



PUBLIC SAFETY INSTITUTE FALL 2021

EXECUTIVE SUMMARY

**The Impact of Swift, Certain and Proportionate Sanctions for
Probation and Parole Violators in Shelby County, Tennessee***

DR. ANGELA MADDEN

Research Associate Professor
Public Safety Institute

DR. STEPHEN WATTS

Associate Professor
Department of Criminology
and Criminal Justice

* This work was funded through the University of Memphis Foundation
by a grant from an anonymous source



MESSAGE FROM THE EXECUTIVE DIRECTOR

The Public Safety Act of 2016 enacted by the Tennessee General Assembly authorized the Tennessee Department of Correction (TDOC) to implement a system of administrative sanctions of probationers and parolees for many of what had been termed technical violations of supervision conditions.

From a policy standpoint, the system is designed to (1) insure swift, certain, and proportionate sanctions rather than facing delays through the court system and (2) reduce the level of our state's prison population made up of individuals re-incarcerated for technical violations of supervision rather than more serious violations, including the commission of new crimes.

In 2017, the Memphis Shelby Crime Commission spearheaded development of a local five-year Safe Community Plan. One of the objectives under the plan is effective implementation of TDOC's administrative sanctions system in Shelby County. Through an anonymous gift to the University of Memphis Foundation, the Public Safety Institute assessed the system's impact on probationers and parolees in Shelby County.

The assessment reveals certain apparent disparate impacts of the system depending on the type of supervision. After implementation of the system in Shelby County, the percentage of probationers with revoked supervisions was significantly lower. For parolees, though, the percentage with revoked supervisions resulting in re-incarceration was slightly higher after implementation of the system. At the same time, the percentage of probationers who were successfully discharged from supervision but who subsequently returned to probation supervision was much higher after the system's implementation. That was not the case for discharged parolees, though.

Under the sanctions system, it took more time for probationers to be either successfully discharged or revoked from supervision. A system with step-by step sanctions may have the impact of keeping individuals under supervision for longer periods of time without reducing the likelihood that they return to probation supervision once discharged.

This year, the General Assembly enacted legislation which makes significant changes in both probation and parole. These changes include:

1. Reducing probation sentences from 10 years to 8 years;
2. Restricting the amount of time a judge may temporarily revoke and incarcerate a person for technical violations of probation or parole;

3. Establishing a presumption of parole release at a person's parole eligibility date or upon a subsequent parole hearing for those serving time for a Class E or D felony, or a non-violent offense; and
4. Establishing a mandatory re-entry supervision period beginning one year prior to sentence expiration for parole-eligible individuals.

Given the apparent increase in the percentage of parolees with revoked supervision and re-incarceration, at least in Shelby County, it may be important for TDOC to focus on more intensive parole supervision since the percentage of incarcerated inmates placed on parole is likely to increase under the changes in state law. Likewise, more intensive efforts to assist probationers in moving in the right direction would appear warranted given the significant increase in the percentage of those successfully discharged who end up being placed on probation supervision again.

Almost 300 surveys of justice system employees and supervisees were conducted as part of the assessment. From the results it appears that both employees and those being supervised need to have a better understanding of the sanctions system.

Now that the administrative sanctions system has been in effect for approximately five years and with the significant legislative changes that have occurred, a statewide assessment of the sanctions system would be beneficial to both TDOC and the General Assembly. The full report is available at <https://www.memphis.edu/psi/research>.



Bill Gibbons, Executive Director
Public Safety Institute

INTRODUCTION

Probation and parole (P & P) are types of community supervision in which offenders are expected to abide by certain conditions. Probation is community supervision *in lieu of* a sentence to incarceration (i.e., sentence to incarceration is suspended). If the probationer is successful, the sentence to incarceration is not imposed and the person is released from state custody. Parole is early release from incarceration to community supervision after serving part of a state-imposed sentence. Like probation, successful completion means the sentence is over, and the person is released from state custody.

If supervisees violate their supervision conditions, either by “technical violations” (i.e., curfew violation, missing a meeting) or by committing new crime, supervision can be revoked. In the past, supervising P & P officers could use discretion to ignore a violation, to impose an "in-house" sanction, or to involve the court or parole board, which could result in revocation. For probationers, revocation can result in incarceration for the remainder of the original sentence (with added time for conviction of any new crimes), and for parolees, revocation means a return to incarceration (with added time for conviction of any new crimes). In response to rising revocations and potentially disparate treatment of similar offenders because of discretionary application of responses to violations, many states implemented swift, certain, and proportionate systems of graduated administrative sanctions, shown to reduce both revocations and recidivism related to new crime.

In 2015, Tennessee Governor Bill Haslam's *Task Force on Sentencing and Recidivism* recommended the development of “swift, certain, and proportionate” alternatives to revocation when non-compliance is not a new crime or absconding, noting that "decades of research on human behavior indicates that an immediate response is always more effective than a delayed response." As a result, the General Assembly enacted *The Public Safety Act of 2016* (PSA) to reduce the number of people entering prison for probation or parole violations when noncompliance is not a new crime. The goal of the PSA regarding supervisees is to reduce their incarceration rate for technical violations through a system of swift, certain, and proportionate administrative sanctions.

This research was done as part of Memphis Shelby Crime Commission’s third five-year “Safe Community Plan” to "effectively implement the state's new system of 'swift, certain, and fair' administrative sanctions in lieu of incarceration for violating certain conditions of probation or parole." The Tennessee Department of Correction (TDOC) led implementation of this Safe Community Plan objective, and the Public Safety Institute (PSI) at the University of Memphis conducted an independent evaluation of the policy’s impact in Shelby County.

METHODS

Guided by four research questions (RQs),¹ the PSI compared outcomes before policy implementation (2014-2016) to outcomes after policy implementation (2017-2019) and conducted surveys of

¹ Each RQ had several sub-questions that compared outcomes across time and between groups (probation/parole).

supervisees and criminal justice professionals. For three RQs, the PSI used pre- and post-policy quantitative data on 41,333 movements of 25,391 individuals, including data on revocations, technical violations, sanctions, and reentry into supervision after a previous exit. One of the most important considerations was whether supervisions ended in discharge (successful completion) or revocation (unsuccessful, resulting in facility custody). For the fourth RQ, the PSI used online and paper questionnaires to survey 1) supervisees, 2) judges, 3) probation and parole officers, 4) TDOC administrators, and 5) prosecutors. (The Shelby County Public Defender’s office never responded to invitations.) A total of 271 completed responses were collected: 107 from justice system respondents and 164 from supervisees.

In addition to examining macro-level aggregate data from 2014-2019 and within each study period (2014-2016 & 2017-2019), the PSI also examined individual level data for the 25,391 individuals who had entries to and/or exits from supervision during this time. Due to concerns about the validity of simply using all entries and all exits to draw conclusions about the impact of the policy (i.e., length of time under supervision could have varied significantly, exposure to the policy could have varied significantly), the PSI compared only individuals with an entry and an exit during the pre-policy period to individuals with an entry and an exit during the post-policy period. Of the 25,391 people whose movements were captured in these data, 4,300 had at least one pre-policy entry/exit pair, and 3,042 had at least one post-policy entry/exit pair.² Many of these individuals entered and exited the system more than once, which also allowed an examination of the likelihood of subsequent entries (i.e., reentries).

Finally, the PSI examined both “within-group” and “between-group” changes/differences. “Within-group” compared metrics of interest within each group of pre-policy and post-policy pairs to determine whether significant differences existed prior to and after the intervention. For example, the researchers compared the pre-policy percentage of probation revocations to the pre-policy percentage of parole revocations (all *within* the same policy period). Within-group comparisons determine how similar were two subgroups (i.e., probationers and parolees) prior to and after the intervention (i.e., the policy). If the two groups were very dissimilar prior to the policy, the impact of the policy on each subgroup is more difficult to interpret. “Between-group” comparisons determine change or difference *between* policy periods (i.e., comparing pre-policy revocations to post-policy revocations).

RESEARCH QUESTIONS AND RESULTS

1. *Did the sanctions system impact revocations?*

- a. At the *macro-level* (considering all exits across periods), revocations as a percentage of all exits declined from the pre-period to the post-period. The impact of the policy, however, seems to have been more positive for probationers than for parolees; the percentage of probationers with revoked supervisions was *significantly lower* after the

² Although 4,300 individuals had pre-policy entry/exit pairs and 3,042 individuals had post-policy entry/exit pairs, missing data significantly reduced the numbers available for analyses.

policy, but the percentage of parolees with revoked supervisions was **significantly higher**. Considering only supervisees with entry/exit pairs, **supervisions were less likely to end in revocation** and the **percentage of supervisions ending in revocation was significantly lower** after the policy. Once again, probationers with entry/exit pairs seemed to benefit more from the policy than parolees; their supervisions were **much less likely than the supervisions of their parolee counterparts to end in revocation**. Moreover, the **percentage of probation entry/exit pairs ending in revocation significantly decreased whereas the percentage of parole entry/exit pairs ending in revocation did not change**. The policy had a more favorable impact on exits from probation supervision than on exits from parole supervision.

- b. It is **unclear** whether the policy impacted revocations for technical violations (TVR) because the concept of “technical violation” was effectively eliminated with the policy, making impossible a direct pre- to post- comparison of TVR. The validity of revocation data in the post-policy period also constrained the ability to draw conclusions about the effectiveness of the policy in this area.

2. Did the sanctions system impact time on supervision?

- a. Overall, post-policy entry/exit pairs spent about the same time on supervision as pre-policy entry/exit pairs. Examining time on supervision by type of exit (discharge or revocation) and by type of supervision (probation or parole) yields different results. Discharges (notwithstanding the type of supervision) took about 70 days longer after the policy, primarily because **discharges among probationers took more time** (about 100 more days). Revocations (notwithstanding the type of supervision) took **significantly longer** after the policy (about 30 more days), primarily because **revocations among probationers took significantly longer** (about 34 more days). Discharges and revocations among parolees took about the same time in both periods.

3. Did the policy impact subsequent reentry to supervision after a prior exit?

- a. The **percentage of successfully discharged supervisees who subsequently reentered supervision increased 589%** after the policy (from 71 to 489). While the percentage of successfully discharged parolees who subsequently reentered supervision was about the same during both pre-policy and post-policy periods, the **percentage of successfully discharged probationers who subsequently reentered supervision was much higher** than for parolees during both periods and was significantly higher after the policy.

4. How do individuals who work with or are subject to the sanctions system feel about it?

- a. Professionals were more likely than supervisees to report that they understand the sanctions system, but less likely than supervisees to perceive it as useful. Although about 1 in 3 professionals prefer the sanctions system to the prior system, very few reported that it has made their job easier. Most supervisees, on the other hand,

perceive the sanctions system as easier and prefer it over the prior system. When asked how the system had impacted their discretion, some professionals reported that the system had *reduced* their discretionary ability, with even more reporting that the system had *eliminated* their discretionary ability. Nearly 4 in 10 professionals, however, reported that reduced or eliminated discretion is a desirable outcome of the system, and few agreed that the reduction of discretion was an undesirable outcome. Finally, the narrative comments made by respondents reflected their roles and highlighted some potential areas of concern with the system (e.g., lack of understanding about the system, procedural concerns, due process concerns, unnecessarily prolonging supervision, encouraging or not discouraging continued negative behaviors).

DISCUSSION AND RECOMMENDATIONS

Policy analysis is always challenging because factors other than the policy (i.e., extraneous or intervening variables) can influence outcomes, and those are difficult or impossible to account for or control. This means that without rigorous mechanisms in place to account for the influence of those factors, one cannot definitively state whether or the extent to which any change is due to the policy. Data collection and management practices, as well as lack of clarity about some procedures (e.g., does every Level 4 violation result in revocation?), also impacted the ability to make conclusions about the policy's impact. Data were not collected with evaluation in mind but were collected for internal TDOC purposes. Therefore, major restructuring and integration were required which undoubtedly introduced a measure of error. The ways in which those challenges affected this research are discussed in the full report.

The full report also discusses the apparent disparate impact of the policy on supervisees by type of supervision, return to supervision after prior successful discharge, and the implications of the effective elimination of the concept of primary importance to the policy. Technical violations were eliminated with the policy, leaving lack of clarity on the best post-policy proxy measure. Given that pre-policy revocations for technical violations cannot be directly compared to their post-policy counterparts, conclusions about the policy's effectiveness in this area are significantly tempered.

In addition to discussion of the outcomes the PSI measured to answer the four research questions, the full report also provides several recommendations. These include the following:

1. Replicate this research after 60 full months of post-policy data (i.e., after 2021) and include evaluation of the training provided to TDOC staff and of materials provided to supervisees;
2. Provide more training for both justice professionals and supervisees;
3. Develop more efficient data collection and management systems for monitoring individual-level outcomes;

4. Define an acceptable post-policy proxy for “technical violations” and clarify how supervisees progress through Levels 1-3 and into Level 4 (“zero-tolerance”), as well as how Level 4 violations result in revocation; and
5. Use individual data on outcomes by levels of supervision (i.e., sanctions each supervisee is given) to comprehensively assess the differential impact the policy seems to have on parolees versus probationers. (The policy may be having the unintended consequence of keeping individuals in the criminal justice system longer for about the same outcomes as they would have had with a shorter stay. With each sanction level comes more opportunities to fail, which puts them in another sanction level for more time and more opportunities to fail.)

