

PROBATION WORKLOAD STUDY COMMITTEE

Report & Recommendations



DECEMBER 2021

CHARGE OF THE COMMITTEE AND MEMBERSHIP

In June 2021, Ohio’s biennial budget – Am.Sub. HB 110 – was enacted. Included in this bill was the creation of a Probation Workload Study Committee.

This committee, housed within the Supreme Court of Ohio, was charged to study and discuss probation caseload principles, education standards for probation officers, workload capacity principles, and any other relevant subjects. The committee also was tasked with submitting a list of recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2021.

The committee, comprised of the nine members listed below, compiled the recommendations in this report in accordance with its charge in Am.Sub. HB 110.

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Hon. Andrew Ballard
Judge, Lawrence County Court of Common Pleas

Hon. Teresa Ballinger
Judge, Marion Municipal Court

Hon. Stacy Cook
Judge, Lucas County Court of Common Pleas

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COMMUNITY CONTROL IN THE 21ST CENTURY

Probation, as it is known today, is much different than probation as it was known prior to Ohio's last sentencing reform in 2011 with House Bill 86. Just like today, defendants were released to the community conditionally. If they failed to meet the condition of release, they were faced with the threat of revocation. Pre-HB 86, however, there was no behavioral research regulating supervision strategies, and the main, if not only, focus was compliance. There was no guidance on how to change offender behavior or reduce recidivism. Research demonstrates that traditional methods of supervision are ineffective in reducing recidivism among adult offenders.

While probation is considered a branch of community corrections and involves supervision in the community, it was first established to mitigate the severity of punishment. It was originally conceived in humanitarian terms — as a second chance or an opportunity for reform.

Present-day probation relies on evidence-based practices (EBP) and validated research-tested principles that guide intervention. For behavior change and recidivism reduction to be possible, offenders must understand the personal and environmental factors underlying their offending behavior and be taught the skills they need in order to make positive changes in the future. One could argue that EBP is perhaps the most important reform in state sentencing and corrections practice taking place today.

A balanced approach is needed to promote compliance with the terms and conditions of probation. Research shows that to be most effective in changing offender behavior, the criminal justice system must not only sanction undesirable behaviors, but also reinforce positive or desirable behaviors.

Interventions within corrections are considered effective when they reduce offender risk and subsequent recidivism. When offender risk is reduced, there are fewer victims of crime and public safety is enhanced.

With this shift in philosophy in mind, this group makes the following recommendations.

RECOMMENDATION 1:

Revise the ORC to require a validated risk assessment tool be used by every municipal, county, and common pleas court when assessing offenders for eligibility for community control. The ORC also should allow use of a broader set of such tools, including an improved ORAS tool.

Risk and need assessments are an important component of probation services. They provide valuable information that helps inform intensity of supervision, interventions, and programming for individuals who are granted probation. The Ohio Revised Code requires probation departments to use the Ohio Risk Assessment System (ORAS), the single validated risk assessment chosen by the Department of Rehabilitation and Correction (ODRC). The ORAS functions as a general risk-and-needs-assessment tool; however, it is not validated for certain special populations, such as persons charged with OVI, domestic violence, sex offenses, and persons with significant mental-health diagnoses or substance-use disorders and has not been revalidated for many years.

When the ODRC first rolled out the ORAS suite, there was discussion about it contracting with the University of Cincinnati to create these trailer tools. However, this has not occurred. The lack of ORAS-specific trailer tools has resulted in a patchwork system where departments are using a variety of supplemental tools to address this need and moved us away from our goal of assessment continuity throughout the state. Additionally, other assessment tools have been created for these special populations that both assess the general risk factors and the specific risk factors of that population so combining these tools with the ORAS is redundant.

Although we support use of the ORAS, the lack of designated or approved trailer tools or an allowance to incorporate other more comprehensive and current tools creates frustration among probation professionals in Ohio. Additionally, straying from any use of the ORAS in order to appropriately assess defendants can put many courts' grant funding at risk. For this reason, courts and probation departments should have the ability to use other validated risk assessment tools when appropriate.

This committee also recommends a committee within the Ohio Criminal Sentencing Commission be formed to review available, validated, and approved risk assessment tools and publish the list to the Supreme Court of Ohio's website. The committee also should be charged with working with ODRC to discuss the revalidation of the ORAS and possible development of specialized trailer tools and that the committee continue to address concerns expressed by courts throughout the state.

RECOMMENDATION 2:

Probation caseloads should be differentiated by assessed risk and need, and caseload sizes should be commensurate with the intensity of supervision, interventions, programming, and structure that is appropriate for the goals of supervision at each identified supervision level.

Caseload ratios also should consider the workload of the probation officer at each level and type of supervision.

- Although there is no established national standard for probation officer caseload sizes, there is ample research that shows caseloads can be too high.¹ When caseloads are too high, the time and quality of service that probation officers can provide is diminished. Diminished quality of service can increase risk to public safety and discourage positive change on the part of those being supervised.
- The staffing ratio of higher risk and need caseloads should be less than the staffing ratio of lower risk and need caseloads. The American Probation and Parole Association (APPA) has recommended standards of 20-1 for high/moderate, 50-1 low, and 200-1 administrative.²
- Because local courts may not have the resources to achieve a 20-1 ratio for high-risk caseloads, they should strive to have a ratio of 30-1 and should be no higher than 50-1.
- The National Association of Drug Court Professionals indicates that supervision caseloads for specialized dockets (i.e., drug, mental health, veteran, reentry, domestic violence, human trafficking courts, etc.) should not exceed a 50-1 ratio. When supervision caseloads exceed a 30-1 ratio, best practices recommend program operations be monitored carefully to ensure supervision officers can evaluate participant performance accurately, share significant observations with team members, and complete other supervisory duties as assigned.³
- Probation departments should have established supervision expectations and goals for each supervision type that consider assessed risk and need, program dosage requirements, and the goals of supervision at that level (e.g., risk-reduction, public safety, compliance, encouraging pro-social behavior, skill-development, and structure).⁴
- Caseload sizes should support the intensity, form, and expectations of supervision in addition to other officer duties at each level of supervision.
- To better understand the link between caseload size, the presence or absence of evidence-based practices, core correctional practices, and recidivism, a multi-site study (Jalbert et al., 2011) was conducted, with the following results:

1 Dr. Ed Latessa, Presentation to the Governor's Working Group on Post-Release Control, Dec. 6, 2019.

2 Adult Drug Court Best Practices Standards, Volume II (2015; NADCP).

3 *Id.*

4 Bonta, et al, (2008). Exploring the Black Box of Community Supervision *Journal of Offender Rehabilitation*, 47: 248–270.

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- Officers with smaller caseloads made more frequent contacts with offenders.
 - Officers had more time to spend during those contacts.
 - Officers were more likely to utilize effective correctional interventions.
 - Offenders supervised by officers with smaller caseloads had lower recidivism rates if the supervision agency had implemented evidence-based practices.
 - Recidivism rates were higher when probationers were supervised on reduced caseloads in agencies in which evidence-based practices were not implemented.

RECOMMENDATION 3:

Supervision term lengths should be commensurate with the supervision goals and requirements of the specific risk level. Formal compliance and progress reviews should occur at predetermined points during the supervision period to determine if the probationer is appropriate for an early release. These reviews should include an evaluation of the probationer’s program dosage attainment, skill acquisition, goals completion, and assessed risk reduction.

For at least the past decade, research indicated that probation caseloads should be differentiated by assessed risk and need and that caseload sizes should correspond with the supervision intensity and structure appropriate for the goals of supervision at each identified level and type of supervision. When appropriately targeting risk and needs, research also indicated, as suggested by evidence-based practices, that outcomes result in greater success in recidivism reduction.

Probation research has also shown that recidivism can be reduced effectively when using a validated risk-and-needs assessment(s) and when following three key principles:

- The risk principle proposes that justice system interventions and services should be matched to offenders’ risk levels, focusing more intensive interventions, such as increased check-ins and reporting or frequency of cognitive behavioral groups or other interventions, for high- and moderate-risk probationers.
- The need principle contends that justice system interventions should target those factors that most significantly influence criminal behavior. These factors include antisocial attitudes and patterns, criminal peer networks, school or work deficits, family dysfunction, substance abuse, leisure activities, and housing instability.
- The responsivity principle demonstrates that interventions are most effective when they are based on research-supported models and tailored to the unique characteristics of individual offenders, avoiding a one-size-fits-all approach.

According to the 2014 National Institute of Corrections and The Center for Effective Public Policy report on “Dosage Probation: Rethinking the Structure of Probation Sentences,” research took this knowledge one step further, linking the duration of probation supervision to the optimal amount of intervention an offender needs to reduce risk of re-offense. The proposed “dosage” model of probation suggests that the length of supervision should be determined by the number of hours of intervention necessary to reduce risk, rather than an arbitrarily (or customarily) established amount of time (e.g., 3 years, 5 years).” The length of supervision should depend on how long it takes an offender to achieve the necessary services and interventions.

Undeniably, moderate- and high-risk offenders may typically have many needs and some of them result in criminal behavior, but others do not. These traits are referred to as “criminogenic needs” and represent the changeable, crime-influencing risk factors that must be targets of risk-reduction efforts (Andrews & Bonta, 2010).

The criminogenic needs that most strongly predict recidivism are antisocial cognition (thoughts and beliefs) that support antisocial behavior; antisocial temperament, which often is characterized by poor decision-making skills, anger-management difficulties, and impulse control deficits; and antisocial associates (see Andrews & Bonta, 2010; Gendreau, Little, & Goggin, 1996).

Other dynamic risk factors that influence crime, to a lesser degree, include family/marital stress, substance abuse, employment instability, educational attainment and engagement difficulties, as well as a lack of prosocial leisure activities. When officers devoted more time during sessions to address conditions and compliance-related matters than to criminogenic needs, it largely resulted in higher recidivism rates.

Research shows that interventions that target criminogenic rather than non-criminogenic needs consistently lead to superior outcomes (Andrews & Bonta, 2010; Gendreau, French, & Taylor, 2002; Gendreau & Goggin, 1996; Lowenkamp, Latessa, & Smith, 2006).

Furthermore, targeting a greater number of criminogenic needs (e.g., 3–4 more criminogenic than non-criminogenic needs) results in more substantial recidivism reductions — as much as 30% lower on average — than is achieved when targeting fewer criminogenic needs (e.g., 1–2 more criminogenic than non-criminogenic needs) (Gendreau et al., 2002). These principles apply to both treatment programs and to interventions by probation officers themselves (Bonta, Ruge, Scott, Bourgon, & Yessine, 2008; Lowenkamp, Flores, Holsinger, Makarios, & Latessa, 2010; Lowenkamp, Pealer, et al., 2006).

When an officer uses face-to-face time with an offender to address criminogenic needs, better outcomes are achieved, including reduced recidivism (Bonta et al., 2008, 2011; Robinson et al., 2012). Thus, it is not surprising that when officers target non-criminogenic needs and spend more time monitoring conditions of supervision during their contact with offenders, reductions in recidivism rates are not positively affected (Bonta et al., 2008).

The approach and skills of corrections professionals can influence recidivism outcomes. Offenders are less likely to engage in future criminal behavior when handled by corrections officials who successfully build professional alliance, focus on criminogenic needs, work with offenders to identify and address skill deficits, and use rewards and responses to noncompliant behavior effectively.

A fourth group of studies focused on training programs developed to incorporate evidence-based principles and core correctional practices into the day-to-day efforts of supervision officers, particularly in their face-to-face contacts with offenders. Such training initiatives are designed not only to promote skill acquisition on the part of officers, but also to sustain these skills, and thus fidelity of implementation over time, through coaching, supervision, and mentoring.

Promising examples include the Effective Practices in Community Supervision (EPICS), Strategic Training Initiative in Community Supervision (STICS), and Staff Training Aimed at Reducing Re-arrest (STARR) models (see, e.g., Bonta et al., 2011; Lowenkamp, Holsinger, Robinson, & Alexander, 2012; Robinson et al., 2012; Smith, Schweitzer, Labreque, & Latessa, 2012). These approaches have proven effective: with officers focusing more on criminogenic needs and skill building, supervision failure and recidivism rates were significantly lower (Bonta et al., 2011; Lowenkamp et al., 2012; Robinson et al., 2012). Therefore, officer skills training and coaching are critical elements to success.

Finally, Bonta and colleagues (Bonta et al., 2008, 2011) have demonstrated a link between recidivism and the amount of time officers spend face-to-face with an offender. They found that recidivism rates among officers who spent 16 to 39 minutes with offenders per session were lower than the recidivism rates of officers who spent less than 16 minutes.

A study was conducted on the Relationship Between Early Termination of Supervision and Recidivism, in 2009, by the Administrative Office of the Courts, an agency of the U.S. federal courts. An initial study of the impact of early termination of supervision among federal probationers demonstrated that said practice, when limited to appropriate cases, did not adversely affect public safety. An expanded study was subsequently conducted using a larger sample and a matched-sample design. Subjects in the early-termination and the full-term groups were followed for three years after release and recidivism was measured based on arrests for new crimes. Although the subjects of the study were predominately low-risk offenders, moderate- and high-risk offenders were represented as well. Researchers determined that the offenders in the early-termination groups, regardless of risk level, had lower rates of recidivism than their full-term counterparts (Baber & Johnson, 2013).

RECOMMENDATION 4:

To establish educational requirements to become a probation officer, to establish minimum salary standards comparable to state probation and parole officer amounts, and review and modernize evidence-based training standards for probation that address the diversity within our state and the unique differences within Ohio Courts.

Ohio is comprised of 88 counties that are diverse in population, culture, racial composition, and socioeconomic status. Ohio's courts are reflective of that diversity but have their own levels of uniqueness with respect to size, location and case types. For example, Ohio courts are in urban, rural and suburban areas. We have single- and multiple-judge courts, as well as juvenile and adult courts and courts that handle misdemeanor and felony cases.

Similarly, individuals who are placed on probation present a unique and diverse set of risk and treatment needs. To effectively address the complex needs of offenders, we recommend a minimum range of educational attainment and relevant experience be established for all probation officers. The idea being that an offender receives a consistent level of service regardless of where they are placed under community supervision. Standards also should be flexible to deal with potential limitations around candidate pools and economics in particular areas of the state.

While increases in educational requirements and salary levels will come at a cost, the increased reliance on probation services over the last several years indicates a need for such funding. The General Assembly should consider all options for funding these services, including an increase in general revenue funding.

Suggestions:

Education

- Education and/or experience should be connected to certain specialized job duties within probation. (i.e., high-risk/high-need offenders should be supervised by officer with a sufficient level of education and experience)
- Create coursework with the Supreme Court of Ohio for officers on best practices in supervising certain types of populations.
- Newly hired probation officers should have at least a bachelor's degree, but any existing probation officers would be grandfathered into any new educational standards that are established.
- Minimum educational achievements and experience should be established for probation executive leadership and managerial staff.

Training

- Establish a certain number of training hours in areas of diversity around race, culture, geographic location and socioeconomic conditions relevant to the different court jurisdictions throughout the state.
- Work with the Supreme Court of Ohio to create an official process to verify existing officers and that they complete the required training hours.

RECOMMENDATION 5:

To amend the Ohio Revised Code to require that municipal and county courts accept transfers in a manner like R.C. 2301.28. Additionally, to amend the Ohio Revised Code to adopt uniform guidelines for transfer between courts and jurisdictions, including when such transfer is appropriate.

Currently, the existing statute provides no uniform guidelines for transfer between courts and/or jurisdictions, even within the same residential county. Failure to do so can limit appropriate resource utilization, referrals for accessible engagement in rehabilitative programming, creates avoidable barriers for probationer employment and fiscal stability, and contributes to an increase in public-safety concerns due to ineffective timely supervision and response.

- The task force recognizes the need for creating and imposing standardized guidelines for transfer of supervision in existing R.C. 2301.28 and a new statute regarding municipal and county courts, to wit:

- Request letter submitted on formal letterhead stating justification for the courtesy supervision. To accompany the following attachments:

Presentence Investigation Report (if one is unavailable, a current record check and summary of details regarding the instant offense)

Sentencing Entry

Current Ohio Risk Assessment System (ORAS) Results (completed not more than 90 days prior to expiration)

Existing Case Plan (if applicable)

Summary of Supervision Compliance (including outstanding financial responsibility to sentencing court and any remaining court-ordered conditions)

Treatment Status Update (including discharge information and/or recommendations from any completed community-based correctional facilities, residential or outpatient treatment programs, mental health or medical providers)

Signed Conditions of Supervision

Probationer's Contact Information (to include current address, living arrangements, phone number, employer information)

Victim Information (if applicable, to include no-contact orders or directives)

- Any probationer considered for courtesy supervision must have a permanent address (shelter-care arrangements are not acceptable) in the receiving county; considerations to be made for supportive housing arrangements.
- If the probationer is established in a residential treatment center, treatment must be completed prior to transfer.

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- Must have no less than nine (9) months remaining on term of supervision.
 - **COMMUNICATION**
 - Receiving county will send an acceptance/denial letter within 30 days of submitted request, either via email or United States Postal Service.
 - At minimum, the receiving county shall send an annual status report summarizing probationer compliance.
 - For instances of noncompliance, receiving county shall notify originating county within seven (7) days; violation behavior will be address utilizing receiving county's behavioral management system.
 - At termination of supervision, receiving county shall provide originating county with a final supervision summary.
 - **MISCELLANEOUS**
 - Supervision fees shall be applied to, and collected by, the receiving county.
 - Probationer may be responsible for additional costs associated with supervision requirements (treatment, programming, urinalysis, etc.) if not funded by Medicaid and/or county indigent funding.
 - Prior to placement in specialized dockets, an agreement must be made with originating judge and the receiving specialized docket judge.
 - All risk levels will be accepted. However, it is recommended that low-risk probationers remain with the sentencing county and be remotely supervised. (Consideration for transfer of low-risk probationer may be given for specialized populations.) Cases will be supervised according to the receiving county's risk-based supervision structure, which shall be clearly communicated between counties prior to transfer.
 - Contiguous county requests will be reviewed and staffed on a case-by-case basis. Consideration will be given to cases where a conflict of interest exists and/or barriers to transportation, employment, etc.
 - Intervention-in-lieu-of-conviction cases will be accepted and supervised according to receiving county's policy and supervision guidelines.
 - Misdemeanor cases will be accepted under the same guidelines.
 - Diversion cases are not acceptable.

RECOMMENDATION 6:

Create a list of uniform conditions of supervision that specifically support public safety, rehabilitation, and reduces technical violations leading to increased successful completion of supervision. Special conditions of supervision shall be directly related to the assessed risk and needs of the probationer.

Ohio probation departments and courts typically have a set of “standard” conditions of probation that apply to each and every person under supervision. In reviewing nine different sets of standard conditions – from jurisdictions ranging in size and demographics – this workgroup found a large variance as to what is considered “standard.”

The longest list of standard conditions had 29 separate conditions, while the average number of conditions was 13.5. There also was some variation in the language used to emphasize the conditions were mandatory.

While there were many differences, the standard conditions of probation focused on these central themes:

- Report as Instructed – While under supervision, one must report as directed by the probations officer.
- Notification of Address, Employment, and Travel – The probation officer must be informed when a probationer moves, changes jobs, or leaves the jurisdiction.
- Warrantless Search – The probationer acknowledges that their residence can be searched at any time.
- Drug and Alcohol Testing – The probationer is subject to random or scheduled drug and alcohol testing.
- Obey the Law – The probationer shall abide by all local, state, and federal laws.
- Appropriate Treatment and Programming – The probationer shall participate in all appropriate treatment and programming at the order of the probation officer or the court.
- Special Conditions – The probationer must abide by any special conditions set by the probation officer or the court.

Standard conditions of probation should be more standardized across the state. By establishing a shorter, more direct list of conditions, Ohio courts can create a clearer understanding of what is expected of probationers. Being more consistent across jurisdictions would also make it easier to transfer supervision to another jurisdiction when necessary.

Using a shorter list of standard conditions also will ensure probation officers are monitoring behaviors they truly care about, leading to fewer technical violations that do not advance the goal of rehabilitating a probationer. Of course, courts should have the discretion to impose other conditions they feel are necessary. However, limiting the initial list will ensure probationers are not overburdened with conditions that serve little purpose.

RECOMMENDATION 7:

Probation departments should develop and implement behavioral-management-system responses that hold individuals accountable, consider public safety, and promote behavior change.

A behavior management system (BMS) is a proactive approach used to reinforce prosocial behaviors, sanction negative behaviors, and use cognitive behavioral interventions to instill long-term positive behavior changes in offenders. An effective BMS gives probation officers a matrix of options to quickly acknowledge and reinforce prosocial behaviors, sanctions that can be utilized to address behaviors that do not conform with the expectations of supervision (i.e., drug use, missing appointments with probation or treatment, technical violations of supervision), and supervision strategies that will garner long-term positive changes in offenders.

By using the BMS effectively, officers reduce the risk to the public while addressing identified needs that contribute to the offender's criminal thinking and behaviors. Ideally, the positive rewards and sanctions would be tied directly to a demonstrated behavior that officers are trying to have the offender repeat or quit engaging in. The interactions the officer has with the offender should mirror the BMS to use cognitive behavioral interventions that address the identified needs of the offender. The needs are identified using a validated risk assessment. BMS responses should consider an individual's risk level and the severity of the behavior and be objective, proportional, and parsimonious.

A BMS should require recognition of prosocial behaviors to support their continuation and consider that misconduct and rule-breaking behaviors are opportunities for intervention.

Submitted
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