low Risk | Moderate Risk | High Risk |
| **Response to Supervision** | Successful completion | Minor violations | Frequent failures |
| **Phase of Release** | Greater than 24 months | Between 6 and 24 months | Less than 6 months |
| **Current Acute Risks** | No acute risks | Acute risks somewhat present, but not consistent with criminal behaviour | Acute risks present and consistent with criminal behaviour |
| **Current Strengths** | Prosocial identity and social capital present | Either strength present | No strengths |
| **Identity Transformation** | Sees need for redemption, accepts responsibility for actions, is future oriented, and sees benefits of crime desistance | Ambivalent towards others and have limited goals | Deflect responsibility, are self-centered, and see short-term rewards for crime |
| **Imminent Risk** | Imminent risk unlikely | Imminent risk uncertain | Imminent risk likely |

# Implementation Fail: A Case Study

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**IN THE LAST** decade, the level of complexity in the workplace has increased dramatically, creating significant challenges for leaders. Faced with poor outcomes, pressure from stakeholders, staff shortages, and uncertain budgets, leaders must contend with the constant need for change, its accelerating pace, unclear information and outcomes, unknown variables and drivers, and a lack of clarity and direction from competing interests.

Unfortunately for leaders, tried-and-true strategies such as static replication of what works from other areas, strategic planning, and root cause analyses are insufficient tools in the complexity of today's correctional space, yet often they are the only strategies our organizations and systems have at their disposal. We offer the following case study of one county agency's attempt to replicate a model for youth corrections after passage of legislation. This case study could be any county, anywhere, and highlights what we consider to be "the rule" as opposed to "the exception" when it comes to implementing new programs, practices, and policies in the criminal justice field. Earnest attempts at justice reform are urgent and necessary. The field needs the effort of communities, activists, and policy makers to improve outcomes for people. Rather than being a rebuke of those efforts, this case study seeks to highlight how the best of intentions can fall short when it comes to implementation, and how leaders in systems must take a different approach to implementing change in our organizations. To create socially significant change, isolated programs and incremental improvements are insufficient.

Data on change initiatives across disciplines and across the country make it clear that they are much more likely to fail than not (Beer & Nohria, 2000). Organizational change, whether it be shifting practices or starting something entirely new, requires people within those organizations to change the way they do business, the way they see the problem itself, and their role in solving it. This process takes time, effort, energy, and resources, beyond just more money and people. Without guided and directed implementation supports, most change efforts never produce the results promised. Among many consequences, failed implementation can also lead to leadership burn out, cynical staff, and a frustrated public. There are better ways to implement changes and shifts in our organizations, and the science of implementation demonstrates how much of what we do, while considered common sense or logical, is simply misguided (Fixsen, Blasé, & Van Dyke, 2019).

Scientific and strategic implementation work requires formal tools and structured interventions to guide organizations, leadership, and people to systematically make impactful changes. Without these, people are relegated to legacy strategies, best guesses, and personal agendas to guide the work. This article will highlight the *Five Dynamics of Effective Implementation* model, created by the Alliance for Community and Justice Innovation, which distills the science of implementation (Fixsen et al., 2019) into five key dynamics: people, data, culture, leadership, and feedback. These dynamics guide the purposeful and intentional actions required to reach full implementation, which is defined as 50 percent of practitioners delivering new policies, practices, and programs with fidelity (Fixsen et al., 2019). When applied well, the dynamics create alignment between the ideal state and what is actually happening on the ground.

The following case study highlights how the five dynamics can be counterintuitive to how we typically approach change in our organizations. We use the case of "Camp Best Practice" not because it is unique or remarkable in any way, rather because it highlights the predictable and run-of-the-mill strategies that we, as leaders, tend to use to make change in our organizations that inevitably lead to efforts fizzling and fading, or never being there in the first place. Camp Best Practice represents the programs and/or change efforts that most of us have passionately worked to implement throughout our careers. Almost any agency or program name across the country could be inserted into the following narrative and tell a similar story. With almost 50 years of collective experience in the correctional field implementing all sorts of change attempts, big and small, the authors of this article can deeply resonate with everything

shared here—as line staff, supervisors, and leaders of these types of efforts.

## Camp Best Practice Model Case Study

An illustrative example of failed implementation was brought to light by the regional news editorial staff of what was *intended* to be a therapeutic rehabilitation facility for youth in a large county. Looking to reform their approach and improve outcomes for justice-involved youth, local leaders borrowed ideas from model programs in other regions, expecting the same outcomes for some of the toughest youth in their county. What ensued paints a picture for decision makers of the cost of failed implementation for communities. Without intentional effort given to the implementation itself, the best intentions, ideas, programs, and models fizzle, fade, or fail altogether. In the case of Camp Best Practice, it's not clear that the model ever existed despite being "in practice" for four years.

Reform efforts started with the passing of a law designed to create juvenile justice realignment. The bill limited certain types of commitments to a state youth correctional facility and provided funding to county probation to supervise youth with serious offenses. Seeking out opportunities to implement the intent of the bill, the county probation department leveraged funding to demolish a county-operated juvenile camp, which we will call Camp Old Practice, and build a new cottage-style facility using a model designed and implemented in another state. We will call the new model for the facility Camp Best Practice (CBP).

Stakeholders wanted to offer a different way of rehabilitating youth and depart from the typical boot camp and institutional style traditional of county youth camps. The goal was to provide a therapeutic community through a home-like environment with a wide range of individualized programming that emphasized trauma-informed care in a small-group setting. More than $50 million dollars was spent on a state-of-the-art residential campus, and optimistic leaders coined the project the "CBP Model," only to have it closed four years later by the governor.

So, what happened to the CBP Model? An evaluation report presented to the county by an outside non-profit group revealed that it's unclear what outcomes the CBP Model could have achieved, because the model was never properly implemented in the first place. As such, the CBP Model is a case study for the troubling, costly, and all too common gap between the vision of leaders and what actually happens in practice, also known as the *implementation gap*.

What policy makers and leaders need to know is that the drivers that make efforts like the CBP Model fail are known, measured by the science of implementation, and very predictable. Decision making that favors short-term gains, or checking the box and moving on, rather than working on long-term impact can have enormous costs for the youth who never receive the benefits promised by the program model and for all of the youth, staff, families, and communities who never experience the return on their enormous investments. If decision-makers had built in early implementation supports, measures, and strategies to respond to the very predictable challenges around leadership, people, data, organizational culture, and feedback, perhaps the community would have experienced better outcomes.

To demonstrate the importance of implementation, this article will break down the CBP model through the lens of the five dynamics of implementation. While direct quotes and data from published evaluation reports and articles are used throughout the case study, citations are not included in the text, but are listed at the end of the article in the reference section. This is intentional to reinforce this case study as a familiar example of current state implementation efforts, not as an issue specific to one organization or jurisdiction. This happens all the time, everywhere, and by using implementation as a framework we hope to demonstrate how we can do better as a field.

## Organizational Structure

Many important aspects of the CBP program model were abandoned because the existing system could not support the innovation. The model's focus on small-group care, which included cohort consistency, a focus on relationships in homelike living spaces, and a new kind of trusting relationship with staff, never materialized in practice. The status quo scheduling practices of officers would not budge to accommodate a new way of doing things. These uncompromising staffing patterns prioritized long shifts and days off over regular programming hours. This prevented adoption of the schedule required to implement the designed model of care, which included an intentionally trusting relationship with a consistent adult leader. Instead, each group of youth had a different probation officer every 2.5 days, diverting what was happening in practice far from the original program model.

Additionally, staff shortages meant that the frequency and dosage of the programming itself, as designed in the model, was happening inconsistently or not at all. Staffing patterns and shortages also made critical structural components of the model, such as staffing cases and team meetings, impossible. Three sets of probation officers were assigned to each small group and split the week, but their disparate schedules made it difficult to discuss their shared insights and experiences on cases and to get on the same page around case planning and addressing problematic behaviors.

This implementation effort paints a picture of the many gaps in fidelity to the program model. As implementation progressed and leaders moved on to new priorities, the CBP Model continued drifting, shifting, and ultimately completely departing from its original design to fit within legacy structures and the immutable culture of the existing system. This concern was echoed in an assessment of CBP completed by the original creators of the model, who help train other sites, such as CBP, on their unique approach to serving confined youth. In the assessment, the director reported that the lack of a unified approach and the chance for staff to meet regularly as a team had resulted in "falling back to old custodial/supervision practices where the focus becomes obtaining institutional compliant behavior as the primary goal instead of internalized change, which should be the mission."

This is not an uncommon strategy for many organizations that want to squeeze the program or practice within existing organizational structures. Much like the old adage of "a square peg in a round hole," the agency context within which this program was being placed simply did not align with the programmatic requirements and expectations that needed to happen to bring about better, or even different, outcomes. The significant misalignment between core principles and practices of the program they were trying to replicate and the existing, legacy practices of the program they were trying to dismantle came into direct conflict with one another. And when that happens, despite our best intentions and herculean efforts, the culture of the existing program always wins.

## Culture Dynamic

With the benefit of hindsight, it is easy to see how CBP was perfectly designed to get their ultimate results. There were many examples

of policies that conflicted with the practices promised in the model. In fact, the CBP director reported that one of the challenges in implementing the model as designed was reconciling it with existing local, state, and federal juvenile justice laws. Staff had many ideas for recreational activities, wanting to further engage youth, but couldn't even lead them on hikes just outside the fence without permission. "Sometimes the policies that govern probation and residential treatment don't always fit into what our model is," the CBP director said.

While the CBP model was designed to shift toward a therapeutic and trauma-informed approach, the strategy could not get traction from the strong pull of its militaristic culture of control, a culture the vast majority of institutions in the carceral system share. The new approach required staff to be empathetic and competent in a variety of skills and knowledgeable about trauma-informed and positive youth development philosophies. This was an enormous departure from the traditional roles, rules, and relationships that define the parameters of work identities of the probation department. These new expectations for staff around developing prosocial relationships that would establish healthy relationships and social emotional skills were not supported by the existing organizational culture.

To change the culture at the CBP Model pilot, the Department recognized that staff must be dedicated to a therapeutic approach while working together for the greater good of the youth. Anchored in the assumptions that warm, professional, and competent staff with a variety of tools at their disposal would engage and motivate youth, the Department encouraged a culture of change. While seemingly a great idea in theory, it represented a tremendous shift from the existing organizational culture and philosophical approach to the work. The shift did not necessarily require more staff or funding; rather, shifts in mindset and identity. Without the modeling, incentives, and supports of an aligned culture, more funding and more staff cannot compensate for the pervasive influence of the old way of doing business.

Organizational change is hard work and takes considerable time and energy. In fact, without dedicated implementation supports, change efforts can take upwards of 17 years to come to fruition, with only about a 14 percent success rate (Fixsen et al., 2019). Unfortunately, most systems are not set up to wait more than a few years to see results. So, it seems we can either implement intentionally or implement how we always have and wait for results we will never see. To date, the latter seems to be the predominate approach, which leads to staff and stakeholders blaming the model for not working rather than the implementation, relegating us back to the days of the doctrine of "nothing works" (Martinson, 1974).

Organizations can increase their likelihood of reaching full implementation by creating a team that is focused on how practices are being deployed in daily practice. Implementation teams function as a catalyst to create pressure and overcome inertia, as a helper to the process to recognize and define needs, diagnose problems and set objectives and acquire needed resources, and as a group that can function as a connector of resources, including people, time, motivation, and funding. An expert and engaged implementation team throughout a project can produce upwards of 80 percent successful use of new ways of doing work in about three years (Brunk, Chapman, & Schoenwald, 2014; Fixsen, Blase, Naoom, & Wallace, 2009; Forgatch & DeGarmo, 2011; Jackson, Fixsen, & Ward, 2018; Saldana, Chamberlain, Wang, & Brown, 2012).

The work of the implementation team includes engaging in planned and purposeful activities, seeing the immediate and longer-term results, solving problems related to new ways of doing work and the use of implementation supports in organizations and systems, and using the experience to develop a revised plan for the next attempt. Unfortunately, many organizations create a team to engage in the planning and development stages, only to have them disband or become defunct soon after implementation begins.

## People Dynamic

Early in the planning process, CBP stakeholders carefully defined and documented the 10 essential elements for evidence-based programming and skill-building activities. While the program *on paper* was receiving national recognition and praise, the program *in practice* was practically non-existent. What was being done, it seemed, was largely just what had always been done.

One of the foundations of the CBP Model is a "small-group" theory, where youth live in groups of 10-12, sharing a small homelike living space. They attend school, group therapy, and most other daily activities as a unit. Each group is assigned a consistent set of probation officers and mental health clinicians, with the goal of building trust-based relationships.

On a visit to the campus, probation leadership detailed a host of problems she encountered, including group sizes that far exceeded those intended by the CBP Model, youth undergoing treatment with psychotropic medication being improperly assigned to the camp, and deviation from the approved therapeutic methods. In essence, the probation department was not applying the principles and policies of the therapeutic, trauma-informed CBP Model as thoughtfully designed. And the small-group sessions that "represented the core of the CBP model" had been discontinued altogether. As a result of their visit, probation leadership commented, "experts are increasingly aware of the Probation Department's inability to operate the facility with basic adherence or fidelity toward its own carefully-developed plans."

The evaluation report conducted by an outside entity called Best Practices Evaluation (BPE) detailed:

> the Department should consider an integration of staff selection (ensuring staff are a good fit for the CBP Model approach), training (baseline training in core skills), and coaching (to build on skills learned in training) supports established by the original implementation design into the onboarding strategies for staff supporting youth. In addition, leadership across the organizations should be exposed to the CBP Model approach to ensure consistency in staff transfers and selection for the ongoing efforts related to the pilot and to inform or guide any considerations for expansion of the approach beyond the pilot."

Staff selection is an important implementation driver, especially when organizations are beginning the installation of an intervention or practice (Fixsen et al., 2019). Not everyone is naturally a "good fit" for certain programs or intervention models, and frontline staff carry out most practices and programs. In the CBP Model implementation, selected staff exhibited beliefs and attitudes more custodial in nature than rehabilitative. Research on implementation of evidence-based programs and practices has revealed that training alone does not translate effectively to the use of consistent practice in the new model within the setting for which it was intended. This is even more challenging when we expect training alone

to shift the underlying values, beliefs, and mindsets of staff that have a different understanding of their role and their work (Fixsen et al., 2019). This seems to have been true with the CBP model, as many of the staff found the new model to conflict with more traditional attitudes and beliefs about youth behavior and corrections philosophy around punishment and consequences.

Training was also insufficient, a problem exacerbated by staff turnover. The evaluation reported that three-quarters of staff couldn't clearly articulate what was expected of them. There was high turnover among teachers, who were replaced by instructors not trained in the CBP model. For those who did receive training, the most common complaint lodged by staff regarding the training was the lack of practice in using the skills they were taught during training. On all three coaching measures, nearly half of all staff reported the coaching had no impact on their skill integration. Despite these implementation challenges, the probation department decreased the training requirements significantly from the original implementation design.

People are the most valuable resource in any organization, and implementation success depends on people. For decades leaders have struggled with aligning and mobilizing people to embrace new practices, sharing things like, "once so-and-so retires… then we can make some meaningful changes." This is a testament to the habit of pointing fingers at individuals rather than contexts and structures that create the outcomes that are achieved. Again, organizations are perfectly designed to get the results they get. When expectations change, but the systems that support them do not, a tremendous amount of inertia and resistance is created in organizations that have to make the change. In many cases, these changes that people really wanted in the beginning become almost impossible to carry out in practice.

## Data Dynamic

Implementation struggles with CBP were exacerbated by problems with data collection. In the state where it was developed, the CBP model led to steep declines in youth crime recidivism rates. As alluring as it is to want to replicate the approach and improve outcomes in other places, it's simply not enough to pick up a program and drop it into a new context, without intentional implementation support and measures, and expect it to produce the same results.

Leaders had every intention for the CBP model to eventually be implemented across all county camp locations, without any data systems in place to provide feedback on whether the program was working in the first place and should be replicated at all. Delays in contracting with an evaluation team prevented early learning and data collection, and ultimately a lack of data sharing agreements between agencies made evaluation difficult. Ten months into the pilot, the evaluation was still only in planning phases.

Further, the county probation department did not have a lot of experience tracking youth released from custody, meaning that implementing an evaluation plan required changes in practice, policy, mindsets, and habits such as collecting good data to begin with and understanding why that was important in the first place. The pilot required more than just collecting data; it had to build the staff and department's capacity to be able to do it effectively.

Data collection across the justice system, including after people complete their sentences, is critical to understanding what works. Enormous investments of taxpayer money are spent on incarceration and programs designed to change behavior and prevent new crimes. It is nearly impossible to implement well without data. Yet assessing whether or not the organization has the capacity to measure what they are being asked to do is often overlooked or is an afterthought when a new initiative is implemented. Without studying what happens to people after their sentences are completed, corrections and rehabilitation agencies are operating in the dark, tailoring projects and programs according to political fashion, rather than according to what really makes a difference in people's lives.

In the case of the CBP Model, as confirmed in the evaluation by the BPE evaluation, implementing without the capacity to track and measure the progress of youth and their outcomes in the community made it impossible to understand what parts of the model were having an impact and whether anything was working at all. That, however, did not seem to slow down the urge to celebrate the program's success before the data was even in on effectiveness.

Data is one of those areas that people tend to love or hate. Organizations tend to have too much of it (data saturation where there is so much that it isn't used or even known about) or very little (data desert where very few data points are even available). Either way, data is often seen as something that must be complicated to be worthwhile. This simply isn't the case when it comes to implementation. A few data points, when used together, can provide a clear picture of what is, or is not, happening in practice and how it is working. But this is only half of the story that you need from data. Leaders also need to know whether their efforts are having their intended impact, and that is why the feedback dynamic is so important.

## Feedback Dynamic

The Director of Youth Justice Policy at a national nonprofit organization was on the steering committee that helped develop the CBP Model. The plan, she said, was for those advocates to continue advising the implementation process, giving feedback and support, but that just did not happen. "We're no longer involved," the director said, expressing frustration that a "ready set of experts that could be doing oversight" had been left out of the process. "These folks are key to the rehabilitative process per the reform agenda," the director said, "because it is these community-based organizations that continue to serve the youth when they return to their communities."

In the beginning of a change effort, it is not uncommon for groups of stakeholders and staff to come together to create visions and plans for the change that they want to see in practice. Change, when you are driving it, can be exhilarating, and visioning work is something that creates energy for the people and groups at the planning table. Unfortunately, as soon as the transition from planning to doing occurs, the proverbial wheels fall off. Plans never go as written. And most times the staff tasked with putting plans into action were not at the planning table. When change efforts begin to feel complicated, are met with challenges or resistance, or face a significant shift in the original context (such as budget cuts, staff changes, or global pandemic), it can quickly become exhausting.

Implementation teams can help design feedback loops, measure the implementation quality and the process itself, support the people doing the implementing, and solve problems as they emerge. These teams should be actively looking at the change process for years, not simply during the planning phase, and the work should include ongoing effort to remove barriers, track progress, and align new practices, policies, and priorities with the implementation. Without this intentional work, leaders move on and efforts fizzle, fade, or disappear as focus shifts to new initiatives. In the case of the CBP model, that intention seemed to be present early in

planning meetings; however, consistent with the most common implementation pitfall, the ongoing support of a dedicated group of people focused on the implementation itself dropped significantly and eventually vanished altogether. Implementation teams not only create an infrastructure to monitor activities, review data, and improve processes, they hold organizations accountable for whether or not things are happening as the public expects.

## Leadership

Leadership is a critical implementation driver because leaders are responsible for the important decisions, resources, relationships, and vision for implementation. Their focus is also necessary for addressing misalignments between internal policies and practices and the goals of an implementation project. The CBP Model implementation struggled from a lack of consistency in leadership both at the program level and among executives. Administrative turnover made it difficult to resolve the pervasive internal issues such as work schedules and staffing patterns that created barriers to implementing the program model. Regardless of good intentions and efforts, structural barriers created by legacy practices can destroy new ideas and programs and certainly prevent fidelity. Over time, leadership may move on to new agendas, move on altogether, or be consumed by handling major crises like wildfires and the pandemic. In the case of the CBP model, priorities shifted, key staff turned over or transferred, and, without a team to attend to the quality of the implementation itself, the CBP model drifted further and further away from what it was designed to achieve.

The challenges of leading in the complex environment of large justice bureaucracies requires more than just managing change as if it were something that can be controlled and governed with management practices. Implementation leadership is a mindset beyond technical, linear, and check-the-box approaches that at best are limited in their ability to facilitate organizational change and at worst create more complex challenges in the future. Implementation leadership requires a personal and collective commitment to perpetual growth and learning throughout the implementation process. This can be challenging, as many justice agencies have a predisposition to solve problems with rules and policies. Unfortunately, it is rare that a new policy, procedure, or set of rules creates meaningful and sustainable change within an organization.

The local newspaper's editorial board summed it up when they wrote: "In any large bureaucracy there can be dangerous gaps between vision and execution, and the county is as large as bureaucracies come. The county unnecessarily exacerbates its problems with a very short attention span, allowing its leaders to believe they have accomplished things that they have merely discussed."

## Conclusion

The CBP model is an example of trying to fit a specific program model into a structure that in many cases is set up to do the opposite of what is required. It is the square peg/round hole problem that so many organizations across the country struggle with. The natural response to this challenge is to change the program model, trying to make it fit within what already exists. Where leaders fall short is in changing the organization to better fit the necessary components of the model being adopted. The propensity is to focus on changing the model over changing our organizations. This not only creates barriers to long-term outcomes, it fuels two of the most commonly expressed challenges to change: the need for more resources and the need for more readiness.

### *More Resources*

Scott Sonenshein in his book *Stretch* (2017) argues that most people and organizations have what he terms a "chase" mentality, where *more* is required to be successful. Many leaders believe that reform and change efforts require more people and more funding to be successful. The reality is that no amount of money and people can overcome legacy practices and the inertia that comes from trying to shove a square peg into a round hole. In this case Peter Drucker was right: culture does eat strategy for breakfast.

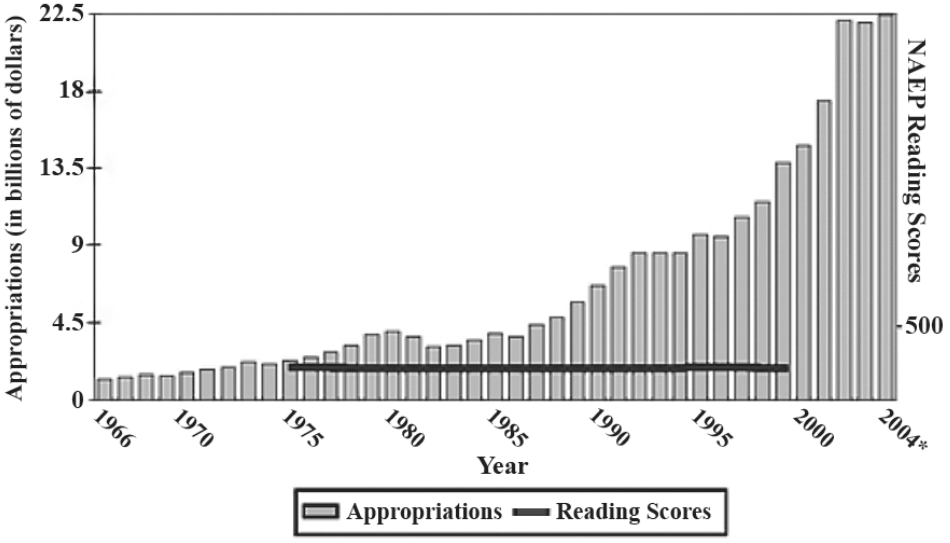
A commonly used example that highlights how more funding and staff, while perhaps necessary, are insufficient to create sustainable and meaningful changes is about reading scores for children in the U.S. Reading scores for 9-year-olds have remained stagnant for more than 60 years. Literacy scores have not improved even as funding, social conditions, attention to education, and even evidence-based instruction have changed drastically (Grigg, Daane, Jin, & Campbell, 2003; Goldberg & Harvey, 1983). Figure 1 demonstrates how reading scores have stayed the same despite dramatic increases in funding over several decades.

Despite this alarming data, federal spending in 2012 was more than double what it was in 2004, at $55 billion (https://www2.ed.gov/nclb/overview/intro/index.html). This data is an implementation cautionary tale demonstrating how, "It is not just the availability of funding; socially significant results depend on what the funds are used for… Spending more on things that don't work only results in outcomes as usual" (Fixsen et al., 2019, p. 55).

Missed opportunities exist when we are so focused on what feels outside of our reach that we overlook the strengths, resources, and capital that are right in front of us and that can help us achieve our goals:

> …almost anything—tangible and intangible—has potential as a resource, but for that to become anything valuable requires action. This helps us realize

**FIGURE 1**
**Federal Spending on K-12 Education and NAEP Reading Scores (Age 9)**



> that resources don't come from outside us—they're not things we go out and get but rather things we create and shape… By adopting a stretching mind-set, we can reach extraordinary potential with what we already have. It's a matter of recognizing the untapped value in our resources and directing our energy to nurturing and developing what's in hand" (Sonenshein, 2017, p. 121).

### *More Readiness*

Another challenge to the change process that comes up often is organizational readiness. When leaders are tasked with organizational change initiatives, many start by requesting organizational assessments to gauge overall readiness for change. Unfortunately, readiness is fluid; according to Fixsen et al. (2019), organizations are only about 20 percent ready for any given change initiative at any given time. So the idea of waiting to be "ready" or waiting until you are "fully staffed" or "better resourced" is simply a nice way of saying no. Organizations will likely never be ready for the change initiatives that come their way; if they were, the change wouldn't be needed in the first place. And even if staff across the organization want the change and are eager to make it happen, 70 percent of change efforts that have critical mass support still fail (Fixsen et al., 2019). This is another opportunity to engage implementation teams that can create and nurture readiness so that, over time, all individuals within an organization are ready for change and ready, willing, and able to put new ways of doing their work into practice (Prochaska, Prochaska, & Levesque, 2001).

### *Implementation as an Answer*

So how do we avoid throwing our hands in the air and giving up? The answer is to focus on implementation and alignment. The Five Dynamics of Effective Implementation provide practical and applicable strategies to better align and insulate change efforts within organizations (ACJI, 2020). Creating implementation teams that review, adjust, and align practices related to people, data, culture, leadership, and feedback can create pressure for change and overcome the inertia that many organizations experience through the process. An expert and engaged implementation team alone can produce significant increases in implementation effectiveness and sustainability. This practice alone has potential as a game changer for correctional leaders nationwide.

These teams should be focused on aligning practices across the organization to support the change. Alignment is about using what you have to make incremental shifts toward your ultimate organizational goals. It is about intentionally connecting the new program model or change initiative to the people and their daily tasks at work. This work examines: How are people spending their time? Where do they put their focus? What is incentivized? What is modeled? What is rewarded? And, how do we know?

Front-line staff being asked to change the way they work with people may feel like they don't have time to engage in what feels like extra work with their clients, because they have ten more people waiting to talk to them outside their office door. Digging deeper, we may learn it takes just as much time to, for instance, talk about skill building as it does to check in about urinalysis results, terms, conditions, and rules. In many instances, the real struggle lies in a staff's comfort level doing the new thing rather than a true lack of time. In many situations organizational policies actually incentivize staff to focus on the things we want them to stop focusing on, such as technical violations, rather than the transformative work of building new skills. These types of challenges require a different kind of solution. It requires leaders supporting a diverse implementation team to grapple with realigning who we are in our jobs with what we believe, what we measure, and what we are asked to do in the long-term work of implementation. Without acknowledging and creating space for this invisible, complicated, and important work, we will continue to chase different and better ways of doing things that never actually make it into practice and never deliver the promised results.

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# There May Not Be a Tomorrow: Immediacy, Motivational Interviewing, and Opioid Intervention Courts

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**THE AGELESS PHRASE** "necessity is the mother of invention" was evidenced several decades ago when jail beds became full of crack-cocaine offenders, leaving the jurisdiction of Miami-Dade County, Florida, with no options to secure violent offenders. Necessity then met with innovation in 1989 with the creation of the first drug court (Kirchner, 2014). Something similar seems to be occurring with the recent birth of opioid intervention courts. The nation's first Opioid Intervention Court (OIC) was established in Buffalo in 2017 after three traditional drug-treatment court defendants fatally overdosed on opioids before their second court appearance—with these three deaths occurring *within a single week* (US Federal News, 2019).

The well-established treatment court model was deemed not enough and not fast enough for those in danger of overdose—prompting a new response. Buffalo, New York, started a first-ever treatment court with the primary goals of saving lives via a brief post-arrest medical intervention option. This option occurs within hours of arrest, where non-violent offenders with opioid use disorder are offered Medication for Opioid Use Disorder (MOUD), counseling, and residential assistance.

New OICs are starting up as they attempt to incorporate the Buffalo Court's critical immediacy model. They are likened to "emergency rooms" for life-saving triage and stabilization of new arrestees believed to be at high risk for opioid overdose (J. Smith, personal communication, December 18, 2019). Evidence that this new OIC model has mainstreamed is found in a 2019 publication "*Opioid Intervention Courts: 10 Essential Elements*" (Center for Court Innovation, 2019). Further support is demonstrated by the U.S. Bureau of Justice's (BJA) funding of a process report of the Buffalo OIC. To help new OIC courts, the report offers a deep-dive into how these 10 essential elements were implemented (Carey, van Wormer, & Johnson, 2022). With this review of implementation characteristics, the OIC model now is emerging with a structure of established research-based best practices to enable model replication.

In this article we speak to the need for evidence-based treatment to raise the odds for success within these new short-term triage courts. This is not an easy task, as this "immediacy" approach must respond to crisis timelines, helping staff to establish rapid engagement, and strategically influence crucial (potentially life-saving) decisions upon first contact (Carey et al., 2022).

What are the evidence-based approaches that can sync with the needs of this "rapid court engagement" model—and do so with effectiveness? Interventions must fit the quickened time range of minutes, hours, and days rather than weeks, months, or years. Considering most EBPs, this might seem an impossible order to fill. However, consider Moyers' (2015) description of Motivational Interviewing as the only EBP that values the relational aspects of treatment (engagement, collaboration) at the same level it values the technical aspects (evidence-based practice). The "what" you do (technical) and the "how" you do it (relational) are both equally prized and become a dual skill focus by an MI practitioner. In addition, this approach has a "gold standard" fidelity measure[2] that assesses both technical adherence as well as relational delivery to determine a person's MI competency/proficiency level (Moyers, Rowell, Manuel, Ernst, & Houck, 2016).

While it is not a perfect fit for every need, Motivational Interviewing has the ability to meet the demands of an OIC, warranting strong consideration. With MI as a court's fundamental service approach, a jail assessment can create "potent opportunities" (Forman & Moyers, 2019). These skills can extend to any participant during this stabilizing programming and run from initial contact to later warm handoffs for continuing care.

Nine benefits of Motivational Interviewing

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[2] This measure is the well-researched Motivational Interviewing Treatment Integrity metric (MITI).

are presented for consideration. A tenth benefit will act as a summary to close this review:

## 1. Motivational Interviewing fits. It is an EBP for OUDs that is well-suited for brief interventions—even single sessions or within compressed time frames.

MI fits for OICs. Developed over 40 years ago in the SUD treatment field, MI is recommended by the National Drug Court Institute as an evidence-based treatment for substance use disorders (NDCI, 2019). This is coupled with the American Society for Addiction Medicine recommending MI as an accepted treatment option for opioid use disorders (ASAM, 2020). Within this new ASAM publication, "National Practice Guideline for the Treatment of Opioid Use Disorder," Motivational Interviewing is recommended for use with multiple special populations, including pregnant women, adolescents, individuals with co-occurring psychiatric disorders, and individuals in the criminal justice system after arrest. MI is also recommended to assist engagement of the newly arrested for the use of methadone, buprenorphine, and naltrexone, the three leading medications prescribed for opioid use disorders (ASAM, 2020). MI can help emerging OICs shoulder the many complexities and struggles of working with this population.

With OICs, the objective is to keep someone alive to start initial stabilization, while steadying them to move to longer term services. With an opioid population prone to overdose, you start engagement immediately—or you may not start at all. Using MI, a staff member can instill a desire to "start work" and begin an arrestee's readiness to change, even within the first brief contact (Stinson & Clark, 2017).

MI has been designated as an evidence-based practice for increasing both *engagement* and *retention* in treatment (NREPP, 2013). This type of engagement is as rapid as it is durable. MI has been called an "effective tool" for use within compressed time frames (Forman & Moyers, 2019). Multiple randomized clinical trials have shown reliable outcomes when it is used in just a single session (McCambridge & Strang, 2004; Diskin & Hodgins, 2009). An investigation conducted among adult patients in an emergency department found a single 30-minute session of motivational enhancement reduced prescription opioid misuse—*including opioid overdose risk behaviors*—for those who had histories of non-fatal overdoses and/or misuse of prescription opioids (Bohnert et al., 2016).

If stabilization can occur with this crisis-response approach, this OIC model seeks to keep the participant for approximately 90 to 180 days. Across this programming, MI can bolster the participant's retention in services. Examples are plentiful; one effectiveness study found that by incorporating MI into a standard substance abuse evaluation, participants were almost twice as likely to return for one additional session (Carroll et al., 2006). Another multi-site effectiveness study found that participants who received a single session of MI had significantly better retention in outpatient substance use treatment at 28 days when compared with controls (Carroll, Libby, Sheehan, & Hyland, 2001). It is important to note that the outcomes for brief interventions of MI are durable; studies that tracked progress over time found gains were still evident at two-, three-, and four-year follow up (Karakula et al., 2016; Schermer, Moyers, Miller, & Bloomfield, 2006; Baer et al., 2001).

## 2. The nagging question of critical immediacy for OIC first contacts: Can you ruin motivation in three minutes?

Certainly, you can. The contrasted response is that you can also raise motivation in three minutes (Stinson & Clark, 2017). Following arrest, an opioid intervention must measure outcomes in minutes and hours. Little time to intervene means little room for error. Initial contacts made by OIC staff are done with urgency (immediacy), and training in MI can improve the likelihood that short interactions prove helpful.

Many OIC staff have never been trained to gain a working knowledge of motivation (and how to raise it) and the process of human behavior change (and how to influence it). Change can occur by spontaneous remission, where readiness and action immediately follow a dramatic event or epiphany. Yet, most changes do not occur by point-in-time events; they occur by a *process* that follows the change continuum of "importance—confidence—readiness" (Stinson & Clark, 2017). Motivational Interviewing can train staff in skills to increase motivation in each of these three fundamental constructs.

Within this new crisis-response approach, all OIC staff, along with attending physicians, are better served to increase their knowledge of motivation and this continuum of change. One reason for MI's rapid spread across probation, corrections, health care, and SUD work is that MI has helped staff to "raise the odds" to increase the readiness to change in compressed time frames.

For opioid intervention, following arrest and through the first 48 hours, contacts could instill ambivalence (if there is none) or skillfully negotiate both sides of the arrestee's ambivalence (if there is some). All change is self-change, so having the arrestee articulate the person's own reasons for change is paramount. MI places a strong focus on amplifying the arrestee's discrepancy that arises between wants, aspirations, and values of the arrestee—and actual behavior. Considering that these first contacts are made in jail, it is easy to believe most people have a large gap between "what is real and what is their ideal." This forms the MI basis of eliciting a person's own reasons for change (person-centered *evoking)* rather than urging for an assessor's ideas or "good advice" (staff-centered *installing)*.

## 3. Conventional treatment or Motivational Interviewing (MI) in compressed time frames?

When we suggest to an OIC staff person that MI could be helpful for these first triage encounters, we are met with the response, "This isn't the time for treatment—these screenings happen within hours of an arrest and are brief!" Certainly, a conventional view of "treatment" being a 50-minute session in a provider's office falls short. Forego this conventional view and consider the necessity of skill development to address "critical immediacy" to impact and influence critical decisions in very short time frames.

Initial medical intervention means presenting and explaining a menu of procedural options for MOUD—advising for decisions of safety and stabilization in the face of mortal risk. Questions arise; MOUD or no MOUD? What kind of MOUD? Time tables? Residential assistance needed to stabilize and improve living arrangements? So many critical decisions are required of the new arrestee.

For those making these initial jail interventions, this effort takes on the characteristics of "first responders" and crisis intervention work. Crisis staff work by the motto, "Let them be alive in the morning." Yet there are naysayers who complain "arrestees aren't able make good decisions" due to their OUD (Clark, 2020a). Their approach would be to make these initial jail contacts more assertive and persuasive. We disagree. Motivational Interviewing believes most arrestees are

ambivalent about their opioid use—part of them wants to stop and, with equal force, part of them does not. A mortal issue is realized because many people suffering an OUD will die in this state of ambivalence. MI cautions helpers that people generally do not overcome the "stuckness" of ambivalence through advice or warnings. Instead, the use of motivational interviewing offers a chance to add to the compassion and zealous drive of these triage jail responders by providing an accelerant of skills to negotiate this decisional balance.

Opioid Interventions Courts need to be organized around the MI principles of client engagement, the resolution of ambivalence, and the use of a guiding style to assist healthy decision-making.

## 4. Even when actively offering MOUD, there is no guarantee. MOUD needs MI.

The development of new practices always seems to outpace the consideration of client motivation. Implementation bogs down until a program circles back to increase the attention and importance of a participant's buy-in. For any OUD client, "how" these medications are used often dominates any discussion, at the expense of "why" or "if" MOUD is to be used. MI can increase the arrestee's sense of importance to choose, comply with, and continue MOUD (Lewis-Fernandez et al., 2018). Research finds that "managing expectations" of patients for MOUD is an important theme and has much to do with "psychological readiness for treatment," a view shared by both providers and patients (Muthulingam et al., 2019). This 2019 study applied motivational interviewing to help patients resolve ambivalence and problem-solve treatment barriers.

The reluctance of a recent arrestee can be expressed in various ways:

"It is just not a good time."

"Who knows if that would even help?"

"If you take this away, what will I be left with?"

"It is the only thing that helps me to get through the day!"

MI can help those newly arrested to forego the status quo (in this case, continuing with street opioids) by tipping the balance to create an appetite for change. In another 2018 study, receiving one session of brief behavioral treatment that included Motivational Interviewing was associated with higher odds of receiving MOUD (Allison et al., 2018). MOUD needs MI to create willing acceptance and active participation.

## 5. MI can stand the heat. It has effective methods for individuals with OUD who present as resistant to treatment.

Motivational Interviewing was originally developed for those who are more resistant, angry, or reluctant to change (Clark, 2020b). MI has been found to be a particularly effective approach for working with people who are angry and defensive *at first contact* (emphasis added; Miller & Rollnick, 2013). Multiple resistance-lowering techniques can keep challenging participants moving forward using a non-adversarial approach.

Now add the heat of post-traumatic stress disorders (PTSD). Studies have shown that people with a higher reactance level have a better response to MI than to more directive styles (Miller & Rollnick, 2013). The term "reactance" can mean oversensitivity, touchiness, or even volatility. Consider how many arrestees entering an OIC might suffer from PTSD and the elevated reactance levels so prevalent with this condition.

Another common challenge is the complexity of dual diagnosis where an arrestee may enter an OIC with both a mental health disorder and a substance use disorder. The Center for Behavioral Health Statistics (SAMHSA) cautions that between 40 to 50 percent of those who abuse drugs have a comorbid mental health disorder (SAMSHA, 2011). Results from a 2018 study indicated that MI was associated with increased self-efficacy and treatment completion of dually diagnosed clients (Moore, Flamez, & Szirony, 2018). MI can "stand the heat" that stems from the intensity and complexity of treatment court work.

## 6. MI has been effectively trained to Peer Support providers and is used to empower peer assistance.

The U.S. Centers for Medicare and Medicaid Services declared peer support an evidence-based practice in 2007 (Eiken & Campbell, 2008). OIC startups are using supportive peers for good reasons; they can resolve the complaints of "you don't understand" by bringing common experience of "been there, lived it, seen it." SUD programs have used peer support for many years, and opioid intervention courts now turn to them as well. Starting in 2001, Georgia was the first state to offer a peer support service as part of the Medicaid State Plan rehabilitative services benefit (Eiken & Campbell, 2008). The Georgia CARES program (certified addiction recovery empowerment specialist) extends training in MI as part of their certification process. Many states have followed Georgia's lead, as MI is considered essential for any peer readiness curriculum (A. Lyme, personal communication, December 20, 2019).

Our Center has trained peer support staff and found no differences in their learning uptake as compared to any other training population. This field experience has been affirmed through multiple research investigations, which found comparative learning transfer with peers (Swarbrick, Hohan, Gitlitz, 2019; Crisanti et al., 2016). As with any disciplines working with OUD, peer support specialists can engage and build trust or they can argue and try to dominate. Training in a guiding style of communication and resistance-lowering techniques may bolster their shoulder-to-shoulder support. To empower their personal stories and "lived experience," MI might be one way to help peers prepare the ground before planting the seeds to guide a better life.

## 7. The use of MI doubles the effect size with minority populations.

Early reports of OIC race/ethnicity numbers find approximately 30 percent of OIC populations are minorities (D. Reilly, personal communication, December 11, 2019). Some treatments do not cross cultures well—yet MI does. Racial and ethnic minorities experience great benefit from its use as *the effect size of MI is doubled when used with minority clients* (Miller, 2018). Persons who have experienced a lack of respect, have been stigmatized by the label of "addict," or marginalized due to their ethnicity and race seem to be most attracted to this client-centered approach and the relational focus of MI.

## 8. MI is learnable and has a multi-modal training capacity for OICs.

With the imminent threat of overdose, it is critical that *all* OIC staff share in the treatment mission. MI has been trained to all treatment court roles—helping them to increase their skills for engagement and enhancing motivation. Large rooms of treatment court judges have enthusiastically joined day-long trainings in Motivational Interviewing (Center for Strength-Based Strategies, 2021). A cadre of treatment court judges are now receiving coaching in MI to improve their dialogue and efforts from the judicial Bench in program

review hearings (Center for Strength-Based Strategies, 2022).

MI training has been delivered to people in all roles: prosecutors, defense counsel, as well as coordinators, probation officers, peer support, and case managers. The Buffalo OIC judges received brief, improvised MI training (Carey, van Wormer, & Johnson, 2022); more Opioid Intervention Courts may want to follow Buffalo's lead and add more tailored and comprehensive MI training as a treatment "multiplier." Opioid intervention courts cannot afford to have some staff boring holes in the bottom of the treatment boat (overly directive, dominating) while others are trying to sail to a desired destination (establishing a high-quality working alliance, increasing the readiness for change).

A helpful research finding is that one's ability to learn MI is not contingent on experience, education, or professional field. You do not have to have years of seniority or advanced degrees (Stinson & Clark, 2017). This approach also has well-established fidelity measures to determine if it is being used correctly by team members (competency) and to what quality and extent (proficiency).

## 9. MI complements other evidence-based practices a treatment court may be using.

There are over 200 clinical trials and several meta-analyses showing MI's effectiveness as a stand-alone treatment (Miller, 2019). Research has found that when MI is added to another evidence-based practice (EBP), *both become more effective*—and the effect size is sustained over a longer period of time (Miller, 2018). Combining MI with another EBP appears to cause both approaches to be more effective for two reasons: first, with MI in place, people are also more responsive to participate; and second, participants are more likely to complete what is intended by implementing the EBP treatments in tandem.

## Discussion

OICs emerge with a pre-plea model, extending a non-adversarial approach. If one considers that this rapid court engagement model tries to avoid sanctions and coercion, then engagement strategies and resistance-lowering techniques—the strengths MI is known for—play an even more critical role in bolstering cooperation and commitment by participants. The tenth benefit we review is that MI is designed to fit a non-adversarial approach.

Providers facing retirement may remember a vastly different field of SUD treatment here in the United States, as William R. Miller, the architect of Motivational Interviewing, reminds us in a past commentary (Walters, Clark, Gingerich, & Meltzer, 2007). In the 1970s it was acceptable, even commendable, to abuse those suffering from addiction—the abuse was believed good for them, it was what they needed, the only way to get through to them. This resulted in the boot camp atmosphere of California's Synanon, to name a famous example, with the yelling of insults and obscenities, confrontation for denial busting, and the attitude that you had to "tear them down to build them back up."

Fortunately, over time and partly in response to research, a punitive and dominating stance that was common in U.S. treatment has given way to a much more respectful and collaborative approach. Many things probably contributed to this change, including evidence that it was not very effective. It is hard to pinpoint the causes of seismic shifts in a professional field, but the field's amazing receptiveness to MI is at least a reflection of this profound change. Across several decades, treatment has changed, restoring hope and humanity to those suffering with substance use disorder.

It is within the context of this profound transformation that one can better understand the pre-plea involvement of the OIC and the non-adversarial approach; these courts attend to this opioid epidemic *as a health-care crisis*. It is here that you will find overlap between the foundational "spirit of MI"[3] and the fundamental nature of these new opioid intervention courts. MI can offer the know-how and techniques to help OICs deliver treatment with a non-adversarial, non-punitive guiding style. MI has been a leader in developing and delivering this non-coercive approach across several decades, reminding all that progress and change do not have "sides."

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# Recent Developments in the Imposition, Tolling, and Revocation of Supervision

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**THIS ARTICLE IS** intended to aid probation officers in assessing situations related to the imposition, tolling, and revocation of supervised release. In it, I discuss relevant case law, statutory changes, and recent developments, updating the information on these topics provided in two earlier articles that were published in *Federal Probation* in 1997 and 2005.[1]

## Imposition

One notable development around imposition of supervision relates to the First Step Act (FSA) of 2018.[2] Specifically, Congress amended 18 U.S.C. § 3582(c)(1)(A) to allow inmates to seek compassionate release directly from the sentencing court (instead of limiting the process so it could only be initiated on motion of the Director of the Bureau of Prisons). The compassionate release statute already included a provision allowing for a "special term" of supervision, which is a period of probation or supervised release imposed at the time compassionate release is granted, not to exceed the unserved portion of the original term of imprisonment. But the FSA and the inmate-driven process it introduced resulted in a drastic increase in individuals granted compassionate release, bringing renewed attention to special terms of supervision imposed under this section.[3] Based on concerns raised by its Committee on Criminal Law, the Judicial Conference recently agreed to seek legislation clarifying how a special term of supervision interacts with any term of supervised release imposed at the original sentencing.[4] At this time, clarifying legislation has not been enacted. In addition to noting the logistical uncertainties of imposing multiple terms of supervision, the Conference expressed concern that special terms of supervision, particularly if combined with an original supervised release term, may result in individuals being supervised for unnecessarily long periods, contrary to established social science principles.[5] As these issues have not yet been resolved by legislation or case law, the Administrative Office of the U.S. Courts (AO) issued guidance on special terms of supervision.[6]

## Tolling

A term of supervision is tolled, meaning the term temporarily pauses, in certain circumstances prescribed by statute or by case law. Although there have not been any statutory changes regarding tolling since the previous *Federal Probation* articles, the case law in this area has evolved.[7]

### *Pretrial Detention*

By statute, a term of probation or supervised release tolls when the person under supervision is "imprisoned in connection with a conviction for a Federal, State, or local crime" for 30 days or longer.[8] In 2019,

[1] Caroline M. Goodwin, *Legal Developments in the Imposition, Tolling, and Revocation of Supervision*, 61 Fed. Probation 76 (1997); Joe Gergits, *Looking at the Law: Update to Legal Developments in the Imposition, Tolling, and Revocation of Supervision*, 69 Fed. Probation 35 (2005).

[2] Pub. L. 115-391.

[3] *See* U.S. Sentencing Comm'n, *The First Step Act of 2018: One Year of Implementation* (Aug. 2020), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf; and U.S. Sentencing Comm'n, *Compassionate Release Data Report, Fiscal Years 2020 to 2021* (May 2022), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20220509-Compassionate-Release.pdf.

[4] Judicial Conference of the United States, *Report of the Proceedings of the Judicial Conference of the United States* (Sept. 15, 2020).

[5] *Id.*

[6] Administrative Office of the U.S. Courts, *"Special Term" of Supervision Under Compassionate Release* (Oct. 7, 2020), https://jnet.ao.dcn/news-events/coronavirus-covid-19-guidance/coronavirus-covid-19-guidance-probation-and-pretrial-services-faqs#Special%20Term%20of%20Supervision%20Under% Compassionate%20Release.

[7] The following sections rely primarily on Ninth Circuit cases, as it has addressed tolling and related topics more frequently in recent years than the other Courts of Appeal.

[8] 18 U.S.C. § 3564(b) (probation); 18 U.S.C. § 3624(e) (supervised release).

the Supreme Court in *Mont v. United States* resolved a circuit split relating to tolling and pretrial detention. Previously, the Ninth Circuit and the D.C. Circuit had held that an individual's pretrial detention in another case is not "imprison[ment] in connection with a conviction" for purposes of tolling supervision under 18 U.S.C. § 3624(e), while the Fourth, Fifth, Sixth, and Eleventh Circuits held that pretrial detention in another case is "imprisonment in connection with a conviction" for purposes of tolling supervision.[9] In *Mont*, the Supreme Court held that pretrial detention is "imprison[ment] in connection with a conviction" if (1) the defendant is convicted for the offense, and (2) the time in pretrial detention is credited toward the sentence imposed.[10] As a result of *Mont,* a court may not be able to determine whether supervision is tolled until the new case is resolved.

### *Fugitives*

There is presently a circuit split regarding the fugitive tolling doctrine, which tolls supervision when an individual absconds. As noted in the 1997 *Federal Probation* article, the "Sentencing Reform Act did not codify the common law that tolled supervision for absconders."[11] However, the Second, Third, Fourth, Fifth, and Ninth Circuits have adopted the fugitive tolling doctrine in post-Sentencing Reform Act cases,[12] while the First Circuit rejected it on the grounds that imprisonment was the only grounds for tolling Congress saw fit to include in § 3624(e).[13]

Although the Ninth Circuit currently follows the fugitive tolling doctrine, it has hinted that the doctrine may be incompatible with Supreme Court case law prohibiting court-created equitable exceptions to jurisdictional requirements.[14] In *United States v. Pocklington*, the court was considering the warrant requirement for delayed revocation hearings, rather than fugitive tolling, but the government pointed to fugitive tolling as an example of an appropriate "extra-textual" exception. The Ninth Circuit rejected the government's argument, noting that the defendants in the fugitive tolling doctrine cases cited had "conceded the general validity of the fugitive tolling doctrine" without addressing courts' lack of authority "to create equitable exceptions to jurisdictional requirements."[15] The Ninth Circuit in *Pocklington* declined to resolve any tensions around the fugitive tolling doctrine, finding it inapposite to the case before it, but also declined to apply any sort of equitable exception to the jurisdictional limits of 18 U.S.C. § 3565(c).

The Ninth Circuit has addressed what it means for the defendant to abscond, for purposes of the fugitive tolling doctrine. First, it held that a defendant absconds supervision by returning to the United States following deportation without advising the probation office of their return.[16] It later held that failing to notify the probation office of a change in address, along with other noncompliant behavior including failure to pay restitution and failing to notify the officer of new criminal charges, was sufficient to find that the defendant had absconded, even though an early termination motion was filed with the court bearing the supervisee's purported new address.[17]

The Ninth Circuit also addressed the termination of fugitive tolling, holding that it ends "when federal authorities are capable of resuming supervision."[18] The court also held that a defendant's multiple arrests in another state while absconding did not impute knowledge of the defendant's whereabouts to federal authorities.[19] This case implies that earlier actual knowledge of an absconder's whereabouts could impact the amount of time tolled, and underscores the importance of securing a warrant or summons as soon as possible to ensure that the court retains the power to revoke.

### *Civil Commitment*

There is also a circuit split regarding the tolling of supervision during civil commitment proceedings for "sexually dangerous persons" under the Adam Walsh Act.[20] These proceedings typically take place at or near the end of imprisonment for a criminal conviction. The Fourth, Seventh, and Eighth Circuits held that supervision tolls between the date a criminal sentence of imprisonment concludes and the date the person is physically released from Bureau of Prisons (BOP) custody following Adam Walsh Act proceedings.[21] The Ninth Circuit held that supervision does not toll, and begins to run on what would have been the BOP release date had the Adam Walsh Act proceedings not been instituted.[22] It should be noted that the Ninth Circuit relied heavily on pretrial detention case law that was subsequently overruled by *Mont*, and the court does not appear to have addressed this issue since *Mont* was decided. Each of these cases involved situations where the defendant ultimately was not committed, either because the government withdrew the petition or because the court found the defendant did not meet the criteria for commitment under the Adam Walsh Act.

The Ninth Circuit's position on tolling may have an effect on Adam Walsh Act cases beyond the issue of tolling itself. In *United States v. Antone*, the Fourth Circuit noted that the district court considered the likelihood that the defendant would release from BOP without supervision as an additional reason supporting civil commitment.[23] The defendant's underlying criminal case was from the District of Arizona, and the district court hearing his civil commitment case in the Eastern District of North Carolina (Antone was incarcerated at FMC Butner) "predicted that without a tolling mechanism, [he] would not be subject to any term of supervised

[9] *United States v. Morales-Alejo*, 193 F.3d 1102 (9th Cir. 1999); *United States v. Marsh*, 829 F.3d 705 (D.C. Cir. 2016), *United States v. Ide*, 624 F.3d 666 (4th Cir. 2010); *United States v. Molina-Gazca*, 571 F.3d 470 (5th Cir. 2009); *United States v. Goins*, 516 F.3d 416 (6th Cir. 2008); and *United States v. Johnson*, 581 F.3d 1310 (11th Cir. 2009).

[10] *Mont v. United States*, 139 S. Ct. 1826 (2019).

[11] Goodwin, *supra* note 1.

[12] *United States v. Barinas*, 865 F.3d 99 (2d Cir. 2017); *United States v. Island*, 916 F.3d 249 (3d Cir. 2019); *United States v. Buchanan*, 638 F.3d 448 (4th Cir. 2011); *United States v. Cartagena-Lopez*, 979 F.3d 356 (5th Cir. 2020); *United States v. Crane*, 979 F.2d 687 (9th Cir. 1992) (prior to addition of 18 U.S.C. § 3583(i)); *United States v. Murguia-Oliveros*, 421 F.3d 951 (9th Cir. 2005) (reaffirming the fugitive tolling doctrine after addition of § 3583(i)).

[13] *United States v. Hernandez-Ferrer*, 599 F.3d 63 (1st Cir. 2010).

[14] *United States v. Pocklington*, 792 F.3d 1036, 1040 (9th Cir. 2015), citing *Bowles v. Russell*, 551 U.S. 205 (2007).

[15] *Id.* at 1040, n.1, referencing *Ignacio Juarez* and *Watson*, *infra* notes 13 and 16.

[16] *United States v. Ignacio Juarez*, 601 F.3d 885 (9th Cir. 2010).

[17] *United States v. Grant*, 727 F.3d 928 (9th Cir. 2013).

[18] *Ignacio Juarez*, 601 F.3d 885 at 890.

[19] *United States v. Watson*, 633 F.3d 929 (9th Cir. 2011).

[20] Civil commitment proceedings under the Adam Walsh Act are governed by 18 U.S.C. § 4248.

[21] *United States Neuhauser*, 745 F.3d 125 (4th Cir. 2014); *United States v. Maranda*, 761 F.3d 689 (7th Cir. 2014); *United States v. Mosby*, 719 F.3d 925 (8th Cir. 2013).

[22] *United States v. Turner*, 689 F.3d 1117 (9th Cir. 2012).

[23] *United States v. Antone*, 742 F.3d 151 (4th Cir. 2014).

release under Ninth Circuit law."[24] On appeal, the defendant argued that the district court erred in considering the tolling issue, "because it failed to consider the possibility that he would be judicially estopped from challenging his expressly-agreed-to supervised release…"[25] Because it reversed the district court's grant of the civil commitment petition on sufficiency of the evidence grounds, it did not reach the issues of whether it was proper for the court to consider tolling or whether the defendant would be estopped from later challenging the term of supervision. However, this case demonstrates the need for resolving the circuit split, whether through a Supreme Court decision or clarifying legislation.

### *ICE Custody and Deportation*

The Fifth Circuit held that supervision does not toll during administrative detention in Immigration and Customs Enforcement (ICE) custody or when an ICE detainer is in place during otherwise non-tolling confinement (such as pretrial detention without a conviction).[26] In *Garcia-Rodriguez*, the defendant was released from BOP to ICE custody and was later deported. Almost three years later, he was arrested in Texas on violation of a state or municipal law. The Fifth Circuit concluded that the defendant's supervised release started running the moment he was transferred from BOP to ICE custody, and issued a limited remand for fact-finding on the specific dates involved.[27] *Juarez-Velasquez* arose from a much more complicated factual background involving two prior federal convictions and time in custody on later-dismissed state charges. It is relevant here that an ICE detainer was filed approximately two and a half years into the three-year term of supervised release on the first federal case, while the defendant was in state pretrial detention on charges that were later dismissed. The Fifth Circuit concluded that the ICE detainer was an "administrative hold that did not amount to imprisonment in connection with a conviction" and reversed the revocation of supervised release in the first federal case.[28]

The Third and Sixth Circuits have held that supervision is not tolled due to deportation.[29] The Second, Eighth, and Eleventh Circuits previously reached this same conclusion.[30]

### *Other Tolling Issues*

Courts have issued several additional noteworthy opinions addressing whether tolling applies to various other forms of confinement or unavailability for supervision.

The Second Circuit held that a state parole revocation sentence is imprisonment "in connection with a conviction" and thus tolls the term of federal supervision.[31] Although "revocation of parole is not itself a criminal proceeding, the incarceration that results from revocation is a consequence of the underlying crime of conviction."[32] Although the principles discussed by the Second Circuit are likely widely applicable to parole revocation sentences, its decision relied heavily on New York state laws regarding parole,[33] indicating that other courts considering the issue should review the applicable state's parole laws when determining whether a parole revocation sentence tolls supervision.

The Eighth Circuit held that, because being out on bond on state charges is not imprisonment, it does not toll the term of supervised release; only when the defendant was imprisoned on those charges did tolling begin.[34] Similarly, the D.C. Circuit held that release post-sentencing, while an appeal is pending, is not considered a part of supervised release.[35]

The Ninth Circuit held that time in a halfway house that is part of the federal sentence does not count toward the term of supervised release.[36] However, supervision may begin running when a defendant is at a similar facility as part of a state sentence.[37]

In a case arising out of unusual circumstances, the Seventh Circuit held that a defendant detained pending a revocation hearing was not imprisoned in connection with a conviction, and thus the term of supervision was not tolled during that time.[38] Typically, a supervisee would not end up in detention awaiting a revocation hearing absent a warrant (or a summons, directing the supervisee to appear at a hearing, where the person would then be detained), thereby extending jurisdiction and obviating the need to reach the potential tolling issue. However, in *United States v. Block*, after the probation officer notified the court of alleged violations, the court held a status conference without issuing a warrant or summons. The defendant appeared at the status conference and was remanded to custody. Because there was no warrant or summons—which would have provided a basis for post-supervision jurisdiction under 18 U.S.C. § 3583(i)—and the revocation hearing was not held until after expiration of the term of supervised release, the court was forced to confront an unusual tolling issue. Pointing to the language of 18 U.S.C. § 3583(e) stating that the court may revoke a term of supervised release and "require the defendant to serve in prison *all or part of the term of supervised release*," the Seventh Circuit held that the defendant was simply serving part of his term of supervised release in detention; thus the time did not toll.[39] Finding there was no valid jurisdictional basis for the revocation, the Seventh Circuit vacated the lower court's judgment.

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[24] *Id.* at 165.

[25] *Id.* at 170.

[26] *United States v. Garcia-Rodriguez*, 640 F.3d 129 (5th Cir. 2011); *United States v. Juarez-Velasquez*, 763 F.3d 430 (5th Cir. 2014).

[27] Pursuant to the limited remand, the district court made a factual finding that the defendant was transferred to ICE custody on October 28, 2005, rather than an earlier date in October that had previously been suggested as his transfer date. Subsequently, the Court of Appeals held the district court had jurisdiction to revoke the term of supervised release, as a warrant had been filed on October 24, 2008. *United States v. Garcia-Rodriguez*, 444 F. App'x 25 (5th Cir. 2011).

[28] *Juarez-Velasquez* at 436.

[29] *United States v. Cole*, 567 F.3d 110 (3d Cir. 2009); *United States v. Ossa-Gallegos*, 491 F.3d 537 (6th Cir. 2007) (en banc) (overruling *United States v. Isong*, 111 F.3d 429 (6th Cir. 1997)).

[30] *U.S. v. Balogun*, 146 F.3d 141, 144-47 (2d Cir. 1998); *U.S. v. Juan-Manuel*, 222 F.3d 480, 485-88 (8th Cir. 2000); *United States v. Okoko*, 365 963 (11th Cir. 2004).

[31] *United States v. Bussey*, 745 F.3d 631 (2d Cir. 2014).

[32] *Id.* at 633.

[33] *Id.*

[34] *United States v. House*, 501 F.3d 928 (8th Cir. 2007).

[35] *United States v. Davis*, 711 F.3d 174 (D.C. Cir. 2013) (release pending appeal ordered by Court of Appeals after the defendant was already in custody on the sentence). *See also United States v. Channon*, 845 F. App'x 783 (10th Cir. 2021) (unpublished) (defendant continued on release by district court after sentencing, but prior to self-surrender, while appeal was pending).

[36] *United States v. Miller*, 547 F.3d 1207 (9th Cir. 2008); *United States v. Earl*, 729 F.3d 1064 (9th Cir. 2013).

[37] *United States v. Sullivan*, 504 F.3d 969 (9th Cir. 2007) (holding that because both federal law and Montana state law indicate that time at a state pre-release center is not "imprisonment," the term of supervised release started when the defendant was placed at the pre-release center, and had expired by the time of the alleged violation).

[38] *United States v. Block*, 927 F.3d 978 (7th Cir. 2019).

[39] *Id.* at 982.

## Revocation

### *Revocation of Special Term*

Just as it does not specify the interaction between a term of supervision imposed at sentencing and a special term of supervision, 18 U.S.C. § 3582(c)(1)(A) does not specify whether the general revocation provisions for probation (§ 3565) or supervised release (§ 3583(e)) apply to a special term of supervision imposed on an individual granted compassionate release. In addition to seeking clarifying legislation on the interaction between these special terms of supervision and imposed-at-sentencing terms of supervised release, the Judicial Conference approved seeking clarifying legislation on the revocation and reimposition of special terms of supervision, specifically by including § 3583(e)(3) by reference.[40]

### *Mandatory Revocation Term for Specified Offenses*

18 U.S.C. § 3583(k) specifies a mandatory minimum term of five years of imprisonment upon revocation of supervision for certain offenses of conviction. In the 2019 case *United States v. Haymond*, the Supreme Court found this provision unconstitutional as applied, insofar as the facts resulting in imposition of the mandatory minimum term of imprisonment were found by a judge rather than a jury.[41] In a subsequent case, the Tenth Circuit held that *Haymond* does not apply where imposition of a mandatory minimum sentence under § 3583(k) was based on facts admitted by the defendant under oath in pleading guilty to a new charge and at the revocation hearing.[42] The appellate courts have rejected attempts to expand *Haymond* beyond § 3583(k), including to mandatory revocation for drug possession,[43] where revocation results in imprisonment longer than the statutory maximum for the offense of conviction,[44] or across the board on all revocations.[45] Post-*Haymond*, officers may seek revocation under 18 U.S.C. § 3583(e)(3). Alternatively, the government may seek new criminal charges and/or proceed under § 3583(k), by presenting the facts supporting revocation under this provision to a jury or by relying on an admitted violation consistent with a guilty plea, such that no judicial fact finding is necessary to support the mandatory minimum term of imprisonment.

### *Revocation in Juvenile Cases*

Both of the prior *Federal Probation* articles note the lack of specificity in 18 U.S.C. § 5037 as to whether the potential disposition upon revocation of juvenile probation or juvenile delinquent supervision is based on the juvenile's age at the time of the original disposition or at the time of the revocation.[46] When those articles were written, only the Fifth Circuit had addressed the issue, holding that it is the juvenile's age at the time of revocation that controls the potential revocation disposition.[47] Since then, the Eighth and Eleventh Circuits have reached the same conclusion.[48]

The Ninth Circuit found § 5037(d) ambiguous as to revocation penalties, specifically whether the requirement that the juvenile receive credit for any previously ordered term of official detention applies to all juveniles, regardless of age at revocation, or just to juveniles at or under age 21 at the time of revocation.[49] It ultimately held that credit for previous official detention applies to all juvenile revocation sentences, including where the juvenile was over 21 at the time of revocation.

### *Delayed Revocation*

Several courts have addressed issues regarding the delayed revocation provisions in 18 U.S.C. §§ 3565(c) and 3583(i). These provisions specify that a court retains the power to revoke a term of probation or supervised release beyond expiration of the term "for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." The issuance of a warrant or summons does not toll the term of supervision, but extends the jurisdiction of the court to hold a revocation hearing after expiration of the term, so long as the warrant or summons is issued before expiration. An Eighth Circuit case, *United States v. Jordan*, demonstrates the importance of understanding the distinction between tolling and delayed revocation.[50] In *Jordan*, within about two months of commencing supervision, the defendant committed technical violations resulting in issuance of a warrant. He subsequently absconded and committed crimes in other states before being arrested about six months after the revocation warrant was issued. Shortly thereafter, a second revocation warrant was issued, based on some of the new state charges. However, another three years passed before the state charges were fully resolved and he was returned to face revocation proceedings. A third revocation warrant was then issued based on an additional state offense. On appeal of his revocation sentence, the defendant argued that the issuance of the first revocation warrant tolled supervision, and thus his revocation sentence should have been based only on the technical violations underlying the first warrant. Finding "no support" for this argument, the Eighth Circuit noted that § 3583(i) "does not stop the running of the supervised release period; rather, it extends the district court's power to revoke beyond the supervised release period in certain circumstances."[51] *Jordan* also demonstrates that it is not uncommon to find situations involving a combination of tolling and delayed revocation.

### *Warrant or Summons Requirement*

Continuing the trend noted in section III(A) of the 2005 *Federal Probation* article, appellate courts faced with the issue have consistently required actual issuance of a warrant or summons to preserve jurisdiction under 18 U.S.C. § 3583(i).[52] However, in an unpublished opin-

[40] Judicial Conference of the United States, *Report of the Proceedings of the Judicial Conference of the United States* (March 16, 2021).

[41] *United States v. Haymond*, 139 S.Ct. 2369 (2019). *Haymond* is a plurality opinion, with Justice Breyer concurring in the judgment.

[42] *United States v. Shakespeare*, 32 F.4th 1228 (10th Cir. 2022).

[43] *United States v. Seighman*, 966 F.3d 237 (3d Cir. 2020).

[44] *United States v. Henderson*, 998 F.3d 1071 (9th Cir. 2021).

[45] *United States v. Childs*, 17 F.4th 790 (8th Cir. 2021).

[46] Goodwin, *supra* note 1, and Gergits, *supra* note 1.

[47] *United States v. A Juvenile Female*, 103 F.3d 14 (5th Cir. 1996).

[48] *United States v. Silva*, 443 F.3d 795 (11th Cir. 2006); *United States v. E.T.H.*, 833 F.3d 931 (8th Cir. 2016).

[49] *United States v. Juvenile Male*, 900 F.3d 1036 (9th Cir. 2018).

[50] 572 F.3d 446 (8th Cir. 2009).

[51] *Id.* at 448.

[52] *United States v. Janvier*, 599 F.3d 264 (2d Cir. 2010) (order directing issuance of a warrant does not save jurisdiction where warrant was not actually issued until after expiration); *United States v. Merlino*, 785 F.3d 79 (3d Cir. 2015) (failure to issue warrant deprived court of jurisdiction, even though delay in issuing warrant was caused by defense counsel); *United States v. Block*, 927 F.3d 978 (7th Cir. 2019) (court was deprived of jurisdiction where it held a status conference and ordered defendant detained, but never issued a warrant or summons); *United States v. Pocklington*, 792

ion, the Second Circuit found that a court order which met certain requirements was a summons for purposes of the statute, distinguishing it from other court orders that merely directed the issuance of a warrant or summons.[53]

The 2005 article in *Federal Probation* pointed to an Eleventh Circuit case, *United States v. Bernardine*, in support of having the probation officer (rather than the clerk) issue warrants or summons under the "any other duty that the court may designate" provision of 18 U.S.C. § 3603(10).[54] It should be noted, however, that the Ninth Circuit stated in *Pocklington* that a probation office does not have the power to issue a warrant, and that it must instead be issued by a judge or a court.[55] However, the Ninth Circuit was addressing a situation involving a request by the probation office to extend supervision and a question of whether that request could be considered a warrant or summons, rather than a situation where a judge decided a warrant or summons should issue and delegated the ministerial task of issuance to the probation officer. Relatedly, the Ninth Circuit has recognized that a judge can direct a clerk to sign and issue a summons,[56] and the same would presumably be true for a warrant.

The 2005 article also noted a Ninth Circuit case, *United States v. Vargas-Amaya*, in which the court held that revocation warrants must comply with the oath or affirmation clause of the Fourth Amendment.[57] It also notes that the AO addressed *Vargas-Amaya* by amending the Prob 12C form, "Petition for Warrant or Summons for Person Under Supervision," to include a declaration that satisfies 28 U.S.C. § 1746. Since that time, the Fifth and First Circuits have held that the oath or affirmation requirement *does not* apply to revocation warrants.[58] Although the importance of this circuit split is largely rendered moot by the amendment of the Prob 12C form, the oath or affirmation issue may still arise in unusual circumstances (such as a long-term fugitive where the warrant was based on a pre-amendment Prob 12C, as appears to have been the case in *United States v. Collazo-Castro*[59]).

### Scope of Delayed Revocation

There is a circuit split over whether a delayed revocation can address only those violations alleged as the basis for the warrant or summons issued prior to expiration of the term of supervision, or whether it can include additional violations. In *United States v. Naranjo*, the Fifth Circuit held that the "such a violation" phrase in 18 U.S.C. § 3583(i) means that so long as a warrant or summons was timely issued, revocation can be based on any violating conduct that occurred during the term of supervision, and is not limited to violations contained in a petition for revocation filed during the term.[60] The Fifth Circuit was later joined by the Second and Eleventh Circuits, although the Second Circuit limited its holding to later-alleged violations that were related to those alleged in the timely filed petition, as it was not faced with addressing unrelated allegations.[61] In unpublished opinions, the Third and Fourth Circuits relied on *Naranjo* to reach the same conclusion, though the Third Circuit limited its holding in the same manner as the Second Circuit.[62]

In *United States v. Campbell*, the Ninth Circuit was faced with the situation the Second and Third Circuits had avoided—revocation based on a violation unrelated to the violations underlying the timely-issued warrant.[63] Just prior to expiration of the term of supervised release, the probation officer filed a report alleging violations relating to an unreported asset, failure to report contact with law enforcement, and using a third party to open a new auto loan without the officer's permission. A summons was issued before the term expired, but a hearing was not held until after expiration. Between expiration and the hearing, the probation officer amended the petition, adding numerous new perjury allegations (relating to unreported casino winnings) and a new instance of failure to report contact with law enforcement—with all of the new allegations being factually distinct from the original allegations. The probation officer later amended the petition a second time to add additional allegations relating to the unreported asset from the original petition. At the revocation hearing, the court found the defendant had violated conditions related to some of the original allegations (including the additional, related facts/allegations from the second amended report) and to some of the perjury allegations from the first amended report.

On appeal, the Ninth Circuit affirmed the revocation based on the allegations in the original report, including the additional related facts/allegations contained in the second amended report. However, it found that the district court "erred in adjudicating the perjury allegations" contained in the first amended report, as it was submitted after the defendant's supervised release expired. The Ninth Circuit reasoned that § 3583(i)'s "such a violation" language is constrained by the preceding clause, which references "adjudication of matters arising before… expiration."[64] It noted that this language evidenced congressional intent "to limit the universe of violations alleged post-expiration" to those factually related to matters raised before expiration of supervision.[65]

### "Any Period Reasonably Necessary"

Courts have also interpreted the period of time beyond term expiration that might be "reasonably necessary" to adjudicate revocation matters, 18 U.S.C. § 3583(i), finding the delay to be reasonable in most cases, particularly where custody and/or new criminal charges are involved.[66] However, not all delays

F.3d 1036 (9th Cir. 2015) (probation could not be extended at hearing after expiration date, where a warrant or summons was not issued prior to expiration).

[53] *United States v. Bunn*, 542 F. App'x 50 (2d Cir. 2013) (unpublished).

[54] Gergits, *supra* note 1; *United States v. Bernardine*, 237 F.3d 1279 (11th Cir. 2001).

[55] *Pocklington*, 792 F.3d 1036, 1040-1041.

[56] *United States v. Vallee*, 677 F.3d 1263 (9th Cir. 2012).

[57] Gergits, *supra* note 1; *United States v. Vargas-Amaya*, 389 F.3d 901 (9th Cir. 2004).

[58] *United States v. Garcia-Avalino*, 444 F.3d 444 (5th Cir. 2006); *United States v. Collazo-Castro*, 660 F.3d 516 (1st Cir. 2011).

[59] *Collazo-Castro*, 660 F.3d 516, 517.

[60] *United States v. Naranjo*, 259 F.3d 379 (5th Cir. 2001).

[61] *United States v. Presley*, 487 F.3d 1346 (11th Cir. 2007); *U.S. v. Edwards*, 834 F.3d 180 (2d Cir. 2016).

[62] *United States v. Brennan*, 285 F. App'x 51 (4th Cir. 2008); *United States v. Mike*, 755 F. App'x 132 (3d Cir. 2018).

[63] *United States v. Campbell*, 883 F.3d 1148 (9th Cir. 2018).

[64] *Id.* at 1153.

[65] *Id.*

[66] *United States v. Ramos*, 401 F.3d 111 (2d Cir. 2005) (delays while state charges were being adjudicated, between state conviction and execution of revocation warrant, and between execution of warrant and revocation hearing all found to be reasonable where the defendant was in state custody and was not prejudiced by the delays); *United States v. Madden*, 515 F.3d 601 (6th Cir. 2008) (delay of approximately 3 years between issuance of warrant and revocation hearing was reasonable, where the defendant had pending state and federal charges; the delay in revocation was caused by the court proceedings, "which in turn were caused by Madden's own conduct."); *United States v. Morales-Isabarras*,

are excusable. For example, the Tenth Circuit in *United States v. Crisler* found that a court lacked jurisdiction to revoke probation where a revocation hearing was continued for five months—with the end of the five months still within the term of supervision—yet the revocation hearing was not held until after expiration.[67] In an illustrative case from the Eastern District of Virginia, *United States v. Sherry*, the court found that it did not have the power to hold a revocation hearing where there was a delay of 15 months between issuance and execution of the warrant, where the delay in execution was due to the U.S. Marshals' policy of treating misdemeanor warrants as low priority and due to the probation office failing to communicate with the defendant after issuance of the warrant.[68]

## Conclusion

Officers are frequently called upon to assess and provide information to courts regarding the imposition, tolling, or revocation of probation or supervised release. It is important for officers to stay informed about the evolving legal landscape on these issues.

745 F.3d 398 (9th Cir. 2014) (delay of approximately 6 years between issuance of warrant and revocation hearing was reasonable, where defendant had new federal charges in two districts other than the one where he was on supervised release, he was deported prior to execution of the first district's revocation warrant, and was a fugitive between the time he reentered the country and when he was found).

[67] *United States v. Crisler*, 501 F.3d 1151 (10th Cir. 2007).

[68] *United States v. Sherry*, 252 F.Supp.3d 498 (E.D. Va. 2017).

# Probation Officer Impressions in Federal Reentry Courts

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**MOST RESEARCH INTO** the effectiveness of reentry courts, and other problem-solving courts, focuses on whether program participants have lower rates of subsequent rearrest and reconviction. While this is clearly an important outcome, there are other aspects to the functioning of problem-solving courts that are relevant to appraising the functioning of such courts.

There have been limited studies assessing effectiveness of federal reentry courts in terms of reduced recidivism, and most have produced mixed results.[1] The Federal Judicial Center conducted a process-descriptive study of judge-involved programs in the federal system in 2013 and found inconsistent results on rates of recidivism (Meierhoefer & Breen, 2013; Vance, 2011; Vance, 2017). Another prominent study of the Supervision To Aid Reentry (STAR) program in the Eastern District of Pennsylvania found reduced probation violations among reentry court participants when compared to individuals under the condition of supervision as usual (Taylor, 2018). The same study found that rearrest rates were not significantly different for reentry court participants and the comparison group; however, those who graduated from the STAR program had significantly lower rates of rearrest compared to those who had not participated in or completed the program. More recent research showed no relationship between reentry court participation and recidivism or supervision revocation (Crow & Smykla, 2021).

Most of the other research on reentry courts has been performed at the state level, including the U.S. Department of Justice's study of eight sites with Second Chance Act-funded reentry courts (Lindquist et al., 2018). Another prominent study used a randomized controlled trial—the gold standard for research—to re-evaluate the Harlem Parole Reentry Court after it implemented program changes based on an earlier evaluation (Ayoub & Pooler, 2015). Researchers found that while there were no differences in rearrests between program participants and control group individuals, program participants had significantly fewer total reconvictions than the control group, as well as fewer supervision revocations.

Other research has focused more on the process of the reentry court (see Wolf, 2011, for a comprehensive list of reentry court components). One study catalogued reentry courts in six federal districts and described the different structures and procedures, as well as qualitative outcome measures (Newman & Moschella, 2017). The authors (one of whom is a federal judge) detailed the strengths of the various programs. A repeated finding was the importance of changing the returning citizen's view of the justice system. The authors describe one goal of the Dayton reentry court in the Southern District of Ohio being to "build a relationship between participants and the court, prosecutors, and supervising probation officers, to ensure individuals that the justice system is invested in seeing them succeed post-release" (Newman & Moschella, 2017, p. 27). Another program strength was the opportunity for participants to help one another ("Without exception and with extraordinary generosity, the participants offer what resources they have available to them . . . to help each other"; Newman & Moschella, 2017, p. 35).

Other researchers have considered the opinions of staff and participants in the reentry courts. Federal District Court Judge Timothy Degiusti argues for greater inquiry into the perceptions of court stakeholders rather than the predominant focus on participant outcomes (2018). He asserts that "the perceptions and beliefs about the success and effectiveness of these programs held by those on the front lines should be among the metrics used to measure their worth" (Degiusti, 2018, p. 20). Reentry court staff and reentry court participants from six federal districts responded to qualitative survey questions asking them to rate their agreement with several statements. Overall, the feedback was positive from both participants and staff. Participants

[1] It has been suggested that the lack of consistent reductions in recidivism among federal reentry court participants is at least partly due to the already-low recidivism rate in the federal system (Rowland, 2016).

noted that the program had a positive impact on their view of the justice system.

Another study examined different stakeholders' subjective views of reentry challenges (Ward, Stallings, & Hawkins, 2021). Participants included incarcerated individuals, judges, and probation officers, and they were asked to complete a survey describing the greatest challenges to reentry after incarceration. Probation officers and judges were more likely to cite personal factors such as the individual's internal motivation as most challenging for reentry, while incarcerated individuals were more likely to cite external factors such as low wages and employment as most challenging. The researchers explain that the judge and probation officer responses related to the "agency of the inmate, placing much of the blame of reoffending as an internal challenge that the offender must overcome" (Ward et al., 2021, p. 97).

We recently conducted a national survey of federal reentry courts as part of the doctoral dissertation of the first author. Among the important questions we asked were the size and composition of the court, the emphasis on programmatic elements such as graduation and employment, and the primary reasons for dismissal and dropout among participants. Another important question concerned adherence to different criminological models. The two primary contemporary models for effective correctional treatment are the Risk-Need-Responsivity (RNR) model and the Good Lives Matter (GLM) model. The RNR model emerged in the 1990s as an alternative to the punishment-dominant mindset that had been promulgated since the 1970s (Andrews & Bonta, 2010). RNR prioritizes which offenders are targeted for treatment and specifies what kind of treatment they should receive based on their needs and capabilities. This individualized, social learning perspective was highly influential for researchers and practitioners alike, and it was used in the development of risk assessment tools and treatment planning measures in correctional and community supervision settings (Looman & Abracen, 2013; Polaschek, 2012). In the early years of this century, some researchers who believed that RNR disproportionately relied on criminogenic risk factors created the GLM model, which emphasizes human potential and growth (Ward & Stewart, 2003). Rather than focusing on criminogenic needs, GLM broadens the scope to include the exploration of what is important to the individual. Although the RNR model has much more empirical support and is more prominent than the GLM model in the field of criminal justice, some researchers argue that RNR could be further improved by putting more emphasis on human potential (Polaschek, 2012).

Because of the emphasis on the Risk-Need-Responsivity (RNR) model in federal probation, we hypothesized that RNR principles would be more highly endorsed in the reentry courts than the values-based principles associated with the Good Lives Model (GLM) (see Table 1). We also hypothesized that the importance placed on external variables such as employment and family would be inversely related to the importance placed on internal variables such as motivation: The lower a participant's motivation, the more important it would be for that participant to have external support through their job or family. Finally, we anticipated that a focus on participant retention would be positively correlated with a focus on successful completion of the program.

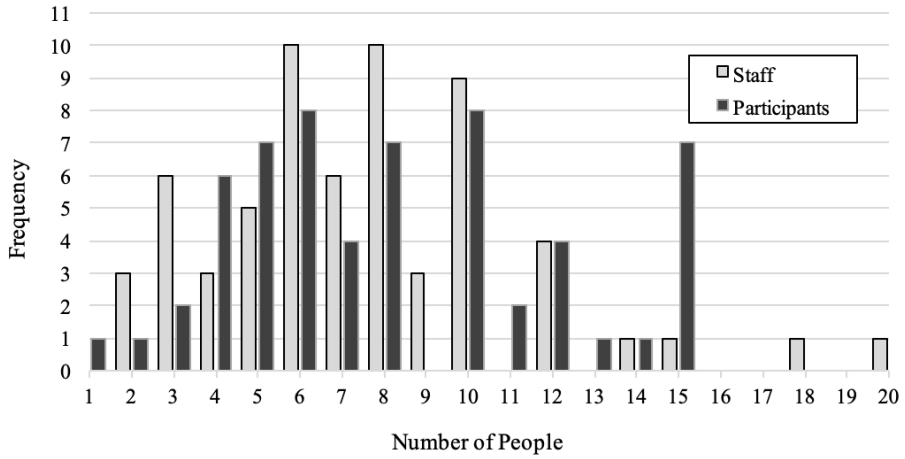
## Method

To limit the number of confounding variables in the study, we chose to target one group for this research: probation officers. Probation officers are ideally situated at the junction of the court and the community, and thus we believed they could provide a unique perspective. Federal probation offices in districts with federal reentry courts were contacted by telephone or email and asked to participate in a 33-question, 20-minute survey regarding their reentry court. Most questions were multiple-choice, although respondents had the additional option of providing a narrative response in elaboration. Surveys were completed anonymously and did not provide identifying information, including geographic location, to maintain respondents' confidentiality. A total of 64 surveys were completed by 40 districts in 31 states and the District of Columbia. Respondents who requested a summary of the results were provided with one after findings were analyzed.

**TABLE 1**
**RNR-Derived Program Goals and Corresponding GLM-Derived Program Goals**

| RNR | GLM |
|---|---|
| Reducing the risk of reoffending | Improving overall quality of life |
| Providing treatment intensity consistent with the individual's risk of reoffending | Providing treatment that supports the individual's self-identified life goals |
| Providing interventions that reduce risk factors | Promoting self-regulation and agency |
| Providing interventions consistent with the individual's learning style | Providing interventions that build upon the individual's strengths |

**FIGURE 1**
**Demographic Information: Reentry Court Staff and Participants[a]**




[a] Three courts with an unusually high number of participants (25, 28, and 34, respectively) were not included in the graph due to space constraints.

## Results

All respondents (with one exception) were federal probation officers. Reentry courts included between 1 and 20 staff and between 1 and 34 participants (see Figure 1). Half of courts (N=32) met twice monthly; another 23 courts (36 percent) met monthly. Respondents had been involved in the reentry court for an average of 4.5 years. Ten courts (16 percent) were established in 2010, with all courts established between 2005 and 2021.

Criteria for including participants were similar across programs, with slight variations. For example, almost 90 percent of programs excluded those convicted of sexual offenses, and approximately three-quarters of programs excluded individuals with severe mental illness. Thirteen programs did not allow individuals convicted of violent offenses to enter the program, and about half of programs excluded those at low risk of recidivism from participating.

Most programs (N=42, or 71 percent) contacted potential participants within one month of the individuals' release from prison; about one-fifth of programs contacted potential participants around 6 months after their release from prison; and a few waited up to a year after release to contact potential participants. Additional assessments were used by 50 percent of programs to assess participants before they began. These included mental health assessments, risk assessments, interviews, and personality tests.

Program duration ranged between 9 and 27 months, with an average length of about 14.5 months. Most programs were designed to be completed in 12 months. All courts celebrated participant graduation with some sort of recognition, and all but one court reduced the time on supervised release as a result of the participant's successful completion of the program. The majority of courts reduced supervised release by 12 months; some enhanced this reduction for graduating individuals who subsequently served as mentors for other participants.

Concerning internal review, many reentry courts reported conducting program evaluation to identify areas of strength and need. Usually this involved informal reviews, but some programs engaged in formal evaluation research in collaboration with local universities.

Retention and expulsion are important in reentry courts. Because a primary goal involves successful completion of a program, it is important to identify the factors that contribute to participant retention. Respondents rated staff training and program orientation as most important in participant retention. In response to a question about the likelihood of a participant's termination following various events, many respondents (N=45, or 70 percent) indicated that participants were sometimes (but not always) expelled if they violated their probation conditions. Participants were more likely to be dismissed from the program if they accrued multiple absences (28 percent of respondents said dismissal was very likely and 41 percent said dismissal was likely). Interestingly, less than half of respondents indicated that participants were very likely to be terminated following a reconviction; 22 percent said termination was likely, and 17 percent indicated that it sometimes happened.

Reentry courts were unlikely to terminate a participant based on excessive time in the program or for mental health problems. In addition, drug use was cited as an occasional reason for dismissal from the program. Health concerns were the least common reason for dismissal. Most participants who had not completed the program had been terminated rather than dropping out. The most common reason for participants to withdraw from the program was described as lack of commitment or motivation. Some respondents mentioned work obligations as reasons for voluntary withdrawal, but the more common explanation involved participant characteristics rather than external demands.

Indeed, respondents rated the participant's internal motivation as significantly more important than either the participant's relationship with the probation officer or the participant's relationship with the judge. Although all three were rated as important, the importance ratings for internal motivation were significantly higher than those for relationships with staff or other participants in the court. A related question asked respondents to rate the importance of participant behaviors such as honesty, consistent attendance, problem solving ability, graduation/program completion, and sobriety. Honesty ($M$ = 1.06, $SD$ = .246) and sobriety ($M$ = 1.06, $SD$ = .244) were rated as more important than either program completion ($M$ = 1.55, $SD$ = .665) or employment ($M$ = 1.77, $SD$ = .792).

Respondents showed similar levels of endorsement for more traditional RNR principles and for values-based GLM principles. Related-Samples Wilcoxon Signed Ranks Tests were conducted to compare the importance ratings of the two sets of principles. Means and standard deviations appear in Table 2. Respondents rated reducing the risk of reoffending as significantly more important

**TABLE 2**
**Question 18: How important is each of these outcomes to reentry court generally?[a]**

| | | **Pair 1** | | Pair 2 | | **Pair 3** | | Pair 4 | |
|---|---|---|---|---|---|---|---|---|---|
| | | **Reduce risk of reoffending** | **Improve quality of life** | Treatment intensity consistent with risk | Treatment supports overall life goals | **Interventions reduce risk factors** | **Promotion of self-regulation and agency** | Aligned with learning style | Interventions build on individual strengths |
| N | Valid | 64 | 64 | 64 | 64 | 64 | 64 | 64 | 64 |
| | Missing | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Min. | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Max. | | 2 | 3 | 4 | 3 | 3 | 3 | 3 | 3 |
| Mean | | 1.10 | 1.30 | 1.30 | 1.20 | 1.20 | 1.50 | 1.30 | 1.40 |
| SD | | .31 | .49 | .54 | .45 | .44 | .64 | .56 | .52 |

[a] Rated on a Likert scale from 1 (Very Important) to 5 (Not at all important).

RNR-based components are shaded and GLM-based components are unshaded. Four Wilcoxon Signed Rank analyses were conducted, one for each RNR/GLM pair. Bolded text indicates significant differences between items within the pair.

than improving the participant's overall quality of life, $Z = 3.05$, $p < .01$, $r = 0.38$. However, the importance ratings did not differ between the traditional RNR principle of providing treatment intensity consistent with the individual's risk of reoffending and the GLM principle of providing treatment that promotes the individual's self-identified life goals, $Z = .47$, $p = .637$. In addition, interventions that reduce risk factors were rated as significantly more important than those promoting the participant's self-regulation and agency, $Z = 3.80$, $p < .001$, $r = 0.48$. Finally, the RNR principle of providing interventions consistent with the participant's learning style was seen as equally important as providing interventions that build upon the individual's strengths, $Z = .78$, $p = .439$.

The importance attributed to a participant's internal motivation for success was not significantly correlated with the importance attributed to family support, $r(62) = .12$, $p = .165$; or to employment, $r(61) = .12$, $p = .179$. As predicted, respondents who rated program completion as highly important were more likely to rate preventing attrition as highly important, $r(62) = .57$, $p < .001$.

Respondents rated internal motivation ($M = 1.22$, $SD = .42$) as more important than either the participant's relationship with the probation officer ($M = 1.58$, $SD = .71$) or the participant's relationship with the judge ($M = 2.14$, $SD = .99$) (see Figure 2). Importance ratings were significantly higher for internal motivation than for (1) the participant's relationship with the probation officer, $Z = 3.58$, $p < .001$, $r = 0.45$; and (2) the participant's relationship with the judge, $Z = 5.42$, $p < .001$, $r = 0.68$.

The importance of mentors and treatment providers was cited more often than family support as a critical component of successful participation. One respondent noted that "not all participants have a relationship with family . . . or have pro-social family relationships. We hope for this and it is important if it is present; however, [the participant's] success or failure in the program is not determined by this factor."

A recurring theme involved the balance between support and accountability. One respondent indicated that the court offered "positive reinforcement for reaching goals and completing tasks balanced against constructive accountability for non-compliance or poor conduct." While respondents noted the necessity of sanctions following slip-ups, they also endorsed the power of a supportive environment: "[We promote] an environment and a change in beliefs where the participants learn that asking for help is a positive and necessary skill to learn in managing life."

When asked about the greatest strength of their program, many respondents described the team environment and the benefits of collaboration. They also commented on the voluntary nature of the program, both for participants and for staff. Respondents cited the intimacy associated with small, focused programs as another strength, as well as the genuineness of the team. One respondent indicated that "we truly want to see people do well and succeed and we will do whatever it takes to make that happen."

## Discussion

Survey respondents, almost all probation officers, rated both RNR-influenced principles and GLM-influenced principles as important to participant outcome. Some differences were seen, however, between RNR and GLM influence: respondents' importance ratings for reducing the risk of reoffending were significantly higher than that for improving the overall quality of life. Moreover, interventions that reduce risk factors were rated as significantly more important than those promoting self-regulation and agency. The importance rating for internal motivation was not related to the importance rating for family support or employment. On the other hand, preventing program attrition was directly correlated with prioritizing participant retention.

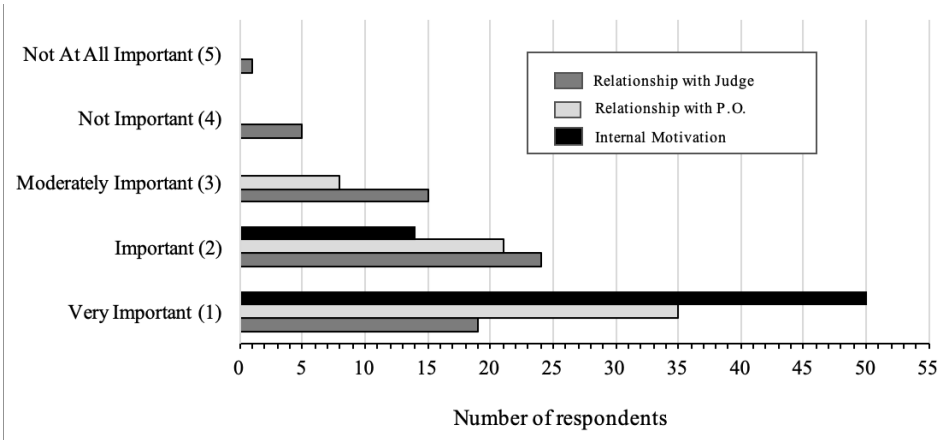
Although some of the statistical comparisons were significant, it is equally important to consider real-world significance. For instance, the importance ratings given to RNR-based principles and GLM-based principles mostly reflected the perceived value of both. It appears that probation officers were consistent in assigning high value to court components regardless of whether the components were more closely aligned with RNR or GLM.

Respondents were more likely to cite reasons for non-completion of reentry court as related to the participant's internal characteristics (e.g., motivation) than to external obstacles (for example, employment). This may reflect a fairly common tendency to attribute the causes of human behavior to personal characteristics rather than situational influences—but also identifies an area that could be studied further to yield information about the accuracy of this perception.

There were several limitations to this research. Rating scales may have been insufficiently sensitive to raters' perceptions. Others associated with reentry courts may have held views somewhat different than the responding probation officers. The study did not obtain the perceptions of participants, which may also have differed and would be important under any circumstances.

It may be useful to inform federal jurisdictions of the current landscape of post-conviction courts so that they may share resources and learn from one another. Robert Wolf, director of communications at the Center for Court Innovation, advocates the sharing of information across problem-solving courts, arguing that there are "advantages to breaking down the conceptual and in some cases practical barriers that separate specialized courts from each other" (Wolf, 2007, p. 3). He describes the first step in breaking down barriers as finding out what courts are currently in existence. This advice applies equally across and within different problem-solving

**FIGURE 2**
**Importance Ratings for Relationship with Judge, Relationship with Probation Officer, and Internal Motivation**



courts. The federal system would benefit from having a database of federal reentry courts, similar to those maintained in some states. Despite inevitable differences based on population, geographic location, resources, and the like, such a database would provide a valuable tool for the exchange of information across federal post-conviction courts. This would in turn support more consistent and effective post-incarceration interventions, an important goal in the development of effective community-based interventions for justice-involved individuals.

## Conclusion

Research on stakeholder perceptions of reentry court is equally important to informing the reentry landscape as the more standard recidivism studies. The present research contributed to this field by surveying probation officers in 64 federal reentry courts around the country. More research is needed into the perceptions of individuals involved in the federal reentry courts, including judges, probation officers, attorneys, and participants. The continued refinement of reentry courts depends not only on quantitative outcome data but also on the perceptions and values described by the key participants in such courts.

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# A Tribute to Ed Latessa: The Change Maker

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**IT HAS BEEN** almost a year since Ed Latessa passed away. We still catch ourselves reaching out to him to ask for advice, or send a link to a new grant, a picture of the kids or a text just to say hello. Ed was a giant in the field of corrections, and his work will live on.

Ed held many informal titles: a great scholar, a true leader, a loyal friend, a protective father, an excellent colleague, and an invaluable mentor. But probably the greatest accolade one could bestow on Ed was that he was a **CHANGE MAKER**. Ed wanted to change the world. Not for the glory; rather, his mission was to improve the lives of others. This mission carried across all his titles and was evident every day in his work.

From the beginning of his career, Ed set out to change things for the better. When he arrived at the University of Cincinnati in 1980, the School of Criminal Justice was a small program stuck in the back of French Hall. He was one of five faculty, but already he had a mission: to make this small criminal justice department one of the best in the country. He knew from the beginning he couldn't do it by himself. He had a vision, but he needed partners to bring it to life. So, he started recruiting great scholars. Larry Travis was already at UC, so the next two hires were Frank Cullen and Pat Van Voorhis. The four of them set out to grow the department into what it is today, the fourth best criminal justice department, according to the most recent *U.S. News & World Report*. All four original faculty retired from the University of Cincinnati's School of Criminal Justice while Ed was at the helm. Today the school has grown to roughly two dozen faculty and over 50 doctoral students, with the first doctoral students graduating in 1996. His program and students are clearly part of his legacy and will keep his mission of change active.

Ed came to UC at a time in which rehabilitation was not a popular philosophy in corrections. In fact, some would argue that was in the dark ages of corrections. On the heels of Martinson's "Nothing works" article (1974, p. 25), rehabilitation efforts for people involved in the criminal justice system nearly halted (Cullen & Gilbert, 1982). But if you are going to be a change maker, sometimes you need to buck the system. In fact, we don't think Ed ever met a set of bureaucratic red tape that he wasn't able to tear right through. He had an uncanny superpower of getting through what he would call "administrative bulls*@t" to get things done. So, when rehabilitation needed to be resurrected, Ed was among those who stepped up. Along with colleagues like Pat Van Voorhis, Frank Cullen, and the Canadian troop (Paul Gendreau, Jim Bonta, and Don Andrews) among others, Ed set forth to help save rehabilitation one jurisdiction at a time.

Ed's role in this endeavor was to talk to anyone who would listen. He jumped in a car, boarded a plane, and even took a helicopter once to get the "What Works" word out to the field. Ed would sometimes travel to four cities in a single week to speak to practitioners, administrators, and even legislators. Ed was a blue-collar academician. He preferred being in the field over the ivory tower. Don't get us wrong: Ed was a prolific scholar, with over 12,000 Google Scholar citations, more than a dozen textbooks, and a multitude of academic awards. However, there was also no one better than Ed at explaining the data in person. He had a way of breaking down complex ideas into understandable, relatable concepts. He was also funny. People remembered Ed. Wherever he went, he was invited back to talk to more people. So although Ed was a homebody who would have happily given up being on the road, he knew that the cost of changing the system was getting the word out about "What Works"—and he was definitely the person to do it.

In the area of scholarship, while most academicians at this stage in their career were focused on publishing in top-tier academic journals that were located behind paywalls, Ed was always more interested in writing for the field—ensuring that his research was used in practice rather than just in the classroom. So, when *Federal Probation* asked us to write a tribute to Ed, it felt like the perfect venue to talk about one of his greatest skills, his ability to translate research to practice. From his first articles for *Federal Probation* in the

1980s, to his 2002 article *"Beyond Correctional Quackery: Professionalism and the Possibility of Effective Treatment,"* to his last, *"A Rejoinder to Dressel and Farid: New Study Finds Computer Algorithm is More Accurate than Humans at Predicting Arrest and as Good as a Group of 20 Lay Experts,"* his writings in *Federal Probation* over the years consistently reflect where he stood throughout his career. As we look over Ed's contributions to *Federal Probation,* three distinct phases begin to emerge that define his professional life: 1) The Beyond Correctional Quackery phase, 2) The Risk Assessment phase, and 3) The Rethinking Corrections phase.

## The Beyond Correctional Quackery Phase

In 2002 Ed, Frank Cullen, and Paul Gendreau published "Beyond Correctional Quackery: Professionalism and the Possibility of Effective Treatment" in *Federal Probation.* If you ever heard Ed speak, you likely heard stories of the correctional quackery that takes place in the field of corrections. From a program in Tennessee that trains people incarcerated in marathons to using yoga for domestic violence in Texas, Ed was not shy in calling out professionals for not following science. This is one reason people loved (or hated) Ed Latessa. He was not afraid to challenge even the most-well-intended people if their work was not grounded in what the literature demonstrates to work in reducing recidivism. In fact, he and his colleagues composed a list of 16 of the most questionable theories of crime that are, unfortunately, still found in some of today's programs, including the "Been there, done that" theory or the "It worked for me" theory. Both of these "theories of crime" led to Ed often schooling a room full of practitioners on the difference between anecdotal and empirical evidence. He often joked about anecdotal evidence leaving the audience with one clear piece of advice: "drink more red wine."

Ed was a true follower of the science. He used research to move programs from what felt good to what was effective, improving one program at a time across the country. His initial study on Ohio's halfway houses and community-based correctional facilities (CBCF) led to a sweeping change of Ohio's community corrections system. Yet Ed's reach expanded well beyond the Ohio borders. At the time of his retirement, he had done work in all 50 states and more than 25 different countries. In fact, in his office hung a map of the United States in which Janice (his Executive Assistant) would add a new pushpin every time he returned from a new place. Needless to say, that map was so full of different colored pushpins, they eventually had to get a larger map that spanned the globe.

Ed's travels brought him to many programs that were on the right track, as well as ones he would later rank as "piss-poor." Seeing the disparity between different programs, Ed was always cautious about lumping all programs together into a single category. He learned a lesson from Martinson—not all correctional programs are created equal. This is why Ed spearheaded the development of the Correctional Program Checklist (CPC), a structured organizational assessment designed to help programs categorize their adherence to the research (see Flores et al., 2005; Listwan et al., 2006). The CPC allows programs to assess how well they are grounded in evidence-based interventions and provides a roadmap to help them improve. By 2018, he had trained agencies in 32 states, some with legislative mandates to use the tool to demonstrate program effectiveness over time (Duriez et al., 2018). Over the span of 40 years, it is estimated that Ed had a direct impact on more than 5,000 individual correctional programs, helping them understand the Risk-Need-Responsivity (RNR) concepts, implement effective programming, improve program fidelity, and avoid correctional quackery.

## The Risk Assessment Era

Ed truly believed in the importance of following the science, and this included the use of actuarial risk assessments. If you heard one of his talks, you would know all about watermelon thumping—his way of telling judges and practitioners that they weren't very good at measuring risk on their own. He was adamant that without understanding risk, programs could cause more harm than good. Armed with data on how people who are assessed low risk were more likely to do worse in intensive interventions (Lowenkamp & Latessa, 2004), he pushed judges, legislators, and correctional professionals to take risk into account as they designed their correctional interventions.

Given the importance of the risk principle, Ed often found his work grounded in the developing, validating, implementing, and training of risk assessments. Early in his career, he and his UC colleagues trained on the Level of Service Inventory-Revised (LSI-R) and helped agencies across the country implement risk assessment tools effectively. Ed would travel across the country training correctional staff on the LSI-R, helping them understand how the risk and needs of a person impact success on community supervision. Eventually he amassed a cadre of UC trainers (at first doctoral students, later researchers or practitioners) for the LSI-R and the Youthful Level of Service Inventory (YLSI), ensuring that correctional programs were armed with the best information possible to help people in the corrections system succeed.

Although training over ten thousand practitioners would be a lifetime's work for most, Ed was only getting started. Once agencies began adopting risk assessments, he recognized the importance of inter-rater reliability, using assessments that are valid and that have been normed on their local population, and implementing them in ways that improve outcomes for people in the system (Flores et al., 2005). In 2006, the Ohio Department of Rehabilitation and Correction (ODRC) approached Ed to create a risk assessment system that spanned the different stages of the criminal justice system (pretrial, post-adjudication, prison intake, and reentry). While recognizing the prominence of the LSI-R at the time, Ed decided that having access to a non-proprietary risk assessment for states and local jurisdictions was important to ensure that every jurisdiction in the state had the capability of measuring risk using a common language (Lowenkamp et al., 2008; Latessa et al., 2010). While some wanted Ed to monetize the assessment, Ed was adamant that the assessment remain free to the field. He wanted to make sure that agency budgets didn't get in the way of providing effective interventions. This was a general theme of Ed's life—generous with his time and resources to ensure that people could do their best work. This concept was adopted by the juvenile justice system in Ohio, with the subsequent development of the Ohio Youth Assessment System (OYAS). Both of these tools have been adopted, validated, and normed by several other states seeking a non-proprietary statewide risk assessment system. Risk assessment is yet another example of Ed's large footprint on moving the field of corrections forward.

## The Rethinking Corrections Phase

Often, Ed would have conversations with all of us about what we could do to improve the field. I don't know if it was his proximity to practitioners or his unique ability to identify people's needs, but Ed always had

his hand in creating material to better the corrections space. Among his favorites were EPICS for Influencers (Effective Practices in Community Supervision—EPICS-I)—a community supervision model that identifies a prosocial community support person and teaches that "influencer" core skills within the EPICS model to assist their loved one. Another major product was the Cognitive-Behavioral Intervention curricula (CBI), a set of curricula that have been used in prisons and residential and outpatient programs to help lend structure to the delivery of behavioral interventions that target criminogenic need areas. Ed was always on the forefront of helping to improve the system. In 2012, working with Paula Smith and colleagues, Ed helped create a case review conference model that could be used within departments to help them uncover systemic issues that may have caused a serious event from occurring (Smith et al., 2012). Drawing on the medical field, where they are called mortality and morbidity reviews, this case review conference model helped juvenile probation departments take a systematic look at a serious incident and find ways to improve their system while avoiding casting blame on an individual. These are just a few examples of the works developed under his leadership.

Ed understood that the way to improve the system is through the staff closest to the people. When we look back on his career, his work centered around giving skills to line staff to help improve their delivery of interventions. He always recognized that if we can't provide tools to the people who work with the people in our system, we will never have a positive impact on outcomes. In 2018, Ed co-authored an article in *Federal Probation* that summed up his thinking about how correctional staff should approach their work in a different way. "Probation Officer as a Coach: Building a New Professional Identity" (Lovins et al., 2018) was a piece born out of 20 years of working directly with probation and parole officers in training and implementing core correctional practices. The concept of probation officer as coach resonated with Ed, who always saw himself as a coach. He coached his kids' sports teams. He coached his students. He was a coach for his colleagues—always helping figure out a game plan, creating successful paths forward, knowing when to provide a pat on the back or a kick in the rear. The model of probation officer as coach is now being tested via federal grants, which is exactly as Ed would have it. If the science does not back the theory or concept, time to move on.

## Conclusion

Ed always saw the corrections system as a way to help people move on with their lives rather than keeping them stuck. During his 40-year career, Ed was always fighting for how the system should provide pathways back to the community. He believed that once the court process was over, our system's role was no longer to punish people but to help them move forward. He believed every step of the system should help improve the outcomes of people in the system, not become a barrier to success. He saw his role, and that of his students, as creating opportunities for improvement, whether through research, training, curricula, assessment, graduates—all were avenues to help better the field and improve the lives of those working and participating in the justice system.

Sadly, Ed's life was cut short due to pancreatic cancer. He had beat it once, defying all odds, but when it returned, his fate was written. The final year of his life was hard. The pandemic had taken its toll, but people across the world reached out to tell Ed about how great a difference he made in their lives. Judges, practitioners, legislators, government officials, and organizations joined Zoom calls to let Ed know how much he impacted them and their system. And Ed did not forget a face or a name. He took a wealth of knowledge with him when he left this world but left a remarkable legacy—as a great father and husband, an incredible scholar, a loyal friend, a fearless leader, an amazing mentor and teacher, but most of all a **CHANGE MAKER**.

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