



The Commission on Criminal and Juvenile Justice's Task Force on Community Supervision

Introduction

Over the last five years, Utah has analyzed its criminal justice system and focused considerable attention on the drivers of its prison population. Now, the areas of probation and parole are taking a more prominent role in reform conversations as stakeholders recognize the impact that supervision populations have on their prison populations as well as in the community. This trend is also occurring nationwide: 45 percent of all prison admissions are for supervision violations, and nearly a quarter are for technical violations (noncompliance with one or more rules of supervision).ⁱ In fact, as a result, on any given day, nearly 1 in 4 people in prison in the U.S.—about 280,000 people—are there because of a supervision violation.ⁱⁱ There are, however, numerous steps Utah can take to improve its community supervision system while strengthening community safety.

Background and Process

Utah has demonstrated a consistent commitment to data analysis and research-backed policymaking in the areas of criminal and juvenile justice. In 2015, the state passed HB 348, a comprehensive package of reforms to improve its criminal justice system drawn from the data and evidence-based recommendations from a six month-long study by the Utah Commission on Criminal and Juvenile Justice (CCJJ). HB 348 contained significant improvements to Utah's community supervision system including requiring case action plans for individuals on probation or parole, directing the Sentencing Commission to establish a graduated sanctions and incentives system, and requiring risk and needs assessments for supervision standards.

Since that time, analyses by CCJJ and the Utah Department of Corrections (UDC) have revealed concerns about Utah's community supervision population, including its growing size and success rates.ⁱⁱⁱ As a result, Utah state leadership agreed that its community supervision policies and practices would benefit from a deep data analysis and system review. To this end, in May 2019, Utah state leadership convened an inter-branch task force committed to using data and scientific evidence to help identify ways to improve the functioning of Utah's community supervision systems and advancing a comprehensive set of reforms in 2020 that yield stronger public safety and better outcomes for our communities. Task force membership, which consisted of a smaller group of CCJJ members, included:

Judge Judith Atherton, *Former District Court Judge (3rd Judicial District)*

Shane Bahr, *District Court Administrator, Designee for Judge Noonan*

Carrie Cochran, *Chair of the Board of Pardons and Parole*

Kim Cordova, *Executive Director of the Commission on Criminal and Juvenile Justice*

Mike Haddon, *Executive Director of the Utah Department of Corrections*

Richard Mauro, *Executive Director of the Salt Lake Legal Defender Association*

Judge Mary T. Noonan, *Utah State Court Administrator*

Marshall Thompson, *Director of the Utah Sentencing Commission*

Pam Vickrey, *Executive Director of the Utah Juvenile Defender Attorneys, Chair of the Sentencing Commission*

Ann Williamson, *Executive Director of the Utah Department of Human Services*

The task force was aided in its efforts by staff from the Public Safety Performance Project of The Pew Charitable Trusts, the Crime and Justice Institute, and the Sorenson Impact Center, who provided nonpartisan data analysis and technical assistance.

To formulate its recommendations, the task force engaged in a rigorous review of community supervision data, evaluated current supervision policies and programs, explored best practices from other states, and engaged in policy discussions to better understand the current state of the system. The task force also conducted a survey of Adult Probation and Parole (AP&P) agents to understand their perspectives on key practice areas as well as how effective they viewed specific policies. The task force discussed these findings and developed recommendations over the last three months. Lastly, the process included ongoing dialogue with stakeholders from a cohort state: representatives from Arizona’s Community Supervision Task Force, who were also working to identify policy changes for their system. The task forces met together two times to learn about each other’s systems, policies and discuss effective practices.

Key Data Findings

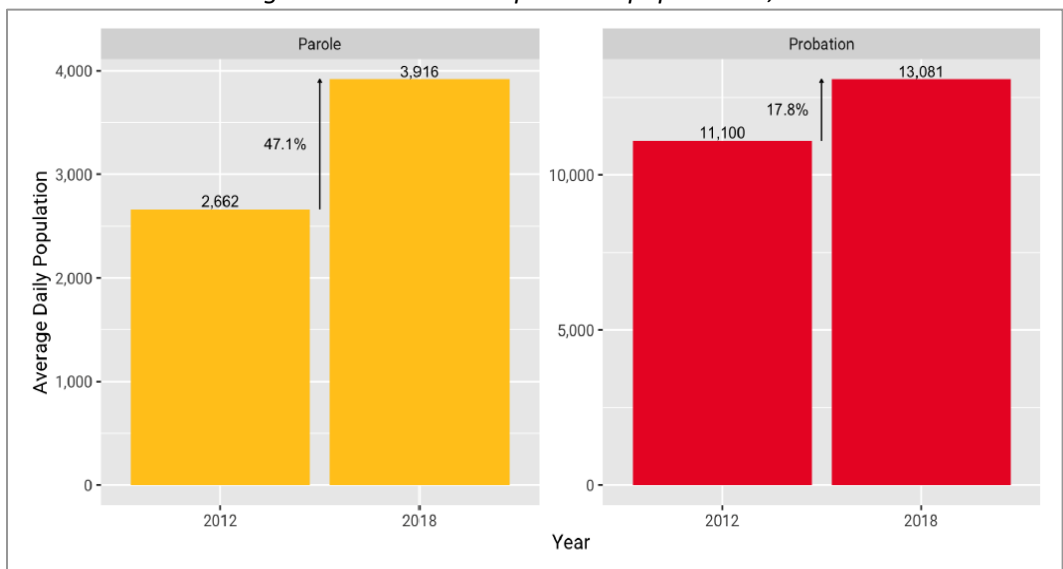
The task force’s data analysis revealed considerable growth in both parole and probation admissions – demonstrating a growing recognition that community-based corrections are a critical and effective alternative to incarceration. However, an increase in supervision revocations is driving prison admissions and resulting in a larger prison population. The data revealed four key findings about the state of the community supervision system in Utah:

- 1) Utah’s community supervision population has undergone steady growth since 2012;
- 2) Supervision revocations for both probation and parole have also increased;
- 3) The growth in Utah’s prison population is driven by these revocations; and
- 4) Technical revocations of supervision are pervasive, resulting in terms of imprisonment longer than 60 days.

1. Utah’s Community Supervision Population Has Undergone Steady Growth

Since 2012, both the probation and parole populations have increased by 17.8 percent and 47.1 percent, respectively, due largely to a growth in admissions (see Figure 1).

Figure 1: Increase in supervision populations, 2012 - 2018



For probation, the increased population is commensurate with a decline in new court prison commitments, which suggests that the court is utilizing probation instead of incarceration at a higher rate. Over that same time period, the Board of Pardons and Parole (BOPP)

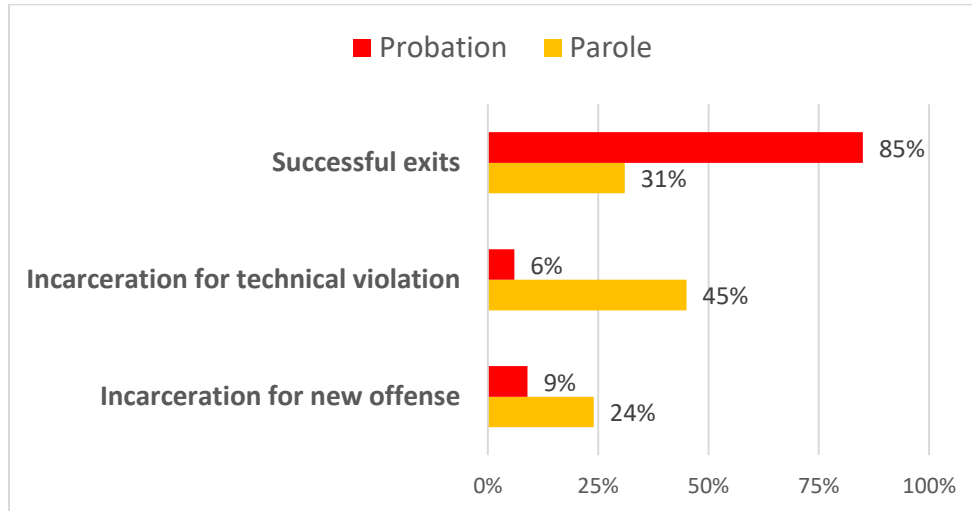
has also released more individuals from prison, leading to an expansion of the overall parole population.

While it can be challenging to supervise more people generally, the growth in the supervision populations was compounded by an increase in higher risk individuals, necessitating caseloads that require more time and attention. Between 2013 to 2018, the proportion of high-risk individuals on probation rose from 41 percent to 44 percent and from 10 percent to 18 percent for intensive-risk. Although there was a drop in high-risk individuals on parole (from 61 percent to 49 percent), the proportion of individuals assessed as intensive-risk rose from 15 to 25 percent over those same five years. Supervision for higher-risk individuals includes more frequent reporting and in-person meeting requirements, thereby increasing the overall workload for AP&P agents. According to the agent survey results, there is a split as to how much their caseloads allow them to promote successful completion of supervision and ensure public safety. Approximately half of respondents reported that their caseloads allowed them to complete these tasks either “somewhat,” “considerably,” or “a great deal,” while the remaining half said that they were only able to do so “a little” or “not at all.”

2. Supervision Revocations Have Increased

In 2018, 85 percent exited successfully from probation, while 15 percent had their probation revoked; on parole, 31 percent of cases exited successfully compared to 69 percent that were incarcerated (see Figure 2). Yet, while success and failure rates have remained relatively stable, the sheer number of exits from supervision are considerably higher because the overall supervision population has grown.¹ For example, in 2015 there were 646 probation revocations compared to 1,030 in 2018, reflecting a growth of 69 percent. For parolees, there were 1,387 revocations in 2015 and 1,967 in 2018, a growth of 42 percent. Moreover, these revocations have become significant drivers of Utah’s prison population.

Figure 2: Probation and Parole Outcomes, 2018

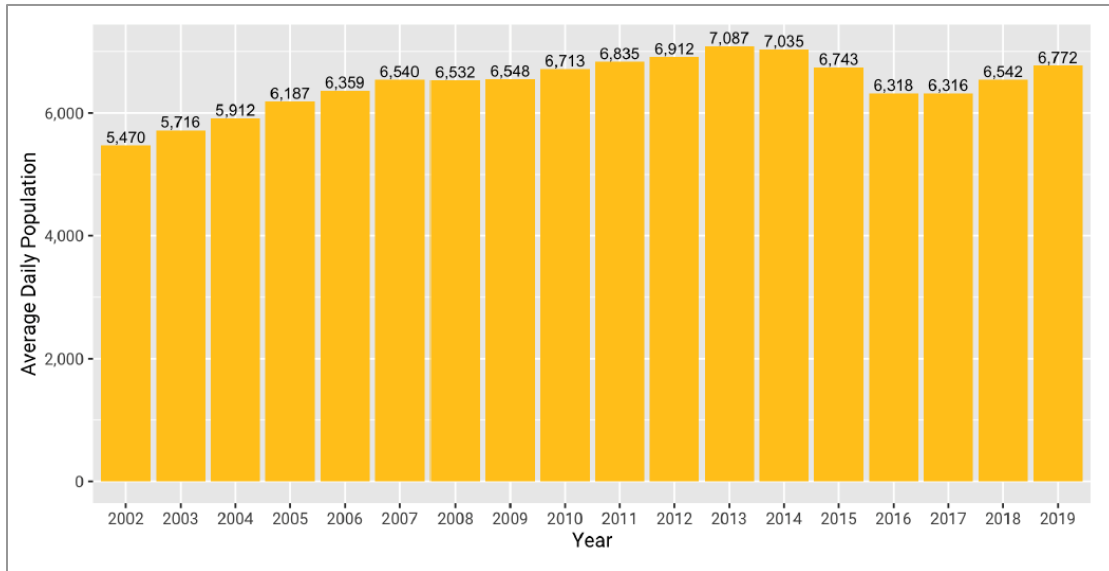


3. Supervision Revocations Are Driving the Growth in the Prison Population

Despite an initial drop between 2014-2016, the prison population grew by more than 400 individuals in the last two years (see Figure 3).

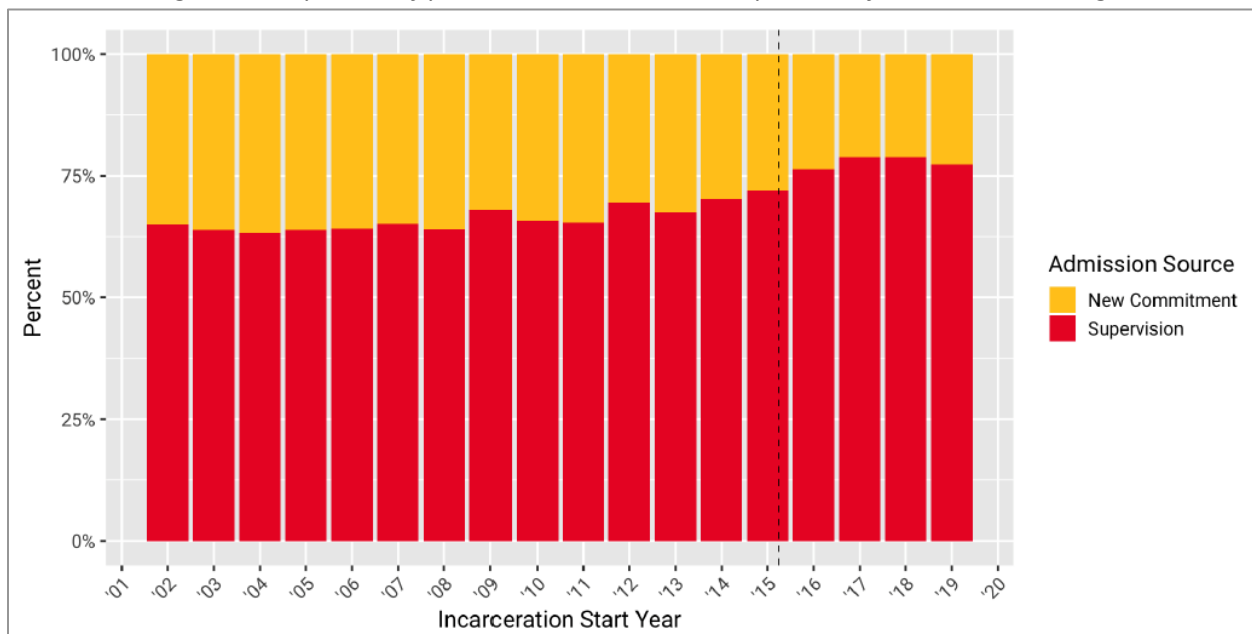
¹ In this analysis, “success” is defined as an exit from supervision that does not include prison incarceration, while “failure” is a revocation to prison incarceration.

Figure 3: Average prison population by year



Contributing most to that growth are revocations of probation and parole (see Figure 4). Nearly half of admissions in 2018 were people returning to prison due to parole violations; an increase from 2013 when that population made up less than a third. However, it is important to note that parole revocations – as a portion of prison admissions – had been increasing over the last decade and prior to HB 348 (dotted line indicates passage of HB 348, Fig. 4). Thus, this trend may not be associated with specific policies but rather a gradual change in agent behavior and practice over time.

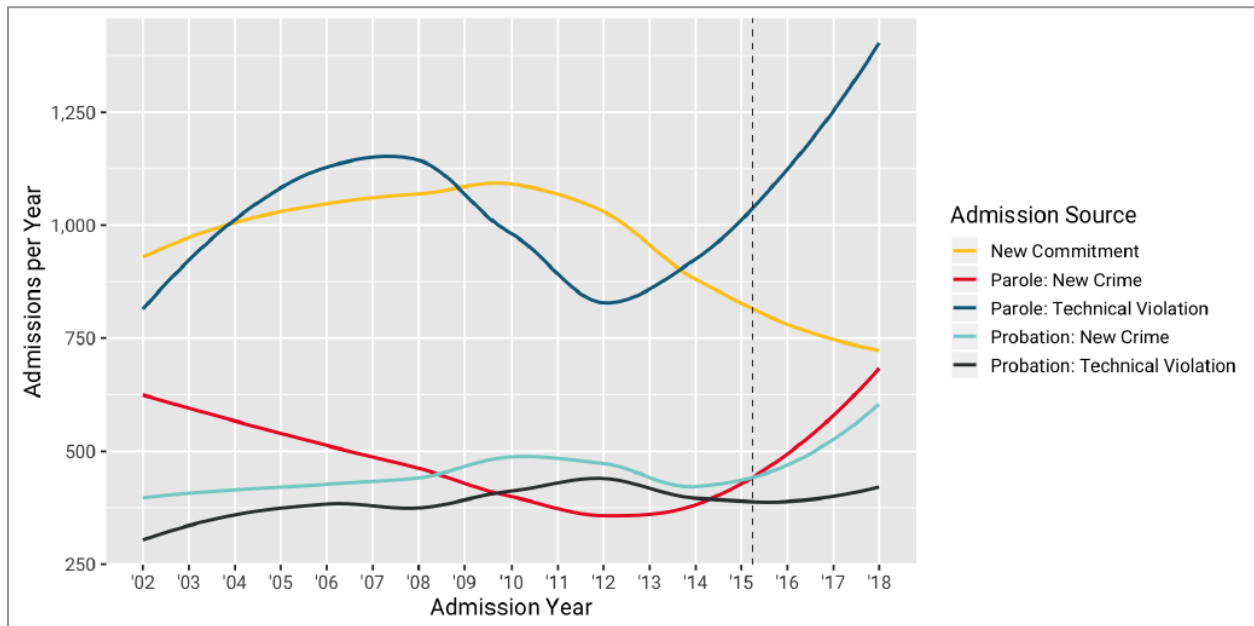
Figure 4: Proportion of prison admissions due to supervision failures is increasing



While there has been a general increase in revocations to prison for technical violations and new crimes, parole technical revocations, in particular, are driving prison admissions (see Figure 5, dark blue line), along with a surge from new crimes committed while on parole (see red line). Probation revocations also accounted for a

larger share of total admissions in 2018 (31 percent) than in 2013 (26 percent) (see light blue and black lines). Due to this growth in admissions, the supervision population has increased from 34.8 percent in 2013 to 45.3 percent in 2018 as part of the stock prison population.

Figure 5: Parole technical violations driving prison admissions



4. Technical Revocations Are Widespread and Result in Significant Terms of Incarceration

Technical revocations² to prison are prevalent and can result in significant durations of incarceration. In 2018, technical revocations made up 42 percent of prison admissions for probationers. A technical violation resulting in incarceration is the most common outcome in parole cases as well (66 percent in 2018). When reviewing the data, the task force saw that a typical technical violation was absconding. In fact, allegations of absconding have grown from 60 percent in 2015 to over 75 percent in 2018 for probation cases. For parolees, on the other hand, a little over half have some allegation of absconding reflected in their case history, a proportion that has remained relatively steady since 2015.

Additionally, lengths of stays in prison are increasing for those who have committed technical violations. The Response and Incentive Matrix (RIM), established in 2015, provides prison incarceration sentences and caps for parole technical revocations and should govern the length of stay in prison.³ In 2018, 51 percent of parolees incarcerated on a technical revocation stayed in prison at least 120 days.⁴

While these durations of incarceration for technical violations generally aligns with these caps, agent use of and the efficacy of the RIM may be contributing to the growth in technical revocations. According to the agent survey, 69 percent reported using the RIM “very often” or “extremely often,” yet the remaining 31 percent stated using it only “sometimes,” “rarely,” or “almost never.” Moreover, 45 percent of agents consider the RIM

² *Technical revocations*: revocations of probation or parole due to any violations of the terms and conditions of supervision where a commitment for a new crime is not included.

³ The RIM also provides jail incarceration sentences and caps for probation technical violations. Jail data, however, was not available for this analysis.

⁴ The data reflected in these time periods are suspended sentences imposed by judges. There may be sanctions leading up to these stays in prison that include jail time, but jail data was not available for this analysis.

to be only “somewhat effective,” and 27 percent say it is only “a little” effective. Although the RIM is a mandatory tool, this data suggests that agents may be bypassing the RIM, or that it is in need of modifications.

Recommendations

Given the rigorous review of the data and research, the task force developed recommendations to address the challenges identified in the system and adopt evidence-based practices to establish more successful outcomes.

Recommendation #1: Revise the application of the Response and Incentives Matrix and provide for more community alternatives

Supervision failures are growing and driving the state’s prison population. Technical revocations make up a substantial portion of admissions to prison, and those incarcerated for technical violations stay in prison for significant amounts of time. Research, however, has shown that incarceration is not more effective than community supervision in protecting public safety, and longer lengths of incarceration do not necessarily deter recidivism or increase community safety.^{iv} Policy changes are necessary to stem the increase in failures and decrease the amount of time incarcerated. Both statutory and administrative changes could help alter this path and ensure the community supervision system is not acting as a gateway to incarceration.

The Task Force recommends:

- Directing the Sentencing Commission, through the Adult Sentencing & Release Guidelines, to develop guidance for the judiciary and the Board of Pardons and Parole regarding when incarceration is appropriate for a technical violation of supervision conditions.
 - This guidance should strongly discourage the imposition of prison sanctions for technical violations and/or lower-level new offenses (e.g. drug or property offenses), except where there is a substantial threat to public safety which cannot be addressed through behavior modification sanctions.
- Expanding community-based options for supervision violators, including programming and treatment.
 - This includes expanding funding for social work staff in Treatment Resource Centers (TRCs) to provide community support and alternatives to incarceration for individuals violating supervision.

The above recommendations require statutory changes.

- Establishing strict criteria compelling Adult Probation & Parole (AP&P) agents to utilize the RIM
 - AP&P should clarify agency policy through internal guidance and a pre-revocation checklist providing specific criteria agents must meet to petition for a revocation and/or an incarceration sanction.
- Advising the Sentencing Commission to examine lengths of sanctions to prison in the RIM with consideration for reentry preparation and impact of incarceration on individuals.
- Considering modifying the response to absconders who have been safely located:
 - Institute AP&P policy that outlines procedures for warrant recall and continuing supervision when an individual who has absconded on supervision has been safely located or has surrendered to an appropriate authority.
 - Implement “safe surrender” programming to encourage resolution of warrants.
- Establishing training or education for key stakeholders regarding sentencing incarcerated parolees on new cases per Utah Code Ann. § 76-3-208.

The above recommendations require administrative changes.

Recommendation #2: Modify the application of legal financial obligations

Legal financial obligations (LFOs), ordered as part of a criminal sentence, can contribute to economic uncertainty and undermine the financial stability of people on supervision.^v For instance, a first DUI offense requires payment of a mandatory fine of \$700, but also a \$630 surcharge and \$50 court security fee. Other financial sanctions can include, for example, costs for investigation, apprehension, and prosecution; costs of county incarceration; interest on judgments; or specimen fees.^{vi} Additionally, once a prison sentence is imposed, all criminal debt is transferred to the Office of State Debt Collection (OSDC) where interest begins to accrue.

These costs can present a tremendous hardship for those on supervision who are struggling to integrate into their communities. Individuals leaving prison may owe as much as 60 percent of their income to criminal debts.^{vii} Research reveals that many individuals may face the choice between providing for their basic needs, like electricity and groceries, or paying their LFOs.^{viii} In interviews, multiple stakeholders raised LFOs as a challenge for those on community supervision. Additionally, according to the AP&P survey, agents identified “basic needs” as one of the top four barriers to supervision completion. Although many fines and fees serve a legitimate criminal justice purpose to hold individuals accountable for financial loss, the standard application of these and other legal financial obligations may place severe burdens on criminal justice-involved individuals who simply cannot afford to pay.

The Task Force recommends:

- Creating an ability to pay assessment to inform LFOs imposed at sentencing.
 - This assessment would be triggered by an automatic presumption of indigency when a public defender is appointed. The assessment would require a court determination of reasonable monthly payment amounts based on that individual’s circumstances.
- Authorizing judges and BOPP to explicitly waive the remainder of LFOs (except restitution) at successful completion of supervision or after 12 timely payments to the court.
- Providing a grace period, after incarceration, for payment of LFOs through OSDC.
 - Pause interest and charges throughout time spent incarcerated and during the grace period.
- Authorizing the court or OSDC to defer LFOs through a showing of manifest hardship.

The above recommendations require statutory changes.

- Advising the Sentencing Commission to make recommendations to the Judicial Council regarding the burdens imposed by fines and changing the bail/fine schedule.
- Providing judicial training on the purpose of LFOs, especially regarding fines.

The above recommendations require administrative changes.

Recommendation #3: Establish performance measures and a means of data sharing among relevant agencies

Performance measures enable stakeholders to track key data indicators and assess the success of any system changes. Utah already collects data on many aspects of its criminal justice system, including the use of graduated sanctions and incentives, treatment and recidivism reduction programs, the earned time credit program, and court information on legal financial obligations.^{ix} Tracking performance metrics and monitoring outcomes helps assess the impact of reforms, provides insight into overall system functionality, and determines

if further adjustments are needed. The task force concluded that additional data collection would enable further assessment of and improvements to Utah's community supervision system and facilitate conversation and partnership among key system actors.

The Task Force recommends:

- Authorizing CCJJ to collect the following data measures from specified agencies on a quarterly basis and disseminate these metrics to relevant stakeholders, such as the judiciary and BOPP:
 - Department of Corrections:
 - Incentives and sanctions used per person on supervision;
 - Technical violations leading to a revocation (by judicial district); and,
 - Supervision terminations requested vs. terminations granted (by judicial district)
 - County Jail Administration:
 - Number and proportion of population of supervision violators in jail; and,
 - Days spent in jail by supervision violators (days imposed vs. days spent incarcerated)
 - Department of Substance Abuse and Mental Health (DSAMH):
 - List of certified behavioral health providers for criminal justice-involved individuals by AP&P region and services offered;
 - Number of criminal justice-involved individuals served by DSAMH, by behavioral treatment type (e.g., substance abuse; inpatient, etc.);
 - Average wait time for behavioral health treatment, by treatment type; and
 - Percentage of criminal justice-involved individuals completing or failing DSAMH programming (by behavioral treatment type) and completing supervision successfully
 - Require any publicly funded treatment programs to provide data to DSAMH, starting with federal treatment episode data set.
 - Administrative Office of the Courts (AOC):
 - Collect data related to appointment of counsel, which is currently not captured by current court data.

The above recommendations require statutory changes.

Recommendation #4: Establish key stakeholder engagement through individuals impacted by the criminal justice system

It is critical that changes and improvements to the community supervision system include the voices of those most affected by it: those who were formerly incarcerated and/or on community supervision. These individuals know best how the system is working and where there are gaps and places for improvement. The lived experiences and input of those who experienced the system first-hand are key to ensuring that reforms meet the needs of those involved in the system.

The Task Force recommends:

- Advising the Sentencing Commission and CCJJ, in coordination with the UDC, BOPP, and AOC, to establish a focus group of formerly incarcerated individuals and/or individuals formerly on supervision to discuss barriers faced on supervision. The group discussion could inform:
 - The gaps and barriers on supervision as well as the creation of effective incentives; and
 - Future policy and administrative changes necessary to implement reform.

Conclusion

Community supervision allows individuals who otherwise would have been incarcerated or who have already served time in prison to meet obligations to their families, communities, and victims. As in many other states, community supervision has become a primary driver of incarceration in Utah. To address and reverse this trend, the state should consider implementing these recommendations and continue to engage in efforts to assess and improve the system. These recommendations will help reshape community supervision and move the system from merely punishing failure toward cultivating long-term success, with the goal of a safer, more productive future for individuals, families, and communities.

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Josh Draper, *Northern Region*
Northern Region Supervisors
Spencer Turley, *Region III*
Annette Salgado, *Region III*
Region III Supervisors and Agents
Irvin Hale, *Region IV*
Region IV Supervisors and Agents
Tony Garrett, *Region V*
Wade Allinson, *Region VI*

Judiciary

Judge Kraig Powell
Judge Patrick Corum
Judge Derek P. Pullan
Judge Jennifer L. Valencia
Judge Matthew Bates
Judge William K. Kendall
Judge M. James Brady
Judge Robert C. Lunnen
Judge Samuel P. Chiara

Utah State Representatives

Representative Eric Hutchings
Representative V. Lowry Snow

Sorenson Impact Center

Jonathan Zadra

Administrative Office of the Courts

Judge Mary Noonan

ⁱ Council of State Governments, "Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets" (2019), <https://csgjusticecenter.org/confinedandcostly/>

ⁱⁱ *Id.*

ⁱⁱⁱ See, e.g., Utah Commission on Criminal & Juvenile Justice, "Current Criminal Justice Policies: 2019 Annual Report," (Nov. 2019) https://justice.utah.gov/JRI/Documents/Justice%20Reinvestment%20Initiative/2019/JRI_2019_Annual_Report.html; S. Nystrom, et al., "Examining Parole Revocation Patterns," *Utah CCJJ* (Oct. 2018), https://justice.utah.gov/JRI/Documents/Parole_Revocation_Patterns_Final.pdf.

^{iv} See, e.g., Harding, Siegel, and Morenoff, "Parole Sanctions and Earnings after Release," *Soc. Forces* 96 no. 2 (2017); C. Klingele, "Rethinking the Use of Community Supervision," *Journal of Criminal Law & Criminology* 103, no. 4 (2013): 1015-69, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2232078#; "Responding to Probation and Parole Violations: Are Jail Sanctions

More Effective Than Community-Based Graduated Sanctions?” *Journal of Criminal Justice* 43, no. 3 (2015): 242-50, <https://doi.org/10.1016/j.jcrimjus.2015.04.010>.

^v A. Agan and S. Starr, “The Effect of Criminal Records on Access to Employment,” *American Economic Review* 107, no. 5 (2017): 560-64, <https://www.aeaweb.org/articles?id=10.1257/aer.p20171003>; C.W. Harlow, “Education and Correctional Populations” (U.S. Department of Justice, Office of Justice Programs, 2003), <https://www.bjs.gov/content/pub/pdf/ecp.pdf>; D. Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, no. 5 (2003): 937-75, <https://scholar.harvard.edu/pager/publications/mark-criminal-record>.

^{vi} UT Code Ann. § 77-32a-107 et seq.; § 76-3-201(6)(a); § 15-1-4; § 53-10-404.

^{vii} Douglas N. Evans, “The Debt Penalty: Exposing the Financial Barriers to Offender Reintegration,” *Research & Evaluation Center, John Jay College of Criminal Justice* 9 (Aug. 2014).

^{viii} Neil L. Sobol, “Charging the Poor: Criminal Justice Debt & Modern-Day Debtors’ Prisons,” *75 Md Law Rev.* 486, 520 (2016); Lauren-Brooke Eisen, “Charging Inmates Perpetuates Mass Incarceration,” *Brennan Ctr. for Justice* 2 (2015).

^{ix} UT Code Ann. § 64-13-21(4) and (7)(f); §62A-15-103(2)(1); §63M-7-204; §77-22-5.4(6); §51-9-402(4).