



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

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Tennessee Senate Committee on the Judiciary

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My discussion will focus on the Taskforce on Sentencing and Recidivism's fifth recommendation, which states: "Develop additional alternatives that are swift, certain, and proportionate responses for non-compliance with conditions of probation and parole when such non-compliance does not rise to the level of a new criminal prosecution or absconding from supervision."

Both the Tennessee Consultation on Criminal Justice and Human Rights Defense Center support this recommendation, specifically the use of short-term jail stays for technical violators.

I. Background and Data

First a look at the numerical data. The total parole population in Tennessee for FY 2014-15 was 13,664;² this only includes offenders on parole after completing a prison sentence – not those on probation or other types of community corrections supervision.

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² <https://www.tn.gov/assets/entities/correction/attachments/FelonAugust2015.pdf>

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When parolees violate the terms of their supervised release they may face revocation hearings. This applies when offenders commit new crimes and also when they commit “technical” violations; the latter include failure to pay supervision fees, leaving the county or state without permission, failing drug tests, not maintaining employment, violations of electronic monitoring, failure to report for parole meetings, and failure to attend or complete required treatment programs. Typically, parolees do not face revocation for technical violations unless graduated administrative sanctions have proven ineffective; for example, an offender who fails a drug test first may be required to undergo more frequent drug tests and/or enroll in a substance abuse program.

In FY 2014-15, the Board of Paroles held 2,059 revocation hearings; of those, 1,991, or around 97%, resulted in a revocation of parole according to the Board’s Research, Policy and Planning office. These include revocations for both technical violations and new criminal offenses. There is no easy way to separate the two types of revocations, as some hearings include both new offenses and technical violations, while in other cases new criminal charges are initially filed but later dismissed, leaving only technical violations.

According to the most recent data from the TDOC – the TN Felon Population Update, August 2015 – there were 10,415 admissions to the prison system in FY 2014-15 (not including locally sentenced felons). Of those, 4,425 (42.5%) were for “Violators Returned” – defined as “commitment of felons on *technical violations* of the conditions of their parole or probation, or community correction terms” (emphasis added).³ Thus, over four of every ten TDOC admissions during the last fiscal year were technical violators. This is significantly higher than the national average; a 2014 report by the U.S. Dept. of Justice, Bureau of Justice Statistics, found the average percentage of admissions due to community supervision violations was just under 26%.⁴

³ <https://www.tn.gov/assets/entities/correction/attachments/FelonAugust2015.pdf> (page 8)

⁴ <http://www.bjs.gov/content/pub/pdf/p13.pdf> (Table 9)

The TDOC’s cost of incarceration is an average \$71.79 per day – or around \$26,203 per year using 2012-13 data.⁵ Thus, based on this average cost, the annual cost of incarceration for the 4,425 technical violators sent to state prisons alone in FY 2014-15 was *almost \$115,950,000*.

In advance of this hearing, the TDOC provided detailed data for Community Supervision Releases by Type for FY 2014-15, which includes the number and percent of technical violations for offenders on probation, parole and community corrections:

Community Supervision Releases by Type: FY 2014-2015

TYPE	Probation	%	Parole	%	Communi ty	%	SYSTEM WIDE	%
Death	342	2.0%	150	3.3%	68	3.1%	560	2.3%
Discharges & Expirations	11,139	64.5%	2,592	57.7%	559	25.2%	14,290	59.6%
Revocation, Positive Drug Test	384	2.2%	40	0.9%	217	9.8%	641	2.7%
Revocation, New Charge	2,780	16.1%	963	21.4%	437	19.7%	4,180	17.4%
Revocation, New Charge Pending	564	3.3%	371	8.3%	101	4.6%	1,036	4.3%
Revocation, Technical	2,062	11.9%	375	8.4%	832	37.6%	3,269	13.6%
TOTAL	17,271		4,491		2,214		23,976	

Although the numbers are slightly different than those in the TN Felon Population Update, this data indicates that, excluding deaths and discharges of offenders from community supervision, technical violations (including positive drug tests, which are typically considered technicals), around 42% of probation revocations are for technical violations; 23.7% of parole revocations are for technical violations; and 66% of community corrections revocations are for technical violations – for an average of 42.8% of all community supervision revocations resulting from technical violations.

Decreasing the number of technical violators would result in significant savings to the state (and thus to taxpayers), as well as fewer admissions to the state prison system; as indicated above, 42.5% of TDOC prison admissions are for revocations due to technical violations, at a cost of almost \$115,950,000 annually.

⁵ Email with cost breakdown for TDOC prisoners, TDOC Office of Communication & Public Relations, July 1, 2014

II. Current Options for Revocations

Presently, if an offender's parole is revoked due to technical violations, he can either be returned to the state prison system to continue serving his original sentence (and may be re-released on parole in the future), or sent to a six-month Parole Technical Violator Diversion Program that operates at the Turney Center prison annex.⁶ The diversion program is authorized by TCA § 41-1-123; while that statute permits the TDOC to establish such programs at one or more locations in the state, only one is currently in operation – and since it only accepts male offenders, female offenders do not have the option of participating in a technical violator diversion program.

Downsides of the program include its six-month duration, which necessarily removes violators from the community for half a year and costs them their jobs, possibly their housing or place of residence, as well as close contact with their families and children (as there is only one technical violator program, prisoners from across the state are placed there even though it may be located far from their families).

As noted in the Taskforce recommendations, “Any response that requires secure confinement can have negative consequences on positive supports an offender has in the community. Even a short period of detention or incarceration can cause offenders to lose jobs, housing, or custody of their children. Only when all community-based sanctions have been imposed and an individual continues to violate should secure confinement sanctions other than a revocation to prison be considered.”

The technical violator diversion program also has a limited number of beds, and the six-month duration means only two full cohorts of offenders can cycle through the program each year.

Although the TDOC operates under “progressive intervention” for offenders, whereby technical violations are addressed with closer supervision or administrative sanctions, presently

⁶ <https://www.tn.gov/correction/article/tdoc-rehabilitation-parole-technical-violators-diversion-program>

there is no option between non-incarceration sanctions and revocation with a six-month stay at the Technical Violator Diversion Program or return to prison to continue serving the original sentence.

III. Short-term Jail Stays as Intermediate Sanctions

A number of states have adopted policies that allow technical violators to be sent to jail for short-term stays – as little as 1 day and up to 90 days, with jail time to be served on weekends in some cases. This option is reserved for those offenders who continue to commit violations after other administrative actions have proven ineffective, or who commit serious technical violations, as an intermediate sanction before revocation and return to prison.

The benefits of an intermediate sanction that sends technical violators to jail for short stays include: 1) holding offenders accountable for breaking the rules; 2) Addressing the issues that resulted in the violations; 3) Minimizing interruption to the offender’s work and family life; and 4) Minimizing the cost of incarceration to the state.⁷

As noted in the Taskforce recommendations, the “TDOC should strive to respond to violations with a community-based response. If those responses are ineffective with an individual, short-term jail stays can be used as a sanction in lieu of revocation. The least amount of time should be used, initially one-to-three days, and should only escalate to up to 7 days if a shorter term has been used and has not been effective at curbing that individual’s behavior. Administrative sanctions would allow probation and parole officers (PPOs) to impose the jail time without first obtaining direct judicial approval, enabling a more immediate sanction. To protect due process rights, offenders may have an administrative hearing or waive their right to one.”

According to a 2011 report by the Pew Center on the States, “Despite a nearly two-decade decline in national crime rates, the rate of reincarceration for a new crime among those persons released from prison increased by 11.9 percent between the two cohorts in this study [1999

⁷ <http://www.ncsl.org/print/cj/violationsreport.pdf>

and 2004]. However, this increase was offset by a 17.7 percent drop in the rate of offenders returned for a technical violation. These numbers suggest that states are improving their responses to community supervision violations, thereby reserving prison space for ex-offenders who have committed new crimes.”⁸

Over 30 states provided data for the Pew report, but unfortunately Tennessee was not among them. The report also noted that “Some technical violators should undoubtedly be returned to prison, particularly those who violate conditions such as ‘stay away’ orders that have a direct link to victim safety. But progressive sanctions that hold the offender accountable and keep him or her in the community – and therefore connected to family and employment – can be just as effective, if not more effective, than a costly revocation.”⁹

The Pew report cited Hawaii as an example, where technical violators receive a “swift and certain” short-term jail stay. Hawaii’s Opportunity Probation with Enforcement (HOPE) program has reportedly reduced both revocations and new arrests by over 50 percent.¹⁰

In May 2015, Alabama enacted justice reinvestment legislation (SB 67), which required the state to “Establish intermediate sanctions to respond to technical violations of probation and parole, and allow for short jail stays prior to revocation in the range of possible sanctions.”¹¹ According to the Justice Reinvestment Framework, the state will “Develop policies establishing progressive sanctions in response to lower-level technical violations among probationers and parolees and articulate a framework for use of swift and short jail stays as part of the range of sanctions.”¹²

Alabama’s Justice Reinvestment Framework further states:

⁸ http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/pewstateofrecidivism.pdf

⁹ *Id.*

¹⁰ *Id.*

¹¹ <https://csgjusticecenter.org/wp-content/uploads/2015/05/AlabamasJusticeReinvestmentApproach.pdf>

¹² <http://ali.state.al.us/documents/ALpolicyframeworkfortaskforce20150130.pdf>

Sanctioning technical probation and parole violators with one month of confinement followed by a return to supervision provides a less costly and much more effective method of holding individuals accountable for their behavior than the use of lengthy confinement periods in prison for supervision violations. It increases accountability among probationers and parolees who otherwise would have been released from prison to the community without any supervision. These confinement periods also use state resources more efficiently than the revocation process because it shortens the average length of stay for people returned to prison for a violation of a condition of probation or parole. There were 3,376 probation and parole violators sent to prison in FY2013, and almost thirty percent of these were technical violations of supervision conditions, which include breaking curfews, missing appointments, or testing positive for drug use. The number of prison beds that Alabama used for technical probation revocations was 1,520 at the end of June 2014, and that bed demand represents an annual operational cost of \$25 million.”¹³

A July 2015 report by the Vera Institute of Justice notes that parolees in New Orleans can be required to serve up to 90 days in jail for a first technical violation.¹⁴

In Colorado, a “Swift and Sure” pilot program implemented in 2014 allows parole violators to be placed in county jails as a short-term intermediate sanction.¹⁵

In 2012, Missouri lawmakers passed a bill (HB 1525) that allows parolees to be sent to jail for short-term stays for technical rule violations, including failing drug tests.¹⁶ According to a news report in the *St. Louis Post-Dispatch*, backers of the bill argued that “swift punishment would get the message across better than the current system, in which minor violations pile up, get mired in court backlogs and then result in an offender being shipped to the penitentiary.”¹⁷

The requirement of imposing “swift” sanctions for technical violations is paramount. As most parents know, children benefit most when discipline is imposed shortly after a transgression. When a child steals from the cookie jar, discipline imposed days or weeks later is ineffective, as the sanction has no immediate connection to or association with the wrongdoing. As stated in the

¹³ *Id.*

¹⁴ <http://www.vera.org/sites/default/files/resources/downloads/detention-probation-parole-violators-orleans-parish-prison.pdf>

¹⁵ http://www.doc.state.co.us/sites/default/files/ar/0250_76_090914_0.pdf

¹⁶ <http://www.house.mo.gov/billtracking/bills121/billpdf/truly/HB1525T.PDF>

¹⁷ http://www.stltoday.com/news/local/govt-and-politics/missouri-legislature-passes-sentencing-parole-guidelines/article_5b8171e9-e173-5504-8f9f-9e65474c5ebb.html

Taskforce recommendations, “Many decades of research on human behavior indicate that an immediate response to behavior is always more effective than a delayed response.”

Also consider, however, that we do not discipline children who steal from the cookie jar by spanking them for four hours and then making them stand in a corner for a week. The discipline must be proportionate as well as timely. Under the current system, revoking parolees who commit technical violations and then making them wait weeks or months for a revocation hearing is not by any definition “swift.” Nor in many cases that involve technical violations is a return to prison to continue serving the original sentence a proportionate response. It is, however, a costly response.

The Taskforce recommendations note that revocation of parole or probation for offenders who commit technical violations should be limited to those who have already served a short-term jail sanction: “Offenders on probation and parole supervision should be ineligible for revocation by a judge or the Board of Parole unless they have already been subject to a short-term jail sanction.” Exceptions include offenders who commit new crimes (who are not technical violators), and those who abscond from parole supervision. If adopted, this limitation on revocations would further reduce the number of technical violators who are returned to prison, thus reducing overcrowding in Tennessee’s prison system and resulting costs to the state.

IV. Impact on Local Jails

If short-term jail stays as a sanction for technical parole violations are implemented, there will be an impact on the county jails used for the short stays. According to the most recent Tennessee Jail Summary Report (August 2015),¹⁸ TDOC “backup” prisoners are held in almost every county jail statewide, totaling 4,967 offenders. The same report indicates that there are also 4,530 vacant beds in county jails statewide.

¹⁸ <https://www.tn.gov/assets/entities/correction/attachments/JailAugust2015.pdf>

When the 2,500-bed Trousdale Turner Correctional Center opens late this year or in early 2016, the TDOC has an opportunity to move some of the TDOC backup prisoners from jails to state prisons. This will free up jail bed space which can then be used for short-term stay sanctions for technical violators.

Further, as noted above, currently 42.5% of TDOC prison admissions are due to revoked violators; once implemented, short-term jail sanctions should reduce the number of probationers and parolees sent to prison due to technical violations; this would also serve to reduce the TDOC's in-house population, allowing more TDOC backup prisoners to be moved to state facilities and thus further freeing up jail bed space for short-term stay sanctions.

V. Other Parole-related Issues

Addressing problems related to technical violators, who constitute 42.5% of annual TDOC prison admissions, will require more than authorizing short-term jail stays as an intermediate sanction.

Presently, our parole system is primarily focused on supervision and enforcement of parole conditions – not on assisting released prisoners with their social, employment and housing needs, all of which would decrease their risk of recidivism.

As the TDOC candidly acknowledges:

Probation parole officers are not job placement counselors. However, officers can assist by helping offenders identify their vocational strengths and goals and then providing related resource referrals. Officers may also make referrals to the local Career Center which offers job search and job readiness assistance.... TDOC does not distribute a list of employers. Although many employers are willing to hire offenders who have skills and/or a positive work ethic, most employers do not wish to be included in a list that is widely distributed without regard to their specific job needs and requirements.¹⁹

Of course, without assistance in obtaining employment, finding a stable place to live, obtaining mental health or substance abuse treatment, etc., parolees are at a much higher risk of

¹⁹ <https://www.tn.gov/correction/article/tdoc-community-supervision-resources-information>

recidivism. As noted in a March 2010 resource guide for parole leaders published by the National Institute of Corrections, “. . . parole supervision in the latter decades of the 20th century and into the early years of the new century focused on monitoring and compliance, seeing a major role of supervision to be the return of noncompliant offenders to the parole authority for consideration when violations occurred. More emphasis is now being placed on parole supervision as a way not only to intervene with noncompliant behavior but to employ positive strategies to change offender behavior – reducing the likelihood of future victimization.”²⁰

Thus, the very function of parole officers and how they approach offender supervision should be reexamined and reevaluated. Otherwise, parole serves not as a means of successfully reintegrating offenders into the community following their release from prison, but rather as a “feeder” system that focuses on monitoring and primarily serves as a way to return offenders to prison when they commit technical violations or, due to their failure to reintegrate, after they commit new crimes.

As a companion issue, case loads for parole officers tend to be high, which prevents them from forming one-on-one relationships with parolees and limits the amount of supervision they can provide. According to the TDOC, there are only 754 probation/parole officers statewide. More parole officers would reduce case loads and free up time they could use to assist offenders with post-release reentry needs.

With respect to the composition of the Board of Paroles members, there is no statutory requirement that the appointed members have any particular expertise or familiarity with criminal justice-related issues, nor any specified qualifications that would ensure they are able to make informed decisions as to which prisoners should be released on parole. TCA § 40-28-103(c) only provides that, “In considering persons for appointment [to the Board], the appointing authority shall give preference to candidates with training, education or experience in the criminal justice

²⁰ <http://nationalparoleresourcecenter.org/nprcdocuments/Parole-Essentials-Practical-Guides-For-Parole-Leaders.pdf>

system, law, medicine, education, social work or the behavioral sciences.” Yet this “preference” does not ensure that Board members have specific qualifications for making parole decisions.

Compare this with the requirements for parole board members in Kentucky, for example: “The Governor shall make each appointment from a list of three (3) names given to him or her by the Kentucky State Corrections Commission. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board.”

Over the past five years at least 16 states have overhauled their parole systems, including six states that now require specific minimum qualifications for board members.²¹ Thus, minimum qualifications for parole board members should be considered in Tennessee, in addition to changes in how board members are appointed; for example, they could be appointed only with the approval of the Senate or through another method that provides some measure of legislative oversight.

Lastly, legislation was passed in 2012 that transferred probation, parole and community corrections supervision for adult offenders from the Tennessee Board of Probation and Parole to the TDOC.²² The previous year, the legislature had voted to discontinue the joint Select Oversight Committee on Corrections. Reinstating such a committee would permit legislative oversight that focuses not only on issues affecting the TDOC – which, given recent developments related to levels of violence and staffing issues, appears warranted – but also on issues related to probation, parole and community corrections.

²¹ https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8eaa61_story.html

²² <https://www.tn.gov/assets/entities/correction/attachments/HistoricalTimeline.pdf>

VI. Summary of Recommendations

1. Allow short-term jail stays as a swift and certain sanction for technical violators in addition to other intermediate sanctions in the TDOC's progressive intervention process.
 - a. Short-term jail stays would range from 1 to 7 days in local jails, with options for time to be served on weekends to prevent loss of employment or housing.
 - b. This sanction would only be used for serious technical violations, or after other administrative sanctions have been ineffective at correcting an offender's misbehavior or non-compliance.
 - c. Revocations of community supervision based solely on technical violations would require that offenders first receive a short-term jail stay as an intermediate sanction.
 - d. A hearing to ensure due process protections would be provided before imposing a short-term jail stay, though an offender could waive the hearing.
 - e. County jails would receive reimbursement for holding technical violators in the same manner that they currently receive payments for holding TDOC backup prisoners or locally-sentenced felons.
2. Shift the focus of community supervision from primarily supervision and monitoring to actively assisting offenders with their post-release needs and connecting them with programs and resources to help reduce their risk of recidivism.
3. Reduce caseloads for probation/parole officers, such as through the hiring of additional officers and/or support staff.
4. Require Parole Board members to meet minimum qualifications; also, require appointment of Board members to be subject to a legislative approval process.
5. Reestablish a legislative Oversight Committee on Corrections, to ensure focused ongoing oversight of the TDOC and parole-related matters by the legislature.