

1. **Policy Discussion** – Pew

- Streamlining parole
- Parole for vulnerable populations
- Effective sanctioning practices
- Incentivizing good behavior and recidivism reduction program completion in institutions
- Mental Health

2. **Upcoming meetings**

- *4th subgroup meeting:* Nov. 8, all working groups to meet, 9-10:30am
 - Full SROC (afternoon): SROC report-out meeting
- *5th subgroup meeting:* Nov. 27, 10-12pm
- Final SROC meeting: Dec. 13, time: TBD

Policy Discussion: Streamlining Parole (aka Administrative Parole)

Administrative parole is a process that allows eligible inmates to be released to parole supervision, without a hearing, if they are compliant with an intake plan while they are incarcerated.

➤ What is a typical intake plan?

Inmate intake plans often include programming determined by an assessment tool and/or participation in a work or education program as well as a requirement to comply with the rules of the institution. Administrative parole is not contingent on completing the case plan, but rather the inmate – while incarcerated – must maintain conduct that adheres to the components of the plan.

Intake Plan Examples

South Dakota¹

- Within 30 days of admission to the department, the department shall establish an individual program directive for each inmate which includes:
 - Required work, school, or program participation;
 - Refraining from conduct evincing an intent to reoffend; and
 - Required conduct in accordance with the rules and policies of the department and its institutions.

Mississippi²

- Within 90 days of admission, the department will complete a case plan that includes:
 - Programming and treatment requirements based on the results of a risk and needs assessment;
 - Any programming or treatment requirements contained in the sentencing order; and
 - General behavior requirements in accordance with the rules and policies of the department.
- The department shall ensure that the case plan is achievable prior to inmate's parole eligibility date.

Louisiana³

- The Department of Public Safety and Corrections will establish procedures to develop a written case plan that includes:
 - The results of an assessment of the offender's risk and needs and includes participation in programming that addresses the needs identified in that assessment.
- The case plan should be reasonably achievable prior to the offender's administrative parole eligibility date.
- The department will notify the parole committee in writing of an offender's compliance or noncompliance with the case plan not less than 60 days before an offender's administrative parole release date.
- The provisions of this Paragraph shall be implemented to the extent that funds are appropriated for this purpose and to the extent that it is consistent with the available resources.

Alaska⁴

- Within 90 days after sentencing, a written case plan is developed that includes:
 - the results of the assessment of the prisoner's risks and needs;
 - a requirement to follow the rules of the institution;
 - modifications when necessary for changes in classification, housing status, medical or mental health, and resource availability;
 - required participation in programming that addresses the needs identified in the assessment

¹ S.D. Codified Laws § 24-15A-34

² Miss. Code Ann. § 47-7-3.1

³ La. R.S. § 15:827

⁴ Alaska Stat. § 33.30.011

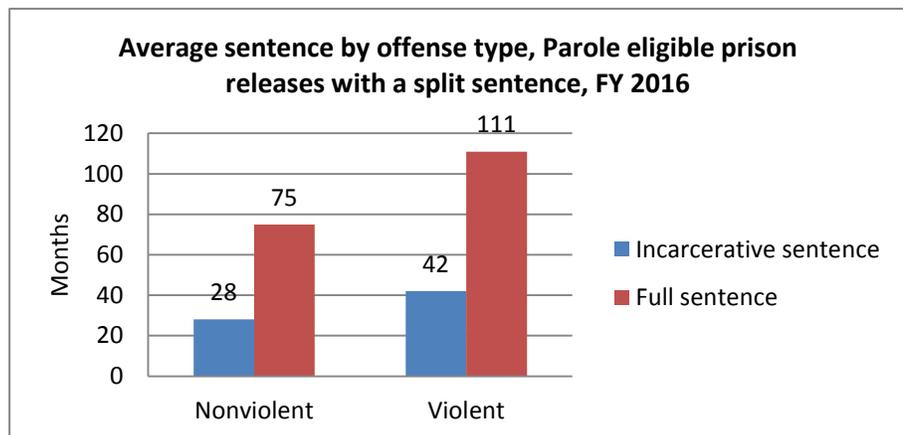
➤ **Question: How do you provide an opportunity for administrative release after a violation occurs?**

In order to incentivize compliant behavior, intake plans connected to administrative release policies often require inmates to follow the rules of the institution. Failure to follow the rules can result in an inmate being removed from an administrative release policy. To maintain this incentive without restricting the possibility of administrative parole for many inmates who are otherwise compliant, states have often focused on establishing a time frame:

- For example: No major violation within six months of release date.⁵
- Additionally, many states also allow inmates to have an opportunity to restore credits lost, either based on a certain time period and/or by approval of the DOC Director.⁶

Policy option:

- *Establish an administrative parole process for nonviolent offenders that allows the Department of Corrections to develop a written intake plan (reflective of the current process under development) and will include:*
 - *Work, education, and/or program participation;*
 - *A requirement that plans be achievable by the inmate’s earliest parole eligibility date and will not preclude an inmate from being released if access to the program was out of the control of the inmate*
 - *[A requirement to not receive any major disciplinaries within (xx days/month) of the parole release date.⁷]*
 - *The Department will provide consistency among institutions in determining what disciplinaries remove an inmate from administrative release*
- *Victims will be notified of the administrative parole release date in advance to provide them with an opportunity to request a hearing.*
- *To focus the parole board on the most serious and complex cases, and reduce unnecessary delays, parole hearings will be conducted for inmates who have:*
 - *failed to comply with the intake plan; or,*
 - *committed a major disciplinary in the last (xx days/month) prior to their parole eligibility date; or,*
 - *a parole hearing is requested by the victim.*
- *Otherwise, inmates will be released to parole supervision on their parole eligibility date to supervision.*
- **Parole determination: Split sentences⁸**
 - Currently, parole eligibility is calculated using the entirety of an individual’s sentence. Inmates serving a split sentence will serve a considerable longer time period prior to parole eligibility than someone serving a straight sentence:



⁵ Miss. Code Ann. § 47-7-18

⁶ Many states have policies that if credits are forfeited, allow for those credits to be restored. State example: Arizona, see A.R.S. § 41-1604.07; Michigan, see MCLS § 800.33; Nebraska, see R.R.S. Neb. § 83-1,107; Nevada, see Nev. Rev. Stat. Ann. § 209.451; Texas, see Tex. Gov’t Code § 498.004; Virginia, see Va. Code Ann. § 53.1-189

⁷ S.C. Code Ann. § 24-13-210 (D): An inmate in the custody of SCDC who commits an offense or violates one of the rules of the facility during his term of imprisonment, all or part of the good conduct credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections

⁸ Those serving YOA sentences are not included in the graph.

Policy option:

- *Establish fairness in time served by calculating parole eligibility based on the inmate's active incarceratory sentence.*

Policy Discussion: Parole for vulnerable populations

South Carolina Overview:

- South Carolina currently has two policies that provide for the possibility of some form of compassionate release either based on age or medical condition.
 - *Geriatric parole*⁹: an inmate who is at least seventy and incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk
 - *Medical parole*¹⁰:
 - No less than one year prior to the parole eligibility date
 - Board determines that the physical condition of the prisoner is so serious that he would not be reasonably expected to live for more than one year
 - The Board requires the medical opinion of two licensed physicians that determine that the inmate is terminally ill and cannot be expected to live for more than one year.
 - Only the full Board may order the release for an inmate that is geriatric, terminally ill, or permanently incapacitated.
- **Question: What is the youngest age that a state qualifies a person for geriatric parole?**
 - Louisiana has the *lowest age* for geriatric parole:
 - age 45 and the inmate has served 20 years of at least a 30-year sentence
 - A number of states use 65 or “elderly”, without a specific age designation.¹¹
 - Alabama’s geriatric age is 55, the same age that the National Commission on Correctional Health Care defines “elderly”.¹²
 - Additionally, states use physical and mental health status as well as criminal history or risk level.

⁹ S.C. Code Ann. § 24-21-715. Parole for terminally ill, geriatric, or permanently disabled inmates. The Director of the Department of Corrections can also petition parole for inmates that are “permanently incapacitated” (an inmate who no longer poses a public safety risk because of a medical condition and requires residential care) or is “terminally ill” (an inmate having an incurable condition that will likely cause death within two years and so debilitating that the inmate does not pose a public safety risk). Further, parole is possible on a life sentence for a “serious” or “most serious” crime if SCDC requests the Board to consider the case and the inmate: is sixty-five (65) years of age and has served thirty (30) years; or, is seventy (70) years of age and has served at least twenty (20) years; or, has an illness where life expectancy is one year or less.

¹⁰ S.C. Code Ann. § 24-21-610. Eligibility for parole.

¹¹ Maschi, Tina, Leibowitz, Rees, and Pappacena, “Analysis of US Compassionated and Geriatric Release Laws: Applying a Human Rights Framework to Global Prison Health,” J. Hum. Rights Soc. Work (2016) 1:165:-175 (*Finding that AL, CT, LO, NC, NM, VA, WY, and Federal law use a specific age designation; other states that include age do not specify an age.*)

¹² Ala. § 14-14-2. *Finding that a geriatric inmate is: a person 55 years of age or older convicted in this state of a non-capital felony offense and sentenced to the penitentiary, who suffers from a chronic life-threatening infirmity, life-threatening illness, or chronic debilitating disease related to aging, who poses a low risk to the community, and who does not constitute a danger to himself or herself or society.*

State examples:

State	Age of Eligible Applicants
Virginia ¹³	- 60 who have served 10 years or - 65 who have served 5 years
Wisconsin ¹⁴	- 60 who have served 10 years or - 65 who have served 5 years
Louisiana ¹⁵	- 60 who have served 10 years - 45 and have served 20 years of at least a 30-year sentence
North Carolina ¹⁶	- 65 and have a chronic infirmity, illness, or disease related to aging; and be incapacitated to the extent that they do not pose a public safety risk
Wyoming ¹⁷	- incapacitated by age to the extent that deteriorating physical or mental health substantially diminishes their ability to provide self-care within a correctional facility
US Federal Law ¹⁸	- 65 and have a chronic infirmity, illness, or disease related to aging

South Carolina Prison Population, 2016 ¹⁹ (Does not include life sentences)			
	5+ years served	10+ years served	15+ years served
Age 50 and Up	1,262	731	363
Age 55 and Up	721	440	234
Age 60 and Up	344	218	117
Age 65 and Up	162	99	55

South Carolina Prison Population, 2016 (Includes life sentences)			
	5+ years served	10+ years served	15+ years served
Age 50 and Up	1,088	1,003	895
Age 55 and Up	771	715	644
Age 60 and Up	447	420	384
Age 65 and Up	202	189	174

Policy option:

- Expand geriatric parole to include inmates who are below age 70
- Include criteria for those eligible for medical parole to inmates that have spent more than 30 or more days in an infirmary in the prior calendar year or received costly and frequent medical treatment outside a Department of Corrections facility in the previous 12 months.
- Establish a medical parole docket, allowing for the inmate and any correctional staff to petition for parole, and prioritize those parole hearings.²⁰
- When the Parole Board is reviewing a parole application based on age or medical condition, limit the reasons for denial to whether the individual poses a public safety risk.²¹

¹³ Va. Code Ann. §53.1 – 40.01. (Disqualifying offenses: Class 1 Felonies - Offenses punishable up to life imprisonment and the death penalty; includes rape, murder, and sexual assault)

¹⁴ Wis. Stat. §302.1135. (Disqualifying offenses: Class B felonies –Offenses punishable up to 60 years in prison; includes manslaughter, sexual assault, and kidnapping)

¹⁵ La. R.S. § 15:574.4. (Disqualifying offenses: Crimes of violence or sex offenses)

¹⁶ N.C. Gen. Stat. §§ 15A-1369, 1369.5

¹⁷ Wyo. Stat. § 7-13-424

¹⁸ 28 CFR 2.78

¹⁹ Prison population on June 30th, 2016. Years served is the time between admission date and June 30th, 2016; it does not include jail time. This chart does not include inmates on death row.

²⁰ Code of Ala. § 15-22-43. Established a medical parole docket to be considered for the parole board. The Department of Corrections provides a list of all geriatric, permanently incapacitated, and terminally ill inmates as well as all inmates who have spent more than 30 or more days in an infirmary in the prior calendar year or received costly and frequent medical treatment outside a Department of Corrections facility in the previous 12 months

²¹ Currently, the South Carolina Board of Pardons and Paroles deny parole for any of six reasons: 1) Nature and seriousness of the current offense; 2) Indication of violence in this or a previous offense; 3) Use of a deadly weapon in this or a previous offense; 4) Prior criminal record indicates poor community adjustment; 5) Failure to successfully complete a community supervision program; and 6) Institutional record is unfavorable. See Policy

Research on Supervision Practices:

- **Responding to probation violations: swift, certain, and proportional sanctions**
 - Programs that are effective at reducing recidivism have three core elements in common: they target people who are most likely to reoffend (who); they use practices rooted in the latest research on what works to reduce recidivism (what), and focuses on providing appropriate treatment tailored to the needs of the person under supervision (how).²²
 - Research demonstrates that responding to violations with immediacy, certainty, and proportionality interrupts problem behavior more effectively than delayed, random, and severe sanctions and supports recidivism reduction.²³
 - Elements of effective sanctioning:
 - Develop a range of sanctions from low-intensity community-based options to jail time and apply according to the frequency and seriousness of the violations
 - Communicate a credible and consistent deterrent threat
 - Streamline procedures to allow for a swift response
 - Limit the time an offender can be revoked to prison for a technical violation

- **How states have implemented this research:**
 - **Enact administrative sanctions:** To create a greater range of lower-intensity sanctions, many states have implemented administrative sanctions, which empower supervision officers to respond to certain lower-severity violations (i.e. missing a meeting) with an immediate, graduated sanction (i.e. increased reporting). South Carolina implemented administrative sanctions as a part of S. 1154.²⁴

 - **Limit Revocations for Compliance Violations:** To preserve prison space for the most serious offenders and respond more proportionately to non-criminal behavior, some states have placed caps on the length of time a probationer or parolee can be revoked to prison for a technical (non-criminal) violation.

South Carolina Overview:

Probation violation

- When a probationer commits a violation, probation agents can:
 - Administer sanctions on the probationer²⁵; or
 - Seek revocation with the sentencing authority.
 - The court can revoke probation and impose all or a portion of the sentence.²⁶

Parole violation:

- In situations involving parole violations, the board makes the final decision and can either²⁷:
 - Continue the individual on parole; or,
 - Revoke parole and sentence to an amount of the parolee's remaining sentence.

and Procedure Manual, p. 30, available at <https://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual-+April+2015.pdf>

²² Bonta, James, and D. A. Andrews (2007), "Risk-need-responsivity model for offender assessment and rehabilitation," *Rehabilitation* 6 (2007): 1-22.

²³ Gendreau, P., Goggin, C., Cullen, F. T., & Andrews, D. A. (2000). The effects of community sanctions and incarceration on recidivism. *Forum on Corrections Research*, 12(May), 10-13.; Smith, P., Goggin, C., & Gendreau, P. (2002). The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences. Ottawa, Ontario, Canada: Solicitor General of Canada.; Villettaz, P., Killias, M., & Zoder, I. (2006). The effects of custodial vs. noncustodial sentences

²⁴ S.C. Code Ann. § 24-21-110

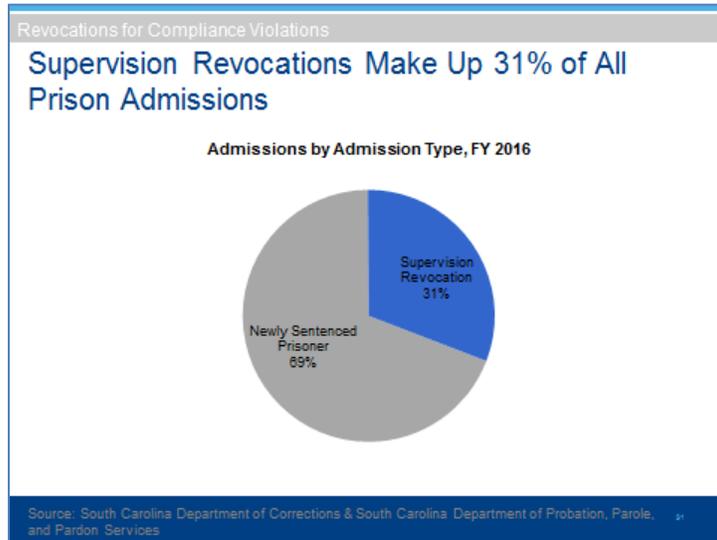
²⁵ *Id.*

²⁶ S.C. Code Ann. § 24-21-460

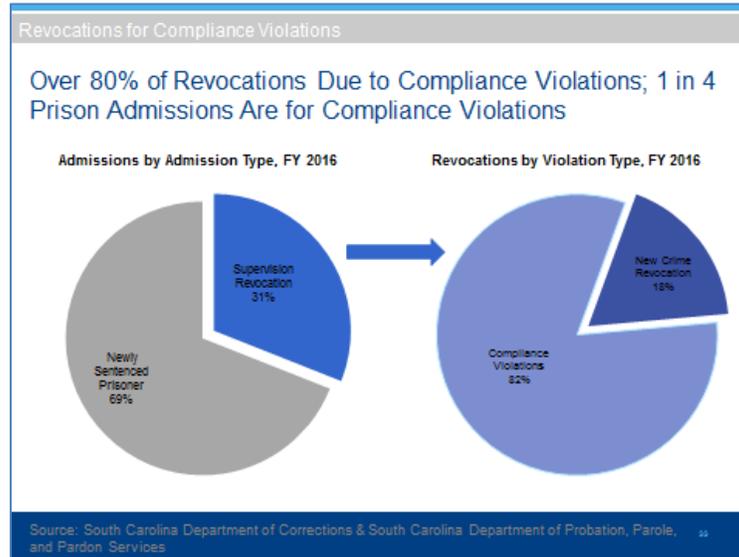
²⁷ S.C. Code Ann. § 24-21-680; see also *supra* n. 19, p. 36-38.

South Carolina Data Findings:

➤ Revocations on Compliance Violations



- In terms of admissions for revocations over time, that number has dropped:
 - 2010: 3,872 revocations -- 2016: 2,717



- Average sentence length for compliance revocation violations is 35 months

State Examples

Revoked from supervision	Alaska (Alaska Stat. §12-55-110)	Louisiana (La. R.S. § 15:574.9)	Mississippi (Miss. Code Ann. §47-7-37)
1 st revocation	Up to 3 days	15 days	Up to 90 days
2 nd revocation	Up to 5 days	30 days	Up to 120 days
3 rd revocation	Up to 10 days	45 days	Up to 180 days or remainder
4 th and subsequent	Up to remainder		Up to remainder

➤ Policy Discussion:

- *To foster swift and certain sanctions while prioritizing prison beds for individuals who commit crimes, limit the use of prison space for compliance violations.*

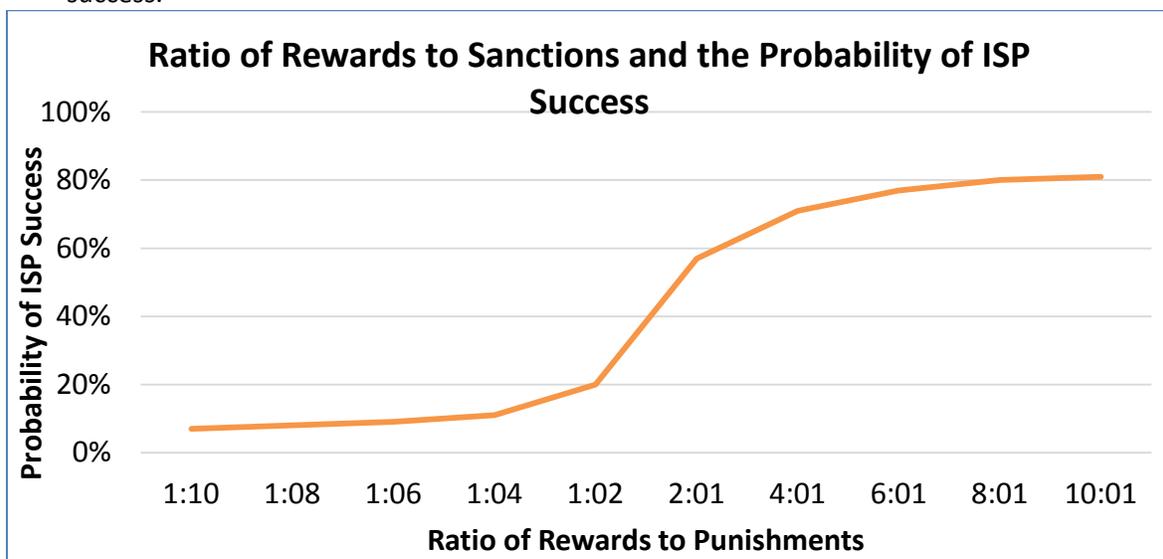
Policy Discussion: Incentivizing Good Behavior and Recidivism Reduction Program Completion in Institutions

South Carolina Data Findings:²⁸

- The average time served for people in prison has increased 29% since 2010 (55 months in 2010 compared to 71 months in 2016).
- This increase is driven in part by a greater number of inmates serving long sentences. Since 2010, the number of longest serving inmates has increased (3,420 in 2010 to 4,290 in 2016) and fewer are parole eligible.
- Common offenses among longest-serving inmates are: murder, armed robbery, 1st degree burglary, and trafficking of controlled substances.
- 59% of the longest-serving inmates have no prior commitments to prison (41% have prior commitments)

Relevant Research on Incentives to support positive behavior change:

- Researchers have examined whether longer periods of incarceration reduce recidivism more than shorter periods.
 - Finding: Several studies have found that there is no increased public safety benefit of longer periods of incarceration.²⁹
- Incentives to Support Positive Behavior Change:
 - When incentives and rewards are applied at a higher rate than sanctions, it increases the likelihood of success.³⁰



- This study looked at the ratio of rewards to punishments used on supervisees and compared this to the success of the probation sample. The measure of success was successful completion of intensive supervision probation.
- The study found that when participants received 1 reward to 10 punishments (punishment heavy) they had an extremely low likelihood of success compared to when participants received 10 rewards to 1 punishment (reward heavy).

²⁸ Prison population on June 30th 2010 and June 30th 2016 are compared. Time served is time between admission date to release date; it does not include jail time²⁸. "Longest serving" defined as those whose time served is longer than 10 years.

²⁹ The United States Sentencing Commission (2014): No difference in recidivism for drug offenders before and after sentence reduction due to the Fair Sentencing Act; see Meade, et al. (2012): Prison terms of 5 years or less have no effect on recidivism; prison terms of 10 years or more have some reduction in re-arrest due to aging out; see Nagin, Cullen & Jonson (2009) (systematic review): Found no relationship between time served and recidivism.

³⁰ Wodahl, Garland, Culhane & McCarty (2011), *Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-based Corrections*; see also Petersilia (2007), *Employ Behavioral Contracting for 'Earned Discharge' Parole*.

- Probationers were more successful when rewards were used more frequently than sanctions; the greatest leap in success rates came at the 4 to 1 ratio (4 rewards for every 1 sanction).

➤ **How States Incentivize Serious Inmates to Complete Recidivism Reduction Programming:**

State Examples

- **Iowa³¹**: offenders can earn time off of Mandatory Minimum sentences.
- **Nevada³²**: “Meritorious Credit” – a set number of days earned for each program completed
 - Credits are awarded for completion of programs designed to reduce recidivism:
 - 60 days for each phase of substance abuse treatment
 - 15-30 days for other rehabilitative programs (anger management, parenting, victim awareness)
 - 60 days for vocational programs (HVAC, auto shop, dry cleaning, computer skills, etc.)
 - 10-30 days for job skills courses
 - 60-120 days for earning educational degrees (GED, high school diploma, Associate’s, Bachelor’s)
- **Georgia³³**: day-for-day credit for program participation
- **Tennessee³⁴**: not more than eight days for each month served for satisfactory program performance in accordance with the criteria established by the department (inmates can also earn good time).

South Carolina Overview:

Type of credit to be earned	Parolable offenses	No-parole offenses ³⁵	Life Sentences or mandatory minimum of 30 yrs
Good time ³⁶	20 days/month	3 days/month	0 days / month
Work ³⁷ and/or education	1 day / 2days (Limit: 180 days/year)	6 days/month (72 days/year)	0 days / month

Example: Policy in practice:

Good conduct credit	<i>Parolable offenses: 20 days</i>	20 days (reward) for 30 days	2:3 ratio
	<i>No-parole offenses: 3 days</i>	3 days of reward for 30 days	1:10 ratio
Example: Increase good conduct by 2 days		<i>5 days of reward for 30 days</i>	<i>1:6 ratio</i>
Work and Education Credits	<i>Parolable offenses: 15 days</i>	15 days of reward for 30 days	1:2 ratio
	<i>No-parole offenses: 6 days</i>	6 days of reward for 30 days	1:5 ratio
Example: Increase work and education credits by 4 days		<i>10 days of reward for 30 days</i>	<i>1:3 ratio</i>

³¹ Iowa Code § 903A.5

³² Nev. Rev. Stat. Ann. § 209.4465

³³ O.C.G.A. § 42-5-101. This statute applies to any felony prison term other than life imprisonment

³⁴ Tenn. Code Ann. § 41-21-236

³⁵ S.C. Code Ann. § 24-13-230. Credits cannot fall below the minimum amount of time served. An inmate is not eligible for work release until he/she has served a minimum of 80%, see S.C. Code Ann. § 23-13-125 and -150.

³⁶ S.C. Code Ann. § 24-13-210. Inmates that are placed in a local facility can earn one day credit for every two days served.

³⁷ S.C. Code Ann. § 24-13-230

State Example:

- Louisiana: in the last few years, the state dropped its time served requirements for its violent, non-life inmates:
 - Allowed its violent, non-life inmates to be eligible for parole at 65%³⁸
 - Allowed people to be released on good time credits at 75% of sentence served³⁹

- Policy Discussion:
 - *Provide greater incentives for inmates serving no-parole offenses through increasing education and work credits, incentivizing release to supervision at a time lower than 85% of the offense.*
 - *To further incentive participation in work or education programming, allow for parole eligibility at 65% and release on credits at 75% to the community supervision program.*

³⁸ L.A. Code Ann. R.S. §15:574(A)

³⁹ L.A. Code Ann. R.S. §15:571.3

Policy: Addressing Mental Health Needs

Over the last 40 years, the intersection between behavioral health and the criminal justice system have become increasingly apparent. Many individuals in the criminal justice system have serious mental health issues and incarceration can often exacerbate their condition. Additionally, law enforcement is often forced to respond to behavioral health emergencies that they are not trained for or equipped to handle.

Further, the collateral consequences that arise from a criminal conviction can often hinder the progress of someone with mental health and/or substance use disorders; ideally, addressing behavioral health needs before an individual enters the criminal justice system. However, the interaction between law enforcement and those individuals who have mental health, substance use, or co-occurring disorders is what often triggers a behavioral response, sometimes for the first time. Recognizing that this interaction is happening more frequently, law enforcement – in conjunction with treatment providers – have developed three main approaches to address these needs:⁴⁰

- I. Diversion at the law enforcement phase
- II. Diversion at the pretrial or prosecution phase
- III. Diversion at the problem-solving/specialty court phase

	Law Enforcement	Pretrial / Prosecution	Problem-solving / Specialty Court
<i>Oversight</i>	<ul style="list-style-type: none"> • Municipal police department • County sheriff 	<ul style="list-style-type: none"> • State's / District / Prosecuting Attorney • Pretrial services oversight by court or probation (county or state) 	<ul style="list-style-type: none"> • Court
<i>Diversion Goals</i>	<ul style="list-style-type: none"> • Street-level safety • Reduce pressure on booking, holding in jail • Identify treatment needs of individuals that motivate crimes 	<ul style="list-style-type: none"> • Reduce docket pressure • Reduce court and jail expenses • Maximize prosecution resources for more serious cases • Address the needs of individuals that motivate crimes 	<ul style="list-style-type: none"> • Reduce recidivism • Supervision with rehabilitation best practices
<i>Diversion Practices</i>	<ul style="list-style-type: none"> • Street-level crisis intervention • Co-location with or immediate diversion to behavioral health services 	<ul style="list-style-type: none"> • Deferred prosecution • Referral to community services • Individualized conditions for success / failure • Justice supervision (for more serious crimes) 	<ul style="list-style-type: none"> • Deferred adjudication / sentencing • Multidisciplinary staffing • Referral to community services • Justice accountability • Clear rewards / sanctions

⁴⁰ Center for Health & Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, December 2013, available at: http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf.

➤ **I. Diversion at the law enforcement phase examples⁴¹:**

Crisis Intervention Team (CIT) model

- Specialized police-based first responder program
- Provides pre-arrest booking diversion for individuals deemed to be having a mental health crisis
- Can include co-response units where mental health professionals respond with police officers together
- Examples:
 - **Memphis, TN:** provided specialized training for a select group of patrol officers and dispatcher and created a therapeutic treatment site as an alternative to booking.
 - **Houston, TX:** all police cadets receive 40 hrs of mental health training; mental health professionals are paired with police officers to respond to a crisis
 - From 2010 to 2014, the Mental Health Division reported that Houston Police Department officers had diverted 9,527 individuals
 - **Madison, WI:** all police cadets receive 60 hrs of mental health training; all patrol officers are trained to respond to crisis calls; the police department employs five full-time mental health officers focused on providing outreach to known mental health consumers in addition to providing support to patrol officers during calls for service
 - Based upon completed police reports, 17% (n = 3,100) of Madison Police Department calls for service in 2015 were categorized as related to mental health, creating an average of 60 mental health cases per week. Of these 3,100 official reports, 90% resulted in diversion.

Law Enforcement Assisted Diversion (LEAD)

- Seattle, WA: law enforcement officers will refer low-level defendants (often for drugs and prostitution) to community-based services to address their underlying needs
 - Studies have shown a reduction in arrests and felony charges for LEAD participants compared to control participants

➤ **II. Diversion at the pretrial or prosecution phase example:**

- **Wisconsin:**⁴² through statute, the state authorized grants to counties to establish and operate programs that provide alternatives to prosecution and incarceration for those who have substance use disorders.
 - Through a collaboration between Wisconsin's Office of Justice Assistance (OJA), the Department of Corrections (DOC), and the Department of Health Services (DHS), the state created the Treatment Alternatives and Diversion (TAD) grant program to provide alternatives to prosecution and incarceration for non-violent individuals with criminal offense charges or convictions who abuse alcohol or other drugs.
 - TAD currently funds programs in seven sites. Each site provides case management, substance abuse treatment, drug testing, and monitoring but varies in terms of length, treatment intensity, and target population.

In order to develop an effective pretrial or prosecutorial diversion program, a number of factors should be taken into consideration. To follow are a number of key elements to consider:⁴³

⁴¹ Tallon, Jennifer A., Labriola and Spadafore, *Creating Off-Ramps: A National Review of Police-Led Diversion Programs*, Center for Court Innovation (2016): available at <http://www.courtinnovation.org/sites/default/files/documents/Creating%20Off-Ramps%20A%20National%20Review%20of%20Police-Led%20Diversion%20Programs.pdf>. Survey of 1,500 law enforcement agencies, looking at models for specialized police response to mental health issues; found even short-term jail sentences may actually increase likelihood of future offending, police agencies should develop programs to reduce exposure to the traditional justice system.

⁴² Center for Health & Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, supra n. 38, p. 19.

⁴³ Fader-Towe, Hallie, Fred C. Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage*, The Council of State Governments Justice Center, 2015, available at: https://csgjusticecenter.org/wp-content/uploads/2015/09/Improving_Responses_to_People_with_Mental_Illnesses_at_the_Pretrial_Stage_Essential_Elements.pdf

- 1) Collaboration between a diverse group of stakeholders in the criminal justice and behavioral health systems
 - Plans should be established that incorporate community-based treatment and support services as well as networking across agencies.
- 2) Training:
 - Familiarize frontline criminal justice stakeholder to be able to recognize signs of behavioral health disorders and ways to connect them to a clinician.
 - Treatment providers should be aware of criminal justice processes and how to support adherence to pretrial release conditions.
- 3) Ensure that there are alternative options to incarceration.
- 4) Judicial officers need to have the tools to make informed decisions to determine release and to set the least restrictive conditions to support court appearance.
- 5) To facilitate connections between an individual and behavioral health support services, establish screening for mental health and substance abuse needs to be implemented at key decision-points in the criminal justice system.
 - There is often a significant wait time in establishing connections to treatment providers. Data collection and planning can work to identify ways to prioritize spots for those who pose the greatest public safety risk and need treatment as a condition of release.
- 6) Case planning and partnerships between community supervision and treatment at the pretrial stage should be established as well as an application of risk-needs-responsivity methods.
- 7) Collect data to evaluate the effectiveness of the systems.

➤ **III. Diversion at the court phase**

Problem-solving courts can be a very helpful model to establish a collaborative approach in addressing one's criminogenic needs. There are four main criminogenic factors (the "Big 4") that are the most predictive of criminal behavior⁴⁴:

1. Antisocial attitudes (thinking, values, beliefs and rationalizations that are supportive of crime)
2. Antisocial peers (associating with other "criminal" thinkers)
3. Antisocial personality (impulsive, low self-control, disregard for others, a struggle with prosocial interactions)
4. And, a history of similar behaviors.

These needs are often more difficult to address as they require more intense intervention and on-going attention. In order to change them, the antisocial risk factors must be replaced with prosocial attitudes and skills.

Other important criminogenic needs include:

5. Substance abuse
6. Employment/education (work performance and satisfaction)
7. Poor family relationships (low expectations from family)
8. Lack of prosocial Leisure activities

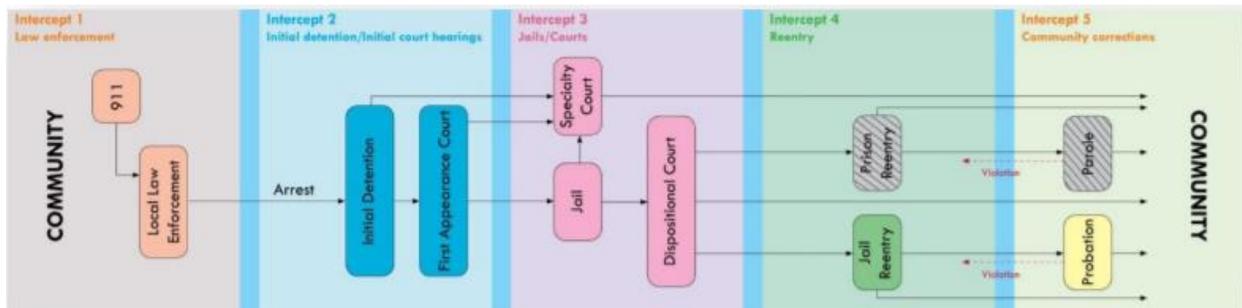
Perhaps contrary to what many may think, having a mental health disorder is not a criminogenic need - it is not significantly associated with criminal behavior. Having a mental health issue does not make one more likely to commit a crime; it is however, a responsivity factor, a factor that needs to be treated in order to be able to target the other criminogenic needs (e.g. transportation).

Research on mental health courts is limited but some studies have shown that participation in these programs improve connections and consistency with treatment providers.

⁴⁴ Bonta & Andrews (2007), *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*

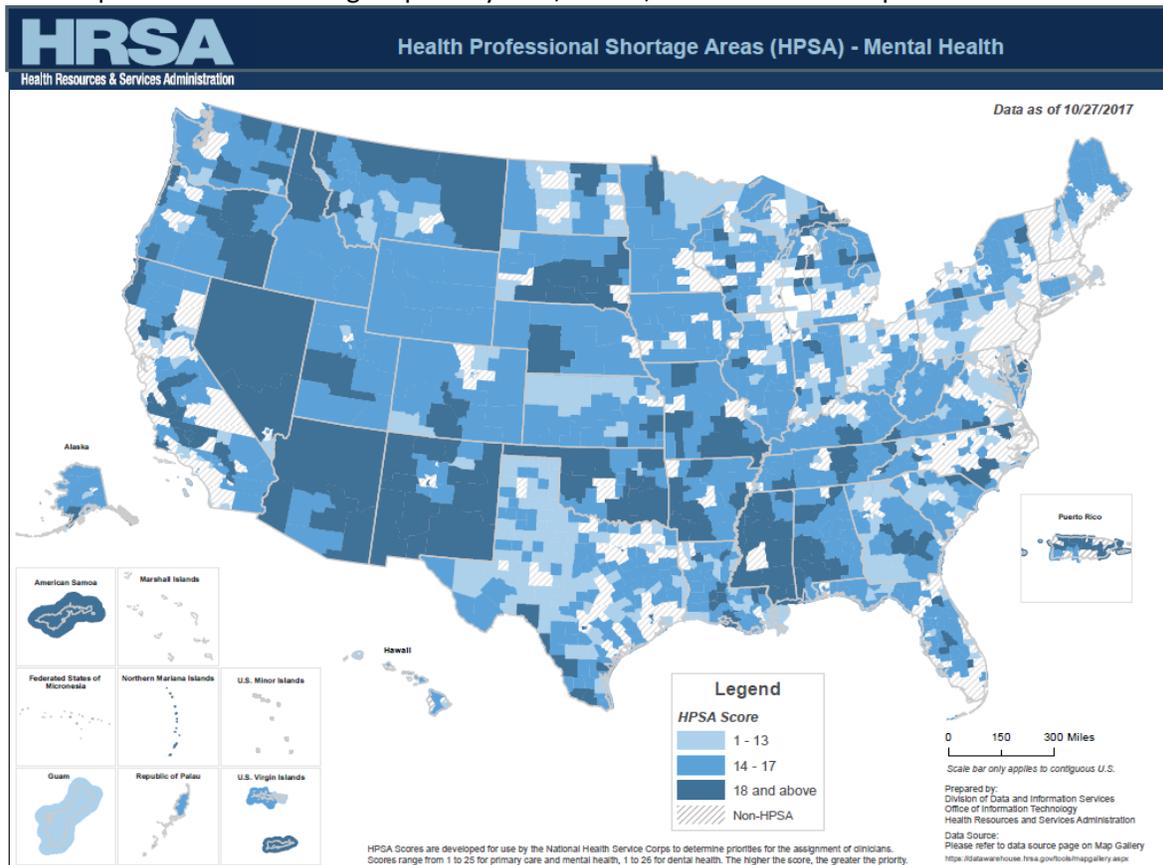
Another tool that some states have been using is a Sequential Intercept Model. It has two core principles⁴⁵:

- 1) Minimize the inappropriate penetration of persons with mental illness into the criminal justice system
- 2) The unit of analysis to successfully address criminal justice-mental health problems is the community.



The goal of the tool is to help think through how to divert people from jail who do not need to be there and provide them with the services they do need. The chart is used to map the community mental health program that exist and can be linked to the criminal justice system.

One significant challenge is the shortage of mental health providers. The U.S. Department of Health & Human Services, Health Resources & Services Administration conducted a nationwide study reflecting what areas of the country have shortage of health professionals focusing on primary care, dental, and mental health providers.⁴⁶



⁴⁵ Steadman, Henry J., Joseph P. Morrissey, and Travis W. Parker, *When Political Will Is Not Enough: Jails, Communities and Persons with Mental Health Disorders*, January 2015 available at <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/White-Paper-hjs-jpm-final.pdf>

⁴⁶ The shortages are based on geography (providers for a population in a defined area), population (providers for a specific population, e.g. low income, migrant farmworkers) or facility-based (public or non-profit medical facilities; correctional facilities with a shortage of health providers; state hospitals, etc.) see Health Resources & Services Administration, Health Professional Shortage Areas (HPSAs), Shortage Designation; available at: https://datawarehouse.hrsa.gov/ExportedMaps/HPSAs/HGDWMapGallery_BHPR_HPSAs_MH.pdf

South Carolina Overview:

- ***Diversion at the pretrial or prosecution phase***
 - South Carolina has Pre-Trial Intervention (PTI) and Alcohol Education (AEP) Program

- ***Diversion at the court phase***
 - There are seven mental health courts in South Carolina:
 - 1) Marlboro (4th Circuit)
 - 2) Richland (5th Circuit); also includes a Juvenile Mental Health Court
 - 3) Charleston (9th Circuit)
 - 4) Anderson (10th Circuit)
 - 5) Greenville (13th Circuit)
 - 6) Horry (15th Circuit – serves Myrtle Beach and Georgetown)

Under South Carolina law⁴⁷, the Office of Pretrial Intervention Coordinator collects data on all programs administered by a circuit solicitor, the Commission on Prosecution Coordination, or a court, which divert offenders from prosecution to an alternative program or treatment. Regarding mental health courts, the following information is collected:

1. Number of individuals who applied/referred
2. Number of original criminal offenses applied/referred.
3. Number of individuals accepted
4. Number of individuals who successfully completed within a twelve-month period
5. Number of individuals who did not complete within a twelve-month period, but who are still participating
6. Number of individuals who unsuccessfully completed within the twelve-month period and who have been prosecuted for the offense committed
7. Number of individuals who successfully completed after a twelve-month period from the date of acceptance
8. Number of individuals who unsuccessfully completed after a twelve-month period from the date of acceptance
9. Number of individuals with fees fully or partially waived for indigence

⁴⁷ S.C. Code Ann. § 17-22-1120