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Christine S. Scott-Hayward

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# THE FAILURE OF PAROLE: RETHINKING THE ROLE OF THE STATE IN REENTRY

Christine S. Scott-Hayward\*

## I. INTRODUCTION

“When I first came home, I was nervous. I didn’t know what I was doing or which road to take. And then [parole] want[s] me to do all these programs, all these appointments and all this other stuff . . . . It makes it even harder for one to be able to go out and get a job. You know when you have to be at an appointment at eight in the morning and they keep you there ’til eleven; then you know, you got a job interview at nine but parole is telling you, this is first, you can’t do nothing about it.”—Paul<sup>1</sup>

The problems described by Paul are not uncommon. In 2009, more than 700,000 people were released from state and federal prisons.<sup>2</sup> The vast majority of them returned to the communities from which they came and faced a variety of challenges including reconnecting with family and peers, finding housing and employment, and more generally avoiding criminal behavior.<sup>3</sup> This process of return is commonly referred to as re-

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\* Associate-in-Law, Columbia Law School. Thanks to Erin Braatz, David Greenberg, Francesca LaGuardia, Mia Serban, Jonathan Simon, Anthony Thompson, Lucia Trimbur, and the members of NYU’s Crime, Law and Deviance workshop and Lawyering Scholarship Colloquium for helpful comments and suggestions. I am particularly grateful to the organizations that helped facilitate the study and to the men and women who shared their time and their stories. The policies advocated and views presented are my own, as are any errors.

1. Interview with Paul, age 33 (Oct. 24, 2009) (name changed to protect identity). See *infra* Part IV.B.1 for a discussion of how the interviews for this study were conducted.

2. HEATHER C. WEST ET AL., U.S. DEP’T OF JUSTICE, PRISONERS IN 2009, at 4 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>.

3. See *infra* Part II. See generally JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY (2005); COUNCIL OF STATE GOV’TS, REPORT OF THE RE-ENTRY POLICY COUNCIL: CHARTING THE SAFE AND SUCCESSFUL RETURN OF PRISONERS TO THE COMMUNITY (2005), available at <http://reentrypolicy.org/publications/1694>; file [hereinafter REENTRY POLICY COUNCIL REPORT]; ANTHONY C. THOMPSON, RELEASING PRISONERS, REDEEMING COMMUNITIES: REENTRY, RACE, AND POLITICS (2008).

entry.<sup>4</sup> For many people, reentry is further complicated by the fact that despite moves by some states in the last few decades to abolish parole,<sup>5</sup> most people released from prison are still released to parole or post-prison supervision.<sup>6</sup> People released to parole are generally subjected to a large number of conditions, including regular reporting to a parole officer, avoiding police contact, submitting to drug testing, and finding and maintaining employment.<sup>7</sup> As one commentator has noted: “Although some conditions are clearly aimed at supporting the [individual] in transition, the total effect may be to create another layer of challenge to what is an already daunting situation.”<sup>8</sup>

Over the last two decades, and culminating with the signing of the Second Chance Act,<sup>9</sup> federal, state, and local governments have developed a variety of approaches to reentry, both in prison prior to release and in the community after release.<sup>10</sup> Many states have turned to their parole supervision agencies to run their post-release reentry services.<sup>11</sup> Given that most people released from prison are supervised by parole

4. See *infra* Part II (defining and discussing reentry).

5. JOAN PETERSILLA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 65–67 (2003).

6. In 2009, 74 percent of people released from state prison were released to supervision. WEST ET AL., *supra* note 2, at 6; see also *infra* notes 85–86 and accompanying text.

7. See generally, Lawrence F. Travis III & James Stacey, *A Half Century of Parole Rules: Conditions of Parole in the United States*, 2008, 38 J. CRIM. JUST. 604 (2010); see also *Parolee Conditions*, CAL. DEP’T OF CORR. AND REHAB., [http://www.cdcr.ca.gov/Parole/Parolee\\_Conditions/index.html](http://www.cdcr.ca.gov/Parole/Parolee_Conditions/index.html) (last visited Feb. 26, 2011) [hereinafter *California Parole Conditions*].

8. Peggy B. Burke, *Collaboration for Successful Prisoner Reentry: The Role of Parole and the Courts*, CORR. MGMT. Q., June 2001, at 11, 13.

9. Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 42 U.S.C.).

10. This article deals only with post-release reentry; for comprehensive discussions of reentry, see REENTRY POLICY COUNCIL REPORT, *supra* note 3 and TRAVIS, *supra* note 3.

11. See, e.g., *Regional Reentry Center Overview*, MASS.GOV, [http://www.mass.gov/?pageID=eopsterminal&L=4&L0=home&L1=Law+Enforcement+%26+Criminal+Justice&L2=Parole&L3=Parole+Board+Regional+Reentry+Centers&sid=eeops&b=terminalcontent&f=pb\\_new\\_rrc\\_overview&csid=eeops](http://www.mass.gov/?pageID=eopsterminal&L=4&L0=home&L1=Law+Enforcement+%26+Criminal+Justice&L2=Parole&L3=Parole+Board+Regional+Reentry+Centers&sid=eeops&b=terminalcontent&f=pb_new_rrc_overview&csid=eeops) (last visited Feb. 6, 2011) (describing the Massachusetts Parole Board Regional Reentry Centers, which “will serve as the nucleus of reentry services for all state offenders released from a correctional facility”); *Community Corrections*, WASH. STATE DEP’T OF CORR., <http://www.doc.wa.gov/aboutdoc/communitycorrections.asp> (last visited Feb. 26, 2011) (describing the role of the Washington State Division of Community Corrections (responsible for providing post-release supervision) in the Department of Corrections’ Reentry Initiative).

agencies and that parole has traditionally had a rehabilitation function,<sup>12</sup> this might not be a surprising move.<sup>13</sup> However, despite the fact that some of the most important scholarly work in this area examines both reentry and parole,<sup>14</sup> it appears that no one has asked whether parole agencies should be providing reentry services.

This article examines whether parole is the appropriate institution to be providing post-release reentry services. Based on interviews conducted with people on parole in New York City and a review of prior research on parole outcomes, it concludes that it is not. Not only does parole fail to help people reenter society, it can sometimes hinder the reentry process. Part II describes in more detail the challenges faced by people leaving prison and looks at how overcoming these challenges can affect a person's ability to reenter society successfully. It also briefly examines some ways in which governments and communities have addressed reentry issues. Part III describes the origins of parole and looks at how it has changed over the last forty years. It explores changes in parole release mechanisms as well as the shift in parole supervision styles from a casework approach to a surveillance approach.<sup>15</sup> Part IV examines the effect of parole supervision on reentry and concludes that parole fails at both of the goals of reentry—promoting both public safety and the reintegration of former prisoners.<sup>16</sup> Finally, Part V suggests some ways to improve reentry outcomes. First, it suggests that parole supervision be eliminated for people at a low risk of recidivism. Second, it proposes that the provision of reentry services be decoupled from the surveillance and monitoring aspects of parole, and that *all* people leaving prison, regardless of whether they are released to supervision or not, be provided with a reentry specialist to assist them with the reentry process. Finally, it suggests some ways to improve current supervision practices by adopting evidence-based practices and incorporating the goals and priorities of the individual under supervision.

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12. See *infra* Parts III.B and III.C.

13. See AMY L. SOLOMON ET AL., PUTTING PUBLIC SAFETY FIRST: 13 PAROLE SUPERVISION STRATEGIES TO ENHANCE REENTRY OUTCOMES 3 (2008) [hereinafter PUTTING PUBLIC SAFETY FIRST] (“Parole supervision is only part of the [reentry] solution, but it is an essential part, given its mandate to manage offenders released from prison.”).

14. See, e.g., PETERSILIA, *supra* note 5; TRAVIS, *supra* note 3.

15. See *infra* Part III.C (describing different parole supervision styles).

16. Testimony of Jeremy Travis, President, John Jay College of Criminal Justice Before H. Comm. on Appropriations Subcomm. on Commerce, Justice, Science, and Related Agencies (visited Mar. 12, 2009), available at [http://www.jjay.cuny.edu/Travis\\_Congressional\\_Testimony.pdf](http://www.jjay.cuny.edu/Travis_Congressional_Testimony.pdf) [hereinafter Travis Testimony] (discussing the goals of reentry).

## II. THE REENTRY PHENOMENON

How to cope with the huge numbers of people released from prisons and jails every year is one of the biggest issues facing the criminal justice system today. It is widely acknowledged that the number of people released from prison has been steadily increasing over the last decade, largely as a result of the dramatic growth in the prison population since the 1970s.<sup>17</sup> In 2009, almost 730,000 people were released from state and federal prisons, an increase of more than 20 percent since 2000.<sup>18</sup> The return of so many people to their communities presents many challenges to the policymakers who must balance the interests of society (in public safety and accountability) with the reintegration of former prisoners.<sup>19</sup> Many of the people released from prison will return to prison as a result of a parole violation.<sup>20</sup>

“Reentry is the process by which individuals return to communities from prison or jail custody” with the goal of reintegrating into society.<sup>21</sup> The challenges facing people leaving prison have been well-documented and range from social challenges, such as reconnecting with family, to

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17. At year-end 2009, there were more than 1.6 million people in state and federal prisons in the United States. WEST ET AL., *supra* note 2, at 1. See generally MASS IMPRISONMENT, SOCIAL CAUSES AND CONSEQUENCES (David Garland ed., 2001) (a collection of essays discussing various aspects of the phenomenon of mass imprisonment); Bruce Western & Christopher Wildeman, *Punishment, Inequality, and the Future of Mass Incarceration*, 57 U. KAN. L. REV. 851 (2009).

18. WEST ET AL., *supra* note 2, at 4. This is a slight decrease from the high of 735,000 people released in 2008. *Id.* A further nine million people will leave a U.S. jail each year, some more than once. See AMY L. SOLOMON ET AL., URBAN INSTITUTE, LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY 3 (2008), available at [http://www.jjay.cuny.edu/Final\\_Life\\_After\\_Lockup.pdf](http://www.jjay.cuny.edu/Final_Life_After_Lockup.pdf).

19. See Travis Testimony, *supra* note 16.

20. Overall, 35 percent of admissions to state prison in 2009 were for technical violations. WEST ET AL., *supra* note 2, at 5. However, a large proportion of this figure is accounted for by California’s extremely high rate of return (65 percent); excluding California, 26 percent of the remaining prison admissions are a result of parole violations. *Id.* at 6, 26; see also MICHAEL JACOBSON, DOWNSIZING PRISONS: HOW TO REDUCE CRIME AND END MASS INCARCERATION 142 (2005). Given that it costs states more than \$22,000 a year to house one person in prison, *Expenditures/Employment*, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=16> (last visited May 20, 2011), reducing the number of prison admissions that result from parole violations could have a major impact on state finances. See PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 2.

21. THOMPSON, *supra* note 3, at 1; see also TONY WARD & SHADD MARUNA, REHABILITATION 3–7 (2007) (arguing that reentry is simply a re-branding of the concept of rehabilitation).

generally avoiding criminal activity.<sup>22</sup> This process is further complicated by the many indirect legal consequences of a criminal conviction (usually referred to as “collateral consequences”), which can inhibit an individual’s ability to reenter society.<sup>23</sup> These collateral consequences can exacerbate many of the reentry challenges that people already face, which are described in more detail below.

People newly released from prison are often stigmatized by their time in prison and usually have to deal with a loss of social standing.<sup>24</sup> While we do not know exactly why some people successfully reintegrate and others do not, we do know that strengthening pro-social connections is vital.<sup>25</sup> For example, close family relationships can improve reentry outcomes.<sup>26</sup> In addition, successful reentry, usually interpreted as staying crime-free, is generally associated with stable housing and employment.<sup>27</sup> However, as described below, finding both housing and employment is often a daunting task for a person coming out of prison.

One of the first things that a person leaving prison needs to do is to find housing. Permanent housing allows a person to plant roots in the

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22. See generally REENTRY POLICY COUNCIL REPORT, *supra* note 3; INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (Marc Mauer & Meda Chesney-Lind eds., 2002); Michael Pinard, *An Integrated Perspective of the Collateral Consequences of Criminal Convictions and the Reentry of Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623 (2006); Jacqueline Helfgott, *Ex-offender Needs Versus Community Opportunity in Seattle, Washington*, FED. PROBATION, June 1997, at 12.

23. Pinard, *supra* note 22, at 624 n.1. Collateral consequences diminish the rights and privileges of people convicted of a criminal offense and include denial of public housing and public assistance benefits, limitations on employment and access to federal student loans, disenfranchisement (both temporary and permanent), and deportation. See REENTRY POLICY COUNCIL REPORT, *supra* note 3. In addition to these more general penalties, certain crimes carry more specific consequences, such as suspension of driving privileges, registration requirements, and bars to employment in some fields. *Id.*

24. Jacqueline B. Helfgott et al., *The Influence of Social Distance on Community Corrections Officer Perceptions of Offender Reentry Needs*, FED. PROBATION, June 2008, at 2, 2.

25. See Stephen Farrall, *Social Capital and Offender Reintegration: Making Probation Desistance Focused*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 57 (Shadd Maruna & Russ Immarigeon, eds. 2004).

26. See ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE 139–78 (1993); Farrall, *supra* note 25, at 58–59.

27. URBAN INST., UNDERSTANDING THE CHALLENGES OF PRISONER REENTRY: RESEARCH FINDINGS FROM THE URBAN INSTITUTE’S PRISONER REENTRY PORTFOLIO 4, 8, 13 (2006), available at [http://www.urban.org/uploadedpdf/411289\\_reentry\\_portfolio.pdf](http://www.urban.org/uploadedpdf/411289_reentry_portfolio.pdf).

community to which he or she is returning, and by providing a place for communication, can make it easier to seek employment.<sup>28</sup> Secure, stable housing is also almost essential for parents, particularly women, wishing to reunite with their children after release from prison.<sup>29</sup> Finding such housing can be difficult, in part because of the legal impediments facing people with criminal records; under federal legislation passed in 1996 and 1998, people with drug or violent felony convictions can be prohibited from living in public housing.<sup>30</sup> Additionally, an increasing number of landlords in the private sector conduct criminal background screenings and decline to offer leases to people with criminal records.<sup>31</sup>

Because of these impediments, most people released from prison live with family members or intimate partners.<sup>32</sup> However, some are restricted by parole conditions from staying with certain family members.<sup>33</sup> In other cases, a long prison stay can lead to detachment from family and friends, who may not want the former prisoner staying with them for fear that he or she will get back in trouble.<sup>34</sup> Few people released from prison have the resources to find their own housing, so many resort to living in homeless shelters or other temporary housing.<sup>35</sup> This can have a negative effect on their ability to reintegrate: a 2002 study in New York found that people on parole living in homeless shelters were seven times more likely to abscond (i.e., stop reporting) than those who had some form of housing.<sup>36</sup>

In addition to finding housing, finding a job is also a key to reintegration. Research shows that there is a strong association between successful reentry and the ability to secure and maintain employment.<sup>37</sup> However, former prisoners face significant barriers to obtaining employment. Many people enter prison with limited educational or vocational

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28. THOMPSON, *supra* note 3, at 69.

29. Gwen Rubenstein & Debbie Mukamal, *Welfare and Housing—Denial of Benefits to Drug Offenders*, in *INVISIBLE PUNISHMENT*, *supra* note 22, at 45–48.

30. Housing Opportunity Program Extension Act of 1996, Pub. L. 104-120, § 9, 110 Stat. 834, 836; Quality Housing and Work Responsibility Act of 1998, Pub. L. 105-276, § 575, 112 Stat. 2518, 2634; *see also* Rubenstein & Mukamal, *supra* note 29, at 48.

31. David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, *LAW & SOC. INQUIRY*, Winter 2008, at 5.

32. URBAN INST., *supra* note 27, at 8.

33. *See infra* Part IV.B.2.c.

34. *See generally* PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES (Jeremy Travis & Michelle Waul, eds. 2003).

35. URBAN INST., *supra* note 27, at 8.

36. Stephen Metreaux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 *CRIMINOLOGY & PUB. POL'Y* 139 (2004)

37. URBAN INST., *supra* note 27, at 4–5.

skills; a 2003 Bureau of Justice Statistics study found that about 40 percent of people in prison had not completed high school or its equivalent.<sup>38</sup> In addition, few people receive employment-related training in prison, in part because of the abolition of Pell Grants in 1994.<sup>39</sup> Thus, many people leaving prison lack the skills and/or qualifications to find work.<sup>40</sup> Further, the stigma of a criminal conviction leaves many employers reluctant to hire former prisoners,<sup>41</sup> while some occupations, including many in the health field, bar people with criminal records from obtaining licenses.<sup>42</sup> Even for those people who do manage to find employment, incarceration can have negative long-term effects. For example, a recent study by the Pew Center on the States found that incarceration reduces a person's earnings by 40 percent, limits his or her future economic mobility, "the ability of individuals and families to move up the income ladder over their lifetime and across generations," and can even affect the economic mobility of his or her children.<sup>43</sup>

For all of these reasons, obtaining stable employment is difficult, and so while they try to find employment, many people turn to public assistance to support themselves and their families. However, federal laws enacted over the last two decades can act as barriers to the receipt of

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38. CAROLINE WOLF HARLOW, U.S. DEP'T OF JUSTICE, EDUCATION AND CORRECTIONAL POPULATIONS (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ecp.pdf>.

39. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20411, 108 Stat. 1796, 1828; see also Charles B.A. Ubah, *Abolition of Pell Grants for Higher Education of Prisoners: Examining Antecedents and Consequences*, 39 J. OFFENDER REHABILITATION 73 (2004) (discussing the consequences of the elimination of Pell Grants for people in prison); PETERSILIA, *supra* note 5, at 33-34 (noting that because of the elimination of federal funding for college programs, between 1990 and 1997, the number of higher education programs in prisons decreased from 350 to 8).

40. See URBAN INST., *supra* note 27, at 4-5; Harry J. Holzer et al., *Employment Barriers Facing Ex-Offenders*, at Urban Institute Reentry Roundtable (May 19-20, 2003), available at [http://www.urban.org/UploadedPDF/410855\\_holzer.pdf](http://www.urban.org/UploadedPDF/410855_holzer.pdf); Chris Uggen & J. Staff, *Work as a Turning Point for Criminal Offenders*, in CRIME & EMPLOYMENT: CRITICAL ISSUES IN CRIME REDUCTION FOR CORRECTIONS 141, 143-44 (Jessie L. Krienert & Mark S. Fleisher, eds. 2004).

41. Harry Holzer et al., *Will Employers Hire Former Offenders? Employer Preferences, Background Checks, and Their Determinants*, in IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION 205 (Bruce Western et al., eds. 2004).

42. PETERSILIA, *supra* note 5, at 113-14.

43. ECONOMIC MOBILITY PROJECT & PUBLIC SAFETY PERFORMANCE PROJECT, PEW CTR. ON THE STATES, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 3 (2010), available at [http://www.pewcenteronthestates.org/uploadedFiles/Collateral\\_Costs.pdf?n=8653](http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653).



public benefits.<sup>44</sup> For example, a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposes a lifetime ban on eligibility for welfare assistance and food stamps on people with a felony drug conviction.<sup>45</sup> While states have the ability to opt out of or narrow the ban, only nine states have opted out entirely,<sup>46</sup> nine states have left the ban intact, and the remaining thirty-two states and the District of Columbia have narrowed its scope.<sup>47</sup>

In addition to the challenges of finding housing and employment, people leaving prison face a number of other problems including reconnecting with family and friends,<sup>48</sup> addressing health (particularly mental health) problems,<sup>49</sup> dealing with substance use issues,<sup>50</sup> and regaining their civic identity.<sup>51</sup> It is widely accepted that all of these problems and challenges make reentry a difficult process and can affect the likelihood of reintegration.<sup>52</sup>

Developing ways of dealing with all of these challenges and addressing reentry has become a focus of both government and community agencies. Jeremy Travis has argued that strategies to address reentry have two main goals: “to promote public safety (by reducing recidivism rates), and

44. Rubenstein & Mukamal, *supra* note 29, at 37.

45. Pub. L. No. 104-193, § 115, 110 Stat. 2105, 2180.

46. See LEGAL ACTION CTR., AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS (2004), available at [http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC\\_Print\\_Report.pdf](http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_Print_Report.pdf); LEGAL ACTION CTR., AFTER PRISON REPORT: 2009 UPDATE (2009), available at <http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry—2009.pdf>.

47. LEGAL ACTION CTR., AFTER PRISON REPORT: 2009 UPDATE, *supra* note 46; see, e.g., CAL. WELF. & INST. CODE § 18901.3(d) (West 2009) (narrowing the ban to allow people convicted of drug possession to receive benefits); VA. CODE ANN. § 63.2-505.2 (2004) (setting out a number of ways for people to re-instate eligibility including participation in drug treatment).

48. See generally PRISONERS ONCE REMOVED, *supra* note 34.

49. See URBAN INST., *supra* note 27, at 6–7; Arthur J. Lurigio et al., *The Effects of Serious Mental Illness on Offender Re-Entry: Recognizing and Responding to the Problem*, FED. PROBATION, Sept. 2004, at 45.

50. URBAN INST., *supra* note 27, at 11 (noting that people who engage in substance use after release are at a high risk to commit new offenses).

51. See, e.g., NICOLE D. PORTER, SENTENCING PROJECT, EXPANDING THE VOTE: STATE FELONY DISENFRANCHISEMENT REFORM, 1997–2010 (2010), available at [http://www.sentencingproject.org/doc/publications/publications/vr\\_ExpandingtheVoteFinalAddendum.pdf](http://www.sentencingproject.org/doc/publications/publications/vr_ExpandingtheVoteFinalAddendum.pdf); George P. Fletcher, *Disenfranchisement as Punishment*, 46 U.C.L.A. L. REV. 1895 (1999); Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65 (2003).

52. See generally PETERSILIA, *supra* note 5; TRAVIS, *supra* note 3; URBAN INST., *supra* note 27.

to promote prisoner reintegration (by connecting returning prisoners with the indicia of citizenship, including work, family, peer groups, community, and democratic responsibilities and participation such as voting).<sup>53</sup> To achieve these goals, both community and government agencies have established a wide variety of reentry programs and interventions, upwards of 10,000 individual programs nationwide by one count.<sup>54</sup>

In the community, reentry services are provided by both community organizations and state agencies. Community organizations provide many post-release reentry services ranging from projects providing legal assistance to employment programs.<sup>55</sup> At the governmental level, there is also a wide variety of initiatives and programs.<sup>56</sup> Two recent innovations that have gained attention are reentry courts and comprehensive interagency initiatives.

At both the state and local level, jurisdictions have begun to rely on comprehensive interagency reentry initiatives, such as the National Institute of Corrections' Transition from Prison to the Community Initiative (TPC),<sup>57</sup> that starts when an individual enters prison and continue after release.<sup>58</sup> The TPC was launched in 2001 with the goal of articulating a

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53. Travis Testimony, *supra* note 16.

54. Joan Petersilia, *What Works in Prisoner Reentry? Reviewing and Questioning the Evidence*, FED. PROBATION, Sept. 2004, at 4, 7 (examining literature and concluding that it is hard to know what works because while there were close to 10,000 reentry programs nationwide, only nineteen evaluations were included in the literature she examined); see also AMY L. SOLOMON ET AL., URBAN INST., OUTSIDE THE WALLS: A NATIONAL SNAPSHOT OF COMMUNITY BASED PRISONER REENTRY PROGRAMS (2004), available at [http://www.urban.org/UploadedPDF/410911\\_OTWResourceGuide.pdf](http://www.urban.org/UploadedPDF/410911_OTWResourceGuide.pdf).

55. See, e.g., *Second Chance Project*, OHIO JUST. & POL'Y CTR., <http://www.ohiojpc.org/main.html> (follow "Projects" hyperlink; then follow "Second Chance Project") (last visited Aug. 25, 2011); *The National H.I.R.E. Network*, NAT'L HIRE NETWORK, <http://www.hirenetwork.org> (last visited Aug. 25, 2011); *The Center for Employment Opportunities*, CTR. EMPLOYMENT OPPORTUNITIES, <http://www.ceoworks.org> (last visited Aug. 25, 2011).

56. For a description of some state reentry/transition planning efforts, see CHRISTINE S. SCOTT-HAYWARD, VERA INST. OF JUSTICE, THE FISCAL CRISIS IN CORRECTIONS: RETHINKING POLICIES AND PRACTICES 8-9 (2009), available at [http://www.vera.org/files/The-fiscal-crisis-in-corrections\\_July-2009.pdf](http://www.vera.org/files/The-fiscal-crisis-in-corrections_July-2009.pdf).

57. *Transition from Prison to Community (TPC)*, NAT'L INST. OF CORR., <http://nicic.gov/TPCModel> (last visited Aug. 25, 2011).

58. See, e.g., MICH. PRISONER REENTRY INITIATIVE, 2010 PROGRESS REPORT: MAKING STRIDES IN PUBLIC SAFETY 6-7, available at [http://www.michigan.gov/documents/corrections/MPRI\\_2010\\_Progress\\_Report\\_343664\\_7.pdf](http://www.michigan.gov/documents/corrections/MPRI_2010_Progress_Report_343664_7.pdf) (referring to "great potential for decreasing the recidivism rate"); *Boston Reentry Initiative (REI)*, SUFFOLK CNTY. SHERIFF'S DEP'T, <http://www.scsdma.org/programs/reentry/BRI.shtml> (last visited Aug. 25, 2011) (a local initiative).

“comprehensive and strategic approach to transition that would incorporate the lessons of evidence-based practice, emphasize the importance of collaboration, and provide a practical tool for corrections agencies to utilize.”<sup>59</sup> Initially the National Institute of Corrections provided technical assistance to eight states in developing or expanding their initiatives based on the TPC model.<sup>60</sup> While the TPC initiatives are generally viewed positively by practitioners and show promise in reducing recidivism and increasing successful reintegration, their comprehensive nature makes them hard to evaluate.<sup>61</sup>

While approaches vary significantly by state and by locality, one common feature is that at the state level, many states, including those that have adopted comprehensive initiatives, have chosen to house their post-release reentry programs and services, at least partially, in their parole agencies or rely on parole officers to provide reentry services.<sup>62</sup> This decision has a number of implications, including the fact that people leaving prison without supervision often do not have access to any reentry services. In Texas, for example, of the 72,218 releases from custody in 2009, approximately 39,000 people were released from prison to the community without supervision and thus were not entitled to reentry services.<sup>63</sup> More fundamentally, as discussed in Part IV below, the poor reentry outcomes of people on parole suggest that parole is not the appropriate institution to be providing reentry services.<sup>64</sup>

### III. PAROLE AND POST-PRISON SUPERVISION

Contrary to popular opinion, parole remains a fundamental part of the U.S. criminal justice systems; most people are still released from prison to parole or some other form of supervision. However, parole has undergone significant changes since it was first enacted, particularly in

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59. PEGGY B. BURKE, U.S. DEP'T JUSTICE, TPC REENTRY HANDBOOK: IMPLEMENTING THE NIC TRANSITION FROM PRISON TO THE COMMUNITY MODEL v (2008), available at <http://nicic.gov/Downloads/PDF/Library/022669.pdf>.

60. *TPC State Profiles—Round 1*, NAT'L INST. OF CORR., <http://nicic.gov/TPC/StateProfiles1> (last visited Aug. 25, 2011).

61. See, e.g., MICH. PRISONER REENTRY INITIATIVE, 2010 PROGRESS REPORT: MAKING STRIDES IN PUBLIC SAFETY, *supra* note 58, at 6.

62. See, e.g., *id.*; *supra* note 11.

63. MARC LEVIN, TEX. PUB. POL'Y FOUND., 2011–2012 LEGISLATOR'S GUIDE TO THE ISSUES: PAROLE & REENTRY (2010), available at <http://www.texaspolicy.com/pdf/2011-ParoleReentry-CEJ-ml.pdf>. In part this is because of the number of releases from state jails, which house people serving sentences of up to two years; people released from state jails (24,200 in 2009) are ineligible for parole. *Id.*

64. See *infra* Part IV.

how people are supervised. This Part outline these changes and posits that the changes help explain why parole may not be the appropriate institution to provide reentry services.

### A. *The Origins of Parole*

First adopted in Ireland in the 1850s by Walter Crofton,<sup>65</sup> parole was introduced in the United States by Zebulon Brockway, who was appointed superintendent of New York State's Elmira Reformatory in 1876.<sup>66</sup> At Elmira, with the goals of both managing the prison population and preparing prisoners for release, Brockway implemented an indeterminate sentencing model along with parole release.<sup>67</sup> Prisoners were classified based on their conduct, and after a certain period of good conduct, were released to the community while remaining under the authority of the correctional institution.<sup>68</sup> For six months they were required to make monthly reports to a "guardian" and these reports were sent back to the institution.<sup>69</sup> New York formally adopted all the elements of parole in 1907, and by 1942 all states and the federal government had enacted parole legislation.<sup>70</sup>

For most of the twentieth century, the vast majority of prisoners in the United States were released under this original model—an indeterminate sentence, discretionary release by a parole board, and post-release supervision.<sup>71</sup> The premise of the system was that rehabilitation was the main goal of corrections and so sentencing decisions should be made on a

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65. PETERSILIA, *supra* note 5, at 57; *see also* NORVAL MORRIS, MACONOCHE'S GENTLEMEN (2001) (discussing the "mark system," which allowed people to shorten their sentences in prison by good behavior; the mark system is believed by many to be the foundation for the Irish system).

66. PETERSILIA, *supra* note 5, at 58. The Elmira Reformatory housed males aged between sixteen and thirty. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* The supervision aspect of parole played a secondary role to the release decision in most early parole systems. For example, in the early years of California's parole system, there was no active supervision of people on parole; they were simply required to report monthly by mail. Sheldon L. Messinger et al., *The Foundations of Parole in California*, 19 LAW & SOC'Y REV. 69, 88 (1985).

70. PETERSILIA, *supra* note 5, at 58. Other states adopted parole for different reasons. For example, in the late nineteenth century, California rejected an indeterminate sentencing system but enacted a parole statute largely to relieve the governor of the burden of exercising clemency. Messinger et al., *supra* note 69, at 79–82. Later, parole was used to relieve overcrowding in the prison system but unlike most states, parole in California was not begun as part of a rehabilitative program. *Id.* at 101.

71. Joan Petersilia, *Parole and Prisoner Reentry in the United States*, 26 CRIME & JUST. 479, 492 (1999).

case-by-case basis.<sup>72</sup> The amount of time the person actually spent in prison depended on the decision of the parole board, which made a determination as to whether an individual had been rehabilitated and was ready for release.<sup>73</sup> Most people became eligible for parole after serving their minimum sentence less any time off for good behavior.<sup>74</sup> The purpose of parole itself was to “to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. It also serve[d] to alleviate the costs to society of keeping an individual in prison.”<sup>75</sup>

Beginning in the 1970s, indeterminate sentencing and the rehabilitative ideal came under attack from numerous fronts.<sup>76</sup> Criticisms included the fact that there was little evidence that rehabilitative programming reduced recidivism.<sup>77</sup> Further, there was no evidence that parole supervision reduced recidivism either.<sup>78</sup> In addition, a system where prisoners did not know when they would be released was seen as inhumane while the uncontrolled discretion of parole boards was criticized as racist and biased against the lower classes.<sup>79</sup> On the other hand, some felt that the system

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72. Joel M. Caplan, *Parole System Anomie: Conflicting Models of Casework and Surveillance*, FED. PROBATION, Dec. 2006, at 32, 33.

73. DON STEMEN ET AL., VERA INST. OF JUSTICE, OF FRAGMENTATION AND FERMENT: THE IMPACT OF STATE SENTENCING POLICIES ON INCARCERATION RATES, 1975–2002 at 9 (2005), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/213003.pdf>.

74. *Id.*

75. *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

76. See generally FRANCIS ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* (1981); Kevin R. Reitz, *Sentencing*, in *THE HANDBOOK OF CRIME AND PUNISHMENT* (Michael Tonry ed., 1998).

77. Robert Martinson, *What Works?—Questions and Answers about Prison Reform*, PUB. INT., Spring 1974, at 22; DOUGLAS LIPTON ET AL., *THE EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES* 20 (1975). Recidivism is the standard performance indicator for the criminal justice system and refers generally to the reoffending of individuals; there are a number of different ways to measure recidivism, the most commonly utilized measures being re-arrest, reconviction, and re-incarceration. Jeremy Travis & Christy Visser, *Introduction: Viewing Crime and Public Safety Through the Reentry Lens*, in *PRISONER REENTRY AND CRIME IN AMERICA* 1, 5–6 (Jeremy Travis & Christy Visser eds. 2005).

78. PETERSILIA, *supra* note 5, at 63; Petersilia, *supra* note 71, at 492; David Greenberg, *The Incapacitative Effect of Imprisonment: Some Estimates*, 9 LAW & SOC'Y REV. 541, 557 (1975) (citing numerous studies that demonstrate that people released from prison “mandatorily after parole denial recidivate at roughly the same frequency as prisoners released on parole”).

79. Petersilia, *supra* note 71, at 493 (citing CITIZENS' INQUIRY ON PAROLE AND CRIMINAL JUSTICE, REPORT ON NEW YORK PAROLE (1974)); AM. FRIENDS SERV.

was too lenient: victim advocacy groups criticized the fact that some people were released after serving only a fraction of their sentence.<sup>80</sup>

These attacks led to a shift in many states to a determinate, structured sentencing scheme, where broad sentence ranges were replaced with fixed sentences.<sup>81</sup> In many states, legislatures increased maximum penalties and added sentence enhancements.<sup>82</sup> These sentencing changes were accompanied by changes in the way people were released from prison and moves toward the abolition of discretionary parole release.<sup>83</sup> However, just two states—Maine and Virginia—abolished parole entirely, meaning both parole release and supervision, and Virginia brought back post-release supervision just four years after its abolition.<sup>84</sup> More common was the replacement of discretionary parole release<sup>85</sup> with mandatory release<sup>86</sup> combined with some form of post-release supervision as was done in California.<sup>87</sup> Other states eliminated discretionary release

COMM., STRUGGLE FOR JUSTICE: A REPORT ON CRIME AND PUNISHMENT IN AMERICAN HISTORY 85 (1993).

80. See Caplan, *supra* note 72, at 33; STEMEN, *supra* note 73, at 9; Reitz, *supra* note 76; see also Cecelia Klingele, *Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release*, 52 WM. & MARY L. REV. 465, 473–77 (2010) (discussing various critiques of the rehabilitative ideal).

81. See, e.g., CAL. PENAL CODE § 1170 (1977) (finding that “the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense”).

82. STEMEN ET AL., *supra* note 73, at 10, 25–26.

83. *Id.* at 10–11; Petersilia, *supra* note 71, at 481–82.

84. Petersilia, *supra* note 71, at 481–82. In 1999, Maine did enact post-prison supervision for people convicted of sex offenses. ME. REV. STAT. tit 17-A, § 1231 (2010). Initially, Virginia also abolished both parole release and supervision, but in 1999, the state brought back post-release supervision. Compare VA. CODE. ANN. § 53.1-165.1 (2010) (abolishing parole for crimes committed after January 1, 1995) with VA. CODE. ANN. § 19.2-295.2 (2010) (requiring courts to impose a term of post-release supervision six months to three years when a sentence of incarceration is imposed).

85. Discretionary parole release is the conditional release of an individual from prison, usually by a parole board. The release authority is based on a statutory or administrative determination of eligibility. TIMOTHY A. HUGHES ET AL., U.S. DEP’T OF JUSTICE, TRENDS IN STATE PAROLE, 1990–2000 2 (2001), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tsp00.pdf>.

86. Mandatory parole release is the conditional release of an individual from prison, usually in a jurisdiction that utilizes a determinate sentencing scheme. Individuals are released from prison after serving a specified portion of their original sentence less any good time earned. *Id.*

87. Mario A. Paparozzi & Joel M. Caplan, *A Profile of Paroling Authorities in America: The Strange Bedfellows of Politics and Professionalism*, 89 PRISON J. 401 (2009). In California for example, discretionary parole release was abolished in 1977

for certain groups; for example in 1998, New York did away with discretionary parole release for people convicted of violent felony offenses and replaced it with court imposed post-release supervision.<sup>88</sup>

All these changes resulted in an increase in the proportion of people who are released from prison without parole,<sup>89</sup> yet most people leaving prison are still released conditionally to parole or some other form of post-prison supervision. In 2009, almost three-quarters of prison releases were conditional releases, meaning that after leaving prison, a person has to comply with certain conditions for a specified period or he or she can be returned to prison.<sup>90</sup> The remainder of prison releases were unconditional, meaning that the individual has served his or her entire prison sentence (less any time off for good behavior) and is released to the community without having to comply with any conditions.<sup>91</sup>

Moreover, despite the fact that many states no longer refer to “parole” supervision and instead use terms like “community supervision” or “supervised release,” qualitatively there are few differences in what this means once the person has been released.<sup>92</sup> For example, Oregon abolished parole in 1989 and replaced it with post-prison supervision for all new sentences, but both people on parole supervision (sentenced under the old system) and those on post-prison supervision are supervised by the same local agencies and officers.<sup>93</sup> In New York, people released to parole are supervised by the same officers and are subject to the same standard conditions as those released on mandatory supervised release. For this reason, in this article, unless otherwise specified, the term “parole supervision” will refer to all forms of post-release supervision.<sup>94</sup>

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and replaced with a determinate sentencing scheme and mandatory three year period of parole for most prisoners. *See supra* note 81; *see also* Ryken Grattet et al., *Parole Violations and Revocations in California: Analysis and Suggestions for Action*, FED. PROBATION, June 2009, at 2.

88. N.Y. PENAL LAW § 70.02 (2010). The period of supervision depended on the severity of the offense and the individual’s criminal history. *Id.*

89. TIMOTHY A. HUGHES ET AL., *supra* note 85, at 4.

90. WEST ET AL., *supra* note 2, at 6. The Bureau of Justice Statistics (BJS) defines conditional releases as releases to probation, parole, supervised mandatory releases, and other unspecified conditional releases. *Id.*

91. *Id.* BJS defines unconditional releases as expirations of sentence, commutations, and other unconditional releases. *Id.*

92. *See* Petersilia, *supra* note 71, at 482 (discussing the various names that states have adopted to replace “parole supervision”). Violation procedures do vary by state. *See infra* Part III.B.

93. OR. REV. STAT. § 144.050 (2010).

94. This use of language is fairly common. *See, e.g.,* PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 3.

### B. Parole Supervision: Conditions and Revocation

Regardless of the operable release mechanism, a person on parole supervision is subject to a list of conditions with which they must comply or risk being sent back to prison.<sup>95</sup> In most states, there is a list of standard conditions that apply to everyone on parole.<sup>96</sup> These conditions usually include reporting requirements, requirements to seek and maintain employment, prohibitions on drug and/or alcohol use, requirements to avoid police contact, as well as travel and residency restrictions.<sup>97</sup> While on parole, individuals have fewer privacy protections than the public at large and are generally subject to searches and seizures without the Fourth Amendment requirements of probable cause or a warrant.<sup>98</sup> In addition, special conditions may be imposed, usually related to the crime of conviction or the particular risks or needs of the individual.<sup>99</sup> Special conditions are generally imposed either by parole boards or supervision officers.<sup>100</sup> These can include requirements to attend programs such as

95. Petersilia, *supra* note 71, at 502–504. In the federal system, which abolished parole in 1984, people sentenced to prison are required to serve a defined term of “supervised release” following their release from prison. U.S. SENT’G COMM., FEDERAL OFFENDERS SENTENCED TO SUPERVISED RELEASE 1 (2010), available at [http://www.ussc.gov/Research/Research\\_Publications/Supervised\\_Release/20100722\\_Supervised\\_Release.pdf](http://www.ussc.gov/Research/Research_Publications/Supervised_Release/20100722_Supervised_Release.pdf). Similar to parole, people on supervised release are required to abide by certain conditions, similar to parole conditions. *See id.*

96. *See, e.g.*, California Parole Conditions, *supra* note 7; *Conditions: Standard Conditions of Post-Prison Supervision*, KAN. DEP’T OF CORR., <http://www.doc.ks.gov/kpb/conditions> (last visited Mar. 17, 2011); N.Y. STATE DIV. PAROLE, NEW YORK STATE PAROLE HANDBOOK: QUESTIONS AND ANSWERS CONCERNING PAROLE RELEASE AND SUPERVISION 21 (2010), available at <https://www.parole.state.ny.us/pdf/handbook-nov2010.pdf> [hereinafter NEW YORK PAROLE HANDBOOK]; *Oregon Board of Parole and Post-Prison Supervision: Board of Parole Supervision Conditions*, OREGON.GOV, [http://www.oregon.gov/BOPPPS/supv\\_cond.shtml](http://www.oregon.gov/BOPPPS/supv_cond.shtml) (last visited Mar. 25, 2011) [hereinafter Oregon Parole Conditions].

97. *See, e.g.*, California Parole Conditions, *supra* note 7; *Conditions: Standard Conditions of Post-Prison Supervision*, *supra* note 96; NEW YORK PAROLE HANDBOOK, *supra* note 96; Oregon Parole Conditions, *supra* note 96.

98. *See* Pennsylvania Bd. of Probation and Parole v. Scott, 524 U.S. 357 (1998); *see generally* Shaun H. Crosner, *Parolees and the Erosion of the Fourth Amendment: A Constitutional Analysis of California Penal Code Section 3067 and the Suspicionless Search Regime it Authorizes*, 41 LOY. L.A. L. REV. 413 (2007).

99. *See, e.g.*, California Parole Conditions, *supra* note 7; UTAH ADMIN. CODE r. 671-402 (1998).

100. THOMAS P. BONCZAR, U.S. DEP’T OF JUSTICE, CHARACTERISTICS OF STATE PAROLE SUPERVISING AGENCIES, 2006 4 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cspsa06.pdf>. In a very few cases, courts can set these conditions. *Id.*



drug treatment or anger management programs, prohibitions on associating with particular individuals, and curfews.<sup>101</sup>

The number and types of conditions have increased over the last fifty years,<sup>102</sup> and some argue that these conditions are making the successful completion of parole supervision more difficult. As Jacobson puts it:

Given all the social, economic, and health deficits of those coming out of prison, it becomes less than surprising that so many parolees are sent back to prison for rule violations. When one combines these problems with conditions that are routinely set for parole—no drug use, having a permanent address, having or actively seeking employment, keeping all reporting and treatment appointments—a recipe for failure results.<sup>103</sup>

Violation of a condition of parole can result in revocation, which means that a person can be returned to prison.<sup>104</sup> However, it is rare that a first violation results in revocation; instead, most states use graduated sanctions (in some cases formal, in others informal) which can range from verbal or written warnings, to requirements to attend day or evening reporting centers, or to short jail stays.<sup>105</sup> Ultimately though, a person may have his or her supervision revoked and be returned to prison, in most cases for a fixed term.<sup>106</sup>

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101. See, e.g., Oregon Parole Conditions, *supra* note 96; NEW YORK PAROLE HANDBOOK, *supra* note 96, at 22.

102. Travis & Stacey, *supra* note 7, at 606.

103. JACOBSON, *supra* note 20, at 150.

104. Petersilia, *supra* note 71, at 506. A violation of one of the rules or conditions of parole that does not lead to a new criminal conviction is usually referred to as a technical violation. JACOBSON, *supra* note 20, at 134. Data on prison admissions usually include all people on parole who are returned to prison in the same category, whether they are returned because of a technical violation or because of a new conviction. *Id.* at 143.

105. See ALISON LAWRENCE, NAT'L CONFERENCE OF STATE LEGISLATURES, PROBATION AND PAROLE VIOLATIONS: STATE RESPONSES (2008), available at <http://www.ncsl.org/print/cj/violationsreport.pdf>; David Fialkoff, *Standardizing Parole Violation Sanctions*, NIJ JOURNAL, June 2009, at 18, available at <http://www.ncjrs.gov/pdffiles1/nij/226873.pdf>; see also BRIAN MARTIN & STEVE VAN DINE, EXAMINING THE IMPACT OF OHIO'S PROGRESSIVE SANCTION GRID, FINAL REPORT (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/224317.pdf>.

106. See, e.g., NEW YORK PAROLE HANDBOOK, *supra* note 96, at 32–34 (describing parole revocation guidelines and minimum sanctions ranging from three to fifteen months); Grattet et al., *supra* note 87, at 3 (noting that in California the maximum term for a revocation is twelve months, but on average, people returned to prison for a technical parole violation spend just four months in prison).

Because of the liberty interest implicated by revocation, the Supreme Court has held that there are certain due process requirements for parole revocations.<sup>107</sup> In *Morrissey v. Brewer*, the Court held that the minimal due process requirements for parole revocation include: (1) a preliminary hearing to determine probable cause for the alleged violations, and (2) a formal revocation hearing at which certain due process requirements must be observed, including (a) the right to be given written notice of the claimed violations, (b) the opportunity to be heard and to present witnesses, and (c) the right to a hearing in front of a “neutral and detached” body.<sup>108</sup> There is no automatic right to counsel at a parole revocation hearing.<sup>109</sup>

The number of people that have had their parole revoked and then been returned to prison has increased significantly over the years. In 2009, 35 percent of prison admissions were for parole violations compared with 29 percent in 1990;<sup>110</sup> between 1980 and 2001, the number of parole violators admitted to prison increased from 21,177 to 215,450—an increase of 917 percent.<sup>111</sup> This increase is one of the driving forces behind the overall growth in the prison population over the last thirty years,<sup>112</sup> and is thus partially responsible for the fiscal crisis in corrections that is facing states today.<sup>113</sup> A large part of the increase in violations can be attributed to changes in supervision style, which is discussed below.

### C. Parole Supervision: From Casework to Surveillance

Alongside the changes in how people are released from prison has been a significant change in the nature of parole supervision. The supervision aspect of parole played a secondary role to the release decision in most early parole systems; parole did not involve much active supervision and people on parole were simply required to file monthly reports with the correctional institution and to maintain employment.<sup>114</sup> Employment

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107. *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972); see generally Duncan N. Stevens, Note, *Off the Mapp: Parole Revocation Hearings and the Fourth Amendment*, 89 J. CRIM. L. & CRIMINOLOGY 1047 (1998).

108. *Morrissey*, 408 U.S. at 485–89.

109. *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973) (holding that the appointment of counsel is required only where “fundamental fairness” requires it).

110. WEST ET AL., *supra* note 2, at 5; JACOBSON, *supra* note 20, at 140.

111. JACOBSON, *supra* note 20, at 142–43.

112. *Id.*

113. See SCOTT-HAYWARD, *supra* note 56; Klingele, *supra* note 80, at 469–70.

114. JONATHAN SIMON, POOR DISCIPLINE: PAROLE AND THE SOCIAL CONTROL OF THE UNDERCLASS, 1890 TO 1990, at 47–55 (1993) (describing this early phase of parole as the disciplinary era where the focus was almost entirely on monitoring the employment status of people on parole); Mona Lynch, *Rehabilitation as Rhetoric: The*

was seen as a “marker of whether or not the prisoner was really a criminal by nature” and once a person found a job, he or she was seen as a “normal” person no longer in need of supervision.<sup>115</sup> Beginning in the 1950s, supervision became more meaningful, and parole began to operate under a clinical or casework model that balanced treatment and reintegration of the individual with the protection of society.<sup>116</sup> A 1964 study of prisons and parole described the main functions of parole supervision as “procurement of information on the parolee . . . and facilitating and graduating the transition between imprisonment and complete freedom . . . these functions presumably are oriented to the goals of protecting the public and rehabilitating the offender.”<sup>117</sup> The supervision and case management of parole was believed to contribute to prisoner reform by encouraging participation in rehabilitation programming and to prepare people to transition to the community.<sup>118</sup> Although *cooperation* with law enforcement was encouraged, the use of police techniques by officers was discouraged.<sup>119</sup>

Although parole survived the dismantling of indeterminate sentencing in the 1970s, since then, a surveillance or managerial model, dominated by a risk management philosophy<sup>120</sup> has become more common among supervision agencies.<sup>121</sup> At the same time, the number of people on parole has increased substantially,<sup>122</sup> without a corresponding increase in resources,<sup>123</sup> which has led to increased caseloads.<sup>124</sup> The larger

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*Ideal of Reformation in Contemporary Parole Discourse and Practices*, 2 PUNISHMENT & SOC'Y 40, 42 (2000) (citing SIMON, *supra*).

115. SIMON, *supra* note 114, at 45.

116. See, e.g., Richard P. Seiter & Angela D. West, *Supervision Styles in Probation and Parole: An Analysis of Activities*, J. OFFENDER REHABILITATION, Dec. 2003, at 57, 58; Caplan, *supra* note 72, at 33.

117. Seiter & West, *supra* note 116, at 58 (quoting DANIEL GLASER, *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM* 423 (1964)).

118. PETERSILIA, *supra* note 5, at 60; Caplan, *supra* note 72, at 33.

119. Lynch, *supra* note 114, at 42.

120. Risk management strategies focus on how to “efficiently manage the level of reoffending risk posed by [individuals]” rather than on why they “commit their illegal acts.” Mona Lynch, *Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity*, 32 LAW & SOC'Y REV. 839, 840 (1998).

121. Caplan, *supra* note 72, at 34.

122. In 1980, there were just over 220,000 people on parole in the United States compared with more than 819,000 in 2009. *Key Facts at a Glance: Correctional Populations*, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/content/glance/tables/corr2tab.cfm> (last updated Sept. 1, 2011).

123. Burke, *supra* note 8, at 16; JOAN PETERSILIA, CALIFORNIA POLICY RESEARCH CENTER BRIEF SERIES: CHALLENGES OF PRISONER REENTRY AND PAROLE IN CALIFORNIA (2000); JACOBSON, *supra* note 20, at 150–51.

caseloads, combined with increased punitiveness in corrections generally, have shifted the focus from “restoring offenders to the community” to “closely monitoring offenders to catch them when they fail to meet all required conditions.”<sup>125</sup>

High caseloads have meant that there is not enough time to provide counseling or referrals. Mona Lynch, who conducted field work in a California parole office in the 1990s, notes that the increase in caseloads and emphasis on data collection meant that officers increasingly spent more time on paperwork and recordkeeping.<sup>126</sup> Lynch describes an agent who reported: “I do more paperwork than I do casework, in terms of seeing and dealing with parolees.”<sup>127</sup> This means that “officers have little choice but to concentrate on surveillance, and the impersonal monitoring of offenders.”<sup>128</sup> According to one scholar, “the rehabilitative functions associated with parole have atrophied.”<sup>129</sup> While employment was once seen as an indicator of who is succeeding on parole, drug-testing now dominates a person’s interactions with his/her parole officer.<sup>130</sup> Parole officers today spend more time monitoring conditions than providing services.<sup>131</sup> In how they carry out their jobs, parole officers look less like social workers and more like police officers.<sup>132</sup>

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124. Martin F. Horn, *Rethinking Sentencing*, 5 CORR. MGMT. Q. 34, 38 (2001).

125. Seiter & West, *supra* note 116, at 58.

126. Lynch, *supra* note 122, at 849–50.

127. *Id.* at 850; *see also* TEX. STATE AUDITOR’S OFFICE, AN AUDIT REPORT ON PAROLE DIVISION OPERATIONS AT THE DEPARTMENT OF CRIMINAL JUSTICE 25 (2010) (surveying parole officers and finding that almost two-thirds of officers felt that the size of their caseload did not allow them to “effectively perform [their] job responsibilities”), *available at* <http://www.sao.state.tx.us/reports/main/11-008.pdf>.

128. Richard P. Seiter, *Prisoner Reentry and the Role of Parole Officers*, FED. PROBATION, Dec. 2002, at 50, 51 (2002); *see also* Caplan, *supra* note 72, at 34.

129. THOMPSON, *supra* note 3, at 143.

130. SIMON, *supra* note 114, at 187–89.

131. *See, e.g.*, WA. JOINT TASK FORCE ON OFFENDERS PROGRAMS, SENTENCING & SUPERVISION, LEGISLATIVE TASK FORCE ON COMMUNITY CUSTODY AND COMMUNITY SUPERVISION: REPORT AND RECOMMENDATIONS TO THE LEGISLATURE 7 (2007), *available at* <http://www.leg.wa.gov/Senate/Committees/HSC/Documents/CommunitySupervisionTFFinalRpt.pdf> (a report to the Washington State Legislature recommending that Community Corrections Officers (who supervise people on probation and parole) should be encouraged to spend more time in the field and with administrative support staff who would assist them with “completing the significant amount of paperwork” they are responsible for).

132. PETERSILIA, *supra* note 3, at 11; *see also* James Bonta et al., *Exploring the Black Box of Community Supervision*, 47 J. OFFENDER REHABILITATION 248 (2008) (finding that “probation officers spent too much time on the enforcement aspect of supervision . . . and not enough time on the service delivery role of supervision”).

Caplan argues that this rapid shift in supervision styles occurred without any corresponding change in the rehabilitative mission and ideology of most parole agencies. This is confirmed by a recent review of the missions of supervision agencies.<sup>133</sup> Most supervision agencies have multiple missions. All continue to cite public safety as their mission, but most also cite rehabilitation or reentry as a mission.<sup>134</sup> Caplan argues that these goals conflict and therefore that the parole system is unstable: “The parole system’s primary response to larger caseloads and a more punitive and unforgiving public is at odds with its traditional medical model of casework, rehabilitation and reintegration.”<sup>135</sup> This conflict is also evident at the officer level: Caplan found that some parole officers themselves often believe the casework functions that they perform are more effective than their control and surveillance functions.<sup>136</sup> However, because of large caseloads and pressure from management who are forced to respond to punitive public sentiment, officers end up using a surveillance approach.<sup>137</sup>

The internal conflict in parole between surveillance and rehabilitation raises a very important question as to whether parole is the right institution to be providing reentry services. It appears that the rationale for situating reentry in parole agencies is that parole has traditionally had a rehabilitative function. However, if that rehabilitative function no longer exists other than on paper, then centralizing or coordinating reentry services through parole agencies may be inadvisable.

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133. Caplan, *supra* note 72, at 32.

134. See, e.g., *Mission*, N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, <https://www.parole.state.ny.us/aboutus.html> (last visited Sept. 6, 2011) (stating the mission as “[t]o promote public safety by preparing inmates for release and supervising parolees to the successful completion of their sentence”); *Mission Statement*, ALA. BD. OF PARDONS & PAROLES, <http://www.pardons.state.al.us/ALABPP/Main/Mission%20Statement.htm> (last visited Sept. 6, 2011) (“It is the mission of this agency to promote and enhance public safety through cooperation and collaboration with the Legislature, the Courts, the Department of Corrections, other criminal justice agencies, victims, and the community by providing investigation, supervision, and surveillance services in a holistic approach to rehabilitating adult offenders.”).

135. Caplan, *supra* note 72, at 32; see also Lynch, *supra* note 120, at 864 (noting management sending conflicting messages about the goals of parole).

136. Caplan, *supra* note 72, at 35.

137. *Id.*

#### IV. PAROLE AND REENTRY

Reentry efforts generally have two stated goals—to promote public safety and to promote reintegration.<sup>138</sup> Similarly, the missions of most parole agencies combine public safety with reentry or rehabilitation.<sup>139</sup> However, as explained below, despite such optimistic goals, there is little evidence that parole supervision agencies either improve public safety or advance reintegration. An empirical examination of parole's successes and failures in these areas shows that in some cases parole supervision can actually hinder the reentry process.

##### A. Public Safety

Despite some efforts to think about success more broadly, recidivism rates are the standard measure of success of parole supervision.<sup>140</sup> There is no doubt that former prisoners do contribute to crime,<sup>141</sup> and it is also true that recidivism rates among people leaving prison are high: A national study based on people leaving prison in fifteen states in 1994 found that within three years of release, 68 percent of people were rearrested for a new offense, 47 percent were reconvicted for a new crime, and 52 percent were reincarcerated due to a new prison sentence or a technical violation of their release.<sup>142</sup> A more recent study of state-level data shows that while re-incarceration rates have come down slightly, they remain high: within three years of release, 43.3 percent of people released from prison in 2004 were back in prison.<sup>143</sup> Not surprisingly, the

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138. Travis Testimony, *supra* note 16, at 4.

139. *See supra* note 134.

140. *See, e.g.,* Petersilia, *supra* note 54, at 7 (arguing that reentry is about more than simply recidivism, and that if reintegration is the ultimate goal of reentry, then more measures of success are needed than simply remaining arrest-free at the end of the study period); JACOBSON, *supra* note 20, at 136–38 (“The pluperfect measure of success on parole may well be the attainment of a well-paying job with benefits, remaining drug free, reconnecting with community and family, and, of course, the complete abandonment of crime commission. However, while this is certainly the goal that corrections officials ought to seek, more common measures of success involve simply whether or not someone on parole permanently absconds or winds up back in prison.”).

141. Richard Rosenfeld et al., *The Contribution of Ex-Prisoners to Crime Rates*, in PRISONER REENTRY AND CRIME IN AMERICA, *supra* note 77, at 80 (estimating that one-fifth of adult arrests consist of people recently released from prison).

142. PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994 7 (2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

143. PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICAN PRISONS 9 (2011), available at <http://www.pewcenteronthestates.org/>

study found significant variations by state. For example, in Illinois, almost 52 percent of people released from prison in 2004 were reincarcerated within three years, compared with less than 23 percent of people released from Oregon prisons.<sup>144</sup>

However, despite these high rates of recidivism, there is little evidence that people on parole have higher recidivism rates than people released from prison without any supervision: a 2005 study found that parole supervision had very little effect on overall recidivism rates.<sup>145</sup> The authors found that people released under mandatory parole were no more likely to be arrested than those released without any supervision at all.<sup>146</sup> The study did find that those released under discretionary parole as opposed to mandatory parole or unsupervised release were slightly less likely to be arrested within two years of release, however, when criminal history and other variables were controlled for, the difference was reduced to about four percentage points.<sup>147</sup> A recent meta-analysis looking at the effectiveness of community supervision supports these findings, concluding that “[o]n the whole, community supervision does not appear to work very well.”<sup>148</sup> The authors reviewed fifteen studies published between 1980 and 2006 and found only a very small decrease in overall recidivism associated with community supervision and no relationship at all between community supervision and violent recidivism.<sup>149</sup> Recent data from Texas show that successful outcomes for people released without supervision are actually slightly higher than for those released to parole.<sup>150</sup>

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uploadedFiles/Pew\_State\_of\_Recidivism.pdf. This figure is based on data provided by forty-one states. *Id.* at 8.

144. *Id.* at 10–11.

145. AMY SOLOMON ET AL., URBAN INST., DOES PAROLE WORK? ANALYZING THE IMPACT OF POSTPRISON SUPERVISION ON REARREST OUTCOMES (2005), available at [http://www.urban.org/uploadedpdf/311156\\_does\\_parole\\_work.pdf](http://www.urban.org/uploadedpdf/311156_does_parole_work.pdf) (study of the same data utilized by Langan & Levin, *supra* note 142); see also Greenberg, *supra* note 78, at 557 (“[P]risoners released mandatorily after parole denial recidivate at roughly the same frequency as prisoners released on parole . . .”).

146. SOLOMON ET AL., *supra* note 145, at 8.

147. *Id.* at 8, 10.

148. Bonta et al, *supra* note 132, at 251.

149. *Id.* (The studies analyzed included studies of both probation and parole.); see also ANDREW VON HIRSCH & KATHLEEN J. HANRAHAN, THE QUESTION OF PAROLE: RETENTION, REFORM OR ABOLITION? 61–64 (1979) (reviewing studies and concluding: “This research is too scanty and its results are too equivocal to warrant the inference that supervision succeeds . . .”).

150. Reentry and Integration Division, Tex. Dep’t of Criminal Justice, Presentation to House Corrections Committee, June 30, 2010 (copy on file with the author) (show-

Although these data are limited, they seem to suggest that parole does not have a positive effect on public safety. However, given the role that parole is expected to play in reentry, and the fact that reentry is about more than simply recidivism,<sup>151</sup> it is also important to examine other measures of success, specifically the effect that parole has, if any, on the reintegration of people released from prison.

## B. Reintegration

### 1. The Study

In order to study the effect of parole on reentry, between September 2009 and January 2010 thirty-six interviews were conducted with people on parole in New York City.<sup>152</sup> Rather than relying wholly on outcomes, the interviews allowed the author to examine how individuals who are on parole approach reentry and how the reentry process for them is shaped by the institution of parole.<sup>153</sup>

Participants were primarily recruited from three sites—two community organizations providing services to, among others, people on parole and one half-way house also serving people on parole.<sup>154</sup> At the time of the interview, each participant had been on parole for at least three months.<sup>155</sup> The average number of months spent on parole prior to the interview was 14.9. Crimes of conviction ranged from drug offenses to homicide, and participants had spent an average of 8.7 years in prison prior to release. Slightly more than one-quarter of participants were fe-

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ing that the three-year recidivism rate for all people released from prison was 24.8 percent compared with 27.9 percent for those released to supervision).

151. PETERSILIA, *supra* note 5; Travis Testimony, *supra* note 16.

152. The study was approved by New York University's University Committee on Activities Involving Human Subjects, August 7, 2009. The interviews ranged from twenty-two minutes to one hour, twenty-three minutes in length, with an average duration of forty-three minutes. All names have been changed to protect the participants' privacy.

153. See, e.g., SHADD MARUNA, *MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES* (2001); Clare Fiona Byrne & Karen J. Trew, *Pathways Through Crime: The Development of Crime and Desistance in the Accounts of Men and Women Offenders*, 47 *HOW. J. CRIM. JUST.* 238 (2008); Lucia Trimbura, "Me and the Law Is Not Friends": *How Former Prisoners Make Sense of Reentry*, 32 *QUALITATIVE SOC.* 259 (2009).

154. Several participants found out about the study through word of mouth from people who had already been interviewed for the study.

155. Two of the people interviewed were excluded from the study for not meeting the participation criteria: one was not actually on parole—he had been released from federal prison but was still under the BPC in a half-way house; the other had only been on parole for one month. Of the remaining thirty-four participants, thirty-three were on state parole or supervised release and one was on federal supervised release.



male (seven females compared with twenty-seven males), all were black or Hispanic, and their ages ranged from twenty-seven to sixty-two, with an average age of forty-five. The interviews were semi-structured interviews: after obtaining consent, a series of open-ended questions were asked about the participants' transition from prison to the community, their experiences since leaving prison, and their experiences on parole. The data were then coded and analyzed.<sup>156</sup>

## 2. Findings

As described in more detail below, overall, the data suggested that parole did not appear to help participants with reentry and in some cases it hindered the reentry process. One of the most striking findings was that few of the study participants described parole as helpful. With some exceptions, even the people who said they had good relationships with their officers did not feel like they could talk to their officers about their problems—there were very few examples of parole officers acting as counselors. Again, with some exceptions, most people did not think their parole officer was there to help them. Finally, there were a number of people who stated that parole was making reentry more difficult. For most people, parole officers were service brokers at best, and at worst, participants found that parole added barriers to reentry.

### a. Relationship with Parole Officer

A person's relationship with his or her parole officer can have an impact on the likelihood of successful reentry. At least one study has found that people who were successful on parole were more likely to indicate having a positive relationship with their parole officer than those who violated parole.<sup>157</sup> As one might expect, participants described a variety of experiences with their parole officers. A few did describe the relationship as good. For example, Chris said that his officer was "very supportive."<sup>158</sup> While Melissa told me that the relationship "improved because I never gave no problems."<sup>159</sup> However, negative experiences were more common. Alan told me: "Well you never have a good parole of-

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156. The data were coded using MaxQDA software. The discussion of findings in Part IV.B.2 relates only to parole and reentry; other findings will be presented in future work.

157. Kristofer Bret Bucklen, *The Pennsylvania Department of Corrections Parole Violator Study (Phase 2)*, PENN. DEP'T CORR. RESEARCH IN REVIEW, Dec. 2006, at 1, available at [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_129492\\_916234\\_0\\_0\\_18/RIRV9N4.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_129492_916234_0_0_18/RIRV9N4.pdf).

158. Interview with Chris, age 46 (Nov. 15, 2009).

159. Interview with Melissa, age 54 (Nov. 18, 2009).

ficer—they almost all, a lot of them put on a façade because they have to do their job, you understand? So regardless how much leeway they give you, there's always rope to hang yourself.”<sup>160</sup>

Despite the fact that parole officers in New York are expected to counsel the people they supervise,<sup>161</sup> the data indicated that most people did not utilize their parole officer as a counselor. Regardless of the type of relationship they had with their officer, most people did not feel comfortable talking to their parole officer when they were in trouble and instead relied on family and friends for support. For example, when Angela was asked whether she felt like she could talk to her officer about her problems or things she was going through, she answered: “I wouldn't . . . Nah—I don't have comfortability [sic] with her like that.”<sup>162</sup> Richard said: “[I]f they tr[ie]d to understand you instead of trying to jump on you, I think it would work better.”<sup>163</sup> Marie responded: “She's a parole officer. She's not a friend.”<sup>164</sup> Isabel described the relationship as being “like a business relationship.”<sup>165</sup> Participants' responses suggested a variety of reasons for this finding, but two frequently cited explanations were a lack of trust on the part of participants and a lack of time on the part of the parole officer.

Previous researchers hypothesized that the conflict between parole officers' helping and policing functions might lead to reluctance among people on parole to ask for help.<sup>166</sup> The participants' interviews lend support to this hypothesis: David was concerned that anything he told his officer might come back and hurt him. As David said: “They got a job to do, bottom line that's what they got to do, so me sitting there going back and forth with somebody, everything they take will be used against you when push comes to shove . . . There ain't nothing that I'm going to tell her that way it don't come back to bite me in the ass later on.”<sup>167</sup> Similarly James explained that with most of his officers, he would not talk to them about his problems because it would never be “off the books or confidential. No. You tell them? They gotta report it.”<sup>168</sup> Alan noted: “[W]hen

160. Interview with Alan, age 49 (Sept. 28, 2009).

161. NEW YORK PAROLE HANDBOOK, *supra* note 96, at 18.

162. Interview with Angela, age 39 (Nov. 16, 2009).

163. Interview with Richard, age 44 (Jan. 29, 2010).

164. Interview with Marie, age 36 (Nov. 13, 2009).

165. Interview with Isabel, age 48 (Oct. 20, 2009).

166. See VON HIRSCH & HANRAHAN, *supra* note 149, at 73.

167. Interview with David, age 50 (Nov. 27, 2009).

168. Interview with James, age 49 (Jan. 12, 2010).

they smile and grin in my face, the other side of that is a frown or whatever.”<sup>169</sup>

The participants’ interviews also lend support for Lynch’s finding that parole officers are often too busy to spend time with the people they supervise.<sup>170</sup> Paul explained that the meetings were too short: “You go into the parole building; you wait two hours for them to ask you ten questions.”<sup>171</sup> Kevin stated: “[W]e don’t really conversate [sic] like that—it’s like if you schedule for a meeting, you come in—he see how you’re doing. How’s the job search going? Are you feeling ok? It’s basically like a 10–15 minute—I’m in; I’m out. We don’t really spend that much time together.”<sup>172</sup>

### b. Facilitating Reentry

Research shows that prior to release, people expect that their parole officers will help them with their transition.<sup>173</sup> For example, prior to release, more than 80 percent of participants in the Urban Institute’s *Returning Home* study expected their parole (or probation) officer to assist with their transition.<sup>174</sup> However, after release, just half reported that their officer had actually been helpful.<sup>175</sup> Another study found that few people leaving prison thought of their supervision officers as a resource in the reentry process.<sup>176</sup> This study supports those findings.

A few participants did describe situations where their officers helped them. For example Mike’s officer recommended a work program;<sup>177</sup> William described how he was released from prison without his medication and his parole officer helped him get the prescription he needed;<sup>178</sup> Melissa’s parole officer worked with her to help her deal with her sobriety issues.<sup>179</sup> Brian said, “she’s not there to, you know, hound me and, you know, if I need any help or any referrals, she says come get ‘em.”<sup>180</sup>

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169. Interview with Alan, *supra* note 160.

170. See Lynch, *supra* note 120, at 850–51.

171. Interview with Paul, *supra* note 1.

172. Interview with Kevin, age 49 (Jan. 12, 2010).

173. PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 28–29.

174. URBAN INSTITUTE, *supra* note 27, at 18.

175. *Id.*

176. See Helfgott, *supra* note 22, at 16. This study involved reentry in Seattle, Washington, and included interviews with twenty people who had recently been released from prison. *Id.* at 14–15.

177. Interview with Mike, age 27 (Nov. 25, 2009).

178. Interview with William, age 43 (Sept. 29, 2009).

179. Interview with Melissa, *supra* note 159.

180. Interview with Brian, age 39 (Sept. 28, 2009).

However, for many, the most positive thing they could say about their parole officer was that he or she did not make their lives difficult. Joel described his relationship with his parole officer as: “[P]retty good, yeah, he don’t bother me or stress me.”<sup>181</sup> Jeff said: “[S]he’s not a hindrance . . . she’s not breathing down my neck.”<sup>182</sup> When asked if his parole officer was trying to help him, David replied: “She’s not, She’s not trying to hinder me. She’s not in the way . . . . She’s not stopping me from doing the things that I would need to do . . . . She’s not being a hard ass, like, you can’t work at this time or that time. You know she actually gets out of the way and let you become employed.”<sup>183</sup>

Others did not see helping as a function of the parole officer. Thomas explained: “I never look for a parole officer to help me because they have a job so I look at it as they doing their job and I want to make their job comfortable because I want to be comfortable.”<sup>184</sup> When asked: “And what do you see their job as being then if it’s not to help you?” He answered: “It’s to monitor. That’s it—to monitor.”<sup>185</sup> Similarly, Chris explained: “[I]t’s not up to her to really help me; it’s up to me to help me.”<sup>186</sup> Joe said: “They’re just there to make sure that I follow the rules of parole. Which I, which is I think it’s stupid, because they should be there to help you . . . I think it also depends on their work load, because they don’t really have time like that to accommodate each individual . . . . As to this approach of throwing you out and being supervised, like make sure you’re in the house and make sure you do this and make sure you do that—Help me! I need help. I can’t find a job. You know what I’m saying? Write a letter for me.”<sup>187</sup>

Rather than relying on their officers, most people turned to community organizations or other contacts to find housing and employment. For example, Brian, who had a job and an apartment was asked whether his officer had set him up with referrals or done anything to help him obtain either. He replied: “No. I did that on my own you know and in the normal way.”<sup>188</sup> William was having trouble getting a check from a previous job cashed because he had no identification, but eventually somebody in his outpatient group helped him figure out how to get a state ID.<sup>189</sup>

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181. Interview with Joel, age 51 (Nov. 18, 2009).

182. Interview with Jeff, age 44 (Dec. 4, 2009).

183. Interview with David, *supra* note 167.

184. Interview with Thomas, age 47 (Nov. 18, 2009).

185. *Id.*

186. Interview with Chris, *supra* note 158.

187. Interview with Joe, age 42 (Oct. 30, 2009).

188. Interview with Brian, *supra* note 180.

189. Interview with William, *supra* note 178.

### c. Parole as an Obstacle to Reentry

While most people described their officers as simply unhelpful, some described ways in which parole was hindering their ability to successfully transition, particularly in terms of employment, one of the main correlates of success. In addition to Paul (quoted in Part I above), Chris complained that he was unable to take a job because the hours would have prevented him from reporting.<sup>190</sup> Luiza described her parole officer as being difficult at times in preventing people from getting jobs until they have finished any treatment programs.<sup>191</sup>

Paul explained that he had managed to find two jobs but had some problems with his officer. Paul's parole officer wanted to check that he was working by coming to his place of employment.<sup>192</sup> This was an issue because Paul had not disclosed his criminal record or the fact that he was on parole to his boss and was concerned that he would lose his job if the parole officer showed up at his job.<sup>193</sup> Eventually they negotiated that his parole officer would come to his job when his boss was not there and that Paul would provide a paystub.<sup>194</sup> Still, Paul explained how stressful the situation was: "Alright, I'll just bring you the paystub but his thing was constantly calling me on the phone—where you at? What you doing? Where you at? What you doing? I'm like, listen—I show you my paystubs every month—then you see that I'm working forty-three hours on one and I'm working fifty hours on the other, what am I doing?"<sup>195</sup>

More generally, participants cited a variety of concerns about conditions that acted as barriers to reentry.<sup>196</sup> For example, residency restrictions made it hard to find a place to live or reconnect with family. Paul said: "I had two places to live but parole doesn't want me in the neighborhood cause according to them, that's the neighborhood I tend to get in trouble in so they don't want me there so I had to end up going to a three-quarter house and, um, basically I'm just waiting for my girlfriend to move so hopefully I move in with her or if my mom moves first, which she probably will, I can probably move in with her, stay with her 'til my girlfriend moves."<sup>197</sup>

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190. Interview with Chris, *supra* note 158.

191. Interview with Luiza, age 40 (Nov. 16, 2009).

192. Interview with Paul, *supra* note 1.

193. *Id.*

194. *Id.*

195. *Id.*

196. See *supra* note 8 and accompanying text; see also Helfgott, *supra* note 22, at 16 (noting that "a common theme in how [people] thought about and dealt with community corrections supervision was that supervision conditions set them up for failure").

197. Interview with Paul, *supra* note 1.

One of the conditions of parole in New York is that a person under parole supervision cannot leave the state without permission from his or her parole officer.<sup>198</sup> A frequent complaint among participants was about parole officers refusing to issue travel passes, which often prevented them from reconnecting with family. Luiza complained that her parole officer would not give her a pass to visit her sister (who lived out of state) for Thanksgiving.<sup>199</sup> The officer's reasoning was that she had not been out of prison long enough.<sup>200</sup> Similarly, James described one officer who always refused to give travel passes and never allowed him a pass to see his daughter who lived out of state.<sup>201</sup> Tony complained that his parole officer refused to give him a travel pass to go to Florida and visit his sister.<sup>202</sup> He argued that what parole really needed to do was "help[ ] me facilitate the process of doing things that are helping me, like this right here is helping me, giving me a travel pass because there are people that I genuinely care about and that are in my network."<sup>203</sup>

Virtually every participant complained about having a curfew—not being free to go where they want when they want—and the reporting requirements. William explained how not being allowed to leave the house before 7:00 a.m. made it hard to exercise.<sup>204</sup> When asked what the biggest challenge being on parole was, Jennifer said: "[J]ust having to report to someone every week, you know, have to report, having to have my life in her hands, you know what I'm saying?"<sup>205</sup> Others saw the connection to parole as holding them back. Tony said: "I don't see my relationship with parole as adversarial in any way but I see this as still a part of my past and something I wanna get through and I wanna get through it as quickly and smoothly as possible."<sup>206</sup> Brian told me, "Technically you're still connected to the corrections department even though you go where you wanna go. It's like being kind of walking on eggshells a little bit."<sup>207</sup>

Again, although there is limited scholarship in this area, the research of other scholars provides examples of how parole status can have

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198. NEW YORK PAROLE HANDBOOK, *supra* note 96, at 21.

199. Interview with Luiza, *supra* note 191.

200. *Id.*

201. Interview with James, *supra* note 168.

202. Interview with Tony, age 40 (Nov. 16, 2009).

203. *Id.*

204. Interview with William, *supra* note 178.

205. Interview with Jennifer, age 42 (Nov. 27, 2009).

206. Interview with Tony, *supra* note 202.

207. Interview with Brian, *supra* note 180.

negative consequences on reentry.<sup>208</sup> Alice Goffman spent six years doing ethnographic research in a poor black neighborhood in Philadelphia and describes a number of incidents she witnessed where the parole status of people affected the decisions they made.<sup>209</sup> For example, in one case a twenty-two-year-old man, Alex, was with his girlfriend at the hospital awaiting the birth of their child, when he was arrested on an outstanding parole warrant (for having consumed alcohol in violation of one of his conditions).<sup>210</sup> The officers told Goffman that when they were at the hospital, their habit was to check the names of people on the visitors list through their system to see if there were any visitors who had outstanding warrants out for their arrest.<sup>211</sup> Alex's arrest spread throughout the community and subsequently led to at least one person refusing to go to the hospital for the birth of his child for fear of being arrested.<sup>212</sup>

After spending a year in prison for the first violation, Alex was released to serve one more year on parole.<sup>213</sup> Then just three weeks before his parole supervision was set to expire he was attacked and robbed.<sup>214</sup> Despite significant physical injuries, he refused to go to the hospital to be treated for fear that his parole officer would find out and he would be penalized for breaking curfew, fighting, or being in the location where the fight occurred.<sup>215</sup> He explained: "All the bullshit I done been through [to finish his parole sentence], it's like, I'm not just going to check into emergency and there come the cops asking me all types of questions and writing my information down and before you know it I'm back in there [in prison]." <sup>216</sup>

#### d. Limitations

Because studies involving in-depth interviews, including this one, rely on small samples and do not utilize random sampling methods, results are not generalizable.<sup>217</sup> For example, the New York participants are

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208. Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, 74 AM. SOC. REV. 339 (2009).

209. *Id.* at 341, 345.

210. *Id.* at 345.

211. *Id.* According to Goffman, two other men on the delivery room floor were arrested that same night. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. For a discussion of the methodological issues involved in interviewing, see Herbert J. Rubin & Irene S. Rubin, *QUALITATIVE INTERVIEWING: THE ART OF HEARING DATA* (2d ed. 2004).

not representative of all people on parole; they were self-selected and many of them were recruited by virtue of the fact that they were already participating in some reentry program.<sup>218</sup> Further, all were on parole in New York City and likely experienced supervision differently than people on parole in other states, and even in other parts of New York State. However, qualitative interviews like these are one of the most helpful ways of learning how people on parole understand and experience the parole supervision and reentry processes themselves.<sup>219</sup> Further, the data provide valuable information on how parole affected the reentry process for these individuals and support existing research showing that parole is not effective in helping people reenter.<sup>220</sup>

## V. SUGGESTIONS FOR REFORM

### A. Ideas for Parole Reform

Parole has been the subject of criticism almost since its inception. Around the turn of the twentieth century, after Abe Majors—whose parole release was high-profile and controversial—was convicted of murder while on parole, a legislator in California called for the repeal of parole release.<sup>221</sup> Years later, in 1975, after analyzing recidivism rates of people on parole, David Greenberg concluded: “[P]arole supervision seems incapable of preventing released prisoners from returning to crime. Instead it functions as an obstacle, preventing those who have once been given a deviant social identity from returning to a normal existence . . . . It would be a step forward for inmates were parole abolished.”<sup>222</sup>

Although the crisis of rehabilitation in the 1970s did lead to changes in parole, including the abolition of discretionary parole release in many states, parole supervision remained in virtually all states and as described in this section, the criticisms of parole have continued.<sup>223</sup> In recent years, scholars and government officials have made a variety of suggestions for

218. See *supra* Part IV.B.1.

219. See generally MARUNA, *supra* note 153.

220. See, e.g., Solomon et al, *supra* note 145.

221. Messinger et al., *supra* note 69, at 90. More recently, after the murder of a police officer by an individual on parole in Massachusetts, Governor Deval Patrick announced an overhaul of parole including the forced resignations of parole board members saying, “The public has lost confidence in parole, and I have lost confidence in parole.” Jonathan Saltzman, *Patrick Overhauls Parole: 5 on Board Depart as Report Faults Freeing of Criminal*, BOSTON GLOBE, Jan. 14, 2011.

222. Greenberg, *supra* note 78, at 577; see also John P. Conrad, *Who Needs a Door-Bell Pusher? The Case for Abolishing Parole*, 59 THE PRISON J. 17 (1979).

223. See generally Horn, *supra* note 124; TRAVIS, *supra* note 3; PETERSILIA, *supra* note 5.



reform out of concern for the high costs of supervision, the high recidivism rates, and the increasing costs of imprisoning people who have their parole revoked.<sup>224</sup> Some of the most commonly cited ideas are discussed below.

### 1. Abolish Parole Supervision Entirely

Like Greenberg, Martin Horn, a former Commissioner of Corrections in New York City, argues for the abolition of parole (both release and supervision).<sup>225</sup> He concludes that discretionary parole is “obsolete” and inconsistent with transparent sentencing and suggests that it be replaced with a “personal responsibility model that unlimbers government resources for more socially useful purposes.”<sup>226</sup> He proposes that all sentences include a fixed period of time that will be spent in a half-way house, after which the individual will be released to the community for two years during which time he or she promises to obey the law.<sup>227</sup> The individual will be given vouchers to obtain services in the community, which would be funded by the freed resources as a result of the elimination of all parole supervision.<sup>228</sup> Under Horn’s approach, those released would not be subject to conditions of release, which would mean there would be no technical violations; however, former prisoners who committed new crimes during this two-year period would be subject to enhanced penalties.<sup>229</sup>

Although Horn doesn’t explain exactly how this voucher system would work, he does make the point that it should be the responsibility of the individual to choose the programs and services he or she thinks would be helpful.<sup>230</sup> However, the systems that are in place to provide reentry services, including the welfare and health systems and a large number of community organizations, are complex. Given that many people leaving prison are dealing with problems such as mental illness, drug use, and educational deficits,<sup>231</sup> it is unrealistic to expect them to be able to negotiate these systems on their own and choose among competing services and

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224. See, e.g., PUTTING PUBLIC SAFETY FIRST, *supra* note 13; PUB. SAFETY PERFORMANCE PROJECT, PEW CTR. ON THE STATES, POLICY FRAMEWORK TO STRENGTHEN COMMUNITY CORRECTIONS (2008), available at <http://www.pewcenteronthestates.org/uploadedFiles/Policy%20Framework.pdf> [hereinafter PEW POLICY FRAMEWORK].

225. Horn, *supra* note 124, at 37–39.

226. *Id.* at 35.

227. *Id.* at 37–38.

228. *Id.* at 38.

229. *Id.* (referring to this as a period of “diminished liberty”).

230. *Id.*

231. JACOBSON, *supra* note 20, at 161.

providers.<sup>232</sup> Further, given how many people are released from prison each year and the limited affordable housing available in many communities, housing all those released from prison in half-way houses would be impractical.

## 2. Require Limited Universal Supervision

With their desire to abolish parole supervision, Greenberg and Horn are rare among scholars and policymakers wishing to reform parole. More common are calls for the abolition of parole *release* or other reforms, and most of these suggestions involve retaining some form of community supervision.<sup>233</sup> On the other end of the spectrum from abolition are calls for universal supervision. For example, Jeremy Travis has argued against discretionary parole release but rejects Horn's personal responsibility model.<sup>234</sup> He argues that the government has obligations to people leaving prison and notes that "in a free market system of brokered transition services, it would be too easy to place blame solely on the former prisoner when the transition plan falls apart."<sup>235</sup> Instead he supports a system of universal post-prison supervision with limited conditions that are tailored to the risks and needs of individuals.<sup>236</sup> This system would also involve shorter overall supervision periods and offer the possibility of reduction in time under supervision for good behavior.<sup>237</sup>

While no state has adopted Travis's model of limited universal supervision, some jurisdictions have looked to expand their supervision systems. For example, when it abolished parole in 1984, the federal government replaced it with a system of universal post-prison supervision.<sup>238</sup> More recently, in 2010, New Hampshire amended its parole laws to mandate early release so that every individual would be released on parole at least nine months prior to the expiration of the maximum term of his or her sentence.<sup>239</sup> The goal of the law was to ensure supervision and treatment upon release.<sup>240</sup> However, there are a number of flaws with the idea of universal supervision, even with the limits envisaged by Travis. Universal or "mandatory" parole can create an "overbroad net of super-

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232. See THOMPSON, *supra* note 3, at 174.

233. See, e.g., TRAVIS, *supra* note 3.

234. *Id.* at 53.

235. *Id.* at 56.

236. *Id.*

237. *Id.*

238. See *supra* note 95.

239. N.H. REV. STAT. ANN. § 504-A:15 (2010).

240. Lynne Tuohy, *Controversial Parole Law Goes Into Effect in NH*, BOSTON.COM (Oct. 3, 2010), [http://www.boston.com/news/local/new\\_hampshire/articles/2010/10/03/controversial\\_parole\\_law\\_goes\\_into\\_effect\\_in\\_nh](http://www.boston.com/news/local/new_hampshire/articles/2010/10/03/controversial_parole_law_goes_into_effect_in_nh).

vision;”<sup>241</sup> not all people, particularly people at low risk to reoffend, require supervision, and in fact, as discussed below, supervising individuals with relatively low risk of recidivism can actually increase the likelihood that they will reoffend.<sup>242</sup>

### 3. Utilize Reentry Courts

Travis also believes that Reentry Courts should take over (from parole boards) the role of overseeing the reintegration process and deciding when to revoke a person’s supervision.<sup>243</sup> The Reentry Court Initiative was launched by the Department of Justice in 2000 with the goal of providing judicial oversight of the reentry process in the same way that a drug court manages the treatment process.<sup>244</sup> Courts would oversee the reentry process using assessment and planning, active oversight, management of support services, accountability to the community, graduated and parsimonious sanctions, and rewards for success.<sup>245</sup> Although reentry courts have gained in popularity, results have been mixed<sup>246</sup> and they have been subject to criticism including for the emphasis they put on the personal responsibility of the individual while ignoring “the bureaucratic and political morass that structures the offender’s situation.”<sup>247</sup>

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241. See Model Penal Code: Sentencing 31(Discussion Draft No. 3, 2010) (noting that the Model Penal Code will “disapprove of the use of mandatory postrelease supervision terms . . . . This approach creates an overbroad net of supervision—and an enlarged risk of technical sentence violations—that is not justified for all prison releases.”)

242. See *infra* Part V.B.2.

243. TRAVIS, *supra* note 3, at 59.

244. Claire McCaskell, *Next Steps in Breaking the Cycle of Reoffending: A Call for Reentry Courts*, 20 FED. SENT’G REP. 308 (2008); CHRISTINE LINDQUIST ET AL., RTI INT’L, REENTRY COURTS PROCESS EVALUATION (PHASE 1) FINAL REPORT (2003), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf>; TRAVIS, *supra* note 3, at 59.

245. McCaskell, *supra* note 244, at 308–309.

246. See, e.g., ZACHARY HAMILTON, CTR. FOR COURT INNOVATION, DO REENTRY COURTS REDUCE RECIDIVISM? RESULTS FROM THE HARLEM PAROLE REENTRY COURT iii (2010), available at [http://www.courtinnovation.org/\\_uploads/documents/Reentry\\_Evaluation.pdf](http://www.courtinnovation.org/_uploads/documents/Reentry_Evaluation.pdf) (finding that although people on parole who participated in the reentry court were less likely to be convicted of a new offense, they were more likely to have their parole revoked and returned to prison).

247. Eric J. Miller, *The Therapeutic Effects of Managerial Reentry Courts*, 20 FED. SENT’G REP. 127, 127 (2007); see also Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255, 289 (2004) (raising questions about the amount of judicial discretion available in reentry (and other problem-solving) courts).

#### 4. Make Parole Supervision a Local Function

Another suggestion is to shift responsibility for parole supervision from the state to local authorities, such as probation departments, in the hope of improving outcomes.<sup>248</sup> Jonathan Simon argues that California should get rid of state parole but “require all California prisoners to report periodically to local police or probation” and let counties provide a “locally crafted solution.”<sup>249</sup> California is currently considering a modified version of this proposal: to address its fiscal problems, it is considering shifting some adult parole operations from the state to counties and banning state prison commitments for certain parole violations.<sup>250</sup> However, there is no evidence to support the proposition that counties, specifically county probation agencies, would be any better either at improving public safety or promoting reintegration.<sup>251</sup> Indeed in some states people on parole are already supervised at the local level and there is no evidence to suggest that outcomes in those states are better than in those where parole supervision is a centralized state function.<sup>252</sup>

#### 5. Improve the Existing Parole System

Joan Petersilia is one of the few scholars who argue for the return of discretionary parole; she cites evidence that people released under discretionary parole are more likely to successfully complete their parole terms than those released under mandatory parole.<sup>253</sup> However, she also argues that states should learn from the recent research on what works and improve their existing systems by utilizing evidence-based practices, which are practices that research has shown to be effective.<sup>254</sup> These practices include assessing risk and needs, targeting interventions based on risk and

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248. Jonathan Simon, *Parole Policies Weak Link in Prison Reduction Plans*, GOVERNING THROUGH CRIME (Mar. 23, 2010, 6:34 AM), <http://governingthroughcrime.blogspot.com/2010/03/parole-policies-weak-link-in-prison.html>.

249. *Id.*

250. Shane Goldmacher, *Brown Eases Inmate Plan*, L.A. TIMES, Mar. 1, 2011.

251. As with parole supervision, there is little research on the effectiveness of probation supervision. There is one widely cited study, but although it did find that probation reduced the recidivism of people on probation, it was unclear whether it was the probation *supervision* itself affecting behavior or the arrest and/or sentencing events. Doris MacKenzie et al., *The Impact of Probation on the Criminal Activities of Offenders*, 36 J. OF RES. IN CRIME & DELINQ. 423 (1999).

252. For example, in Oregon, people on post-prison supervision are supervised by local community corrections agencies. Oregon Parole Conditions, *supra* note 96.

253. PETERSILIA, *supra* note 5, at 70 (citing Connie Stivers, *Impacts of Discretionary Parole Release on Length of Sentence Served, Percent of Imposed Sentence Served, and Recidivism* (unpublished M.A. thesis, University of California, Irvine) (2001)).

254. *Id.* at 71–73; see also REENTRY POLICY COUNCIL REPORT, *supra* note 3.

need (focusing resources on moderate and high-need individuals), relying on graduated sanctions (including the use of positive reinforcements), utilizing cognitive behavioral therapy, and measuring outcomes beyond recidivism, including drug use and employment.<sup>255</sup> Another suggestion to improve parole is to focus resources and services on the period soon after release, which is when most people are at higher risk to reoffend.<sup>256</sup>

This general approach of implementing evidence-based practices in parole is increasingly popular among states and early results show promise. For example, as part of a system-wide strategy to reduce recidivism and cut corrections costs, Kansas set a goal of reducing parole and probation revocations by 20 percent.<sup>257</sup> The initial results are positive. In part by implementing evidence-based practices, between 2006 and 2009 Kansas reduced the number of revocations to prison by almost 25 percent.<sup>258</sup> Similarly, in 2007, Texas, facing the choice between building new prisons and reducing the number of people incarcerated, engaged in a system-wide reform strategy.<sup>259</sup> The Texas Legislature expanded substance use, mental health, and intermediate sanction facilities and programs that focused on people under probation and parole supervision with the goal of reducing the number of revocations.<sup>260</sup> Between 2006 and 2008, the parole revocation rate decreased by 25 percent.<sup>261</sup> Other states have also implemented

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255. BRAD BOGUE ET AL., NAT'L INST. OF CORR., IMPLEMENTING EVIDENCE-BASED PRACTICE IN COMMUNITY CORRECTIONS: THE PRINCIPLES OF EFFECTIVE INTERVENTION 3 (2004), available at <http://static.nicic.gov/Library/019342.pdf>; see also PUTTING PUBLIC SAFETY FIRST, *supra* note 13 (outlining parole supervision strategies to enhance reentry outcomes); *infra* Part IV.B.3. Many of these evidence-based practices draw on the Risk-Needs-Responsivity (RNR) theory of rehabilitation, which focuses on assessing risks and needs, and ensuring that correctional interventions are matched to the motivation, learning style and circumstances of the individual. See generally D.A. Andrews et al., *Classification for Effective Rehabilitation: Rediscovery Psychology*, 17 CRIM. JUST. & BEHAV. 19 (1990).

256. JACOBSON, *supra* note 20, at 167–68.

257. KAN. DEP'T OF CORR., STATEWIDE COMMUNITY CORRECTIONS RISK REDUCTION INITIATIVE 1 (2010), available at <http://www.doc.ks.gov/publications/the-senate-bill-14-risk-reduction-initiative/Community%20Corrections%202009%20Annual%20Report.pdf/>.

258. *Id.* at 13; see also Andres F. Rengifo et al., *Cents and Sensibility: A Case Study of Corrections Reform in Kansas and Michigan*, 38 J. CRIM. JUST. 419, 421–23 (2010) (discussing the Kansas Risk Reduction Initiative).

259. COUNCIL ON STATE GOV'TS, JUSTICE REINVESTMENT IN TEXAS: ASSESSING THE IMPACT OF THE 2007 JUSTICE REINVESTMENT INITIATIVE (2009), available at [http://justicereinvestment.org/files/texas\\_bulletin.pdf](http://justicereinvestment.org/files/texas_bulletin.pdf).

260. *Id.* at 2, 4.

261. *Id.* at 6.

more limited reforms, including reducing supervision requirements and expanding the use of positive rewards.<sup>262</sup>

However, while these reforms are promising and seem to have had some positive impact, for the most part, they leave the main structure of parole intact. Horn has criticized attempts to improve the existing parole system as “throwing good money after bad” and “enlarging an already inefficient and unfair bureaucracy.”<sup>263</sup> Further, as with the other ideas for parole reform described above, they do not fully address the negative impacts that parole has on reentry and reintegration.<sup>264</sup> Below are suggested ways to improve the reentry process while retaining parole supervision in a more limited form.

### *B. Comprehensive Parole and Reentry Reform*

Given how integrated reentry and parole currently are, it is impossible to think about changing one without the other. For this reason, this article suggest that states consider a comprehensive, thoughtful set of reforms that utilizes what is known about what works in corrections programming and treatment, but that states also accept the fact that parole supervision does not appear to be helping people reenter society.<sup>265</sup> This set of reforms should have four elements: (1) administer risk assessment tools prior to release to determine the likelihood of reoffending; (2) eliminate parole supervision for people at low risk to reoffend; (3) provide access to a reentry specialist and reentry services on a voluntary basis to all people leaving prison regardless of whether or not they are on supervision; and (4) improve supervision for high risk people that remain on parole by relying on evidence-based practices and incorporating the goals and priorities of the individual under supervision.

Although the findings presented in Part IV might suggest a complete abolition of parole supervision, this is not politically feasible. Given how entrenched parole supervision is in our criminal justice systems, policymakers would likely be politically uncomfortable abolishing parole entirely. Virginia, one of only two states that attempted to abolish parole

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262. SCOTT-HAYWARD, *supra* note 56, at 7–9.

263. JACOBSON, *supra* note 20, at 163 (quoting personal communications with Martin Horn on Aug. 31, 2002).

264. *See supra* Part IV.

265. As previously mentioned, this article is not concerned with parole *release* and therefore no position is taken regarding the relative merits of the various types of release mechanisms. Further, these proposed reforms apply only to people released from prison and do not address jail reentry issues. For a discussion of jail reentry, see Amy L. SOLOMON ET AL., URBAN INST., *LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY* (2008), available at [http://www.urban.org/UploadedPDF/411660\\_life\\_after\\_lockup.pdf](http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf).

supervision, reinstated it just four years after its initial abolition.<sup>266</sup> It is likely that any calls for abolition would lead to fierce opposition from the labor unions that represent parole officers. In addition, the reaction of the union representing police officers in Los Angeles to the implementation of nonrevocable parole in California<sup>267</sup>—describing it as a “threat to officers” and “a policy that puts officers and the public in danger”—is indicative of the kinds of reactions one might expect if parole supervision was eliminated entirely.<sup>268</sup>

### 1. Risk Assessment

Although risk-based classifications have been subject to criticism since their inception,<sup>269</sup> the quality of risk assessment instruments has improved dramatically over the last decade.<sup>270</sup> Risk assessment instruments attempt to predict who will reoffend by scoring subjects on a series of measures that can affect recidivism.<sup>271</sup> The first risk assessment instruments included only static factors, or factors not amenable to change in the sense that they are not under an individual’s control, such as age and

266. See *supra* note 84 and accompanying text.

267. Described in more detail below, non-revocable parole eliminates parole supervision and conditions for certain low risk people.

268. Andrew Blankstein, *LAPD Complains About Parole Officers Classifying Suspect in Police Shooting As “Low-Level, Nonviolent,”* L.A. TIMES: L.A. NOW (July 14, 2010, 5:25 PM), <http://latimesblogs.latimes.com/lanow/2010/07/lapd-slams-parole-officials-for-classifying-parolee-in-police-shooting-as-lowlevel-nonviolent.html>.

269. For some examples of recent criticisms, see Bernard E. Harcourt, *Risk as a Proxy for Race*, CRIMINOLOGY & PUB. POL’Y (forthcoming), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1677654](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677654) (arguing that “risk today has collapsed into prior criminal history, and prior criminal history has become a proxy for race”); BERNARD HARCOURT, *AGAINST PREDICTION: PROFILING, POLICING, AND PUNISHING IN AN ACTUARIAL AGE* (2006); Michael D. Reisig et al., *Assessing Recidivism Risk Across Female Pathways To Crime*, 23 JUST. Q. 384 (2006) (arguing that risk instruments are not good at predicting recidivism of women). Although these criticisms hold some weight, the author argues that they are less relevant when the risk assessment instruments are to be used, as proposed in this article, to remove individuals from criminal justice control rather than to impose additional punishment or requirements on them.

270. See generally D.A. Andrews et al., *The Recent Past and Near Future of Risk and/or Need Assessment*, 52 CRIME & DELINQ. 7 (2006); Marc Levin, *The Role of Risk Assessment in Enhancing Public Safety and Efficiency in Texas Corrections*, TEX. PUB. POL’Y FOUND. POL’Y PERSPECTIVE, July 2010, available at <http://www.texaspolicy.com/pdf/2010-07-PP15-RiskAssessment-ml.pdf>; Brenda Vose et al., *The Empirical Status of the Level of Service Inventory*, FED. PROBATION, Dec. 2008, at 22.

271. Levin, *supra* note 270, at 1.

criminal history.<sup>272</sup> Current instruments include both static risk factors and dynamic risk and/or need factors, which are factors that can potentially be changed through treatment or other interventions—these include substance use, antisocial cognition, and antisocial associates.<sup>273</sup> The current generation of risk assessment instruments has been shown to be better than clinical judgments in predicting whether or not an individual will reoffend.<sup>274</sup>

Given the inadequacy of clinical judgment alone, and the fact that most states already use them at various points in their criminal justice systems, this article concludes that risk assessment instruments are the best, if not a perfect, method to classify individuals and determine who should be released from prison without any supervision.<sup>275</sup> However, there can be improvements in how they are used. Although the fourth generation of instruments can be used to create a case management plan that can be revised with frequent reassessments, this is not always done, which reduces their effectiveness.<sup>276</sup> Risk assessment instruments should be used at two points: first, to classify individuals and determine who should be released to parole supervision and who should be released without any supervision; and second, for people released to supervision, the instruments can be used to help create a case management plan that will ensure that the individual's needs are being met and will allow a person to leave supervision when he or she is no longer at a high risk to reoffend.

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272. Scott VanBenschoten, *Risk/Needs Assessment: Is This the Best We Can Do?*, FED. PROBATION, Sept. 2008, at 38, 39. These are known as second-generation instruments; the first generation being clinical judgment alone. *Id.*

273. *Id.*; Andrews et al., *supra* note 270, at 11. These are third-generation instruments; fourth-generation instruments are similar to the third generation but include a role for case management. *Id.* at 12–17.

274. Andrews et al., *supra* note 270 at 22. Most of the testing has been done with the Level of Service Inventory-Revised or the Level of Service/CMI; other instruments exist, such as the Wisconsin risk assessment instrument, but they have not been subject to as much testing and therefore their validity is not as clear. *Id.* at 15.

275. In some states the use of risk assessment instruments is statutorily mandated. See, e.g., Illinois Crime Reduction Act of 2009, 730 ILL. COMP. STAT 190/15 (2010).

276. See Andrews et al., *supra* note 255, at 22–23 (noting that when reassessments are not done, then third- and fourth-generation instruments are only as good as second-generation ones); see also Bonta et al., *supra* note 132, at 266–67 (findings “suggest a lack of follow through between assessment and case management” leading to a lack of emphasis on addressing criminogenic needs).



## 2. Eliminate Supervision for Low Risk People

Over the last few years, some states have begun minimizing, or even eliminating, supervision for certain low risk people.<sup>277</sup> For example, California recently undertook a thorough study of its parole system and enacted a number of reforms, including instituting non-revocable parole.<sup>278</sup> This allows certain people who are at low risk to reoffend to be released from prison without any supervision or conditions, meaning they cannot be returned to prison unless they commit a new crime.<sup>279</sup> However, under this new law, people are still considered to be on parole and are subject to its search and seizure provisions.<sup>280</sup>

Going a step further and eliminating parole supervision entirely for this population will likely have no effect on public safety and will make the reentry process easier for people leaving prison. The research described above suggests generally that parole supervision does not improve public safety.<sup>281</sup> Further, other studies have found that there is no increase in recidivism when low risk people are not supervised, and in fact, requiring low risk people to participate in treatment programs can worsen their prospects and increase the likelihood that they will reoffend.<sup>282</sup> There are a number of possible reasons for this, including the fact that supervising low risk people and placing them in programs can disrupt their pro-social networks.<sup>283</sup> In addition, increased supervision and the associated conditions increases the likelihood that violations will occur.<sup>284</sup> These poor public safety outcomes, combined with the fact that parole supervision does not appear to help people reintegrate, support the conclusion that supervision of low risk people is not an effective use of re-

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277. For example, in 2009, the Washington Department of Corrections ended supervision of some low risk people. See WASH. REV. CODE § 9.94A.500 to 640.

278. CAL. PENAL CODE § 3000.03 (West 2010).

279. See *id.*

280. *Sidebar: Benefits of Non-Revocable Parole, Division of Adult Parole Operations: Non-Revocable Parole*, CAL. DEPT. OF CORR. & REHAB., [http://www.cdcr.ca.gov/Parole/Non\\_Revocable\\_Parole/index.html](http://www.cdcr.ca.gov/Parole/Non_Revocable_Parole/index.html) (last visited Mar. 28, 2011).

281. See *supra* Part IV.A.

282. See CHRISTOPHER T. LOWENKAMP & EDWARD J. LATESSA, TOPICS IN COMMUNITY CORRECTIONS: UNDERSTANDING THE RISK PRINCIPLE: HOW AND WHY CORRECTIONAL INTERVENTIONS CAN HARM LOW RISK OFFENDERS (2004), available at <http://www.yourhonor.com/dwi/sentencing/RiskPrinciple.pdf>; see also Christopher T. Lowenkamp et al., *The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?*, 52 CRIME & DELINQ. 77, 88 (2006) (finding programs showed increases in recidivism rates unless they targeted higher risk people).

283. Lowenkamp et al, *supra* note 282, at 89.

284. *Id.*; see also JACOBSON, *supra* note 20, at 150; Burke, *supra* note 8, at 11.

sources and therefore should be eliminated. Further, this is a smaller step than eliminating all parole supervision, which should make it more palatable to policymakers.

### 3. Reentry Services

While California's experiment with non-revocable parole is a step in the right direction, its apparent failure to provide people with any reentry services is problematic. All people leaving prison, whether they are on parole or not, and whether they have a low or high risk of reoffending, should have access to reentry services. While some people leaving prison may be able to access services available in the community without help, many more are likely to need assistance negotiating the bureaucracy of reentry.<sup>285</sup> As explained earlier, not only are the barriers to be overcome numerous, but there are large numbers of organizations and government agencies that provide services, not all of which are reliable or effective.<sup>286</sup> It is unrealistic to expect people just returning from prison to be able to negotiate state systems, such as welfare and housing, as well as to choose among competing service and/or treatment providers and assess their relative quality.

Although many parole agencies have reentry or reintegration as a mission, and some individual parole officers see this as a priority, the participants in this study and the other studies described above indicated that parole officers were not a resource for them when it came to reentry.<sup>287</sup> This is likely a result of the emphasis that parole agencies place on surveillance and monitoring and the fact that the surveillance and reentry functions of parole conflict. For this reason, to assist people returning from prison with the reentry process, this article proposes splitting the surveillance and reentry functions of parole and establishing the position of "reentry specialist."<sup>288</sup> This individual would be employed by the state

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285. See *supra* notes 231–232 and accompanying text.

286. *Id.*

287. See *supra* Part IV.B.2.ii.

288. In some ways this is similar to an overhaul of the organizational culture within the Kansas Department of Corrections that occurred as part of the Kansas Risk Reduction Initiative. See Rengifo et al., *supra* note 258, at 423. New caseloads were developed for people at high risk to offend, that split the reentry and supervision functions of parole. Traditional parole officers were to focus on supervision and monitoring adherence to parole conditions, while "reentry specialists" were to focus on linking people to services. *Id.*; see also Conrad, *supra* note 222, at 23–24 ("Of what real value is it in the helping process to be an expert in the operations of the criminal justice system? Is it not of considerably greater value to have a full knowledge of the resources of the community, to be able to offer services according to determined needs rather than according to present and past status? For a man who needs a job, a

and would be housed in the community corrections or reentry divisions of the state department of corrections or criminal justice. However, he or she would not be a parole officer and would not have any law enforcement powers.

The purpose of this position is primarily to act as a service broker. Soon after leaving prison, a person would be required to have one meeting with a reentry specialist during which the specialist would explain their role, the types of services available, and the fact that meeting with the specialist and participating in any services or treatment programs is voluntary. The specialist would have access to the results of the risk/needs assessment conducted prior to release in order to ascertain the particular needs of the individual but he or she should also work with the individual to ascertain his or her priorities.<sup>289</sup>

The specialist's role is to link the individual to services such as job training programs, counseling, etc., but he or she would not provide any direct services. There are two reasons for this. First, even though the specialist is not a parole officer, he or she will still be employed by the state and thus people not on parole will likely still see them as connected with the criminal justice system and be less likely to open up. Further, people who are on parole will be more likely to seek help if they know that availing of treatment or services will not have any effect on their status with parole. A person struggling with substance use issues should be able to talk to someone about relapse without the fear that what it said will get back to the parole officer somehow and affect the individual's continued status on parole.

Some might argue that having two people do what one person normally does would increase costs at a time when resources are limited. However, there is no reason to think that this would increase costs. Eliminating supervision for low risk people will likely save states a significant amount of money, which can be used to cover the cost of reentry services. While there will be a need for fewer parole officers, we know that many officers would rather focus on the casework aspect of parole<sup>290</sup> and therefore those officers could retrain as reentry specialists.

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decent place to stay, or simply good and disinterested advice, the terms of reference should not be his legal disabilities or the stigmata of retribution and control. He should be helped as a person in need by an agency with experience in meeting these needs. What reason is there to suppose that a counselor of a vocational rehabilitation service cannot do as well as or better than a parole officer in getting an ex-offender placed in employment?").

289. WARD & MARUNA, *supra* note 21, at 131–32.

290. *See supra* note 136 and accompanying text.

On the other hand, Horn and others would question retaining any role for the state given its lack of success thus far. However, as Travis argues, reentry remains at least in part the responsibility of the state.<sup>291</sup> Further, states are in the best position to provide advice on how to negotiate their own bureaucracies. They also have the ability to certify and/or approve treatment providers and other agencies as well as to provide oversight and accountability.

#### 4. Improve Parole Supervision Practices

For policy reasons, eliminating supervision for people at a high risk to reoffend is not feasible. However, even amongst this group, supervision alone is not enough to reduce recidivism and improve outcomes.<sup>292</sup> For parole supervision to be effective, it must incorporate strategies that change behavior, and through that, reduce recidivism.<sup>293</sup> There are a number of such strategies that rely on evidence-based practices and show promise for improving parole supervision.<sup>294</sup>

First, as Travis has argued, the conditions imposed on individuals should be limited and tailored to their risks and needs.<sup>295</sup> The more conditions there are, the harder it is to comply and the more likely it is that the individual will fail.<sup>296</sup> In addition, violations of conditions should be addressed by using systems of graduated sanctions that include rewards for positive behavior. As discussed earlier, some states have formalized graduated sanctions tools, and results to date are positive.<sup>297</sup> For example, Ohio's graduated sanctions matrix allows for multiple sanctions for violative behavior before revocation, ranging from more restrictive conditions to half-way house placement.<sup>298</sup> A 2008 evaluation found that the matrix saved money through reductions in both costly revocation hearings and actual revocations, while recidivism was reduced through combining progressive sanctions with added treatment services.<sup>299</sup>

Second, in addition to using risk assessments to determine whether a person is in need of supervision, parole agencies should utilize the new

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291. *See supra* note 235 and accompanying text.

292. PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 12.

293. *Id.* at 4.

294. *See id.* Not all of the strategies described in the report have been specifically tried on parole, but have been shown effective in the criminal justice system as a whole.

295. TRAVIS, *supra* note 3, at 56.

296. JACOBSON, *supra* note 20, at 150.

297. *See generally* Fialkoff, *supra* note 105.

298. MARTIN & VAN DINE, *supra* note 105, at 5–8; *see also* Grattet et al., *supra* note 87 (discussing California's Parole Violation Decision-Making Instrument).

299. MARTIN & VAN DINE, *supra* note 105, at 17, 27.

generation of risk assessments to help develop a supervision case plan.<sup>300</sup> However, the supervision plan should not be developed without the input of the individual on parole. As Ward and Maruna argue, “[I]t is essential to assess a client’s own goals, life priorities, and his or her aims for the intervention.”<sup>301</sup> Further, it is vital to make the most of the fourth generation of risk/needs assessments and conduct regular reassessments to ensure that the individual’s needs are being met and ascertain whether there has been a reduction in risk.

This leads to the third suggestion, which is that people should have the opportunity to finish their supervision early if their risk of reoffending has been reduced. Some states have already implemented “earned discharge,” which is seen as a way for low risk people to “earn their way off supervision early by adhering to specific goals and strict guidelines.”<sup>302</sup> Expanding earned discharge and making it available to high risk people who do well on parole and reduce their risk level simply takes this concept one step further. It would provide incentives, which can “enhance individual motivation and promote positive behavior change.”<sup>303</sup>

## VI. CONCLUSION

Despite its widespread acceptance, parole supervision is failing. In an era when budget constraints are playing an important role in criminal justice policymaking, states are becoming less tolerant of this failure. At the same time, the large numbers of people returning from prison are putting increasing pressure on states to improve their reentry services. While the reforms proposed above will not solve all of the problems with parole or address all the challenges of reentry, they would serve a number of functions. First, they would ensure access to reentry services to all people leaving prison, not just those who are on parole. Second, by making participation in reentry services voluntary, outcomes would likely be improved.<sup>304</sup> Third, in a time when resources continue to be scarce,<sup>305</sup> they

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300. See PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 26.

301. WARD & MARUNA, *supra* note 21, at 132. Ward and Maruna support the Good Lives model of rehabilitation which argues that successful therapy should go beyond the RNR model and should be based on the individual’s motivation. *Id.* at 23–25, 125–36; *see also*, PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 28–29 (arguing that involving people on parole will enhance their engagement).

302. PUTTING PUBLIC SAFETY FIRST, *supra* note 13, at 16.

303. *Id.*

304. Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 825–27 (discussing research showing that “voluntary treatment [is] superior to compulsory treatment”); Horn, *supra* note 124, at 38–39 (noting that “[o]ne of the problems with

would allow agencies to focus efforts on people at high risk to reoffend and who pose the biggest threat to public safety.

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coerced treatment is that it requires ever-increasing coercion to affect the next group of noncompliant clients”).

305. VERA INST. OF JUSTICE, *THE CONTINUING FISCAL CRISIS IN CORRECTIONS: SETTING A NEW COURSE* (2010), *available at* <http://www.vera.org/download?file=3072/The-continuing-fiscal-crisis-in-corrections-10-2010-updated.pdf>.

