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How Probation and Parole Feed Mass
Incarceration in the United States



Revoked

**How Probation and Parole Feed Mass Incarceration
in the United States**

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Summary

[Probation is] like a prison sentence outside of jail. You walk around with a rope tied around your leg to the prison door. Anything can lead to revocation.

—James Yancey, Georgia defense attorney

I asked for programs but . . . [probation] didn't want to hear that I need help; they just gave me time.

—Monique Taylor (pseudonym), who has served years on probation in Pennsylvania for conduct related to a long-standing drug dependence

Probation, parole, and other forms of supervision are marketed as alternatives to incarceration in the United States. Supervision, it is claimed, will keep people out of prison and help them get back on their feet.

Throughout the past 50 years, the use of probation (a sentence often imposed just after conviction) and parole (served after incarceration) has soared alongside jail and prison populations. As of 2016, the last year for which supervision data is available, 2.2 million people were incarcerated in United States jails and prisons, but more than twice as many, 4.5 million people—or one in every 55—were under supervision. Supervision rates vary vastly by state, from one in every 168 people in New Hampshire, to one in every 18 in Georgia.

Over the past several decades, arbitrary and overly harsh supervision regimes have led people back into US jails and prisons—feeding mass incarceration. According to the Bureau of Justice Statistics (BJS), in the late 1970s, 16 percent of US state and federal prison admissions stemmed from violations of parole and some types of probation. This number climbed to a high of 36 percent in 2008, and, in 2018, the last year for which data is available, was 28 percent. A different set of data for the previous year from the Council of State Governments, which includes all types of probation violations—but is limited to state prison populations—shows that 45 percent of all US state prison admissions stemmed from probation and parole violations. These figures do not include people locked up for supervision violations in jails, for which there is little nationwide data. Black and

brown people are both disproportionately subjected to supervision and incarcerated for violations.

This report documents how and why supervision winds up landing many people in jail and prison—feeding mass incarceration rather than curtailing it. The extent of the problem varies among states, and in recent years multiple jurisdictions have enacted reforms to limit incarceration for supervision violations. This report focuses on three states where our initial research indicated that—despite some reforms—the issue remains particularly acute: Georgia, Pennsylvania, and Wisconsin.

Drawing on data provided by or obtained from these states, presented here for the first time, and interviews with 164 people incarcerated for supervision violations, family members, government officials, practitioners, advocates, and experts, we document the tripwires in these states leading to incarceration. These include burdensome conditions imposed without providing resources; violations for minor slip-ups; lengthy incarceration while alleged violations are adjudicated; flawed procedures; and disproportionately harsh sentences for violations.

The report shows that, nationwide, most people locked up for supervision violations were not convicted of new offenses—rather, they were incarcerated for breaking the rules of their supervision, such as for using drugs or alcohol, failing to report address changes, or not following the rules of supervision-mandated programs. Of those who were incarcerated for new offenses, in our focus states, many were for conduct like possessing drugs; public order offenses such as disorderly conduct or resisting arrest; misdemeanor assaultive conduct; or shoplifting. The distinction between “rule” and “new offense” violations is sometimes blurry, as some jurisdictions do not track whether people incarcerated for rule violations also had pending criminal charges, though some data that we obtained and analyzed for this report did not have this issue.

The root causes of these violations, the report documents, are often a lack of resources and services, unmet health needs, and racial bias. The report also draws attention to marked racial disparities in who is subjected to supervision and how authorities enforce it.

In practice, supervision in many parts of the US has become a system to control and warehouse people who are struggling with an array of economic and health-related challenges, without offering meaningful solutions to those underlying problems.

There is a better way forward. States around the country are enacting reforms to reduce the burdens of supervision, while investing in community-based services. Human Rights Watch and the ACLU urge governments to build on this momentum, and divest from arrests and incarceration for supervision violations while investing in increasing access to jobs, housing, social services, and voluntary, community-based substance use disorder treatment and mental health services—services that have a record of improving public safety and that strengthen people and their communities.

Set Up to Fail

People under supervision, lawyers, and even some judges and former supervision officers recognize that supervision often sets people up to fail. People must comply with an array of wide-ranging, sometimes vague, and hard-to-follow rules, including rules requiring them to pay steep fines and fees, attend frequent meetings, abstain from drugs and alcohol, and report any time they change housing or employment.

People must follow these rules for a long period of time. While numerous experts agree that supervision terms should last only a couple of years, many states allow probation sentences of up to five years. In states including Wisconsin, Pennsylvania, and Georgia, probation terms can be as long as the maximum sentence for the underlying offense, in some cases 10 or 20 years, or even life—and consequences for failing are severe.

Navigating supervision is difficult and in many cases not possible without money, reliable transportation, stable housing, and access to health services. Yet few people under supervision have these resources—and supervision departments are in many cases failing to provide them. “They just gave us a sentence and put us on the street with nothing and expect us to follow rules and make stuff happen,” a man incarcerated for violations in Wisconsin told us. A young mother in Pennsylvania, who had long struggled with substance use disorder, explained, “I asked for programs but . . . [probation] didn’t want to hear that I need help; they just gave me time.”

Many supervision officers interviewed for this report said that they regularly connect people with services, and that re-entry resources have increased in recent years. Yet even more officers we spoke to, and several judges, said that they wished they had more resources. Some people under supervision that we interviewed did report that certain programs were helpful, but the vast majority did not feel that way.

Conduct Triggering Violations

Supervision officers say they generally give people multiple chances before pursuing revocation. But the root causes of the violations, discussed below, often go unaddressed. It is thus no surprise that many people continually engage in the same prohibited behavior, ultimately leading to incarceration—even for minor conduct.

According to our data analysis, the most common rule violations that trigger incarceration in Wisconsin are using drugs and consuming alcohol or entering bars. In Pennsylvania, state parole violations largely result from people failing to report address changes and using drugs. Anecdotal evidence from Georgia (state authorities in Georgia said they could not provide the data sought) suggests that failing to report address changes and drug use are likewise driving incarceration there.

Data from Wisconsin reveal that where new offenses, as opposed to rule violations, led to violation proceedings, the vast majority were for public order offenses like disorderly conduct or resisting arrest, misdemeanor assaultive conduct, shoplifting, and drug offenses. Anecdotal evidence from Georgia and Pennsylvania showed similar trends. If drug offense arrests in these states are consistent with national arrest data, then the overwhelming majority of such drug offenses are for nothing more than possessing drugs for personal use—conduct that Human Rights Watch and the ACLU believe should not be criminalized. Our report also raises concerns about the handling of supervision violations across the board, including those that stem from serious violent conduct.

Few Procedural Protections, Disproportionate Penalties

Basic rights in criminal proceedings, such as the exclusion of illegally obtained evidence and burden of proof beyond a reasonable doubt, generally do not apply during “revocation hearings,” which determine whether someone violated their supervision conditions and

the appropriate punishment. Many jurisdictions also limit access to lawyers for revocation proceedings.

In states such as Pennsylvania, Wisconsin, and Georgia, people are generally incarcerated while they fight revocation, even for minor violations. Detention in parts of these states regularly lasts for months before any hearing, in violation of international human rights standards. Sometimes detention occurs in jails that are overcrowded, unsanitary, and lack adequate mental health services or access to effective drug treatment, and where staff have been accused of mismanagement and violence. These circumstances place immense pressure on people to admit to the violations in the hope they can then get out of jail.

Violations often lead to harsh penalties. In our focus states, many people are sentenced to prison-based treatment programs or additional supervision, keeping them under correctional control—at risk of more imprisonment for any slip-up—for years or decades. Other people receive disproportionately severe incarceration terms.

Feeding Mass Incarceration

Currently, supervision is feeding mass incarceration in the United States. In 20 states, more than half of all state prison admissions in 2017 stemmed from supervision violations. In six states—Utah, Montana, Wisconsin, Idaho, Kansas, and South Dakota—violations made up more than two-thirds of state prison admissions.

In many states, admissions for supervision violations are rising even as prison populations are otherwise falling. For instance, from 2008 to 2018, Pennsylvania reduced prison admissions for conduct other than parole violations by 21 percent, while admissions from parole violations grew by 40 percent.

Nationwide, most people incarcerated for supervision violations were locked up for violating supervision rules, not new convictions—though, in the states where we focused our research, we document problems with how violations for new offenses are handled as well.

In Wisconsin from 2017 to 2019, rule violations accounted for more than 61 percent of all supervision sanctions. In Pennsylvania, rule violations comprised 41 percent of prison

admissions for state parole violations and 78 percent of probation revocations from 2016 to 2019. We were only able to obtain limited data for Georgia.

Black, Latinx, and Indigenous people are disproportionately incarcerated for violations. For instance, in Wisconsin, the proportion of Native Americans sanctioned for violations is seven times higher than their proportion of the state population; for Black people, it is four times their proportion of the population.

Rooted in Disadvantage

Our research demonstrates that violations often stem from disadvantage. Many people cannot afford to pay their supervision fees or other court costs while supporting themselves and their families. As a result, people often do not make their required payments. While the US Supreme Court forbids courts from jailing people solely because they are poor, judges often fail to adequately assess whether someone can pay. Additionally, many people we interviewed said they stopped reporting to supervision because they did not have the money to pay their required fees for supervision or program requirements, eventually leading to violation proceedings for failure to report.

Many people we interviewed also said that the lack of stable housing impeded their ability to comply with supervision conditions. Housing instability and homelessness often contribute to physical and mental health issues, making it harder for people to hold down jobs, attend supervision-mandated meetings, and regularly update their supervision officer on where they live.

Further, people under correctional control are disproportionately likely to have mental health conditions, which can create added barriers to navigating supervision. Meanwhile, many communities lack accessible, voluntary mental health services and treatment options.

High numbers of people are incarcerated for using drugs, including people who are struggling with substance use disorder. Many judges and supervision officers we spoke to argue that jailing people is necessary to stop them from harming themselves or others. But incarceration is, per se, a disproportionate response to personal drug use. It's also ineffectual public health policy; health experts largely disagree that incarceration helps

people recover from substance use disorder. Rather, they assert, governments should invest in voluntary, community-based, harm-reduction services and evidence-based treatment, such as Medication-Assisted Treatment and programs that do not mandate abstinence, since relapse is a normal and expected part of recovery.

Racial bias plays an outsized role in supervision violations. Generations of ongoing systemic discrimination throughout the United States have left Black and brown people less likely to have resources that make navigating supervision feasible, such as financial security, stable housing, reliable transportation, and access to drug treatment and mental health services, compared to their white counterparts. When Black people violate conditions, studies show they are more likely to face sanctions.

Meanwhile, studies show that police disproportionately stop, search, and arrest Black and brown people—making it more likely that they will be arrested in the first place and later be deemed in violation of supervision terms. Nationwide, Black drivers are more likely to be pulled over and searched than white drivers, but less likely to be found with contraband. While Black and white adults use drugs at similar rates, nationwide Black adults are two-and-a-half times as likely as whites to be arrested for possessing drugs for personal use. Disparities are even starker in some places Human Rights Watch studied. In Milwaukee, Wisconsin, vehicle and pedestrian stop rates for Black people are five times what they are for white people.

In addition, many states, including Pennsylvania, Wisconsin, and Georgia, use risk assessment tools (RATs) to set conditions and sanctions, which studies show can disproportionately label Black and brown people “high risk”—triggering tougher levels of supervision and enforcement.

A man who pled guilty to a probation term in Georgia in the hopes of avoiding prison time—only to wind up jailed, once for failure to pay and another time for using and possessing drugs—told us, “[Probation] took all my money, kept me incarcerated for simple little mistakes. It’s really been a lot of pain.”

The Path Forward

While judges and prosecutors often argue that supervision provides them with an alternative to incarceration, supervision is also imposed in cases that otherwise may have triggered less severe sanctions. Regardless, in too many cases it leads people right back into jail and prison, particularly those with limited resources. And supervision is not necessary to prevent serious crime: most violations stem from rule violations and relatively minor offenses for which there is little or no evidence that incarceration enhances public safety or reduces recidivism.

Where people on supervision engage in serious crime, moreover, law enforcement already has mechanisms in place to arrest those allegedly responsible and file charges. In the jurisdictions we examined, pursuing supervision violations in addition to criminal prosecutions for the same conduct often subjects people to lengthier detention and more sanctions, in proceedings that fail to adequately protect their fair trial rights.

Many aspects of the supervision systems we documented violate US and international law, which bar disproportionate punishment, discrimination based on race, poverty, and disability, and arbitrary detention, and which require governments to protect the right to life of people in their custody, including by providing them with necessary medical care free of charge. Various practices we documented in revocation proceedings also raise serious fair trial concerns or are inconsistent with the rights under international law to an adequate standard of living, housing, food, health, and other basic needs.

Communities have an opportunity to choose a better path. In recent years, numerous states, including Georgia and Pennsylvania, have made positive reforms—shortening supervision terms, imposing less burdensome conditions, reducing incarceration for violations, and expanding community-based services.

Additionally, court systems are increasingly diverting people charged with certain crimes away from criminal prosecutions. Meanwhile, for certain behavior that causes harm, some communities are developing restorative justice processes, which aim to hold people accountable for their actions and support those who have been harmed but encourage measures like service in and for communities, restitution, and acknowledging and apologizing for wrongdoing, over incarceration as a solution.

Supervision Amidst Covid-19

The research for this report was completed before the World Health Organization declared Covid-19 a global pandemic in March 2020.¹ Since then, the danger posed to those on supervision and in jails and prisons has become abundantly clear, making the findings of this report even more urgent.

As of July 2020, nine out of the ten largest clusters of Covid-19 in the United States are in jails and prisons.² Nearly 57,000 people incarcerated in US jails and prisons, including in some facilities examined for this report, have been infected with Covid-19, while at least 681 have died.³ Given limited Covid-19 testing in correctional facilities, the true number is likely higher.⁴ As explained in Section III, “Harsh Conditions,” US jails and prisons are at extreme risk of uncontrollable outbreaks of

¹ World Health Organization, “WHO Timeline – COVID-19,” updated April 27, 2020, <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

² “Coronavirus in the U.S.: Latest Map and Case Count,” updated July 17, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (accessed July 17, 2020).

³ American Civil Liberties Union and UCLA School of Law Prison Law and Policy Program, “Covid-19: Death by Incarceration,” https://docs.google.com/spreadsheets/d/1bTMdmt2IG2UrRDcDhKK2ws_ZS-sXqDsPMVC_2SDb3Lw/edit#gid=634242190 (accessed July 14, 2020); Katie Park, Tom Meagher, and Weihui Li, “Tracking the Spread of Coronavirus in Prisons,” *The Marshall Project*, April 24, 2020, <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons> (Latest numbers of Covid-19 cases in federal and state prisons are updated weekly here: <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>); see also “US: COVID-19 Threatens People Behind Bars,” Human Rights Watch news release, March 12, 2020, <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars>; Timothy Williams, Benjamin Weiser and William K. Rashbaum, “Jails are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars,” *New York Times*, March 30, 2020, <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>; “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’—Bachelet,” United Nations High Commissioner for Human Rights press release, March 25, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>; Martin Caste, “Prisons and Jails Worry About Becoming Coronavirus ‘Incubators,’” *NPR*, March 13, 2020, <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>; Allison Frankel, “Poor Conditions at Pennsylvania Jail Heighten Covid-19 Concerns,” Human Rights Watch dispatch, April 8, 2020, <https://www.hrw.org/news/2020/04/08/poor-conditions-pennsylvania-jail-heighten-covid-19-concerns>; Kathleen E. Carey, “64 People Have Been Infected with Coronavirus at County Prison,” *DelCo Times*, April 18, 2020, https://www.delcotimes.com/news/coronavirus/64-people-have-been-infected-with-coronavirus-at-county-prison/article_f7668db0-81af-11ea-b98d-838597af815d.html; “Chatham Co. Sheriff: 2 Employees, 2 Inmates Test Positive for COVID-19,” *WSAV*, April 14, 2020, <https://www.wsav.com/news/coronavirus/sheriff-chatham-county-inmate-tests-positive-for-covid-19/>; Jeremy Roebuck and Allison Steele, “Montgomery County’s Jail Tested Every Inmate for COVID-19—and Found 30 Times More Cases than Previously Known,” *The Philadelphia Inquirer*, April 28, 2020, <https://www.inquirer.com/news/coronavirus-testing-montgomery-county-jail-asymptomatic-philadelphia-prisons-20200428.html>.

⁴ Katie Park, Tom Meagher, and Weihui Li, “Tracking the Spread of Coronavirus in Prisons,” *The Marshall Project*.

infectious diseases like Covid-19, given conditions of confinement including cramped quarters and a general lack of adequate sanitation and hygiene.⁵

Even when people on supervision are not incarcerated, frequent in-person reporting requirements put them at greater risk of exposure and infection.⁶

These concerns prompted 50 current and former supervision executives to issue a statement calling on supervision departments to limit reporting requirements, reduce probation and parole conditions and sentence lengths, and suspend or severely limit incarceration for rule violations during the pandemic.⁷ Human Rights Watch and the ACLU recently called on governments to facilitate reductions in jail and prison populations.⁸ Multiple jurisdictions have taken some of these steps, but high numbers of people still remain in US jails and prisons, or at risk of incarceration for any slip-up.⁹

Across the country, community-led organizations are helping to improve people's access to re-entry supports and services. Many people on supervision credit these organizations—often which, unlike most supervision-mandated programs, use harm-reduction models and

⁵ American Civil Liberties Union, "Failing Grades: States' Responses to Covid-19 in Jails & Prisons," June 2020, <https://www.aclu.org/report/failing-grades-states-responses-covid-19-jails-prisons>; Human Rights Watch, *Averting an Imminent Catastrophe: Recommendations to US Local, State and Federal Officials on Covid-19 in Jails and Prisons*, April 2019, <https://www.hrw.org/news/2020/04/29/averting-imminent-catastrophe-recommendations-us-local-state-and-federal-officials>; Jake Harper, "Inmates, Relatives Say Indiana Prisons Lack COVID-19 Safeguards," *WYFI*, April 10, 2020, <https://www.wfyi.org/news/articles/inmates-relatives-say-indiana-prisons-lack-covid-19-safeguards>; Katelyn Polantz, "Inmates Sue for Soap and Paper Towels as Coronavirus Spreads in Jails," *CNN*, March 31, 2020, <https://www.cnn.com/2020/03/31/politics/inmates-sue-coronavirus-jails/index.html>.

⁶ ExIt: Executives Transforming Probation & Parole, "Statement from Community Supervision Executives on the Importance of Using Best Practices During the COVID-19 Crisis," undated, <https://www.exitprobationparole.org/covid19statement>.

⁷ Ibid.; ExIt: Executives Transforming Probation & Parole, "COVID-19 Response," undated, <https://www.exitprobationparole.org/covid-19-response>.

⁸ "US: Avoid Covid-19 Catastrophe in Jails, Prisons," Human Rights Watch press release, April 29, 2020, <https://www.hrw.org/news/2020/04/29/us-avoid-covid-19-catastrophe-jails-prisons#>; American Civil Liberties Union, "New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us," April 22, 2020, <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>.

⁹ ExIt, Executives Transforming Probation & Parole, "Covid-19 Response" (accessed May 20, 2020); Prison Policy Initiative, "Responses to the Covid-19 Pandemic," updated July 14, 2020, <https://www.prisonpolicy.org/virus/virusresponse.html#releases>; American Civil Liberties Union, "Failing Grades: States' Responses to Covid-19 in Jails & Prisons," June 2020, <https://www.aclu.org/report/failing-grades-states-responses-covid-19-jails-prisons>.

offer assistance without preconditions—with helping them get on the right path. But such programs are sorely underfunded, and non-existent in many, particularly rural, areas.

Human Rights Watch and the ACLU call on governments to build on existing reforms, and divest from supervision and incarceration while investing in jobs, housing, education, and voluntary, community-based substance use disorder treatment and harm reduction services and mental health services. Investing in communities will help to break the cycle of incarceration and facilitate access to the resources people want and need.

Key Recommendations

Human Rights Watch and the American Civil Liberties Union call on federal, state, and local governments to enact the following reforms to reduce the harms of supervision and help people access resources they want and need:

- Divest from probation, parole, and incarceration and invest in access to jobs, housing, education, and voluntary, community-based substance use disorder treatment and mental health services.
- Reduce the use of supervision sentences and instead impose true alternatives to incarceration, such as unconditional discharges or proportionate and flexible community service requirements.
- Where supervision terms are imposed, shorten the length of supervision terms, reduce the number and nature of conditions imposed, and strictly limit incarceration for violations, both before and following violation proceedings.

Definitions and Terms

Supervision

We generally use the term “supervision” to refer to sentences that require people to abide by a set of conditions outside of jail or prison. Conditions often include reporting as directed, staying away from drugs and alcohol, and paying all court costs. Violating any of these conditions can lead to sanctions, including incarceration, sometimes for prolonged periods of time.

This report focuses on the two most common types of supervision, probation and parole, but it also touches to a lesser extent on a third type, extended supervision.

Each state and the federal government use some form of supervision. All three focus states of this report—Pennsylvania, Wisconsin, and Georgia—use probation. Pennsylvania and Georgia also use parole, while Wisconsin abolished parole and replaced it with extended supervision. Pennsylvania additionally uses a form of extended supervision in some cases.

Probation

Probation accounts for the overwhelming majority of supervision terms. Courts sentence people to probation after they have been convicted of a crime, either pursuant to a plea deal or after trial. Courts may impose probation on its own, as an alternative to incarceration, or following a period of incarceration—generally called a “split sentence.”

Most states place some limits on the lengths of probation terms, but some states place no such constraints – probation can be a few months, 20 years, or in some cases, life.

Parole

Most states allow people to be released early from prison based on good behavior while incarcerated. People released in this manner typically must serve the rest of their sentence under parole supervision. For instance, if someone is sentenced to 10 years in prison, and released on parole after serving five years, they must serve the remaining five years of their sentence on parole.

Extended Supervision¹⁰

Extended supervision is a type of mandatory supervision imposed in some jurisdictions—typically those that have abolished parole. In these jurisdictions, people must serve a period of extended supervision after they complete their full prison terms. It is essentially a mandatory form of parole, but without early release. The state legislature generally sets the length of extended supervision terms. For instance, in Wisconsin, people must serve a period of extended supervision that is at least 25 percent of the length of their prison sentence.

Federal Supervision

The federal system, which houses about 10 percent of the total US jail and prison population,¹¹ uses probation and, since abolishing parole in 1987, extended supervision. This report focuses on state supervision systems and detailed discussion of the federal system is beyond its scope.¹²

State vs. County Supervision

State and/or county agencies operate supervision departments. In Pennsylvania, the state Department of Probation and Parole (PBPP) oversees people serving “state parole”—meaning parole for sentences of at least two years in prison—while counties run “county parole,” meaning parole for sentences of less than two years in prison, and probation. Wisconsin’s state Division of Community Corrections, which is housed within the state Department of Corrections, oversees all forms of supervision. In Georgia, the state Department of Community Supervision handles parole and “felony probation,” meaning probation imposed for felony offenses, while individual counties are responsible for “misdemeanor probation,” meaning probation imposed for misdemeanor crimes.

¹⁰ While this type of supervision goes by different names in each state, such as “post-release supervision” in New York and “supervised release” in the federal system, this report uses the term “extended supervision”—the term used in Wisconsin, one of the report’s focus states.

¹¹ Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2020,” *Prison Policy Initiative*, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

¹² For a discussion of issues with federal extended supervision, see Fiona Doherty, “Indeterminate Sentencing Returns: The Invention of Supervised Release,” *New York University Law Review*, 88 (2013): 958.

Some counties in at least eight states, including Georgia, contract with private probation companies to manage and carry out supervision monitoring and compliance. Human Rights Watch has previously documented distinct human rights concerns related to private probation.¹³

Supervision Officers

This term refers to people who enforce compliance with supervision terms. Since probation and parole are the most common forms of supervision, we sometimes write “probation officer” or “parole officer.” Some of those we interviewed use the term “PO” as shorthand.

Violation

A “violation” occurs when someone does not follow the rules of supervision. If a supervision officer believes that someone has violated supervision rules, they generally have wide discretion to determine next steps. This ranges from issuing warnings; to imposing sanctions, such as mandated treatment, a few days or months in jail, or electronic monitoring; to pursuing revocation of their supervision, which generally means incarceration.

Revocation is the most serious consequence available for violations of supervision. It withdraws the grant of what is viewed as an alternative to incarceration; as a result, the individual faces not only sanctions like those listed above, but also potential sentences of years or even decades in prison. As discussed in Section IV, “Sentencing for Violations,” in many states, revocations of parole and extended supervision can trigger incarceration for the entire remainder of the individual’s sentence. Meanwhile, in some states, probation revocation can lead to incarceration for up to the maximum sentence available for the

¹³ For instance, private probation companies, which generally charge hefty monthly supervision fees, have a direct financial incentive to keep people under probation as long as possible to continue collecting fees. Human Rights Watch, ‘Set Up to Fail’: The Impact of Offender-Funded Private Probation on the Poor, (New York: Human Rights Watch: 2018), <https://www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor>; Human Rights Watch, Profiting from Probation: America’s “Offender-Funded Probation Industry,” (New York: Human Rights Watch: 2014), <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry>; Andrew Cohen, “The Private Probation Problem is Worse Than Anyone Thought,” The Atlantic, February 5, 2014, <https://www.theatlantic.com/national/archive/2014/02/the-private-probation-problem-is-worse-than-anyone-thought/283589/>.

original offense. As discussed in Section IV, many states, including Georgia and Pennsylvania, place some limits on sentences following revocation in certain contexts.

This report uses the term “violation proceedings” to refer to all proceedings related to violation of a person’s supervision, up to and including revocation. Where the fact that a person is facing revocation is relevant, we refer to the latter as “revocation proceedings” to avoid potential ambiguity.

Detainer

A detainer is essentially an order that requires someone to be detained in jail. While detainers are also used in other contexts, such as immigration proceedings, we use the term here to refer to orders requiring people to be confined pending violation proceedings.

Sometimes, judges must approve detainers, while in other cases, supervision departments can simply file them. Either way, there is no hearing prior to such detention in the three focus states covered in this report and, to our knowledge, in any jurisdiction in the US.

As detailed in Section III, “Pre-Revocation Confinement,” detainers often result in people sitting in jail for weeks or months pending violation proceedings.

Revocation Proceedings

Revocation proceedings are proceedings to determine if an individual’s supervision term should be revoked and, if so, the appropriate sentence. Sentences could include incarceration, sometimes for years or decades (see Section IV, “Sentencing for Violations”); a community- or incarceration-based treatment program; or an alternative to incarceration, such as a return to supervision with added requirements.

Proceedings begin with the filing of a “revocation petition” by the supervision officer, which outlines the alleged violations of supervision. Generally, the supervision officer also files a detainer.

Judges typically oversee probation revocation proceedings, while parole boards generally conduct these proceedings for parole violations. In some states, such as Wisconsin, Administrative Law Judges handle all revocation proceedings.

The US Supreme Court has outlined a two-step hearing process for revocation proceedings: a “preliminary” hearing followed by a “final” hearing.¹⁴ Many states follow this two-step process,¹⁵ while others have carved out numerous exceptions to the preliminary hearing requirement,¹⁶ and some have even said that one hearing can be sufficient.¹⁷

Preliminary Hearing

The preliminary hearing is supposed to happen promptly and determine, first, if there is probable cause to believe that a violation has occurred, and second, if the person should be detained until their final hearing (see below).¹⁸

However, as discussed in Section III, in practice, preliminary hearings are seldom held in our focus states and, when hearings do occur, few people are released.

Final Hearing

The final hearing determines whether someone violated their supervision and the appropriate sentence. As discussed in Section III, few evidentiary protections apply and, in

¹⁴ *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) (since “[t]here is typically a substantial time lag between the arrest and the eventual determination” whether supervision should be revoked, and people may be arrested far from the place where the revocation proceedings will be held, “due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available.”); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for probation violation proceedings).

¹⁵ Cody Warner, “The Waiting Game: How States Deny Probationers Their Constitutional Right to a Preliminary Hearing,” *Criminal Law Brief*, 8 (2013): 13, 18, <http://nebula.wsimg.com/4ec91c576bd6bd2coco3866b85a32114?AccessKeyId=510058E7EF01CB286695&disposition=o>.

¹⁶ Cody Warner, “The Waiting Game,” p. 18-25.

¹⁷ *McElroy v. State*, 247 Ga. 355 (Ga. 1981) (due process for probation violations can be satisfied in a single court proceeding so long as all minimum due process requirements are met); *People v. Coleman*, 13 Cal. 3d 867, 895 (Cal. 1975) (“a unitary hearing will usually suffice in probation revocation cases to serve the purposes of the separate preliminary and formal revocation hearings outlined in *Morrissey*”). However, such states may be violating the US Supreme Court’s mandates in *Morrissey* and *Gagnon*. Cody Warner, “The Waiting Game,” p. 24.

¹⁸ *Morrissey*, 408 U.S. at 485-87; *Gagnon*, 411 U.S. at 782; Wis. Adm. Code DOC 331.05; O.C.G.A. § 42-9-50; Pennsylvania Department of Corrections and Pennsylvania Board of Probation & Parole, “Parole Handbook,” March 2020, [https://www.parole.pa.gov/Information/Documents/Publications/Publications/Final%20Parole%20Handbook.pdf](https://www.parole.pa.gov/Information/Documents/Publications/Final%20Parole%20Handbook.pdf), p. 24.

most states, the revocation determination is based on the preponderance of the evidence standard.¹⁹

As discussed in Section III, many people waive their final hearings in exchange for a set sentence.²⁰

Types of Violations

Most jurisdictions differentiate between violations of supervision rules (often called “technical” violations and referred to in this report as “rule” violations) and violations involving new offenses (referred to here as “new offense” violations).

These categories sometimes overlap. For instance, using or possessing drugs can constitute both a rule violation and a new offense. Definitions of what is included in these categories also vary between and even within jurisdictions.

Data provided by the Wisconsin Department of Corrections (WI DOC) that we analyzed for this report categorized conduct as a rule violation only if the underlying conduct did not allegedly constitute a criminal offense, regardless of whether charges were filed or a conviction resulted.²¹ However, data provided by the Pennsylvania Board of Probation and Parole (PBPP), as well as data in some national datasets mentioned in the report, categorized conduct as a rule violation so long as it did not result in a conviction for a criminal offense.²² (See “Methodology” section.)

People can be incarcerated for both rule and new offense violations.

¹⁹ Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” *American Journal of Criminal Law*, 31 (2003): 117, 127-28.

²⁰ Further, Georgia does not require final parole revocation hearings if the accused was convicted of certain crimes. O.C.G.A. 42-9-51(a), (c).

²¹ Human Rights Watch e-mail correspondence with Megan Jones, director of research and policy, Wisconsin Department of Corrections, December 18, 2019 (on file with Human Rights Watch).

²² Council of State Governments Justice Center, “Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets,” 2019, <https://csgjusticecenter.org/publications/confined-costly/>, n.1; Human Rights Watch e-mail correspondence with David Butts, open records officer, Pennsylvania Department of Probation and Parole, May 21, 2020 (on file with Human Rights Watch); Human Rights Watch e-mail correspondence with Bureau of Justice Statistics, April 2020 (on file with Human Rights Watch).

Incarceration

The term “jail” refers to county-run facilities that typically incarcerate people who are awaiting trial or revocation, awaiting transfer to another jurisdiction, are sentenced to shorter terms of incarceration (usually one year or less), or sentenced and awaiting transfer to prison.

The term “prison” refers to state-run facilities where people who have been convicted of a crime are serving sentences, usually of more than one year.

We use the term “incarceration” to refer to forms of confinement from which people are not permitted to freely leave, including jails, prisons, and other facilities, such as “probation detention centers” and treatment programs housed within correctional facilities.

Methodology

This report is the product of a joint initiative—the Aryeh Neier Fellowship—between Human Rights Watch and the American Civil Liberties Union (ACLU) to strengthen respect for human rights in the United States.

This report is based on extensive desk research into national trends related to the use of supervision in the United States and in our focus states of Pennsylvania, Wisconsin, and Georgia; 164 interviews conducted between September 2019 and June 2020; and data on incarceration for supervision violations provided to Human Rights Watch in response to public information requests or obtained through publicly available databases online.

Interviews and Observations

We conducted in-person interviews in Pennsylvania, Wisconsin, and Georgia with 47 people who were, or had been, incarcerated for alleged violations of their supervision. We also spoke to ten of their relatives or partners. Of these individuals, 38 were Black, 17 were white, one was Native American, one identified as Latino,²³ 41 were men, and 16 were women. We additionally corresponded via e-mail and letter with 14 people confined in Wisconsin prisons, whom we could not interview in person.

Additionally, we interviewed 42 lawyers and six judges in Pennsylvania, Wisconsin, and Georgia, and one lawmaker in Wisconsin. We also interviewed 23 community advocates in these states.

We spoke with five supervision department officials in Georgia, four supervision department officials in Wisconsin, one correctional officer in Pennsylvania, and one federal supervision department official. On May 20, 2020, the Pennsylvania Department of Probation and Parole declined our March 6, 2020 request to interview Pennsylvania supervision officers, stating they did not have sufficient resources to speak with us.

²³ This report uses the term expressed by the interviewee when referring to their identity, and uses the term Latinx when referring generally to people of Latin American origin or descent. Because some databases do not include “Latinx” or “Hispanic” as a race, and Human Rights Watch did not ask everyone their ethnic or racial identification, Latinx individuals may be undercounted among those we interviewed.

Supervision departments in Montgomery County, Delaware County, and Philadelphia County, Pennsylvania, did not respond to our March 6, 2020 request for interviews.

In addition, Human Rights Watch interviewed eight supervision experts, one addiction psychiatry specialist, and one journalist.

With respect to the interview procedures used, most interviews were conducted in person and in private, in correctional facilities, courthouses, meeting spaces, or offices, and some were conducted via telephone. Human Rights Watch researchers took notes during interviews and generally recorded interviews where the setting permitted recordings.

We followed an interview guide and asked interviewees a series of questions regarding their background, involvement in the supervision process, the purposes of supervision and whether supervision is fulfilling those purposes, and recommendations for improving supervision systems. We also asked individuals customized questions based on their role.

Human Rights Watch researchers wrote interview memos following each interview and then conducted content and thematic analysis.

Human Rights Watch identified people to interview through a variety of sources, including court observations, defense attorneys, community organizations, and online court case databases.

All individuals interviewed provided verbal informed consent to participate and did not receive any compensation for participating in interviews. In some cases, we paid transportation or meal expenses. Individuals interviewed were offered the option of using their real name or a pseudonym in the report.

Where possible, we reviewed public court records and case documents provided by individuals we interviewed.

In addition to interviews, Human Rights Watch observed numerous supervision violation proceedings on nine separate days in Chatham County and Lowndes County, Georgia; Philadelphia County, Delaware County, and Montgomery County, Pennsylvania; and Milwaukee County and Brown County, Wisconsin. Human Rights Watch also attended

community meetings regarding supervision reform in Philadelphia, Pennsylvania; Milwaukee, Wisconsin; and Green Bay, Wisconsin.

We did not research supervision connected to juvenile justice systems. Accordingly, all figures in the report refer to people who were charged and prosecuted as adults. Since all states allow children under age 18 to be charged as adults in some circumstances, these figures may include children.²⁴ In this report, the terms “child” and “children” are used to refer to anyone under the age of 18, consistent with usage under international law.

Data Requests and Quantitative Analysis

Human Rights Watch conducted original analysis of data available online through the Bureau of Justice Statistics.

Further, Human Rights Watch submitted a series of data requests to state and local correctional agencies in Pennsylvania, Wisconsin, and Georgia. The requests sought policies, procedures, and guidelines related to the imposition of supervision, as well as individual-level data for people admitted to jail or prison for supervision violations, including biographical information, their supervision sentence, conduct triggering violation proceedings, length of incarceration pending violation proceedings, and the outcome of those proceedings and sentence imposed.

We received requested policies, procedures, and guidelines regarding supervision practices from the Wisconsin Department of Corrections; Georgia Department of Community Supervision; Pennsylvania Board of Probation and Parole; and Bucks, Lehigh, Allegheny, Lancaster, Potter, and Sullivan counties in Pennsylvania. Agencies that responded to our requests for individual-level data, and limitations on the data provided, are described below. Numerous counties in all three states did not respond to our request.

²⁴ Annie Teigen, “Juvenile Age of Jurisdiction and Transfer to Adult Court Laws,” *National Conference of State Legislatures*, July 1, 2020, <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>.

Wisconsin

Human Rights Watch analyzed three Wisconsin Department of Corrections (WI DOC) datasets. The first we received from WI DOC in response to a public records request drawn from a body of data called the Wisconsin Evidence-Based Response to Violations (EBRV), which is a database that contains all sanctions—from warnings, to months in jail, to revocation—for supervision violations (“sanctions dataset”). In the sanctions dataset, supervision officers coded violations as “rule” or “new offense” violations based on their perception of the individual’s underlying conduct: If a supervision officer believed that the underlying conduct constituted an alleged rule violation, they coded it as a rule violation. If the supervision officer believed that the underlying conduct constituted an alleged new offense—regardless of whether charges were filed—they coded it as a new offense violation.²⁵

We filtered this dataset to only include the months with complete cases (March 2017 – September 2019). The data does not include any information about criminal history before that related to the supervision violations that occurred during this time period. We created grouping variables to aggregate violations and government responses to the violations. We grouped 147 distinct violations into 42 different violation categories and 58 distinct response types into 14 response categories.

Human Rights Watch also analyzed WI DOC data that was publicly available, not the result of our public records request, about the reasons for admission to state prison—which included revocation for a rule violation, revocation for a new offense violation,²⁶ a new sentence (unrelated to revocation), and a category called “other”²⁷—from 2000 to 2019 (“prison admissions dataset”). Unlike the sanctions dataset, in this dataset the WI DOC coded conduct as a rule violation as long as it did not result in a new conviction and

²⁵ Human Rights Watch e-mail correspondence with Megan Jones, December 18, 2019 (on file with Human Rights Watch).

²⁶ WI DOC refers to revocations for rule violations as “revocation only” prison admissions, and to revocations for new offense violations as “revocation new sentence” admissions. See Wisconsin Department of Corrections, Division of Adult Institutions, “Admissions to Prison Dashboard,” <https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx> (accessed June 28, 2020).

²⁷ “Other” includes people incarcerated pending revocation proceedings or serving sanctions short of revocation, such as prison-based treatment programs, as well as people serving sentences from another state. Ibid.

sentence.²⁸ Accordingly, people imprisoned for rule violations in the prison admissions dataset may or may not have been accused of conduct that allegedly constituted a crime.

Human Rights Watch additionally received raw data from the WI DOC, in response to our records request, that merged information from the sanctions and prison admissions datasets. The WI DOC cautioned that “[b]ecause there is no way to match exactly the admission movement to the violation record the resulting data should be considered an ‘estimate’ as the violations associated with the admissions may not be the right violations,” and noted that “not all admissions had associated violation records from EBRV due to the timing of when the DOC started recording violation records from EBRV.”²⁹ Given these limitations, Human Rights Watch did not analyze this data.

However, a Wisconsin lawmaker provided Human Rights Watch with a preliminary processed version of similar merged data, which he obtained through a public records request (“merged dataset”). The merged dataset contains a subset of people admitted to prison following revocation for rule violations between January 2017 and June 2018, drawn from the prison admissions dataset, and includes the alleged underlying conduct that triggered revocation of their supervision, based on the sanctions dataset. WI DOC officials warned that “this data should be interpreted with caution as there are still a number of data entry errors that have yet to be corrected.”³⁰

Additionally, in response to a public records request, Dane County, Wisconsin, provided data on everyone booked into jail between January 2016 and January 2019 who had a probation or parole violation. With this data, Human Rights Watch was able to estimate time spent in jail for each individual. However, because the data did not differentiate between people held pending violation proceedings and people incarcerated following violation proceedings, we could not meaningfully analyze this data and thus it was not included in the research for this report.

²⁸ Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” May 2020, <https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf>, p. 9.

²⁹ Wisconsin Department of Corrections response to Human Rights Watch public records request (on file with Human Rights Watch).

³⁰ Data provided by Wisconsin Department of Corrections to Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).

Pennsylvania

Human Rights Watch downloaded data on Pennsylvania state prison admissions from the Pennsylvania Department of Corrections. Data provided statewide and county level numbers regarding admissions for state parole violations.

Additionally, we acquired data from the Pennsylvania Board of Probation and Parole (PBPP) regarding all state parole violation hearings between January 2016 and July 2019 in response to a public records request. Information on conditions that were violated was stored within a long string variable. We used text searching to identify the codes for different types of conditions violated for each case. Additionally, we created grouping variables for data on hearings and offenses. Beyond the generic code for violation types, we could not analyze the specific types of new offense violations because of a lack of standardized data entry. The dataset did not provide information on the penalties imposed for violations.

In this dataset, the PBPP coded conduct as a “new offense” violation if the conduct resulted in a criminal conviction.³¹

In addition, Human Rights Watch received data regarding all county jail admissions for parole and probation violations from 2016 to 2019 from Lehigh County, Pennsylvania. Human Rights Watch coded violation and charge types into categories. This data provided dates for initial incarceration and sentencing, allowing for a computation of the length of detention before sentencing. Due to a lack of standardized data entry, we could not analyze the underlying conduct that led to incarceration.

Human Rights Watch also received data from the Pennsylvania Sentencing Commission regarding probation revocations between January 2016 and December 2019. However, we did not produce original analysis from this data given the quality of publicly-available analysis of this same data. The publicly-available analysis provided information on sentences following revocation and whether the conduct triggering revocation constituted a “rule” or “new offense” violation. The Sentencing Commission informed us that each county reported data regarding probation revocations absent a standard definition of

³¹ Human Rights Watch e-mail correspondence with David Butts, May 21, 2020 (on file with Human Rights Watch).

“rule” and “new offense” violations.³² Accordingly, some counties may have included alleged criminal conduct that did not result in a conviction as a “new offense” violation, while others may have only considered conduct that resulted in a conviction to be a “new offense” violation.³³ Given broad categorizations, we could not meaningfully analyze the underlying conduct that led to revocation.³⁴

Georgia

The Georgia Department of Community Supervision informed us that they could not provide the individual-level data requested because they merged databases in 2015, and the relevant data was not yet mature enough. The Georgia Department of Corrections informed us that relevant laws did not require them to release the requested data.

Human Rights Watch obtained information publicly available on Georgia county jail websites. We worked with computer science and economics students at the University of Georgia to collect information from Georgia. Human Rights Watch was able to examine data scraped from jail rosters for nine Georgia counties during the course of five months of Summer and Fall 2019 (June 1 – October 31). To ascertain the types of charges that led to jail bookings, we removed all bookings that were not for new criminal charges or did not involve probation or parole violations, such as people serving jail sentences. This analysis allowed us to determine what proportion of bookings involved probation and parole violations.

The data analyses, focused on descriptive statistics, were completed in R. R code and data is on file with Human Rights Watch.

Note on State Selection

We spent a month at the start of this project defining its scope and selecting states on which to focus, informed by phone interviews with practitioners and advocates, as well as

³² Human Rights Watch e-mail correspondence with Matthew Kleinman and Mark Bergstrom, Pennsylvania Sentencing Commission, April 2020 (on file with Human Rights Watch).

³³ Ibid.

³⁴ For instance, the top three rule violation types were “multiple instances of violations” (42 percent); “any single instance of a violation,” (16 percent); and “other” (15 percent). Pennsylvania Sentencing Commission, “Revocation and Resentencing Data Analysis for Resentencing Guidelines,” 2019, <http://pcs.la.psu.edu/guidelines/resentencing/resentencing-analysis-2019>, Exhibit 8.

extensive desk research. We chose to highlight Pennsylvania, Wisconsin, and Georgia because these states had high numbers and proportions of people incarcerated for supervision violations and racial disparities in their data. Each state also presented advocacy opportunities.

Background: Supervision in the United States

History of Supervision

When first used as part of the criminal legal system, supervision was designed to divert people away from incarceration and help them reintegrate into their communities.³⁵ It was first used in the United States during the late 19th Century.³⁶ Courts began sentencing certain people—typically those convicted of low-level crimes, often related to alcohol use, whom they deemed capable of rehabilitation—to “probation.”³⁷

As part of probation, a community “sponsor” would watch over the individual, impose regulations on what they could do, and help them “rehabilitate.”³⁸ After a few weeks, the sponsor would report back to the court.³⁹ If the judge agreed that the person was “reformed,” they would be set free.⁴⁰ Failure to meet probation’s requirements, however, could trigger prison.⁴¹

Around the same time, US prisons began releasing certain people convicted of crimes and sentenced to prison early on “parole” for good behavior.⁴² As with probation, a community

³⁵ Columbia University Justice Lab, “Too Big to Succeed: The Impact of the Growth of Community Corrections and What Should be Done About It,” January 29, 2018, https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf, p. 1; Fiona Doherty, “Obey All Laws and Be Good,” *Georgetown Law Journal*, 104:291, (2016): 328-29, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=6155&context=fss_papers; Cecelia Klingele, “Rethinking the Use of Community Supervision,” *Journal of Criminal Law and Criminology*, 103 (2013), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7463&context=jclc>, p. 1016, 1022-24; Fiona Doherty, “Indeterminate Sentencing Returns: The Invention of Supervised Release,” *New York University Law Review*, 88 (2013): 958, 986, https://digitalcommons.law.yale.edu/fss_papers/4805/.

³⁶ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1022-24; Andrew Horwitz, “The Costs of Abusing Probationary Sentences: Overincarceration and the Erosion of Due Process,” *Brooklyn Law Review*, 75 (2010): 753, 757, <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1242&context=blr>.

³⁷ *Ibid.*; Fiona Doherty, “Testing Periods and Outcome Determination in Criminal Cases,” *Minnesota Law Review*, 103:1699 (2019): 1710, https://www.minnesotalawreview.org/wp-content/uploads/2019/04/Doherty_FINAL.pdf: (“From its earliest days, probation has been used as a tool to sort (mostly indigent) defendants for their ability (or inability) to abstain from intoxicants.”).

³⁸ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1023; Fiona Doherty, “Testing Periods,” p. 1710.

³⁹ *Ibid.*

⁴⁰ Sometimes the court would also impose a small fine. Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1023; Fiona Doherty, “Testing Periods,” p. 1710-11.

⁴¹ Fiona Doherty, “Testing Periods,” p. 1711.

⁴² Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1026.

member would monitor the individual, set rules, and help them reintegrate, typically for about six months.⁴³ Those who followed all conditions were set free, while those who violated the rules faced re-incarceration.⁴⁴

Supervision became increasingly popular across the US as a tool of rehabilitation.⁴⁵ By the 1950s and 60s, nearly half of the people convicted of crimes were sentenced to probation.⁴⁶

Transformation of Supervision

Beginning in the 1970s, supervision fundamentally changed. Then-US President Richard Nixon had declared a “war on drugs”—which, evidence suggests, was fueled by political concerns and racial bias, rather than public health.⁴⁷ Over the next decade, the “war on drugs” combined with a larger “tough on crime” policy, ushering in an era of harsh sentencing laws, including, “mandatory minimum” sentences and “habitual offender” laws for drug-related and other conduct.⁴⁸ Amidst this movement, many politicians and practitioners began railing against supervision, which they perceived as too lenient, and pushed to send more people to prison to serve longer sentences.⁴⁹ Meanwhile, a widely

⁴³ Ibid., p. 1026-27; Fiona Doherty, “Indeterminate Sentencing Returns,” p. 982.

⁴⁴ Ibid.

⁴⁵ Fiona Doherty, “Indeterminate Sentencing Returns,” p. 983; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1023, 1028.

⁴⁶ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1023.

⁴⁷ John Ehrlichmann, President Nixon’s policy advisor, admitted, “The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.” Dan Baum, “Legalize It All,” *Harper’s Magazine*, April 2016, <https://harpers.org/archive/2016/04/legalize-it-all/>.

⁴⁸ Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>, p. 28-29; Vera Institute of Justice, “Playbook for Change? States Reconsider Mandatory Sentences,” February 2014, prisonpolicy.org/scans/vera/mandatory-sentences-policy-report-v2b.pdf, p. 6-7.

⁴⁹ Fiona Doherty, “Indeterminate Sentencing Returns,” p. 993-94; David Muhammad and Vincent Schiraldi, “How to End the Era of Mass Supervision,” *Chronicle of Social Change*, September 30, 2019, https://chronicleofsocialchange.org/justice/how-to-end-the-era-of-mass-supervision/37846?utm_source=The+Marshall+Project+Newsletter&utm_campaign=79e6d5d2a9-EMAIL_CAMPAIGN_2019_10_04_11_41&utm_medium=email&utm_term=0_5e02cdad9d-79e6d5d2a9-174545397l; Ebony L. Ruhland, et al., “The Continuing Leverage of Releasing Authorities: Findings from a National Survey,” *University of Minnesota, Robina Institute*, 2017,

publicized study argued that “nothing works” to rehabilitate people.⁵⁰ As a result, political consensus shifted away from rehabilitation towards punishment and incarceration as a solution to conduct considered criminal.⁵¹

Legislatures, court systems, and supervision agencies toughened conditions, lengthened supervision terms, increased monitoring, and heightened sanctions for violations.⁵² Those tasked with enforcing conditions, who had previously considered themselves “counselors” who helped “clients,” began identifying as “officers” who monitored “offenders.”⁵³

Additionally, states began imposing supervision in addition to—rather than instead of—prison or jail terms. By the 1980s, upwards of 20 states had either eliminated or dramatically reduced early release to parole.⁵⁴ Many states replaced parole with “extended supervision” – a mandatory supervision term imposed after people complete their full

https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/final_national_parole_survey_2017.pdf, p. 9; Human Rights Watch telephone interview with Kendra Bradner, research and policy director, Probation and Parole Reform Project at Columbia Justice Lab, February 10, 2020.

⁵⁰ Fiona Doherty, “Indeterminate Sentencing Returns,” p. 994; Robert Martinson, “What Works? Questions and Answers About Prison Reform,” *National Affairs*, 1974, https://www.nationalaffairs.com/public_interest/detail/what-works-questions-and-answers-about-prison-reform. Robert Martinson, who wrote the article, later tried to qualify his conclusion that “nothing works,” but his conclusions were already widely publicized. See Wayne A. Logan, “The Importance of Purpose in Probation Decision Making,” *Buffalo Criminal Law Review*, 7:171, (2003): 190, https://www.researchgate.net/publication/228306137_The_Importance_of_Purpose_in_Probation_Decision_Making.

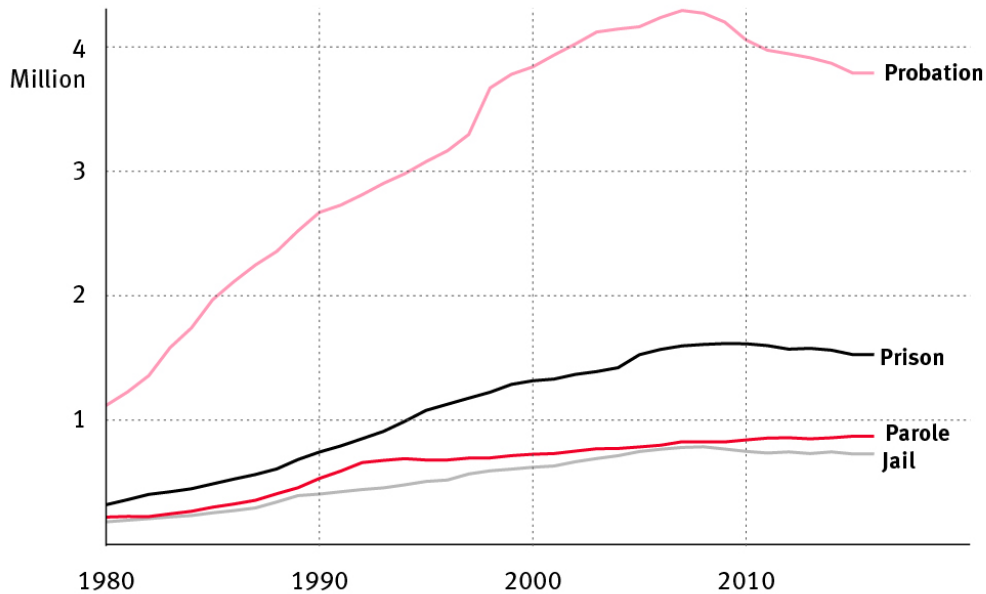
⁵¹ Wayne A. Logan, “The Importance of Purpose in Probation Decision Making,” p. 190-92; David Muhammad and Vincent Schiraldi, “How to End the Era of Mass Supervision;” Andrew Horowitz, “The Costs of Abusing Probationary Sentences,” p. 759; Ronald Corbett, “The Burdens of Leniency: The Changing Face of Probation,” *Minnesota Law Review* 99:1697, (2015): 1705-07, https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Corbett_4fmt_PDF.pdf.

⁵² David Muhammad and Vincent Schiraldi, “How to End the Era of Mass Supervision;” Wayne A. Logan, “The Importance of Purpose in Probation Decision Making,” p. 191-92; Andrew Horowitz, “The Costs of Abusing Probationary Sentences,” p. 762-63; Ronald Corbett, “The Burdens of Leniency,” p. 1707-10; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1028-30; Matthew DeMichele, et al., “Probation and Parole Officers Speak Out—Caseload and Workload Allocation,” *Federal Probation*, 2007, https://www.uscourts.gov/sites/default/files/71_3_5_o.pdf, p. 2; Lawrence F. Travis III and James Stacey, “A Half Century of Parole Rules: Conditions of Parole in the United States, 2008,” *Journal of Criminal Justice*, 4:38, (2010), <https://www.sciencedirect.com/science/article/pii/S0047235210000875>; Vincent Schiraldi, “Transforming Community Supervision,” panel, September 24, 2019.

⁵³ Ibid.; Human Rights Watch telephone interview with Kendra Bradner, February 10, 2020. Indeed, as of 2013, 33 states located their probation departments within their Department of Corrections. Anderson Economic Group, “Incentives in State Probation Systems: Relation to Structure and Practices,” October 23, 2013, https://www.prisonfellowship.org/site/wp-content/uploads/2015/12/Incentives-in-State-Probation_AEG_March-2014.pdf, p. 8.

⁵⁴ Ebony L. Ruhland, et al., “The Continuing Leverage of Parole Releasing Authorities,” p. 9; Christine S. Scott-Hayward, “The Failure of Parole: Rethinking the Role of the State in Reentry,” *New Mexico Law Review*, 41 (2011): 421, 433-34, <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1098&context=nmlr>; National Conference of State Legislatures, “Making Sense of Sentencing: State Systems and Policies,” June 2015, <https://www.ncsl.org/documents/cj/sentencing.pdf>, p. 5; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1027-28; Jarred Williams, et al., “The Wisconsin Community Corrections Story,” *Columbia University Justice Lab*, 2019, <https://justicelab.columbia.edu/sites/default/files/content/Wisconsin%20Community%20Corrections%20Story%20final%20online%20copy.pdf>, p. 7.

Probation and parole populations have **skyrocketed** alongside jail and prison growth in the United States.



Source: Adults on Probation, in Jail or Prison, and on Parole, Sourcebook of Criminal Justice Statistics Online, Table 6.1.2011, <https://www.albany.edu/sourcebook/pdf/t612011.pdf> (1980-2004); Danielle Kaebler & Lauren Glaze, Bureau of Justice Statistics, Correctional Populations in the United States, 2015, 2016, <https://www.bjs.gov/content/pub/pdf/cpus15.pdf>, Table 1 (2005-2014); Danielle Kaebler & Mary Cowhig, Bureau of Justice Statistics, Correctional Populations in the United States, 2016, 2018, <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>, Table 1 (2015-2016).

prison sentences.⁵⁵ Also around that time, courts increasingly imposed “split” probation sentences after conviction, requiring people to serve jail or prison time followed by a period of probation.⁵⁶

⁵⁵ Ibid.

⁵⁶ Bureau of Justice Statistics, “Probation and Parole 1981,” <https://www.bjs.gov/content/pub/pdf/pp81.pdf>, p. 1; Vincent Schiraldi, “The Pennsylvania Community Corrections Story,” *Columbia University Justice Lab*, 2018, <https://justicelab.columbia.edu/sites/default/files/content/PACommunityCorrections4.19.18finalv3.pdf>, p. 4; Fiona Doherty, “Obey All Laws and Be Good,” p. 340-42; Caryl Reynolds, et al., “Justice Reinvestment in Pennsylvania, Second Presentation to the Working Group,” 2020, <https://csgjusticecenter.org/wp-content/uploads/2020/01/PA-Second-Presentation.pdf>; Human Rights Watch telephone interview with Wade Kruger, chief public defender, Lowndes County, Georgia, December 2, 2019 (discussing frequent use of split sentences in Georgia).

The use of supervision also skyrocketed. As incarceration in the United States grew nearly five-fold between 1980 and 2007, from about 500,000⁵⁷ to 2.3 million,⁵⁸ the population under parole (220,400 to 826,100) and probation (1.1 million to 4.3 million) grew almost four-fold.⁵⁹

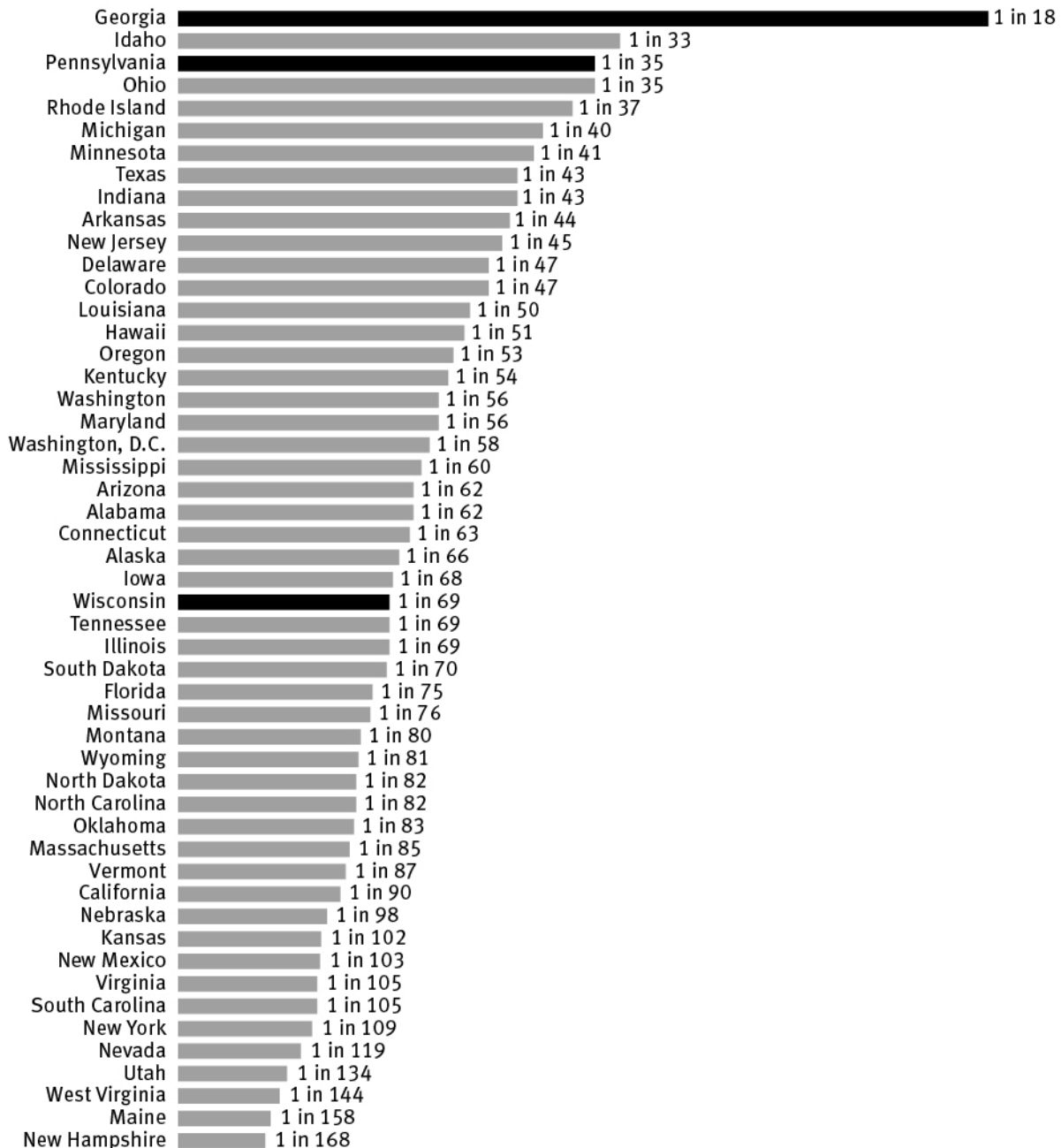
⁵⁷ The Sentencing Project, “Trends in U.S. Corrections,” 2016, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>, p. 2; Bureau of Justice Statistics, “Key Statistic: Total Correctional Population, 1980 – 2016,” <https://www.bjs.gov/index.cfm?ty=kfdetail&iid=487> (accessed May 26, 2020).

⁵⁸ Danielle Kaeble and Mary Cowhig, “Correctional Populations in the United States, 2016,” *Bureau of Justice Statistics*, <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>, Table 1. The incarceration population has since declined to 2.2 million. Ibid; John Gramlich, “America’s Incarceration Rate at Two-Decade Low,” *Pew Research*, May 2, 2018, <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>.

⁵⁹ The Sentencing Project, “Trends in U.S. Corrections,” 2016, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>, p. 2; Bureau of Justice Statistics, “Key Statistic: Total Correctional Population, 1980 – 2016;” Michelle Phelps and Caitlin Curry, “Supervision in the Community: Probation and Parole,” *Oxford Research Encyclopedia of Criminology Oxford*, (England: Oxford University Press, 2017), <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-239>, p. 1. The probation population has declined somewhat over the past decade. See Danielle Kaeble and Mary Cowhig, “Correctional Populations in the United States, 2016,” Table 1. However, that decline has been largely concentrated in a handful of states. See Prison Policy Initiative, “Correctional Control 2018: Incarceration and Supervision by State,” 2018, <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>.

One in 55 Adults in the US is on Probation or Parole

By State, 2016:



Source: PEW Charitable Trusts, Probation and Parole Systems Marked by High Stakes, Missed Opportunities, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>, Figure 3.

Supervision Today

As of 2016, the last year for which national data on supervision is available, 4.5 million adults—or one in every 55—were under supervision.⁶⁰ Of those on supervision, the overwhelming majority—81 percent, or nearly 3.8 million people, were under probation supervision⁶¹—while the remaining 19 percent were on parole.⁶² Rates of supervision in the United States are five to ten times the rates of European nations, similar to incarceration rates.⁶³

In Wisconsin, one in every 69 adults, or 66,400 people, were under supervision as of 2016.⁶⁴ In Pennsylvania, the number was one in every 35 adults, or 296,200 people.⁶⁵ And in Georgia it was one in every 18 adults, or 430,800 people.⁶⁶

Numbers are particularly stark in some counties we studied. In Philadelphia, Pennsylvania, one in 23 people is on supervision—the highest rate of any big city in the US.⁶⁷ In neighboring Delaware County, Pennsylvania, one in every 20 adults is subject to supervision.⁶⁸

⁶⁰ Danielle Kaeble and Mary Cowhig, “Correctional Populations in the United States, 2016,” p. 2; PEW Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” September 2018, https://www.pewtrusts.org/-/media/assets/2018/09/probation_and_parole_systems_marked_by_high_stakes_missed_opportunities_pew.pdf, p. 1.

⁶¹ Danielle Kaeble and Mary Cowhling, “Correctional Populations in the United States, 2016,” Table 1. While, as discussed throughout this report, probation generally entails monitoring and reporting requirements, some of these individuals serving probation serve “non-reporting” probation, which does not involve reporting requirements. Ibid, p. 6; see, for example, Maricopa County, Arizona, “Unsupervised Probation,” updated November 12, 2019, <https://superiorcourt.maricopa.gov/apd/unsupervised/>.

⁶² Danielle Kaeble and Mary Cowhling, “Correctional Populations in the United States, 2016,” Table 1.

⁶³ Michelle Phelps and Caitlin Curry, “Supervision in the Community,” p. 1; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1016-17 (US incarceration rate is seven times that of western European nations).

⁶⁴ PEW Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” p. 6; Danielle Kaeble, “Probation and Parole in the United States, 2016,” 2018, <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>, Appendix Table 1.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Pennsylvania Board of Probation and Parole, “County Adult Probation and Parole Annual Statistical Report”, 2018, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20CAPP%20Annual%20Statistical%20Report.pdf>, Table 19; Inquirer Editorial Board, “Justice for the Less Famous ‘Meek Mills’ Who are Trapped by Probation,” *The Philadelphia Inquirer*, October 27, 2019, https://www.inquirer.com/opinion/editorials/probation-parole-philadelphia-meek-mill-supervision-criminal-justice-reform-20191027.html?__vz=medium%3Dsharebar.

⁶⁸ Pennsylvania Board of Probation and Parole, “County Adult Probation and Parole Annual Statistical Report”, Table 19.

Nationwide, most supervision sentences are imposed for low-level conduct. At the end of 2016, one quarter of probation and parole terms were imposed for property crimes, another quarter were imposed for drug crimes—which, nationwide, are overwhelmingly for personal possession⁶⁹—14 percent were imposed for public order offenses, and 22 percent were imposed for crimes considered violent.⁷⁰ Some scholars argue that, rather than using probation instead of incarceration (“leveling down”), judges and prosecutors also use probation in cases that would otherwise have triggered less severe sanctions (known as “leveling up”), such as fines or community service.⁷¹ In Georgia for example, courts routinely sentence people to probation for traffic infractions if they cannot pay the required fines and fees on their court date.⁷²

Supervision terms can be lengthy. Once people are released to parole, states often require them to serve the full remainder of their sentence under parole supervision—which can be

⁶⁹ US Department of Justice, Federal Bureau of Investigation, “About Crime in the US (CIUS),” 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018>.

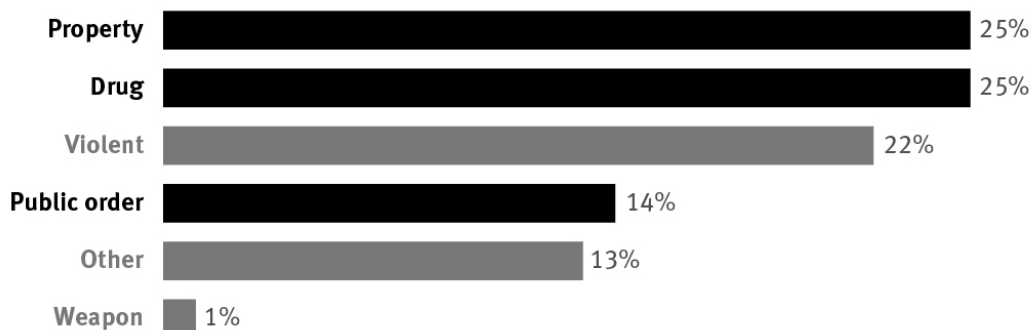
⁷⁰ PEW Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” Figure 5. Wherever possible, this report avoids using the terms “violent” and “nonviolent” crimes. This is because each jurisdiction defines these terms differently, and some legislatures’ and courts’ definitions of “violent” crimes are so expansive that they include conduct that is commonly understood as nonviolent or nonserious. For example, some jurisdictions define “violent” crime to include burglary of an unoccupied dwelling, manufacture or sale of controlled substances, possession of a firearm by a “convicted felon,” or extortion. Still others include any offense involving the use, threat, or risk of force against the person or *property* of another in the definition of violent crime. Justice Policy Institute, “Defining Violence: Reducing Incarceration by Rethinking America’s Approach to Violence,” 2016, <http://www.justicepolicy.org/research/10708>; Micah Herskind, “Three Reasons Advocates Must Move Beyond Demanding Release for ‘Nonviolent Offenders,’” *Medium*, April 14, 2020, <https://medium.com/@micaherskind/three-reasons-advocates-must-move-beyond-demanding-release-for-nonviolent-offenders-2e76629e7d03>; American Civil Liberties Union, “A Living Death: Life Without Parole for Nonviolent Offenses,” 2013, <https://www.aclu.org/report/living-death-life-without-parole-nonviolent-offenses>, p. 18 and n.31-33.

⁷¹ Michelle Phelps, “The Paradox of Probation: Community Supervision in the Age of Mass Incarceration,” *Law Policy*, 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780417/pdf/nihms-460270.pdf> (summarizing existing literature arguing that probation acts as a net-widener, and analyzing nationwide data from 1980 to 2010 showing how probation serves both as an alternative to incarceration and as a net-widener, to varying degrees in different places and times); Fiona Doherty, “Obey All Laws and Be Good,” p. 340 (summarizing literature and explaining how prosecutors seek probation in cases that might otherwise be dismissed). For example, in 2003, Kansas passed a law that allowed judges to divert people convicted of low-level drug crimes into intensive probation programs that provided specialized treatment. While initial reports lauded the reforms, scholars have concluded that—rather than diverting down prison-bound cases—judges shifted up cases that otherwise would have been sentenced to low-level probation supervision. Michelle Phelps, “The Paradox of Probation,” *Law Policy*, p.15. However, other studies have critiqued claims that supervision is “widening the net” of the criminal legal system, primarily arguing that studies are not generalizable. Michelle Phelps, “The Paradox of Probation,” *Law Policy*, p. 5 and n.5.

⁷² Teresa Wiltz, “Doing Less Time: Some States Cut Back on Probation,” *PEW Charitable Trusts*, April 26, 2017, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/26/doing-less-time-some-states-cut-back-on-probation>; Southern Center for Human Rights, “Profiting from the Poor: A Report on Predatory Probation Companies in Georgia,” July 2008, https://www.schr.org/files/profit_from_poor.pdf; Allie Gross, “In Georgia, a Traffic Ticket can Land you in the Slammer,” *Mother Jones*, February 26, 2015, <https://www.motherjones.com/politics/2015/02/georgia-probation-misdemeanor-poor-jail/>; Human Rights Watch telephone interview with James Yancey, Georgia defense attorney, December 5, 2019.

Most people on probation or parole were convicted of **property, drug, and public order** offenses.

By offense, 2016:



Source: PEW Charitable Trusts, Probation and Parole Systems Marked by High Stakes, Missed Opportunities, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>, Figure 5.

significant.⁷³ For instance, Pennsylvania uses “indeterminate” sentences, meaning rather than serving a fixed prison term of, say, 10 years, people receive a minimum sentence and a maximum term that is at least twice as long as the minimum, such as 10 to 20 years.⁷⁴ People released after serving the minimum 10 years⁷⁵ must then serve the remaining decade of their sentence under parole supervision.⁷⁶

Extended supervision terms can also be long. For instance, under Wisconsin law, whenever a judge sentences someone to prison, they must also impose a period of extended supervision that is at least 25 percent of the length of the prison term.⁷⁷

⁷³ Edward E. Rhine, et al., “Levers of Change in Parole Release and Revocation,” *University of Minnesota, Robina Institute*, 2019, https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/parole_landscape_report.pdf, p. 22.

⁷⁴ Pennsylvania Board of Probation and Parole, “Understanding Sentencing,” <https://www.pbpp.pa.gov/Parole%20101/Understanding%20Sentencing/Pages/default.aspx>.

⁷⁵ Pennsylvania releases people to parole based on a variety of factors including “good behavior” time credits. Alexis Lee Watts, et al., “Profiles in Parole Release and Revocation: Pennsylvania,” *University of Minnesota, Robina Institute*, https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/602501_pennsylvania_legal_parole_profile_final.pdf, p. 8-10.

⁷⁶ Vincent Schiraldi, “The Pennsylvania Community Corrections Story,” p.3.

⁷⁷ Wis. Stat. § 973.01; Williams, et al., “Wisconsin Community Corrections Story,” p. 7.

Probation sentences can be even longer. Sixty-two percent of states cap probation terms for most offenses at five years, but at least five states—California, Georgia, Minnesota, Pennsylvania, and Wisconsin—place no ceiling on probation sentences.⁷⁸ Judges in these states can impose probation terms as long as the maximum sentence for the underlying crime.⁷⁹ For example, repeat shoplifting in Georgia carries up to 10 years of probation.⁸⁰ In Wisconsin, possessing 40 grams of cocaine with intent to distribute can trigger 40 years of probation.⁸¹ Where people are sentenced for multiple offenses at the same time, judges in some states, including Pennsylvania and Georgia, can sentence people to separate probation terms for each offense and run them consecutively, which can lengthen probation terms.⁸²

Most states, including Georgia, Pennsylvania, and Wisconsin, allow for early termination of supervision in certain cases.⁸³ However, state law often requires people to first pay off all restitution (money they owe to compensate others for losses related to their crime, such as paying back a shop for stolen items), as well as sometimes court costs and fines, including supervision fees.⁸⁴ As discussed below, for many people, paying these costs is not possible.⁸⁵

⁷⁸ Alexis Lee Watts, “Probation In-Depth,” *University of Minnesota, Robina Institute*, 2016, https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/probation-in-depth_final.pdf, p. 1; Vincent Schiraldi, “The Pennsylvania Community Corrections Story,” p. 3; Cal Pen Code § 1203.1; O.C.G.A. § 17-10-1; Minn. Stat. Ann. § 609.135, Subdivision 2; Pa.C.S. § 9754; Wis. Stat. § 973.09.

⁷⁹ *Ibid.*

⁸⁰ Under Georgia law, if a person commits a second felony offense, such as shoplifting over \$500, and the prosecutor files a “recidivist” sentencing enhancement notice, then the judge *must* sentence the individual to the maximum available sentence—in the case of felony shoplifting, 10 years. However, the judge can order the individual to serve the sentence on probation or in prison. O.C.G.A. § 7-10-17; O.C.G.A. § 16-8-14.

⁸¹ Wis. Stat. § 961.41(1)(cm)(4) (classification); Wis. Stat. § 939.50 (penalties).

⁸² Vincent Schiraldi, “Pennsylvania Community Corrections Story,” p. 4; Human Rights Watch telephone interview with Beau Mullen, defense attorney, Lowndes County, Georgia December 20, 2019.

⁸³ Ebony L. Ruhland, et al., “The Continuing Leverage of Releasing Authorities,” p. 38; Alexis Lee Watts, “Probation In-Depth,” p. 2; Wisconsin Department of Corrections, “Community Corrections – General Information,” <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx#supervision> (early discharge possible for certain people under probation after serving 50 percent of their probation term if they satisfy all conditions, pay all court costs, including supervision fees, and have no outstanding warrants); 42 Pa.C.S. § 9771 (court has inherent power to terminate probation); O.C.G.A. § 17-10-1 (early termination of probation, and transfer to “unsupervised” status, in certain cases provided people pay all restitution).

⁸⁴ *Ibid.*

⁸⁵ Human Rights Watch, *Set Up to Fail*; Samantha Melamed, “Why Are Pennsylvania Judges Sentencing People to Probation for Debts They Won’t Ever be Able to Pay?,” *The Philadelphia Inquirer*, October 10, 2019, <https://www.inquirer.com/news/philadelphia-court-judge-genece-brinkley-probation-court-costs-fines-debtors-prison-aclu-20191010.html>.

Meanwhile, in at least 13 states, including Wisconsin and Pennsylvania, an individual's supervision term can be extended for failing to pay certain court debt.⁸⁶

Who is Under Supervision: Race and Class Disparities

Supervision disproportionately impacts Black and brown people and those with limited financial means. Nationwide as of 2016, one in every 81 white people were under supervision, compared with one in every 23 Black people.⁸⁷ Black people comprise 13 percent of the US adult population, but 30 percent of the supervision population.⁸⁸

Disparities are even starker in some jurisdictions where Human Rights Watch conducted in-depth research. In Wisconsin in 2017, the last year for which data is available, one in every eight Black men were on supervision—more than five times the rate for white men.⁸⁹ Rates are also high for Native American men, one of every 11 of whom were on supervision, a rate four times that of white men.⁹⁰ In Chatham County, Georgia, which contains Savannah, Black people represent 39 percent of the population but 67 percent of the population under felony probation.⁹¹ In Allegheny County, Pennsylvania, which contains Pittsburgh, Black people comprise 13 percent of the population but 42 percent of the supervision population.⁹² In Philadelphia, Pennsylvania, one in every 14 Black people are under supervision.⁹³

⁸⁶ Alexis Lee Watts, "Probation In-Depth," p. 3; Alicia Bannon, et al., "Criminal Justice Debt: A Barrier to Reentry," *Brennan Center for Justice*, October 4, 2010, https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf, p. 25; O.C.G.A. 17-10-1 (a)(2); Wisconsin Legislative Fiscal Bureau, "Felony Sentencing and Probation," Informational Paper 54, January 2015, https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2015/0054_felony_sentencing_and_probation_informational_paper_54.pdf, p. 18.

⁸⁷ PEW, "Probation and Parole Systems Marked by High Stakes, Missed Opportunities," p. 7; Michelle Phelps, "Ending Mass Probation," p. 126.

⁸⁸ Ibid.

⁸⁹ Jarred Williams, et al., "The Wisconsin Community Corrections Story," p. 18.

⁹⁰ Ibid.

⁹¹ Georgia Department of Community Supervision, "Annual Population," <https://dcs.georgia.gov/dcspopulation>; US Census Bureau, Race 1-year, 2018, <http://censusreporter.org>.

⁹² U.S. Census Bureau, "Race American Community Survey 1-year estimates, 2018," <https://censusreporter.org>; Pennsylvania Board of Probation and Parole, "County Adult Probation and Parole Annual Statistical Report 2018," <https://www.pardoc.pa.gov/Information/Documents/CAPP%20Reports/2018%20CAPP%20Report.pdf>, p. 16.

⁹³ Samantha Melamed and Dylan Purcell, "The Probation Trap."

People under supervision are also disproportionately low-income.⁹⁴ Two-thirds of people on probation make less than \$20,000 a year, and two in five people on probation make under \$10,000 a year—far below the poverty line.⁹⁵

Poverty in the United States intersects profoundly with race.⁹⁶ Nationwide, more than 20 percent of Black people live in poverty—twice the rate of white people.⁹⁷ Further, the median Black household wealth is just one-tenth that of white households.⁹⁸ These disparities in wealth result from decades of racist policies in areas from the criminal legal system, to housing, to employment.⁹⁹

⁹⁴ Mack Finkel, “New Data: Low Incomes-But High Fees-For People on Probation,” *Prison Policy Initiative*, April 9, 2019, https://www.prisonpolicy.org/blog/2019/04/09/probation_income/; Elizabeth Kneebone and Richard Reeves, “The Intersection of Race, Place, and Multidimensional Poverty,” *Brookings Institute*, April 21, 2016, <https://www.brookings.edu/research/the-intersection-of-race-place-and-multidimensional-poverty/>.

⁹⁵ *Ibid.*

⁹⁶ Tyrmaine Lee, “A Vast Wealth Gap, Driven by Segregation, Redlining, Evictions, and Exclusions, Separates Black and White America,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html>; Angela Hanks, et al., “Systemic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap,” *Center for American Progress*, February 21, 2018, <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>.

⁹⁷ Idrees Kahloon, “Poor America,” *Economist*, September 28, 2019, p. 6.

⁹⁸ *Ibid.*

⁹⁹ Angela Hanks, et al., “Systemic Inequality”; Bryan Stevenson, “Slavery Gave America a Fear of Black People and a Taste for Violent Punishment. Both Still Define Our Criminal-Justice System,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html>; Danyelle Solomon and Connor Maxwell, “Systemic Inequality and American Democracy,” *Center for American Progress*, August 7, 2019, <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/>; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012).

African-Americans are overrepresented in probation and parole.

Supervision rates, 2016:

1 in 81 White People
on Probation or Parole



1 in 23 Black People
on Probation or Parole



PEW Charitable Trusts, Probation and Parole Systems Marked by High Stakes, Missed Opportunities, 2018,
<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>, Figure 4.

I. Requirements of Supervision

You're telling [people on supervision] 'you need to have employment, you need to have this,' . . . it's already life-altering and then you feel like someone's breathing down your neck.¹⁰⁰

—Valerie Todd, who served more than a decade on supervision in Philadelphia, Pennsylvania

Burdensome Conditions

Supervision is daunting. Nationwide, people under supervision must comply with an average of 10 to 20 conditions a day.¹⁰¹ Courts, parole boards, and/or supervision officers generally impose a set of standard conditions without regard for individuals' needs or capabilities.¹⁰² Further, they retain vast discretion to impose additional conditions.¹⁰³ Some people must comply with upwards of 60 rules.¹⁰⁴

¹⁰⁰ Human Rights Watch interview with Valerie Todd, Philadelphia, Pennsylvania, October 29, 2019.

¹⁰¹ Columbia University Justice Lab, "Too Big to Succeed," p. 5; Jake Horowitz, "Policy Reforms Can Strengthen Community Supervision: A Framework to Improve Probation and Parole," *PEW Charitable Trusts*, April 23, 2020, <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>, p. 36.

¹⁰² Cecelia Klingele, "Rethinking Community Supervision," p. 1035-1036. Pennsylvania's standard conditions are set by statute. See 37 Pa. Code § 63.4 (standard parole conditions); 42 Pa. C.S. § 9763 (standard probation conditions). Georgia sets probation conditions by statute, O.G.C.A. § 42-8-35(a), but only requires guidelines be followed for parole conditions. O.G.C.A. § 42-9-44. Georgia's Department of Community Supervision has developed standard parole conditions in accordance with the statute. See Georgia Department of Community Supervision, "Standard Conditions of Supervision," <https://dcs.georgia.gov/standard-conditions-supervision>. Wisconsin imposes standard conditions by regulation. Wisconsin Department of Corrections, "Standard Rules of Community Supervision," <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>. In some jurisdictions, judges or the parole board set supervision conditions, while in other jurisdictions, such as Wisconsin, supervision officers can also set conditions. Cecelia Klingele, "Rethinking Community Supervision," p. 1035-1036; Wisconsin Department of Corrections, "Community Corrections General Information," <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx>.

¹⁰³ Fiona Doherty, "Obey All Laws and Be Good," p. 300-301; Jake Horowitz, "Policy Reforms Can Strengthen Community Supervision," p. 32; Ronald Corbett, "The Burdens of Leniency," p. 1709.

¹⁰⁴ See, for example, Supervision Conditions, Wayne Murphy (on file with Human Rights Watch); Supervision Conditions, Earnest Burgess (on file with Human Rights Watch).

Common Conditions

Common conditions of supervision include:

- Report as directed
- Abstain from drugs and alcohol
- Pay court costs
- Complete court-ordered treatment
- Submit to drug tests
- Obtain employment
- Report all address changes
- Stay away from “disreputable” people
- Be truthful to supervision officers
- Submit to warrantless searches

DEPARTMENT OF CORRECTIONS Division of Community Corrections DOC-10 (Rev. 12/2008)		WISCONSIN Administrative Code Chapter DOC 328 & 332 Federal Law 42 U.S.C. §§ 2607D-3, 2652e-3 Federal Regulation 42 C.F.R. Part 2	
RULES OF COMMUNITY SUPERVISION		DOC NUMBER	
OFFENDER NAME Earnest Burgess		382949	
<p>18. You shall pay fees for the polygraph (lie detector) examination process as directed by your agent in accordance with Wisconsin Administrative Code 332.17(5) and 332.18 and shall comply with any required Wisconsin Department of Corrections procedures regarding payment of fees.</p> <p>19. You shall follow any specific rules that may be issued by an agent to achieve the goals and objectives of your supervision. The rules may be modified at any time, as appropriate. The specific rules imposed at this time are stated below. You shall place your initials at the end of each specific rule to show you have read the rule.</p> <p>20. You shall not use or possess any controlled substance, unless legally prescribed by a physician. If you have you shall inform your agent immediately. _____</p> <p>21. You shall not have in your possession any drug paraphernalia, which includes but is not limited to: scales, pipes, syringes, gum packs, rolling papers, etc. _____</p> <p>22. You shall not knowingly be in the company of persons possessing illegal substances or paraphernalia for use or sale of the same.</p> <p>23. You shall not enter places where drugs are sold or used. You shall not loiter in any known drug area.</p> <p>24. You shall not have in your possession (including in your residence or in a vehicle) any pagers, cell phones, or police scanners, _____</p> <p>25. You shall not have in your possession at any time more than \$100.00 in cash without agent's approval.</p> <p>26. You shall have no contact with any known gang members, their associates, or gang activity. You shall not be in the residence where a known gang member resides or is staying. _____</p> <p>27. You shall not display any gang representation, including but not limited to gang hand signs, articles of clothing, hats, jewelry, or items which depict criminal activity. _____</p> <p>28. You shall be prepared to submit a urine sample at each contact with your agent or remain on the premises until you do so. You shall not tamper or falsify any urine sample. Refusal to submit a urine sample will be considered a positive result. _____</p> <p>29. You shall conduct all business transactions using your legal name. You shall voluntarily disclose your probation/parole status to any law enforcement agencies you may have contact with.</p> <p>30. You shall report to any programming, including but not limited to: drug/alcohol, anger management, domestic violence, parenting, or any other treatment deemed necessary by your agent. You shall comply with the conditions of treatment programs and fully advise your agent of your progress and discharge. You shall not terminate any program without your agent's approval.</p> <p>31. You shall seek and maintain full time employment, verified by a payroll check stub.</p> <p>32. You shall pay all court ordered obligations to be satisfied 90 days prior to your discharge date. _____</p> <p>33. You shall report to your agent within 24 hours of release from any correctional facility. If released on a weekend or a holiday, you shall report the following Monday or the next business day. _____</p> <p>34. You shall not operate a motor vehicle without a valid driver's license. _____</p> <p>35. You shall have no contact with any victim(s) or co-defendant(s) of your current or past offense(s), without agent's approval. No contact includes but is not limited to, in person, through mail, by phone, or through a 3rd Party. _____</p> <p>36. You shall cooperate with all Probation/Parole Agents, law enforcement officers, and all DOC staff programs. _____</p> <p>37. You shall not engage in any forms of abuse to include verbal threats and acts of physical violence, nor shall you engage in any controlling or aggressive behaviors. This includes but is not limited to: intimidation, psychological, emotional, sexual, or economic abuse.</p> <p>38. You shall maintain absolute sobriety. No alcohol use and/or possession. You may not enter any business or establishment whose main source of income is the sale and/or distribution of alcohol. _____</p> <p>39. You shall have no ammunition or firearm or any object that resembles ammunition or firearm whether owned by you or another person, within your access, including but not limited to your residence or vehicle. _____</p>			
I have reviewed and explained these rules to the offender.		I have received a copy of these rules.	
AGENT SIGNATURE	AREA NUMBER	OFFENDER SIGNATURE	DATE SIGNED

Conditions of supervision for Earnest Burgess following a 2011 conviction in Milwaukee, Wisconsin, for drug possession. Given all these conditions, Burgess said he wondered, “Are you trying to rehabilitate me, or are you trying to punish [me]?” (Document provided by Earnest Burgess.)

Children Under Supervision

While supervision in juvenile justice systems is beyond the scope of this report, it is important to note that, as of 2017—the last year for which data is available—about 310,800 children were placed on juvenile probation in the United States.¹⁰⁵ This figure does not include children sentenced to probation as adults, meaning the true number of children under supervision is likely much higher.¹⁰⁶

The way children on supervision are treated varies among states, but they are often subjected to a wide array of rules—sometimes more than 30—that would be difficult for any child to comply with.¹⁰⁷ These rules include things that may seem ordinary, such as attending frequent meetings with a probation officer and performing community service.¹⁰⁸ But they also often include attending school, abiding by a curfew, and obeying parents or guardians.¹⁰⁹ Breaking any rule can trigger harsh sanctions, including incarceration.¹¹⁰

Yet studies show that children’s brains are not fully developed.¹¹¹ The pre-frontal cortex—the part of the brain that is responsible for temporal organization of

¹⁰⁵ Of these, 283,600 children were placed on probation for delinquency cases—either formally, following adjudication, or informally, following diversion—and another 27,200 children were put on probation for “status” offenses, meaning acts like “truancy” or “ungovernability” that are only unlawful because they are children. Sarah Hockenberry and Charles Puzzanchera, “Juvenile Court Statistics 2017,” June 2019, *National Center for Juvenile Justice*, <https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2017.pdf>, p. 52 (delinquency adjudications), p. 84 (status adjudications).

¹⁰⁶ Sarah Hockenberry and Charles Puzzanchera, “Juvenile Court Statistics 2017,” p. 1. In 2017, nearly 4,000 cases were waived from juvenile court into adult criminal court. *Ibid.*, p. 38. An unknown number of cases were also directly filed in adult criminal court. *Ibid.*, p. 29.

¹⁰⁷ Anne E. Casey Foundation, “Transforming Juvenile Probation: A Vision for Getting it Right,” May 7, 2018, <https://www.aecf.org/resources/transforming-juvenile-probation/>, p. 14.

¹⁰⁸ US Department of Justice, Office of Justice Programs, “Probation as a Court Disposition,” <https://www.ojjdp.gov/ojstatbb/probation/qa07101.asp?qaDate=2018>.

¹⁰⁹ Mahsa Jafarian and Vidhya Ananthakrishnan, “Misbehaving While Under Probation Supervision,” *Vera Institute for Justice*, August 2017, <https://www.vera.org/when-misbehaving-is-a-crime#introduction>.

¹¹⁰ Anne E. Casey Foundation, “Transforming Juvenile Probation: A Vision for Getting it Right,” p. 9; see, for example, Jodi S. Cohen, “A Teenager Didn’t Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention,” *ProPublica*, July 14, 2020, <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>.

¹¹¹ Letter from Human Rights Watch to US House of Representatives, “Need to Treat Children Differently from Adults in the Federal Criminal Justice System,” June 10, 2019, <https://www.hrw.org/news/2019/06/10/need-treat-children-differently-adults-federal-criminal-justice-system#>; Anne E. Casey Foundation, “Transforming Juvenile Probation: A Vision for Getting it Right,” p. 9; MacArthur Foundation, “Juvenile Justice in a Developmental Framework: A 2015 Status Report,” 2015, https://www.macfound.org/media/files/MacArthur_Foundation_2015_Status_Report.pdf, p. 11.

behavior, speech, and reasoning—continues to develop into early adulthood.¹¹² This makes it harder for children to manage their emotions and behaviors, and makes them more likely to make impulsive, short-sighted decisions and to succumb to peer pressure.¹¹³

As a result, many children break the rules of their supervision, and substantial numbers of them end up incarcerated.¹¹⁴ Nationwide in 2017, 42,632 children were confined in some type of detention facility—15 percent, or 6,420 of them, for probation rule violations.¹¹⁵

Children of color are disproportionately impacted. As of 2017, children of color comprised 46 percent of the US population aged 10 to 17,¹¹⁶ but constituted 55 percent of all juvenile probation dispositions and 67 percent of all children confined for rule violations.¹¹⁷

Increasingly, some states are reforming their juvenile probation systems by reducing the use of probation and limiting punishments for violations. Instead, these states reward positive behavior and invest in family and community-based supports.¹¹⁸

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Anne E. Casey Foundation, “Transforming Juvenile Probation: A Vision for Getting it Right,” p. 9.

¹¹⁵ Melissa Sickmund, et al., “Easy Access to the Census of Juveniles in Residential Placement,” *Office of Juvenile Justice and Delinquency Prevention*, updated October 31, 2019, <https://www.ojjdp.gov/ojstatbb/ezacjrp/>. These children are confined in various types of correctional and residential-style facilities that offer varied levels of programming, and many of which largely resemble—or, in fact, are—adult jails and prisons. Ninety-two percent of children are held in locked facilities. See Wendy Sawyer, “Youth Confinement: The Whole Pie 2019,” *Prison Policy Initiative*, December 19, 2019, <https://www.prisonpolicy.org/reports/youth2019.html#facilities>.

¹¹⁶ C. Puzzanchera, et al., “Easy Access to Juvenile Populations: 1990-2018,” *Office of Juvenile Justice and Delinquency Prevention*, updated July 15, 2019, <https://www.ojjdp.gov/ojstatbb/ezapop/>. Children of color include children of all races other than white, plus all Latinx children regardless of race.

¹¹⁷ Melissa Sickmund, et al., “Easy Access to the Census of Juveniles in Residential Placement”; Melissa Sickmund, et al., “Easy Access to Juvenile Court Statistics: 1985-2017,” *Office of Juvenile Justice and Delinquency Prevention*, updated March 31, 2020, <https://www.ojjdp.gov/ojstatbb/ezajcs/>. These figures do not include children placed on probation for status offenses, for which data was not available for 2017.

¹¹⁸ For an overview of reforms to juvenile probation systems, and evidence that positive rewards are more effective than negative sanctions, see Anne E. Casey Foundation, “Transforming Juvenile Probation: A Vision for Getting it Right,” <https://www.aecf.org/resources/transforming-juvenile-probation/>; Stephen Bishop, “Juvenile Probation Officers Should Not Be Fixers, But Levers to Resources for Youth,” *Juvenile Justice Information Exchange*, February 20, 2019, <https://jjie.org/2019/02/20/juvenile-probation-officers-should-not-be-fixers-but-levers-to-resources-for-youth/>.

Vague and Unreasonable Conditions

Rules in Wisconsin and Pennsylvania frequently prohibit people from drinking alcohol or entering bars—in some cases, even when their offenses did not involve drinking.¹¹⁹

In Georgia, courts can require people to stay out of entire counties altogether, known as “banishment” provisions, reminiscent of an ancient era.¹²⁰

Many conditions are vague.¹²¹ For instance, in Wisconsin, a standard condition of probation includes: must “avoid all conduct . . . which is not in the best interest of the public welfare or your rehabilitation.”¹²² In Georgia everyone under probation must “avoid injurious and vicious habits.”¹²³

Many of the people we spoke with said these rules make them nervous to even leave their homes—especially in communities where many people have criminal records and police are a constant presence.¹²⁴ Given that one in three Black men have a criminal record—compared with one in 12 people in the general US population—this burden falls particularly hard on Black men.¹²⁵ Toriano Goldman, a Black man who served probation in

¹¹⁹ Jessica Glazer, “Why it Might Be Time to Rethink the Rules of Parole,” *FiveThirtyEight*, November 13, 2014, <https://fivethirtyeight.com/features/why-it-might-be-time-to-rethink-the-rules-of-parole/>; John Pfaff, *Locked In: The True Causes of Mass Incarceration* (New York: Basic Books, 2017), p. 40 and n.49.

¹²⁰ Briana McGinnis, “This is why some U.S. judges banish convicts from their home communities,” *Washington Post*, March 16, 2017, <https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/16/this-is-why-some-u-s-judges-banish-convicts-from-their-home-communities/>; “Georgia Court: Judges Can Banish Criminals,” *Associated Press*, June 30, 2008, http://www.nbcnews.com/id/25464168/ns/us_news-crime_and_courts/t/georgia-court-judges-can-banish-criminals/#.XkQtaGhKiUk.

¹²¹ Fiona Doherty, “Obey All Laws,” p. 305-308. In addition to the vague conditions discussed, many states prohibit people on supervision from being around “gang members,” which is often defined by arbitrary police labeling. See Zak Cheney-Rice, “California Police Are Falsely Labeling People as Gang Members. It’s Part of a Bigger Crisis,” *New York Magazine*, January 7, 2020, <https://nymag.com/intelligencer/2020/01/lapd-falsely-labeling-gang-members.html>. Staying away from “gang members” is difficult for people who live in overpoliced neighborhoods where many people are labeled as having a gang affiliation. See Kimberly Fitzgerald, “Probation Conditions: Adult and Juveniles, What Types of Conditions Are Unreasonable and Unconstitutional?,” January 2011, http://www.fdap.org/downloads/articles_and_outlines/Seminar2011-ProbationConditions.pdf, p. 4-5.

¹²² Wisconsin Department of Corrections, “Standard Rules of Community Supervision,” <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>.

¹²³ O.G.C.A. § 42-8-35(1).

¹²⁴ PowerCorps Community Roundtable, Toriano Goldman, Philadelphia, Pennsylvania, November 12, 2019; Human Rights Watch interview with Romelo Booker, Milwaukee, Wisconsin, November 20, 2019.

¹²⁵ Sarah Shannon et. al, “The Growth, Scope, and Spatial Distribution of People With Felony Records in the

Philadelphia, Pennsylvania, explained, “Every time I’m in a car, I’m paranoid about who’s in it—are they a convicted felon? Will this lead to a revocation?”¹²⁶ He continued, “I’m from a poor area. Everyone where I live has a criminal background, so where am I supposed to go? It’s impossible to socialize.”¹²⁷

Program Requirements

Another common condition is completing certain types of programs, such as substance use treatment if the underlying offense is drug-related, or anger management programs if, for instance, someone was convicted of assault.¹²⁸ These programs can be outpatient, inpatient, or even based within jails and prisons.¹²⁹

Programs can create their own barriers to rehabilitation. In many cases, for example, people must pay for these programs themselves. Anger management courses in Bucks County, Pennsylvania, near Philadelphia, cost \$45 per class plus a \$100 intake fee.¹³⁰ A violence prevention program in Lehigh County, in southeastern Pennsylvania, costs \$240.¹³¹ As Philadelphia Judge Karen Simmons acknowledged, unaffordable fees can lead people right back to court for “failure to pay” violations.¹³²

United States, 1948-2010,” *Demography*, 54 (2017), <https://link.springer.com/article/10.1007/s13524-017-0611-1>; Kendra Bradner and Vincent Schiraldi, “Racial Inequities in New York Parole Supervision,” *Columbia University Justice Lab*, March 2020, <https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>, p. 5

¹²⁶ PowerCorps Community Roundtable, Toriano Goldman, Philadelphia, Pennsylvania, November 12, 2019.

¹²⁷ *Ibid.*

¹²⁸ National Council on State Courts, “Evidence-Based Sentencing Overview,” <https://www.ncsc.org/csi/evidence-based-sentencing/overview> (accessed July 18, 2020) (discussing imposition of treatment requirements); Human Rights Watch interview with Scott Robichaux, former prosecutor and current defense attorney, Savannah, Georgia, December 9, 2019; Human Rights Watch interview with Judge John Edwards, Valdosta, Georgia, December 10, 2019; Georgia Department of Corrections, “Residential Substance Abuse Treatment,” <http://www.dcor.state.ga.us/Divisions/InmateServices/RiskReduction/RSAT>; York County Pennsylvania, “York County Prison Treatment and Reentry Programs and Probation/Parole Programs,” https://yorkcountypa.gov/images/pdf/prison/YCP_Treat_prog_descrip.pdf; Milwaukee Secure Detention Facility, “Annual Report, Fiscal Year 2018-19,” <https://doc.wi.gov/Documents/OffenderInformation/AdultInstitutions/MSDFAnnualReport.pdf>, p. 10.

¹²⁹ Georgia Department of Corrections, “Residential Substance Abuse Treatment,” (nine-month prison-based program); Milwaukee Secure Detention Facility, “Annual Report, Fiscal Year 2018-19,” p. 10 (90-120-day prison-based program); Response to Public Records Request, Bucks County, Pennsylvania (on file with Human Rights Watch); Response to Public Records Request, Lehigh County, Pennsylvania (on file with Human Rights Watch).

¹³⁰ Response to Public Records Request, Bucks County, Pennsylvania (on file with Human Rights Watch).

¹³¹ Response to Public Records Request, Lehigh County, Pennsylvania (on file with Human Rights Watch).

¹³² Human Rights Watch interview with Judge Karen Yvette Simmons, Philadelphia, Pennsylvania, October 29, 2019.

Further, violating any rule of the program is itself a supervision violation. Program rules can be wide-ranging and harsh. Pennsylvania’s Gaudenzia Siena House—an in-patient drug treatment program—prohibits, among other things, “coarse joking or gesturing;” wearing torn clothing; and watching television outside of the specified “news hour.”¹³³

Rules are also often subjective: to complete a Milwaukee, Wisconsin, prison-based cognitive behavioral program, people must “actively participate in groups, satisfactorily complete all homework assignments, and demonstrate they have acquired the specific skills taught in the program.”¹³⁴ Further, when programs are based inside jails and prisons, people must comply with the correctional facility’s rules.¹³⁵ If people violate any of the program or correctional facility rules, they face revocation and incarceration.

As discussed in Section IV, “Sentences to Treatment Programs,” we spoke with multiple people who were kicked out of prison-based treatment programs and incarcerated, sometimes for long periods of time, based on subjective determinations that they did not engage adequately with their treatment program.

Studies show that people who participate in programs through probation are more likely to have their supervision revoked than people who do not participate in these programs.¹³⁶ Experts attribute this result to the fact that people who participate are more closely watched, thus giving authorities more surveillance, and more opportunities to detect violations.¹³⁷

¹³³ “Gaudenzia Siena House D&A Orientation Handbook,” revised November 2018, <https://www.cor.pa.gov/community-reentry/Documents/Handbooks/Region%202/Gaudenzia%20Siena%20House%20Handbook.pdf>, p. 13-14.

¹³⁴ Wisconsin Department of Corrections, “Opportunities and Options Resource Guide,” December 2018, <https://doc.wi.gov/Documents/AboutDOC/AdultInstitutions/OpportunitiesOptionsResourceGuideEnglish.pdf>, p. 5.

¹³⁵ Human Rights Watch telephone interview with Kendra Bradner, February 10, 2020; Human Rights Watch telephone interview with Brian Burke, public defender, Milwaukee, Wisconsin, November 18, 2019.

¹³⁶ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1038-40; Michelle Phelps, “Ending Mass Probation,” p. 131.

¹³⁷ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1038-40; Jennifer L. Doleac, “Study After Study Shows Ex-Prisoners Would be Better Off Without Intense Supervision,” *Brookings Institute*, July 2, 2018, <https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/> (compiling studies showing that intensive supervision programs and program requirements lead to higher rates of rule violations).



Supervision office in Milwaukee, Wisconsin, November 2019. People are typically required to report to the supervision office frequently—which for many people means traveling more than an hour each way. © 2019 Allison Frankel/Human Rights Watch

Conflicting and Expansive Conditions

Conditions often conflict with each other, for example, requiring people to hold down jobs while also requiring them to attend frequent meetings and treatment programs—typically held during standard work hours.¹³⁸ Many people, including some with whom we spoke for this research, reported that supervision interfered with their ability to hold down a job.¹³⁹

Typical supervision conditions also include expansive search provisions, requiring people to submit to searches at any time, in any place, and without a warrant.¹⁴⁰

Supervision conditions generally require people to frequently report to an officer—monthly, biweekly, or even weekly.¹⁴¹ We spoke with many people who had to travel upwards of an hour from their home to the

supervision office.¹⁴² For example, Romelo Booker explained that he had to take three

¹³⁸ Fiona Doherty, “Obey All Laws and Be Good,” p. 317; Human Rights Watch interview with Erika Lewis (pseudonym), Valdosta, Georgia, December 10, 2019; Human Rights Watch interview with Jasmine Jackson, Philadelphia, Pennsylvania, October 30, 2019.

¹³⁹ Human Rights Watch interview with Jasmine Jackson, October 30, 2019; Christine S. Scott-Hayward, “The Failure of Parole,” p. 448; Human Rights Watch, *Set Up to Fail*, p. 58.

¹⁴⁰ Fiona Doherty, “Obey All Laws and Be Good,” p. 318-322; Wis. Stat. § 302.113(7r) (search of supervisee authorized based on reasonable suspicion of a violation); *Commonwealth v. Wilson*, 620 Pa. 251 (Pa. 2013) (same) *Whitfield v. State*, 337 Ga. App. 167 (Ga. Ct. Appeals 2016) (same).

¹⁴¹ Fiona Doherty, “Obey All Laws and Be Good,” p. 316; Christine S. Scott-Hayward, “The Failure of Parole,” p. 422; *see, e.g.*, O.C.G.A. § 42-8-35; 42 Pa.C.S. § 9763; Wisconsin Department of Corrections, “Standard Rules of Community Supervision,” <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>; Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019.

¹⁴² Human Rights Watch interview with Angel Ortiz, Philadelphia, Pennsylvania, October 29, 2019; Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Mindy Westover, Philadelphia, Pennsylvania, October 28, 2019; Human Rights Watch interview with Robert Thurgood, Philadelphia, Pennsylvania, October 31, 2019; Human Rights Watch interview with Romelo Booker, November 20, 2019.

buses, taking an hour and a half each way, to get to his weekly supervision appointments in Milwaukee, Wisconsin.¹⁴³

Many judges and supervision officers interviewed for this report said the conditions placed on people during supervision ensure people get needed services, such as job training, education, and treatment, that they believe will stop them from committing crimes.¹⁴⁴ “I know defendants just want to get out [of jail without conditions] but that doesn’t address the root of the problem,” Lowndes County, Georgia, Judge John Edwards said, explaining why he imposes conditions such as substance use treatment.¹⁴⁵

Increasingly, supervision departments are reforming their policies and practices to better address peoples’ unique needs—for instance, asking people what services would be useful, or holding meetings in their communities rather than the supervision office, supervision officers said.¹⁴⁶ However, these reforms take time to fully implement, they said.¹⁴⁷ Also, neither supervision officers nor courts usually have significant expertise in addressing people’s health, drug treatment, or other needs.¹⁴⁸ “I didn’t go to school to be a social worker or a teacher, so I don’t have a lot of the background” necessary to connect people with services, said Matthew Ours, a supervision officer in Rock County, Wisconsin, south of Madison.¹⁴⁹ The vast majority of people on supervision interviewed for this report said they did not receive meaningful support from their supervision officers.

¹⁴³ Human Rights Watch interview with Romelo Booker, November 20, 2019.

¹⁴⁴ Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019; Human Rights Watch interview with Judge Timothy Hinkfuss, Green Bay, Wisconsin, November 22, 2019; Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch telephone interview with Marc Altstatt, supervision officer, Chatham County, Georgia, March 9, 2020; Human Rights Watch telephone interview with Melanie Hasty, supervision officer, Lowndes County, Georgia, March 9, 2020; Human Rights Watch telephone interview with Danielle Paskins, supervision officer, Lowndes County, Georgia, March 10, 2020.

¹⁴⁵ Human Rights Watch interview with Judge John Edwards, December 10, 2019.

¹⁴⁶ Human Rights Watch telephone interview with Niel Thoreson, regional chief, Milwaukee, Wisconsin Department of Corrections, Division of Community Corrections, December 5, 2019; Human Rights Watch telephone interview with Marc Altstatt, March 9, 2019; Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020; Human Rights Watch telephone interview with Melanie Hasty, supervision officer, March 9, 2020.

¹⁴⁷ Ibid.

¹⁴⁸ Nikhil Tomar, et al., “Statewide Mental Health Training for Probation Officers: Improving Knowledge and Decreasing Stigma,” *Health and Justice Journal*, November 15, 2017, <https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-017-0057-y>; Jessica Reichert and Lily Gleicher, “Probation Clients’ Barriers to Access and Use of Opioid Use Disorder Medications,” *Health & Justice Journal*, May 28, 2019, <https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-019-0089-6>; Physicians for Human Rights, “Neither Justice nor Treatment: Drug Courts in the United States,” 2017, https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf, p. 3, 13.

¹⁴⁹ Human Rights Watch telephone interview with Matthew Ours, supervision officer, Rock County, Wisconsin, June 18, 2020.

Some judges and supervision officers recognize that, given the vast and often irrelevant conditions imposed, supervision frequently sets people up to fail.¹⁵⁰ “I don’t want to say it’s designed to set [people] up for failure . . . but it seems like it comes out that way, keeping them on that tightrope,” said a Supervision Officer in Dodge County, Wisconsin.¹⁵¹ Philadelphia Judge Simmons reflected that, if she had to report to a judge every week for years on end, she would probably fail at some point. “[T]he odds are that I’m probably gonna do something [wrong], because I’m not perfect.”¹⁵² Similarly, Georgia Department of Community Supervision (DCS) Commissioner Michael Nail admitted, “I’m not sure I’d make it under probation with all these conditions.”¹⁵³

High Costs

Supervision is expensive. Criminal convictions already carry fines, fees, and restitution costs that can easily total thousands of dollars.¹⁵⁴ On top of this, just being on supervision each month costs the person under supervision \$20-60 in Wisconsin,¹⁵⁵ \$30-49 in Georgia,¹⁵⁶ and \$25-65 in Pennsylvania.¹⁵⁷ Electronic monitoring in Wisconsin can cost up

¹⁵⁰ Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020; Human Rights Watch telephone interview with Michael Nail, commissioner, Georgia Department of Community Supervision, February 19, 2020.

¹⁵¹ Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

¹⁵² Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019

¹⁵³ Human Rights Watch telephone interview with Michael Nail, February 19, 2020.

¹⁵⁴ Alicia Bannon, et al., “Criminal Justice Debt,” *Brennan Center for Justice*, p. 8; Emma Anderson, Alyson Hurt and Joseph Shapiro, “State-By-State Court Fees,” NPR, May 19, 2014, <https://www.npr.org/2014/05/19/312455680/state-by-state-court-fees>. As states struggle with shirking budgets, they are increasingly placing those costs on the poor. Joseph Shapiro, “As Court Fees Rise, the Poor Are Paying the Price,” *NPR* (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>. See also, Human Rights Watch, *Get on the Ground: A Case Study of US Law Enforcement*, (New York: Human Rights Watch, 2019), https://www.hrw.org/sites/default/files/report_pdf/us0919_tulsa_web.pdf, p. 65-71.

¹⁵⁵ State of Wisconsin Department of Corrections, Division of Community Corrections, “Offender Handbook,” 2018, https://doc.wi.gov/Documents/AboutDOC/CommunityCorrections/POC-0004_DCCOffenderHandbook.pdf, p. 7 (fees are adjusted based on income bracket).

¹⁵⁶ Parole and felony probation fees cost \$30 a month. Georgia State Board of Pardons and Paroles, “Supervision & Victim Fees,” <https://pap.georgia.gov/supervision-victim-fees>. Many Georgia counties charge around \$49 a month for misdemeanor probation, though some counties only require those fees for the first few months. Derrek Vaughn, “Second Chances: Probation can offer hope; secure convictions,” *Valdosta Daily Times*, August 12, 2018, https://www.valdostadailytimes.com/news/local_news/second-chances-probation-can-offer-hope-secure-convictions/article_eao4a79c-f0c8-564e-8754-34a4e3foe5d2.html.

¹⁵⁷ Pennsylvania Board of Probation and Parole, “County Adult Probation and Parole Annual Statistical Report 2017,” p. 4, 46-47.

to \$700 per month.¹⁵⁸ In Sullivan County, in rural northern Pennsylvania, probation can require routine drug testing and each test costs \$30.¹⁵⁹ In Dodge County, Wisconsin, north of Milwaukee, a drug and alcohol treatment assessment costs \$250.¹⁶⁰ In addition, 43 states, including Georgia and Wisconsin, charge poor people a fee to cover part of the costs of court-appointed lawyers, ranging from \$10 in California to \$500 in parts of Georgia.¹⁶¹

While these fees may appear small in isolation, they regularly total hundreds or even thousands of dollars.¹⁶² Over the last decade in Pennsylvania, the median court costs owed for individuals represented by public defenders, meaning they had limited financial means, was nearly \$1,110—on top of fines and restitution.¹⁶³

¹⁵⁸ Human Impact Partners, “Excessive Revocations: The Health Impacts of Locking People Up Without a New Conviction in Wisconsin,” December 2016, https://humanimpact.org/wp-content/uploads/2018/01/Report_ExcessiveRevocationsWI_2016.12rev-1.pdf, p. 19; Jack Karsten and Darrell West, *Brookings Institute*, “Decades Later, Electronic Monitoring of Offenders is Still Prone to Failure,” September 21, 2017, <https://www.brookings.edu/blog/techtank/2017/09/21/decades-later-electronic-monitoring-of-offenders-is-still-prone-to-failure/> (describing costs of electronic monitoring).

¹⁵⁹ Response to Public Records Request, Sullivan County, Pennsylvania (on file with Human Rights Watch); 61 P.A.C.S. § 6137(e)(4) (requiring people under parole to pay for mandated drug tests); Elizabeth Brico, “The Cost of Drug Testing is Making it Harder for Poor People to Afford Treatment,” *Talk Poverty*, May 15, 2018, <https://talkpoverty.org/2018/05/15/cost-drug-testing-making-harder-poor-people-afford-treatment/>.

¹⁶⁰ Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, June 18, 2020.

¹⁶¹ Emma Anderson, Alyson Hurt and Joseph Shapiro, “State-By-State Court Fees,” *NPR*; Alicia Bannon, et al., “Criminal Justice Debt,” *Brennan Center for Justice*, p. 8; Petition for Revocation, *State of Georgia v. Bruce Lee Hallman*, No. 2014CR223 (Lowndes County, Georgia) (petition to revoke supervision for failure to pay \$500 in court-appointed attorney costs). In many jurisdictions, courts can waive fees if defendants cannot pay. However, the fee can dissuade people from even applying for court-appointed counsel. American Civil Liberties Union of Southern California, “Paying for Justice: The Human Cost of Public Defender Fees,” <https://law.yale.edu/sites/default/files/area/center/liman/document/pdfees-report.pdf>. These fees have been challenged in court. Complaint, *N.P. by his next friend, Shaneka Darden, et al., v. State of Georgia, et al.* (Fulton County, Georgia Filed January 7, 2014), <https://www.schr.org/files/post/files/2014%2001%2007%20Complaint.pdf>.

¹⁶² Alicia Bannon, et al., “Criminal Justice Debt,” *Brennan Center for Justice*, p. 1.

¹⁶³ Colin Sharpe, et al., “Imposition and Collection of Court Costs in Pennsylvania Criminal Cases: Preliminary Results from An Analysis of 10 Years of Court Data,” *ACLU of Pennsylvania*, 2018, https://aclupa.org/sites/default/files/field_documents/imposition_and_assessment_of_court_costs_in_pennsylvania_criminal_cases_final_revised.pdf, p. 2; Samantha Melamed, “Why are Pennsylvania Judges Sentencing People on Probation for Debts They Won’t Ever be Able to Pay?,” *The Philadelphia Inquirer*, October 10, 2019, <https://www.inquirer.com/news/philadelphia-court-judge-genece-brinkley-probation-court-costs-fines-debtors-prison-aclu-20191010.html>.

In Georgia, courts can impose “pay-only” probation, meaning people are under probation solely because they cannot pay their fines and surcharges.¹⁶⁴ As of 2017, over 36,000 people in Georgia were on pay-only probation.¹⁶⁵

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: [REDACTED]

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v. [REDACTED]

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CASE FINANCIAL INFORMATION

Last Payment Date:

Total of Last Payment:

Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
Costs/Fees					
Constable (Delaware)	\$225.75	\$0.00	\$0.00	\$0.00	\$225.75
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
ATJ	\$3.00	\$0.00	\$0.00	\$0.00	\$3.00
CJES	\$2.25	\$0.00	\$0.00	\$0.00	\$2.25
Clerk of Courts - Felony (Delaware)	\$222.00	\$0.00	\$0.00	\$0.00	\$222.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$18.40	\$0.00	\$0.00	\$0.00	\$18.40
Costs of Prosecution - CJEA	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
County Court Cost (Act 204 of 1976)	\$26.80	\$0.00	\$0.00	\$0.00	\$26.80
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$0.00	\$35.00
DNA Detection Fund (Act 185-2004)	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Firearm Education and Training Fund	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
JCPIS	\$10.25	\$0.00	\$0.00	\$0.00	\$10.25
Judicial Computer Project	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
State Court Costs (Act 204 of 1976)	\$12.30	\$0.00	\$0.00	\$0.00	\$12.30
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
Automation CJS Fee (Delaware)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Community Service - Adult (Delaware)	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00
Constable Education Training Act	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
District Attorney (Delaware)	\$95.00	\$0.00	\$0.00	\$0.00	\$95.00
OSP (Delaware/State) (Act 35 of 1991)	\$960.00	\$0.00	\$0.00	\$0.00	\$960.00
OSP (Delaware/State) (Act 35 of 1991)	\$960.00	\$0.00	\$0.00	\$0.00	\$960.00
Sheriff (Delaware)	\$40.00	\$0.00	\$0.00	\$0.00	\$40.00
Substance Abuse Education (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Substance Abuse Education (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00

CPCHMS 0002

Printed: 11/6/2019

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COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Page 8 of 8

CASE FINANCIAL INFORMATION

Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Costs/Fees Totals:	\$3,645.75	\$0.00	\$0.00	\$0.00	\$3,645.75
Grand Totals:	\$3,645.75	\$0.00	\$0.00	\$0.00	\$3,645.75

** - Indicates assessment is subrogated

CP-CMS 50507

Printed: 1/24/2018

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Court cost assessment for a person sentenced to probation in Delaware County, Pennsylvania. Pennsylvania courts regularly impose high court costs, which many people under supervision cannot afford, subjecting them to violations for failure to pay. (Document obtained from Pennsylvania court dockets web portal.)

¹⁶⁴ Georgia Department of Community Supervision Misdemeanor Probation Oversight Unit, “2017 Annual Report,” 2017, https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/document/2017%20DCS%20Annual%20Report%20-%20Final%20%281%29.pdf, p. 4; O.G.C.A. § 42-8-103. However, courts cap monthly supervision fees at three months. O.G.C.A. § 42-8-103(b).

¹⁶⁵ Georgia Department of Community Supervision Misdemeanor Probation Oversight Unit, “2017 Annual Report,” 2017, p. 4

Implications of Court Debt

Court debt carries serious consequences. For instance, 43 states suspend drivers' licenses over unpaid court costs.¹⁶⁶ Across much of the United States, where public transportation is nonexistent or unreliable, losing a license means losing the ability to report for supervision meetings. It also makes it harder to get to work—and thus pay off debt.¹⁶⁷

Additionally, rather than keeping people on supervision for failing to pay, some courts transfer unpaid court debt to a civil judgment. While freeing people from supervision's requirements, these judgments can damage peoples' credit scores, making it more difficult to obtain loans or lines of credit for housing, cars, or education, for example.¹⁶⁸ In many states, court debt can also cost people the right to vote.¹⁶⁹

These barriers add to the already steep consequences people face as a result of criminal convictions, which can include further bars on the right to vote and the ability to obtain jobs, professional licenses, student loans, housing and other public assistance, along with potential immigration consequences.¹⁷⁰

¹⁶⁶ Mario Salas and Angela Ciolfi, "Driven By Dollars: State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt," *Legal Aid Justice Center*, 2017, <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>, p. 2.

¹⁶⁷ Ibid.; Sharon Brett and Mitali Nagrecha, "Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform," *Harvard Law School, Criminal Justice Policy Program*, September 2019, http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf, p. 46-49; ACLU Smart Justice Montana, "Set Up to Fail: Montana's Probation & Parole System," September 10, 2018, https://www.aclumontana.org/sites/default/files/field_documents/setuptofailmontanasprobationparolesystem.pdf, p. 31-32.

¹⁶⁸ Alicia Bannon, et al., "Criminal Justice Debt," *Brennan Center for Justice*, p. 27.

¹⁶⁹ Ibid., p. 29; Beth A. Colgan, "Wealth-Based penal Disenfranchisement," *Vanderbilt Law Review*, 72:1:55 (2019), <https://vanderbiltlawreview.org/lawreview/wp-content/uploads/sites/278/2019/02/Wealth-Based-Penal-Disenfranchisement.pdf>.

¹⁷⁰ Council of State Governments Justice Center, "National Inventory of Collateral Consequences of Conviction," <https://niccc.csgjusticecenter.org/>; Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, (New York: Human Rights Watch, 2004), <https://www.hrw.org/report/2004/11/18/no-second-chance/people-criminal-records-denied-access-public-housing>; Teresa Wiltz, "What Crimes are Eligible for Deportation?," *PEW Charitable Trusts*, December 21, 2016, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/12/21/what-crimes-are-eligible-for-deportation>.

Few Resources

Navigating supervision conditions requires financial security, stable housing, reliable transportation, and, often, access to quality healthcare and mental health services. Yet as discussed in Section VI, “Poverty,” people on supervision typically struggle to access these resources.

Supervision departments are supposed to connect people to these resources.¹⁷¹ Many supervision officers we interviewed in Wisconsin and Georgia said they consider this a vital part of their job, and described increased efforts in recent years to connect people with housing, education, and other support.¹⁷² People on supervision “need homes, they need jobs, they need stability . . . If we’re not offering . . . quality [resources] then we’re really not helping them, all we’re doing is just perpetuating a cycle,” said senior Lowndes County, Georgia, Supervision Officer Melanie Hasty.¹⁷³

Yet across all three focus states, supervision officers, judges, and attorneys largely agree that there are not enough resources to meet peoples’ needs.¹⁷⁴ While the number of people under supervision has soared over the last half century—leading to average caseloads nationwide of above 100 supervisees per officer¹⁷⁵—the resources for community programs

¹⁷¹ Wayne A. Logan, “The Importance of Purpose in Probation Decision Making,” p. 172; Human Rights Watch telephone interview with Michael Nail, February 19, 2020; Human Rights Watch interview with Kendra Bradner, February 10, 2020.

¹⁷² Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020; Human Rights Watch telephone interview with Officer Marc Alstatt, March 9, 2020; Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

¹⁷³ Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020.

¹⁷⁴ See, for example, Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019; Human Rights Watch interview with Hindi Kranzel, Montgomery County Public Defender’s Office, Norristown, Pennsylvania, October 31, 2019; Human Rights Watch telephone interview with Marc Alstatt, March 9, 2020; Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020; Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020; Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch interview with Justo Cabral, solicitor general, Lowndes County, Georgia, , December 10, 2019; Human Rights Watch interview with Michael Edwards, former Chatham County chief public defender, Savannah, Georgia, December 12, 2019; Human Rights Watch interview with Judge Timothy Hinkfuss, November 22, 2019; Human Rights Watch interview with Brian Burke, November 18, 2019; Human Rights Watch telephone interview with [name withheld], supervision officer, Milwaukee, Wisconsin, June 17, 2020; Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

¹⁷⁵ Columbia University Justice Lab, “Too Big to Succeed,” p. 5. For instance, Georgia’s felony probation caseload is about 105:1. Georgia Department of Community Corrections, “2018 Annual Report,” p. 6. In Delaware and Montgomery counties, outside of Philadelphia, probation officers actively supervise more than 170 individuals at once. Pennsylvania Board of Probation and Parole, “County Adult Probation and Parole Annual Statistical Report,” 2018, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20CAPP%20Annual%20Statistical%20Report.pdf>, Table 2.

that provide assistance with housing, jobs, and health care have not kept up with the need for them, particularly in rural areas.¹⁷⁶

Further, according to leading experts on supervision practices, many supervision departments prioritize enforcing conditions over providing resources.¹⁷⁷ Niel Thoreson, Milwaukee, Wisconsin's chief supervision officer, said that, while his office balances the "sometimes paradoxical responsibilit[ies]" of protecting the public and providing services, "the public safety piece [is] our principal concern."¹⁷⁸ Wisconsin's supervision system "is much more about making sure someone isn't breaking the law than it is about making sure that they're building a productive or healthy life or actually getting rehabilitated," said Wisconsin State Representative Evan Goyke.¹⁷⁹ Supervision experts trace this focus, at least in part, to officers' worries that they will get in trouble if someone commits another crime during supervision. "You only hear about the individuals on probation and parole when they mess up," Marc Alstatt, a senior Chatham County, Georgia supervision officer,

¹⁷⁶ David Muhammad and Vincent Schiraldi, "How to End the Era of Mass Supervision;" Michelle Phelps and Caitlin Curry, "Supervision in the Community," p. 9; David Reich, et al., "Block-Granting Low-Income Programs Leads to Large Funding Declines Over Time, History Shows," *Center on Budget and Policy Priorities*, February 22, 2017, <https://www.cbpp.org/research/federal-budget/block-granting-low-income-programs-leads-to-large-funding-declines-over-time>; PEW Charitable Trusts, "Opioid Use Disorder: Challenges and Opportunities in Rural Communities," February 7, 2019, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2019/02/opioid-use-disorder-challenges-and-opportunities-in-rural-communities>; Faye S. Taxman, et al., "Drug Treatment Services for Adult Offenders: The State of the State," *Journal of Substance Abuse Treatment*, 2007, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2266078/pdf/nihms21103.pdf>, Table 6.

¹⁷⁷ Sara Steen and Tara Opsal, "Punishment on the Installment Plan: Individual-Level Predictors of Parole Revocation in Four States," *The Prison Journal*, 87 (2007): 346-48, <https://journals.sagepub.com/doi/pdf/10.1177/0032885507304526>. This public safety focus is reflected in mission statements for supervision departments in many of our focus jurisdictions. Wisconsin Department of Corrections, "About Community Corrections," <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/Default.aspx> ("The mission of the Division of Community Corrections is to enhance public safety through the management and reduction of offender risk by providing supervision and collaboration with community partners to assist offenders to change their behavior and repair the harm they have done."); Philadelphia Adult Probation and Parole Department, mission document, <https://courts.phila.gov/pdf/site/appd.pdf> ("The mission of the Philadelphia Adult Probation and Parole Department is to protect the community by intervening in the lives of Offenders."); Delaware County Court of Common Pleas, "Adult Probation and Parole," <https://www.delcopa.gov/courts/app/index.html> ("The overall mission of Delaware County Adult Probation and Parole Services is to ensure that the community is protected and that all defendants are held accountable to comply with the terms of any sentence imposed by the Court of Common Pleas."); Georgia Department of Community Supervision, "Our Mission," <https://dcs.georgia.gov/about-us/our-mission> ("As an integral part of the criminal justice system, we protect and serve all Georgia citizens through effective and efficient offender supervision in our communities, while providing opportunities for successful outcomes."); see also Matthew DeMichele, et al., "Probation and Parole Officers Speak Out—Caseload and Workload Allocation," *Federal Probation*, 2007, https://www.uscourts.gov/sites/default/files/71_3_5_o.pdf, p. 5.

¹⁷⁸ Human Rights Watch telephone interview with Niel Thoreson, , December 5, 2019.

¹⁷⁹ Human Rights Watch telephone interview with Wisconsin State Representative Evan Goyke, March 16, 2020.

explained.¹⁸⁰ Experts also trace this to high caseloads, and note that enforcement is less time consuming than finding the right set of services for a particular person's needs.¹⁸¹ While a few people we interviewed reported receiving some helpful programming, the vast majority of people we spoke to—along with supervision experts—said that supervision provided little support.¹⁸² “They just gave us a sentence and put us on the street with nothing and expect us to follow rules and make stuff happen,” described Robert Sanders, a 29-year-old man who has been in jail or on probation in Wisconsin since age 17.¹⁸³

Many people reported that, during required meetings, their supervision officers did little to inquire about how they were managing or offer any help. Instead, the officers simply administered drug tests, monitored whether they were employed, and asked if they had been making their required payments.¹⁸⁴ Sarah Martin (pseudonym for last name), a Pennsylvania woman who said she has spent decades on probation due to her longstanding substance use disorder, told us, “Probation officers have never done anything for me . . . They’re there to catch you doing something wrong. They have no resources, no nothing.”¹⁸⁵

¹⁸⁰ Human Rights Watch telephone interview with Marc Alstatt, supervision officer, March 9, 2020.

¹⁸¹ Christine S. Scott-Hayward, “The Failure of Parole,” p. 439; Michael P. Jacobson, et al., “Less is More: How Reducing Probation Populations Can Improve Outcomes,” *Harvard Kennedy School Program in Criminal Justice Policy and Management*, https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf, p. 6; Moana Hafoka, et al., “What Legally Prescribed Functions Tell Us: Role Differences Between Adult and Juvenile Probation Officers,” *Federal Probation*, 81 2017: 32, 33, https://www.uscourts.gov/sites/default/files/81_3_5_0.pdf; Theodore Caplow and Jonathan Simon, “Understanding Prison Policy and Population Trends,” *Crime and Justice*, 26, (1999): 105, <http://dx.doi.org/10.1086/449295>; Human Rights Watch telephone interview with Kendra Bradner, February 10, 2020.

¹⁸² Michelle Phelps, “Ending Mass Probation,” p. 131; Christine Scott-Hayward, “The Failure of Parole,” p. 446-47; Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Jasmine Jackson, October 30, 2019; Human Rights Watch telephone interview with Toriano Goldman, Philadelphia, Pennsylvania, January 24, 2020; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019.

¹⁸³ Human Rights Watch interview with Robert Sanders, Allouez, Wisconsin, November 21, 2019.

¹⁸⁴ Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Jasmine Jackson, October 30, 2019; Human Rights Watch telephone interview with Toriano Goldman, January 24, 2020; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019.

¹⁸⁵ Human Rights Watch Interview with Sarah Martin (pseudonym for last name), Norristown, Pennsylvania, October 31, 2019.



Josh Glenn speaking with Human Rights Watch in Philadelphia, Pennsylvania, October 2019. Following years in jail and on probation, Glenn founded the Youth Art and Self-Empowerment Project (YASP), which helps young people involved in the criminal legal system. Glenn says that community support, rather than probation, helped him succeed. © 2019 Laura Pitter/Human Rights Watch

Some people are able to find help and support outside of supervision through community-based organizations, often led by people who have been involved in the criminal legal system.¹⁸⁶ “Nothing the [criminal legal] system did helped me do what I did today,” said Josh Glenn, who spent years on probation and in jail in Philadelphia, Pennsylvania, for drug-related charges beginning at age 13 before co-founding an organization, the Youth Art and Self-Empowerment Project (YASP) dedicated to helping young people involved in the criminal legal system. “Connecting with community leaders, YASP cofounders, that’s what helped.”¹⁸⁷

¹⁸⁶ Human Rights Watch interview with Jasmine Jackson, October 30, 2019; Human Rights Watch interview with Josh Glenn, Philadelphia, Pennsylvania, October 30, 2019; Human Rights Watch interview with Javonte Black, Savannah, Georgia, December 13, 2019; Human Rights Watch interview with Robert Schreiber, Milwaukee, Wisconsin, November 19, 2019. See also, Michelle Phelps, “Ending Mass Probation,” p. 131; Christine S. Scott-Hayward, “The Failure of Parole,” p. 447.

¹⁸⁷ Human Rights Watch interview with Josh Glenn, October 30, 2019.

Pleas to Probation

Because courts often offer probation as an alternative to a sentence that involves incarceration, many people plead guilty to sentences carrying lengthy probation terms without fully understanding the risks involved. Those detained pending trial face particularly strong pressure to plead to probation so that they can get out of jail.¹⁸⁸

By March 2015, Willie White, a middle-aged Black father of seven, had spent six months in a Lowndes County, Georgia, jail, in south central Georgia, waiting for his trial.¹⁸⁹ Eager to get home to his family, White pled guilty to possession of marijuana with intent to distribute in exchange for 10 years of felony probation.¹⁹⁰

Probation would allow White to avoid more incarceration in the short term, but it would also require him to obey a series of rules, including paying all court costs—in his case, a \$2,500 fine, \$550 in court-appointed attorney fees, a \$32 monthly supervision fee, and a \$50 crime lab fee—staying away from drugs and alcohol, and completing 120 hours of community service.¹⁹¹

Less than three months after White pled guilty, he was back in jail for failure to pay his court costs. The judge imposed a five-day jail term, and then released White to continue serving his probation term.¹⁹² In 2017, White picked up another case for several traffic infractions, to which he pled guilty and was sentenced to a separate one-year probation term.¹⁹³ In October 2018, White tested positive for marijuana, and his misdemeanor probation officer warned him that the judge would likely send him to jail. Scared, White stopped reporting, he said.

¹⁸⁸ John Raphling, “Plead Guilty, Go Home. Plead Not Guilty, Stay in Jail,” *Los Angeles Times*, May 17, 2017, <https://www.hrw.org/news/2017/05/17/plead-guilty-go-home-plead-not-guilty-stay-jail>; Fiona Doherty, “Testing Periods,” p. 1727. Further, social science research shows that people generally overestimate their capacity to comply with difficult conditions. Fiona Doherty, “Testing Periods,” p. 1726.

¹⁸⁹ Human Rights Watch interview with Willie White, Valdosta, Georgia, December 11, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.

¹⁹⁰ Docket, *Georgia v. Willie White*, No. 2012CR908 (Lowndes County, Georgia).

¹⁹¹ *Ibid.*

¹⁹² Order on Motion to Amend Probated Sentence, *Georgia v. Willie White*, No. 2012CR908 (Lowndes County, Georgia June 10, 2015).

¹⁹³ Docket, *Georgia v. Willie White*, Nos. 2017SC13996-98 (Lowndes County, Georgia).

Then in October 2019, as White was riding his bicycle, Lowndes County police arrested him for possessing marijuana and a pill capsule that White says contained a lawful substance. White’s probation officers pursued revocation for possessing drugs, along with failure to report, the positive marijuana test, and a failure to complete community service.¹⁹⁴ The officers lodged a detainer, meaning that White had to remain in jail while contesting the revocation and the drug possession charges.

When we met White in the Lowndes County jail in December 2019, he had already been held for nearly three months. He told us that probation has only made his life worse: “They took all my money, kept me incarcerated for simple little mistakes. It’s really been a lot of pain.”

¹⁹⁴ Petition for Revocation of Probation, *Georgia v. Willie White*, No. 2012CR908 (Lowndes County, Georgia); Petition for Revocation of Probation, *Georgia v. Willie White*, No. 2017SC13996-98 (Lowndes County, Georgia).

II. Conduct Triggering Violations

There's a real problem with . . . rule violations. Who doesn't come late or miss appointments or just has a bad day? Nobody should be going to prison for that, nobody.¹⁹⁵

—Caliph Muab-El, formerly incarcerated for supervision violations in Wisconsin

This boy just keeps going back to jail, back to jail, back to jail. He don't never be out a whole year. He missed Christmas, he missed the holidays, [he] miss[ed] all of that.¹⁹⁶

—Aisha Edwards, whose fiancé, Rashad Yearby, has been repeatedly incarcerated for probation violations in Georgia

A wide range of conduct, such as failing to report to supervision officers when required, failing to inform them that you have moved, or failure to be truthful, can lead to incarceration.

Supervision officers say they generally give people multiple chances before pursuing revocation. But since root causes of the violations, discussed in Section VI, often go unaddressed, many people continue to engage in the same behavior, ultimately leading to incarceration.

¹⁹⁵ Human Rights Watch interview with Caliph Muab'El, Milwaukee, Wisconsin, November 18, 2019.

¹⁹⁶ Human Rights Watch telephone interview with Aisha Edwards, December 16, 2019.

Irregularities in Enforcement

Enforcement practices can vary widely among supervision officers, both between and even within supervision departments. For instance, some officers disregard low-level violations, while others initiate sanctions for any misstep.¹⁹⁷ In many cases, people have multiple supervision officers over the course of their supervision term, meaning they may face sanctions one day for conduct that their previous officer regularly ignored.¹⁹⁸

In order to assess the types of conduct that generally leads to supervision violations, Human Rights Watch analyzed supervision violation records provided by agencies in Pennsylvania and Wisconsin as well as jail booking data obtained through publicly available Georgia jail rosters (see “Methodology” section above).

Pennsylvania

Changing residences without permission was the single largest condition that led to state parole violation proceedings in Pennsylvania from 2016 to 2019, accounting for about one third of all violations.¹⁹⁹ Other common violations included violating a “special” condition—which includes conduct such as failing court-mandated programs and drinking alcohol—(27 percent) and using or possessing drugs (17 percent).²⁰⁰

¹⁹⁷ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1038-40; Michelle Phelps, “Ending Mass Probation,” p. 131; Michelle Phelps, “Supervision in the Community,” p. 10; Mark Jones and John J. Kerbs, “Probation and Parole Officers and Discretionary Decision-Making: Responses to Technical and Criminal Violations,” *Federal Probation*, 2007, https://www.uscourts.gov/sites/default/files/71_1_2_o.pdf, p. 3-4.

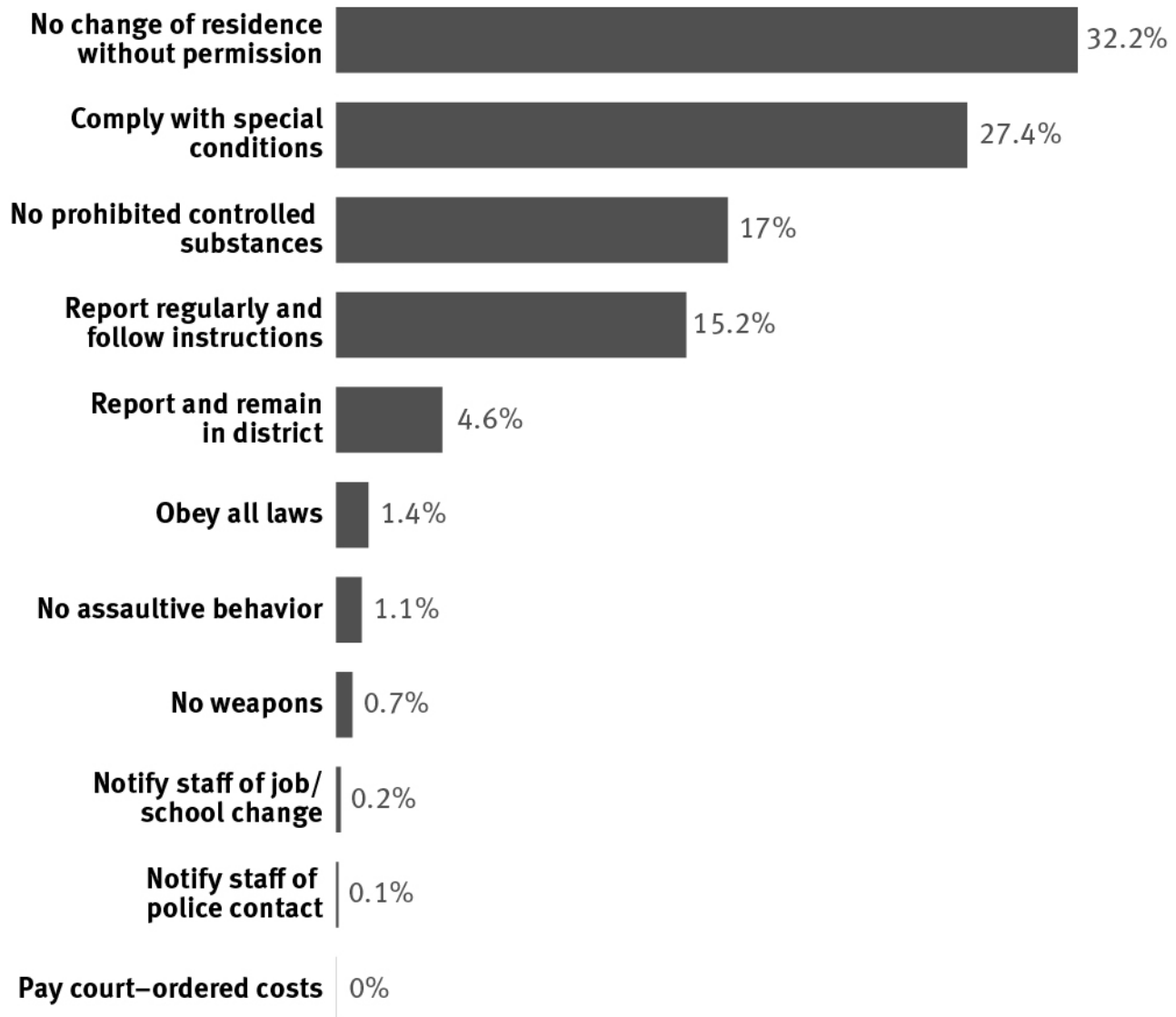
¹⁹⁸ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1038-40.

¹⁹⁹ Human Rights Watch analysis of Pennsylvania Department of Probation and Parole data; Chart, “Common Pennsylvania Parole Conditions Violated.”

²⁰⁰ Ibid.

Common **Parole Conditions** Violated in Pennsylvania

Of hearings with data, January 2016 to July 2019:



Includes hearings with violations of multiple conditions.

Source: Human Rights Watch analysis of Pennsylvania Board of Probation and Parole data.

Wisconsin

In Wisconsin from 2017 to 2019, drug use was by far the most common violation leading to sanctions up to and including incarceration—accounting for one out of every five violations during that period, or 27,000 violations.²⁰¹ The most common rule violations that led to incarceration were drug use (11 percent of all violations leading to incarceration), using alcohol or entering bars (6 percent), and violating mandated treatment rules (5 percent).²⁰²

Where people were incarcerated for new offenses, most (11 percent of all violations leading to incarceration) were public order-related, largely for disorderly conduct, resisting arrest, or “bail jumping”—meaning violating the conditions of pre-trial release.²⁰³ Others were for assaultive conduct (8 percent), the vast majority of which were misdemeanor-level offenses,²⁰⁴ drug possession (6 percent), and property or theft offenses (6 percent).²⁰⁵

²⁰¹ Data includes partial years (3/1/2017 – 9/30/2019). Human Rights Watch Analysis of Wisconsin Department of Corrections Data.

²⁰² Human Rights Watch Analysis of Wisconsin Department of Corrections Data.

²⁰³ “Bail jumping” charges have surged in Wisconsin over the last two decades, and as of 2016, it was Wisconsin’s most charged crime. Natalie Yahr, “Walk the Line: How Bail Jumping Became Wisconsin’s ‘Most-Charged Crime,’” *The Cap Times*, February 26, 2020, https://madison.com/ct/news/local/neighborhoods/walk-the-line-how-bail-jumping-became-wisconsin-s-most/article_b5e35806-d16c-5b8a-b845-d5d01d472394.html.

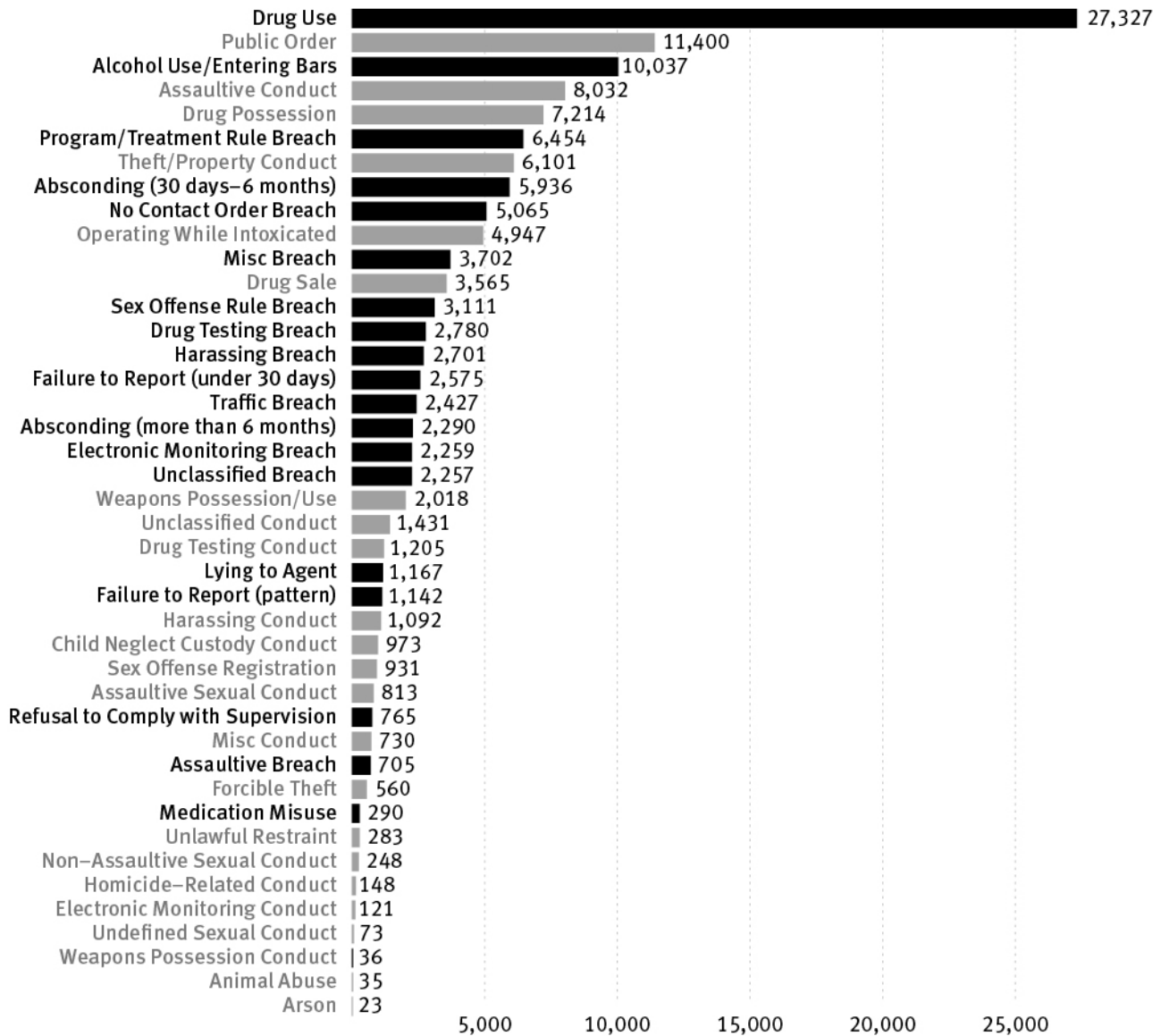
²⁰⁴ A substantial number of assaultive offenses stemmed from misdemeanor-level domestic abuse conduct. While domestic abuse raises serious safety concerns, Wisconsin defines misdemeanor domestic abuse broadly, to include conduct such as disorderly conduct, property damage, trespassing, and bail jumping. Wis. Stat. § 973.055(1)(a)(1); see also, Wisconsin Office of Justice Assistance, “Wisconsin Prosecutor’s Domestic Abuse Reference Book,” 2012, <https://www.doj.state.wi.us/sites/default/files/ocvs/vawa/wi-prosecutors-domestic-abuse-reference-book-2012.pdf>, p. 37 (listing top three most common domestic abuse charges as battery, criminal damage to property, and disorderly conduct).

²⁰⁵ Human Rights Watch Analysis of Wisconsin Department of Corrections Data.

Wisconsin State Violations

March 2017 – September 2019

■ 83,026 Rule violations
■ 51,943 New offense violations



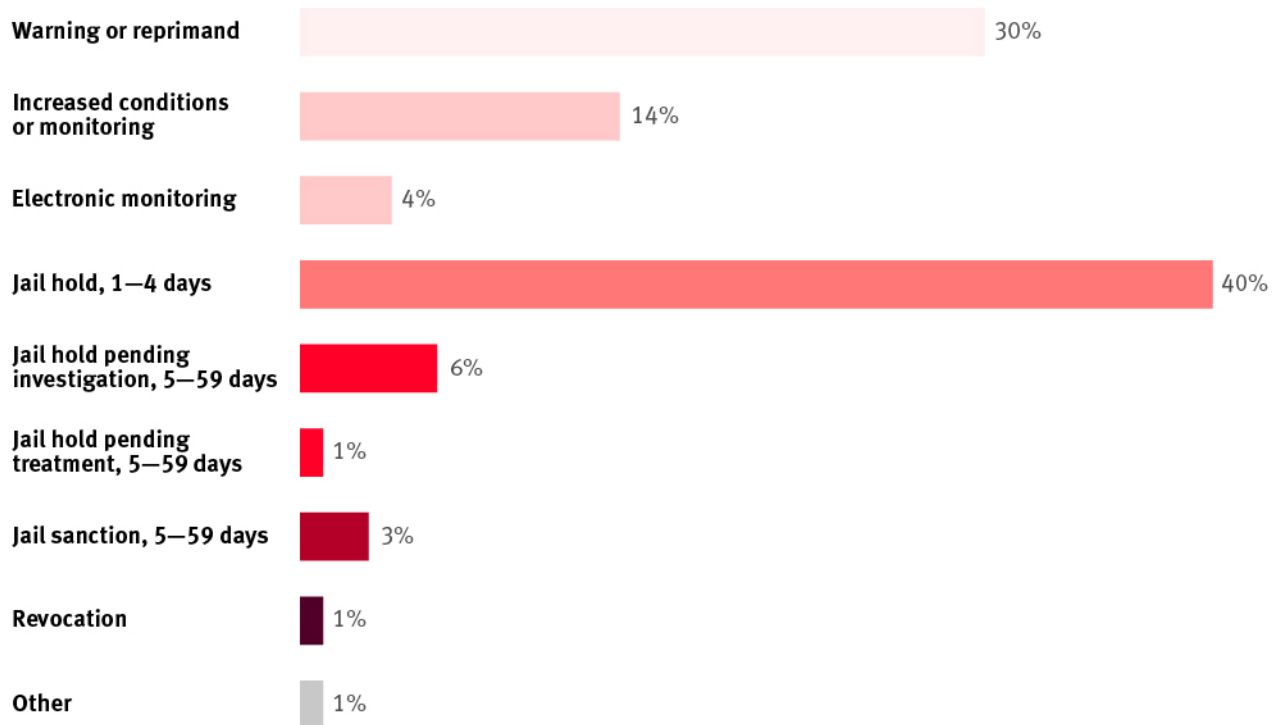
Note: This chart reflects the Wisconsin Department of Corrections' (WiDOC) categorization of conduct as 'rule' or 'new offense' violations. For that reason, the same underlying conduct can be reflected in two categories, such as harassing 'breach' (harassing conduct in violation of supervision rules) and harassing 'conduct' (harassing conduct that constitutes a criminal offense). 'Misc breach' and 'Misc conduct' include a variety of conduct that constituted less than one percent of all violations. 'Unclassified breach' and 'unclassified conduct' refer to conduct that the WiDOC coded generally as, for example, 'other non-criminal medium level violation.'

Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations data.

We analyzed the sanctions that resulted from different violations. Sanctions included additional conditions; electronic monitoring; jail sanctions of one to four days, five to 59 days, or 60 days or more; and revocation. Certain conduct, such as using alcohol or drugs, typically led to a few days in jail, while other conduct, like violating rules of mandated programs and failure to appear or “absconding” (described later in this section), more often led to revocation—which, as explained in Section IV, “Sentencing for Violations,” could mean significant time in prison.

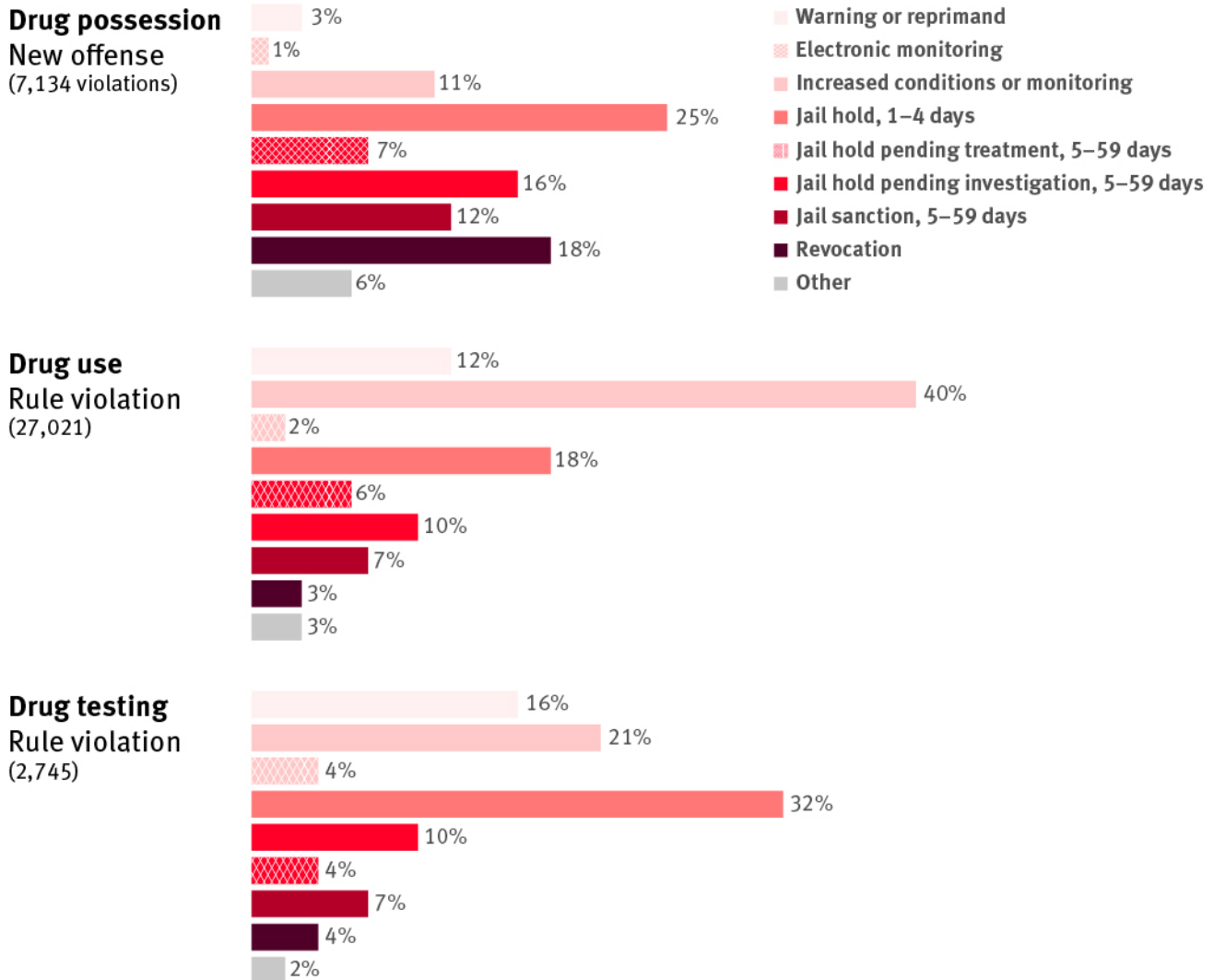
Incarceration for Common Violations in Wisconsin					
Type	Category	Number of violations	Total percentage of violations	Percentage of violations resulting in incarceration (jail/prison)	Percentage of violations resulting in revocation
Rule violation	Drug Use	27,327	20%	11%	3%
New offense violation	Public Order	11,400	8%	11%	11%
Rule violation	Alcohol Use/Entering Bars	10,037	7%	6%	1%
New offense violation	Assaultive Conduct	8,032	6%	8%	13%
New offense violation	Drug Possession	7,214	5%	6%	5%
Rule violation	Program/Treatment Rule Breach	6,454	5%	5%	8%
New offense violation	Theft/Property Conduct	6,101	5%	6%	8%
Rule violation	Absconding (30 days-6 months)	5,936	4%	5%	2%
Rule violation	No Contact Order Breach	5,065	4%	4%	3%
New offense violation	Operating While Intoxicated	4,947	4%	5%	8%
Rule violation	Misc Breach	3,702	3%	2%	1%
New offense violation	Drug Sale	3,565	3%	4%	10%
	All Others	35,189	26%	28%	29%

Responses to **Alcohol-related** Rule Violations in Wisconsin 9,855 Violations, March 2017 – September 2019:



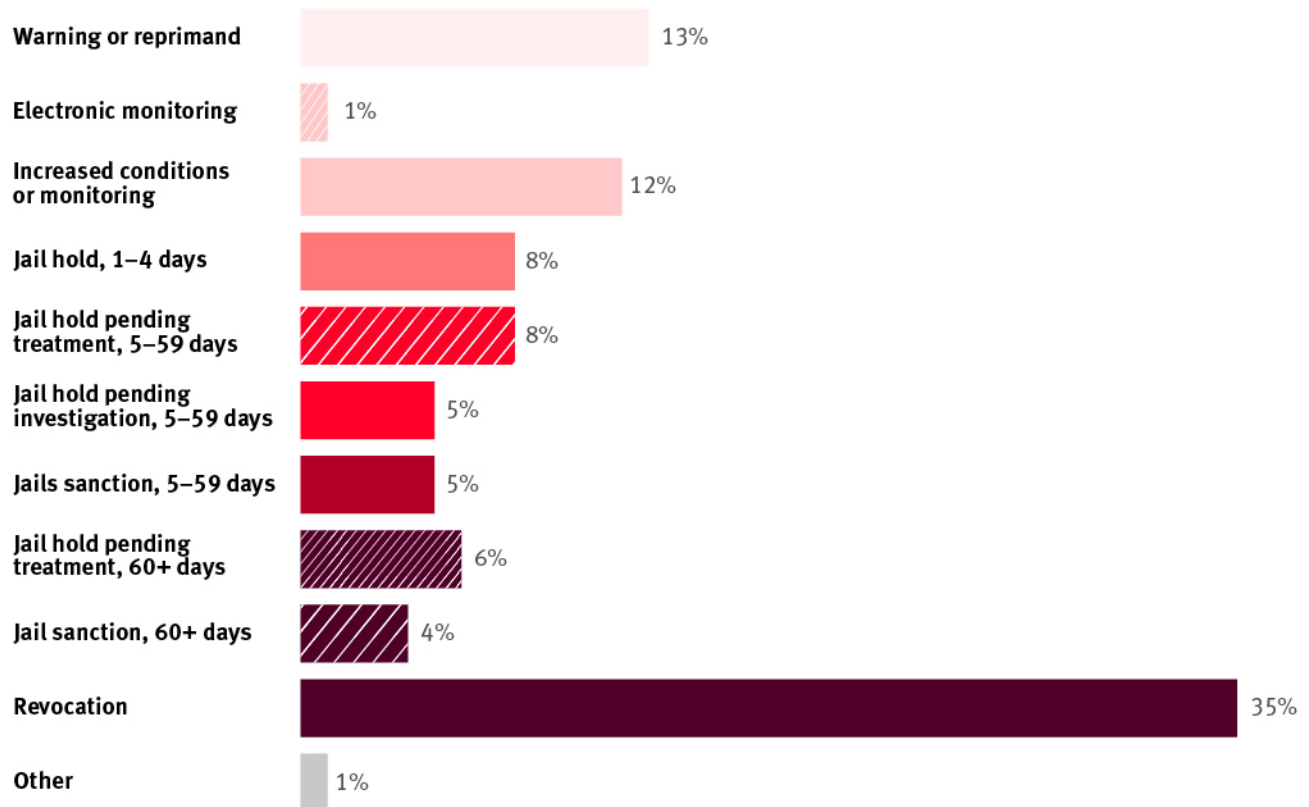
Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence–Based Response to Violations data.

Responses to **Drug-Related** Violations in Wisconsin March 2017 – September 2019:



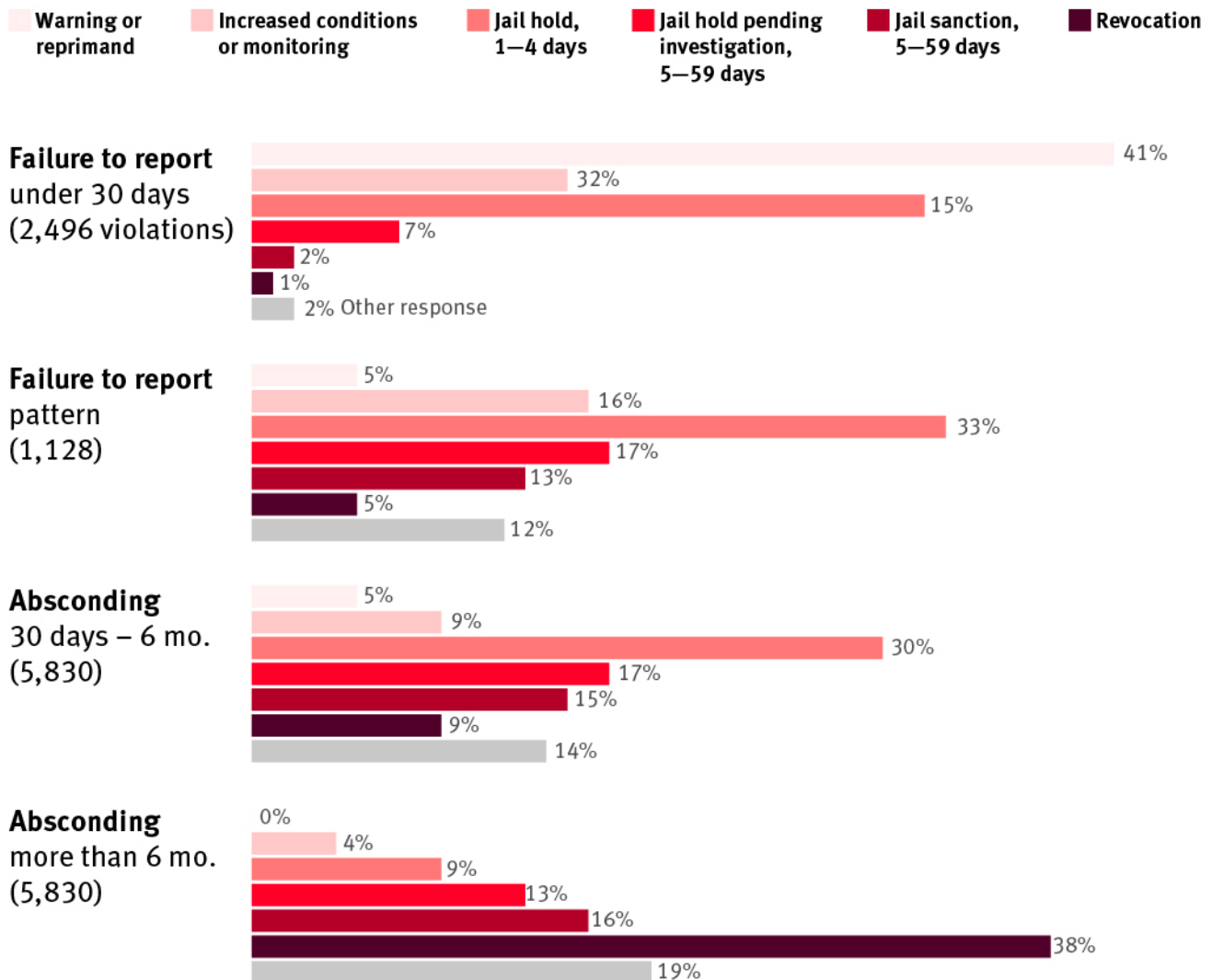
Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence–Based Response to Violations data.

Responses to **Program** or **Treatment** Rule Violations in Wisconsin 6,312 violations, March 2017 – September 2019:



Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence–Based Response to Violations data.

Responses to **Failure to Appear** Rule Violations in Wisconsin March 2017 – September 2019:



Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence–Based Response to Violations data.

Georgia

The Georgia Department of Community Supervision told Human Rights Watch that it could not provide data regarding incarceration for supervision violations.²⁰⁶ However, working with computer science and economics students from the University of Georgia, we were able to scrape data from jail rosters in nine Georgia counties. The data we obtained covered a period from June 1 to October 31, 2019. It indicated the number of people booked into jails for probation or parole violations, but not the specific supervision conditions allegedly violated.²⁰⁷

The data revealed that, when people were booked into jail for both supervision violations and new offense charges at the same time, those new offense charges were largely for public order conduct (21 percent), drug possession (15 percent), theft or property conduct (13 percent), traffic breaches (12 percent) and assaultive conduct (11 percent).²⁰⁸

In addition to the violation types revealed through the data analysis above, we documented numerous cases of violations for failure to pay, failure to report, and personal drug use.

Failure to Pay

The US Supreme Court has made clear that a person's mere failure to pay court debt cannot justify throwing them in jail.²⁰⁹ Courts can only revoke someone's probation if they *can* pay, but willfully choose not to. However, there are no national guidelines setting out how courts must assess a person's ability to pay,²¹⁰ and supervision officers frequently pursue violation proceedings without adequately assessing whether they have the

²⁰⁶ See "Methodology" section.

²⁰⁷ See "Methodology" section.

²⁰⁸ Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters. Other conduct or warrants accounted for the remainder. *Ibid.*

²⁰⁹ *Bearden v. Georgia*, 461 U.S. 660 (1983). Some states have enacted statutes requiring courts to consider peoples' ability to pay fines and fees. See O.C.G.A. §§ 42-8-34(3)(B); 42-8-102(e)(2); Pa. R. Crim. P. 706(C). 42 Pa.C.S. §§ 9721(c.1), 9728(b.2).

²¹⁰ Alicia Bannon, et al., "Criminal Justice Debt," *Brennan Center for Justice*, p. 21.

money.²¹¹ We documented multiple cases of incarceration for nonpayment.²¹² Some supervision officers explained that they generally do not pursue revocation solely for failure to pay—but once they file revocation proceedings for some other violation, they feel it is their obligation to include every violation, including failure to pay.²¹³

Attorneys in Georgia—where officials said they could not provide Human Rights Watch with data we requested on conduct triggering supervision violations²¹⁴—said that failure to pay violations are particularly prevalent there. “If you’re poor and can’t pay, they’ll put your ass in jail,” said Jack Long, a defense attorney who has represented many people on supervision in Brunswick, Georgia, near Savannah. “Judges [either] don’t understand that you can’t lock people up for failure to pay, or they just don’t care.”²¹⁵

Some supervision officers recognize the futility of incarcerating people for failing to pay: “It really is a catch-22,” because “if we lock them up [in jail] they’re gonna lose their job,” making it harder to pay, said Lowndes County, Georgia, senior supervision officer Melanie Hasty.²¹⁶

Sometimes, judges ultimately refuse to revoke probation for failure to pay, believing it is unfair, former Georgia public defender Falen Cox said.²¹⁷ But by then, as discussed below

²¹¹ Mack Finkel, “New Data: Low Incomes—But High Fees—for People on Probation,” *Prison Policy Initiative*, April 9, 2019, https://www.prisonpolicy.org/blog/2019/04/09/probation_income/; Harvard Law School Criminal Justice Policy Program, “Confronting Criminal Justice Debt: A Guide for Policy Reform,” September 2016, <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>, p. 26-27; Andrea Woods, et al., “Boots and Bail on the Ground: Assessing the Implementation of Misdemeanor Bail Reforms in Georgia,” *Georgia Law Review*, 2020, <https://www.georgialawreview.org/article/13665-boots-and-bail-on-the-ground-assessing-the-implementation-of-misdemeanor-bail-reforms-in-georgia>.

²¹² Human Rights Watch interview with Juan Richardson, Valdosta, Georgia, December 11, 2019; Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch interview with Bruce Lee Hallman, Valdosta, Georgia, December 10, 2019; Human Rights Watch interview with Will Harrell, Milwaukee, Wisconsin, November 18, 2019; Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019; Human Rights Watch Court Observations, Delaware County Court, Media, Pennsylvania, October 30, 2019; Human Rights Watch Court Observations, Chatham County Court, Savannah, Georgia, December 9, 2019.

²¹³ Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020; Human Rights Watch telephone interview with Marc Alstatt, supervision officer, March 9, 2020; Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020.

²¹⁴ See “Methodology.”

²¹⁵ Human Rights Watch telephone interview with Jack Long, defense attorney, Brunswick, Georgia, November 21, 2019; Human Rights Watch telephone interview with David Utter, defense attorney, Savannah, Georgia, December 3, 2019; Human Rights Watch interview with Todd Martin, chief public defender, Savannah, Georgia, December 12, 2019.

²¹⁶ Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020.

²¹⁷ Human Rights Watch telephone interview with Falen Cox, defense attorney, Savannah, Georgia, December 9, 2019.

in Section III, “Pre-Revocation Confinement,” people typically have already sat in jail waiting for their revocation hearing for weeks or months, meaning much damage has already been done.²¹⁸

Human Rights Watch has previously documented that, at least in the private probation context, some supervision officers leverage incarceration as a threat to induce payments—issuing warrants that result in peoples’ arrest and negotiating to drop revocation proceedings if they, or their loved ones, pay the money owed.²¹⁹

Valerie Todd’s Story

Valerie Todd had an extremely difficult childhood, but by age 40 she had overcome enormous obstacles. Her mother struggled with heroin use.²²⁰ Her stepdad “molested us all, shot my sister four times in front of me and then hung himself right up the street,” she said. “So it was all violence. We had gun racks in our house, my mom was a drug dealer; my grandma, like my mother, was born in the house of corrections. So it was a big cycle.”

By age 10, Todd said, she began using alcohol and drugs to manage her emotional pain. She soon entered Philadelphia’s juvenile justice system, and in 2010, at the age of 37, was sentenced to 44-88 months in prison, plus 10 years of probation for her involvement in a robbery.²²¹

Todd was released early from prison to parole, and she got her life together. She completed parole in 2017—though she still had to serve 10 more years on probation—began teaching in the prison where she had served her sentence, published a book,²²² and started working for Mothers in Charge, a violence prevention

²¹⁸ Ibid.

²¹⁹ Human Rights Watch, *Profiting from Probation*, p. 49-53.

²²⁰ Human Rights Watch interview with Valerie Todd, October 29, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.

²²¹ *Pennsylvania v. Valeria* [sic] Todd, No. CP-51-CR-2678-2010 (Philadelphia, Pennsylvania).

²²² Valerie Anne Todd-Listman, *Inviting and Exciting: God’s Will* (CreateSpace Independent Publishing Platform, 2013), <https://www.amazon.com/Inviting-Exciting-Valerie-Anne-Listman/dp/1484176596>.

organization. She has since also worked with the ACLU and the Philadelphia Mayor's office, among others, to press for criminal legal system reforms.

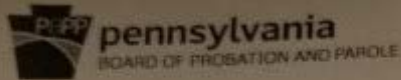
In October 2019, Todd received a letter from the probation department threatening to initiate sanctions, including house arrest, for her failure to pay \$270 in supervision fees.²²³ Money had been tight, and she had missed one payment, Todd explained. She was shocked: after all her progress, “for \$270 you’re threatening to put me on house arrest?”

The head of the Philadelphia public defender office, Keir Bradford-Grey, intervened to personally help Todd, a testament to Todd's reputation in the criminal law reform community. With Bradford-Grey's help, the judge agreed to terminate Valerie's probation early—freeing Todd of the risk of revocation.²²⁴

Todd now continues working with people caught up in the criminal legal system, teaching them, “Power's not in a gun. Power's living an honest, responsible life.” Had Todd not had access to such high-level representation, her case may not have ended with such a favorable outcome.

²²³ Letter to Valerie Todd from Pennsylvania Department of Probation and Parole (on file with Human Rights Watch).

²²⁴ *Pennsylvania v. Valeria* [sic] Todd, No. CP-51-CR-2678-2010 (Philadelphia, Pennsylvania).



10/25/2019

VALERIA TODD

Parole #: 62890

SUPERVISION FEE OVERDUE NOTICE

As of this date, your supervision fee balance is \$270.00. Delinquent supervision fees place you in violation of conditions of your supervision, which can and will result in sanctions against you. Sanctions include, but are not limited to:

- INCREASED REPORTING REQUIREMENTS
- STRICTER CURFEW
- ELECTRONIC MONITORING
- PLACEMENT IN HALF-WAY BACK STATUS
- TRAVEL RESTRICTIONS

You must remit payment of your overdue balance by 11/18/2019.

If you are having difficulty making payments, you MUST contact your agent immediately!
Don't jeopardize your otherwise good standing by failing to address this serious issue.

Sincerely,
FOR THE BOARD

Michael A. Willis
PHILADELPHIA DO District Director

Letter threatening Valerie Todd, who was serving probation in Philadelphia, Pennsylvania, with sanctions for failure to pay \$270 in court costs after she missed one payment. Todd had turned her life around after prison, and feared sanctions would ruin all her progress. (Document provided by Valerie Todd.)

Failure to Report

Supervision officers often warn people that failure to comply with their rules of release can lead to jail.²²⁵ So when people slip up—falling behind on payments, missing a treatment class, using drugs—they often fear telling their supervision officer.²²⁶ As a result, as detailed below in Section VI, people frequently stop reporting, leading to revocation for “failure to report.”²²⁷

Supervision officers also frequently “violate” people (meaning pursue violation proceedings) for “absconding.”²²⁸ While this term ordinarily implies that someone is secretly fleeing to avoid detection,²²⁹ many people violated for absconding have done nothing of the sort. In fact, in many cases, supervision officers know exactly where the people under their supervision live and work, and even arrest them at those locations.²³⁰

In Pennsylvania, nearly 20 percent of all state parole rule violations between 2016 and 2019 resulted from failing to report;²³¹ in Wisconsin, failure to report and absconding constituted 14 percent of all rule violations during those years.²³²

²²⁵ Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019; Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch telephone interview with James Yancey, December 5, 2019; Human Rights Watch interview with Robert Thurgood, October 31, 2019; Human Rights Watch telephone interview with Sarah Shannon, sociology professor, University of Georgia, November 14, 2019; PowerCorps Community Roundtable, Philadelphia, Pennsylvania, November 12, 2019.

²²⁶ *Ibid.* Further, people typically do not have lawyers while they are on supervision, making it difficult for them to obtain the information necessary to make an informed choice about reporting. Human Rights Watch, *Set Up to Fail*, p. 5.

²²⁷ Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020; Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019; Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch telephone interview with James Yancey, December 5, 2019; Human Rights Watch interview with Robert Thurgood, October 31, 2019; Human Rights Watch telephone interview with Sarah Shannon, November 14, 2019; PowerCorps Community Roundtable, Philadelphia, Pennsylvania, November 12, 2019.

²²⁸ Jurisdictions define “absconding” in myriad ways, from missing a couple appointments to prolonged lack of contact. See PEW Charitable Trusts, “Policy Reforms Can Strengthen Community Supervision,” p. 50.

²²⁹ Merriam-Webster Dictionary, “Abscond,” <https://www.merriam-webster.com/dictionary/abscond>; Cambridge Oxford Dictionary, “Abscond,” <https://dictionary.cambridge.org/us/dictionary/english/abscond>.

²³⁰ Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch interview with Romelo Booker, November 21, 2019; Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch Court Observations, Delaware County Courthouse, October 30, 2019.

²³¹ Human Rights Watch analysis of Pennsylvania Board of Probation and Parole data.

²³² Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations (EBRV) Data.

In 2016, Nathanyal May, a then-18-year-old Native American man from Manitowac, Wisconsin (near Green Bay), was arrested for theft.²³³ The following year, he was arrested for battery.²³⁴ May pled guilty to both offenses, ultimately receiving a total of seven months in jail and three years of probation.²³⁵

When he was released from the Manitowac jail around June 2019, May was told his probation officer would arrange transport to a treatment program in Milwaukee, he said. “But [the jail] just released me alone in the middle of the night,” he explained. “There was no transit . . . and I had nowhere to go.”

May, then 20 years old, says he was homeless and did not even know his probation officer’s name. Confused and overwhelmed, he explained, he never reported. After a few months on the streets, a friend’s mom let him move into her Milwaukee home, he said. He got back on track, working jobs at a temp service and as a prep cook, he explained.

Then in August 2019, police arrested May for having a backpack with some marijuana and a BB gun inside, he said. He denied the backpack was his and said he was in the process of returning it to a friend. The police did not pursue charges for unlawful possession of the items, but May’s probation officer sought revocation for this and for “absconding.”

May was incarcerated in the Milwaukee Secure Detention Facility (MSDF) pending his revocation hearing.²³⁶ As discussed below in Section III, “Harmful Conditions,” the media has reported on inhumane conditions at MSDF.²³⁷ In November 2019, a judge revoked May’s probation, and the next month a different judge sentenced him to 10 months in jail, with credit for 164 days—more than five months—already served.²³⁸ May, whom we interviewed at MSDF after he had been incarcerated for about three months, said that detention has cost him both of his jobs, and he will likely be homeless when he gets out.

²³³ Human Rights Watch interview with Nathanyal May, Milwaukee, Wisconsin, November 20, 2019. Docket, *Wisconsin v. Nathanyal May*, 16CM554 (Manitowac, Wisconsin). Unless otherwise noted, information in this section is from Human Rights Watch’s interview with Nathanyal May.

²³⁴ Docket, *Wisconsin v. Nathanyal May*, 17CF457 (Manitowac, Wisconsin).

²³⁵ *Ibid.*; Docket, *Wisconsin v. Nathanyal May*, 16CM554 (Manitowac, Wisconsin).

²³⁶ Wisconsin Department of Corrections, Nathanyal May, “Movement.”

²³⁷ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17; Isiah Holmes, “‘Close MSDF!’ Protestors Declare,” *Wisconsin Examiner*, April 26, 2019, <https://urbanmilwaukee.com/2019/04/26/close-msdf-protestors-declare/>.

²³⁸ Docket, *Wisconsin v. Nathanyal May*, 17CF457 (Manitowac, Wisconsin).

We also spoke with Jasmine Jackson. In 2008, a Philadelphia court sentenced Jackson to two-to-four years of prison followed by six years of probation for a robbery committed when she was 16 years old.²³⁹ In prison, Jackson was connected with the Youth Art and Self-Empowerment Project (YASP), an organization that helps young people caught up in the criminal legal system. “I wouldn’t be who I am now” without them, she said.

Jackson said that she served three years of her sentence in prison then and one year on parole in a halfway house. She returned home in 2011, and at that point, she told us, she thought her obligation to the state was over.

For about six years, everything went well, Jackson said. Then, in September 2017, someone called the police while she and her then-partner were arguing. The police did not bring charges for their fight, but officers came across a warrant for Jackson’s arrest. It turns out that, after Jackson finished serving her state parole, she was supposed to serve the six years of county probation she was sentenced to when she was a teenager. No one ever told her to report to probation, and she did not realize she had to serve more supervision after completing parole, she said.

After being arrested on the probation warrant, Jackson spent three weeks in jail waiting for her revocation hearing, after which the judge revoked her probation and re-sentenced her to two years of probation.²⁴⁰

She lost her job as a result of the arrest and incarceration, and later, after obtaining another job, she lost that too because she had to continually leave work early to report to her probation officer, she said. “They were like ‘you can’t keep calling off and go to leave early to see that man.’”

In January 2019, Jackson was arrested for misdemeanor drug possession, which triggered another probation violation. She was sentenced to another year of probation, to be served

²³⁹ Human Rights Watch interview with Jasmine Jackson, October 30, 2019; *Pennsylvania v. Jasmine Jackson*, No. CP-51-CR-0312221-2006 (Philadelphia, Pennsylvania). Unless otherwise noted, information in this section is from Human Rights Watch’s interview with Jasmine Jackson.

²⁴⁰ *Pennsylvania v. Jasmine Jackson*, No. CP-51-CR-0312221-2006 (Philadelphia, Pennsylvania).

alongside her other probation term.²⁴¹ If Jackson completes these two terms successfully, she should be off probation in January 2020.

“Y’all released me [from prison] and now y’all just inconveniencing my whole life,” Jackson said, sobbing. “The Philadelphia probation system is not for our help, it is not for us . . . All they did is hinder me.”

Personal Drug Use

There is a growing global movement decriminalize the possession of drugs for personal use. Human Rights Watch and the ACLU support this movement as a matter of human rights, because criminalizing personal choices like drug use, in the absence of harm to others, is per se disproportionate and inconsistent with the right to privacy and basic principles of autonomy that underlie all rights.²⁴² Criminalization is also harmful to public health, as criminalization drives drug use underground, making it less likely that people who need treatment or services will be able to access them, and more likely that—at a time of skyrocketing overdose deaths in the United States—they will overdose and die, or contract infectious diseases like Hepatitis C and HIV.²⁴³

Moreover, research indicates that frequent drug testing—a common supervision condition—does not reduce drug use.²⁴⁴

Nevertheless, personal drug use remains a leading driver of incarceration for supervision violations. In Pennsylvania, 17 percent of all state parole rule violations from 2016 to 2019 resulted from drug possession.²⁴⁵ In Wisconsin, 20 percent of total violations during those years stemmed from drug use, and another 5 percent resulted from drug possession.²⁴⁶ Of people booked into jail in nine Georgia counties from June 1 to October 31, 2019 for alleged

²⁴¹ Ibid.; *Pennsylvania v. Jasmine Jackson*, No. MC-51-CR-0030701-2018 (Philadelphia, Pennsylvania).

²⁴² Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 22-27; Global Commission on Drug Use, “Advancing Drug Reform: A New Approach to Decriminalization,” 2016, <https://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf>; Drug Policy Alliance, “It’s Time for the U.S. to Decriminalize Drug Use and Possession,” July 2017, <https://www.drugpolicy.org/sites/default/files/documents/Drug-Policy-Alliance-Time-to-Decriminalize-Report-July-2017.pdf>.

²⁴³ Ibid.; Human Rights Watch, *Barred from Treatment: Punishment of Drug Users in New York State Prisons*, (New York: Human Rights Watch: 2009), https://www.hrw.org/sites/default/files/reports/nyprisonso309webwcover_o.pdf.

²⁴⁴ PEW Charitable Trusts, “Policy Reforms Can Strengthen Community Supervision,” p. 37 (collecting studies).

²⁴⁵ Human Rights Watch analysis of Pennsylvania Board of Probation and Parole data.

²⁴⁶ Human Rights Watch analysis of Wisconsin Department of Corrections EBRV.

supervision violations and new charges, 15 percent of the charges were for drug possession.²⁴⁷

If these arrests while on supervision are consistent with national arrest data, then the overwhelming majority of such arrests are for nothing more than possessing drugs for personal use.²⁴⁸ As detailed below in Section VI, “Substance Use,” Human Rights Watch spoke with numerous people who were incarcerated for violating their supervision as a result of personal drug use, in some cases because they had substance use disorder.²⁴⁹ We also met people who underwent violation proceedings for allegedly committing other crimes, like selling drugs or shoplifting, to support their drug use.

Though Black and white people use drugs at similar rates, arrests for drug crimes are more likely to happen in predominantly poor areas composed of people of color—who are disproportionately targeted by law enforcement.²⁵⁰ Nationwide, Black adults are 2.5 times as likely as white adults to be arrested for simple drug possession,²⁵¹ and 3.6 times as likely as whites to be arrested for marijuana possession in particular.²⁵²

In some jurisdictions we examined closely for this report, disparities for marijuana arrests are particularly glaring. In Brown County, Wisconsin, which contains Green Bay, Black people are 10.9 times more likely to be arrested for marijuana possession than whites.²⁵³

²⁴⁷ Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters.

²⁴⁸ Susan Stellan, “Is the ‘War on Drugs’ Over? Arrest Statistics Say No,” *New York Times*, November 5, 2019, <https://www.nytimes.com/2019/11/05/upshot/is-the-war-on-drugs-over-arrest-statistics-say-no.html>.

²⁴⁹ Human Rights Watch interview with Ruffin Toney, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Wayne Murphy, Milwaukee, Wisconsin, November 18, 2019; Interview with Carter Hopson, Allouez, Wisconsin, November 21, 2019; Human Rights Watch interview with Persheen Williams, Savannah, Georgia, December 12, 2019. Human Rights Watch also observed scores of court hearings in Philadelphia County, Pennsylvania; Delaware County, Pennsylvania; Milwaukee County, Wisconsin; Chatham County, Georgia, and Lowndes County, Georgia, during which judges were presiding over the cases of many people in custody for violation of their supervision as a result of drug use or possession.

²⁵⁰ Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 43-44; Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” *Washington Post*, September 18, 2018, https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/?itid=ap_radleybalko (collecting studies); Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States*, (New York: Human Rights Watch, 2008), https://www.hrw.org/sites/default/files/reports/uso508_1.pdf. See Section VII, “Racial Bias,” for a more detailed discussion of racially biased policing.

²⁵¹ *Ibid.*

²⁵² American Civil Liberties Union, “Extreme Racial Disparities Persist in Marijuana Arrests,” April 2020, <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

²⁵³ American Civil Liberties Union, “Wisconsin - Extreme Racial Disparities Persist in Marijuana Arrests,” April 2020, <https://graphics.aclu.org/marijuana-arrest-report/WI>.

Black people are 2 times more likely than whites to be arrested for marijuana possession in Philadelphia, Pennsylvania; 4.1 times more likely in nearby Delaware County, and 6.5 times more likely in neighboring Montgomery County.²⁵⁴ Meanwhile, racial disparities are slightly lower than the national average in parts of Georgia: Black people are 3.1 times more likely to be arrested for marijuana possession than white people in Lowndes County, and 2.8 times more likely in Chatham County.²⁵⁵

In Wisconsin from 2017 to 2019, Black people were much more likely than white people to face supervision violations for possessing or using drugs. Human Rights Watch calculated a race-specific rate for the number of people with drug-related violations per 10,000 people in Wisconsin. For violations stemming from drug possession offenses, the rate for Black people is 3.5 times the rate for white people, and the rate for Native Americans is 9.4 times the rate for white people.²⁵⁶ For drug use rule violations, the rate for Black people is 2.6 times the rate for white people; the rate for Native Americans is 9.3 times the rate for white people.²⁵⁷

When comparing the race proportions of the Wisconsin population with those charged with drug use violations or drug possession offenses, the disparities are just as glaring. In Wisconsin, the proportion of Native Americans sanctioned for drug use violations is over eight times higher than their proportion of the state population; for Black people, it is more than twice their proportion of the population.²⁵⁸

Given national survey data showing that people of all races and ethnicities use drugs (including marijuana) at similar rates,²⁵⁹ these racial disparities in supervision violations point to a disproportionate impact on Black people and Native Americans that amounts to prohibited racial discrimination under international human rights law.

²⁵⁴ American Civil Liberties Union, “Pennsylvania - Extreme Racial Disparities Persist in Marijuana Arrests,” April 2020, <https://graphics.aclu.org/marijuana-arrest-report/PA>

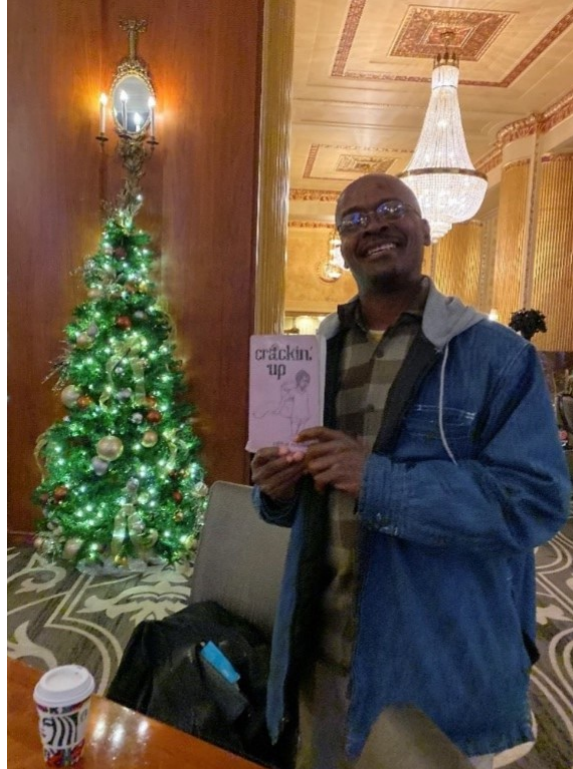
²⁵⁵ American Civil Liberties Union, “Georgia - Extreme Racial Disparities Persist in Marijuana Arrests,” April 2020, <https://graphics.aclu.org/marijuana-arrest-report/ga>.

²⁵⁶ Human Rights Watch analysis of Wisconsin Department of Corrections EBRV.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), “Results from the 2014 National Survey on Drug Use and Health: Detailed Tables,” September 10, 2015, <http://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs2014/NSDUH-DetTabs2014.pdf>. Human Rights Watch & American Civil Liberties Union, *Every 25 Seconds*, p. 30-33.



Wayne Murphy in Milwaukee, Wisconsin, November 2019. Murphy served decades on supervision in Wisconsin and, in 2011, spent more than a month in jail for violating his probation by spending Christmas at an unapproved address. Murphy has since published a novel (pictured). © 2019 Allison Frankel/Human Rights Watch

Racial Disparities in Sanctions for Drug Violations in Wisconsin			
Race	Wisconsin proportion	Drug possession (new offense) proportion	Drug use (violation) proportion
Black	6.3%	19%	15%
Asian	2.8%	1%	1%
Caucasian	81.0%	69%	73%
Hispanic	6.9%	4%	3%
Native American	0.8%	7%	7%
Other	2.2%	0%	0%

Violations for Being Untruthful

Wayne Murphy, 60 years old, is still serving the 20-year probation sentence he was given in Wisconsin for a sexual assault committed in 1992.²⁶⁰ In December 2011—one year before his probation was set to expire—his probation officer gave him an extended curfew to spend Christmas with his sister.²⁶¹ But, when it came time to go, Murphy said in a statement, “my sister [was] ill and [it was clear she was going] to be on oxygen for the rest of her life . . . I had no presents or money. Being there would have sent me into a deep depression.”²⁶² So when Murphy’s friend invited him over for football and dinner, he decided to go to his friend’s instead. “I just wanted to feel like a normal person just once before the year ended,” he wrote.²⁶³

A few days later, on December 29, 2011, Murphy spoke with his probation officer and explained why he went to a different house, and clarified that no drugs or alcohol—which would violate his supervision conditions—were involved.²⁶⁴ However, Murphy’s probation officer was convinced that Murphy was lying about where he went and what he did there. She pursued revocation and lodged a detainer, requiring Murphy to be incarcerated.²⁶⁵

Murphy spent 36 days in jail waiting for a hearing, and then was sentenced to serve another four days behind bars for the violation, he said.²⁶⁶

²⁶⁰ Human Rights Watch interview with Wayne Murphy, November 18, 2019.

²⁶¹ *Ibid.*; Memo from Supervision Officer Shaun O’Connell to Judge Maryann Sumi Re: Wayne D. Murphy, January 6, 2012 (on file with Human Rights Watch).

²⁶² Statement to Department of Corrections, Wayne Murphy, February 29, 2011 (on file with Human Rights Watch); Human Rights Watch interview with Wayne Murphy, November 18, 2019.

²⁶³ Statement to Department of Corrections, Wayne Murphy, February 29, 2011.

²⁶⁴ Memo from Agent Shaun O’Connell to Judge Maryann Sumi Re: Wayne D. Murphy, January 6, 2012 (on file with Human Rights Watch).

²⁶⁵ *Ibid.*

²⁶⁶ Human Rights Watch interview with Wayne Murphy, November 18, 2019.

III. Lack of Due Process for Violations

Supervision officers typically have vast discretion to address violations of probation and parole.²⁶⁷ Officers can ignore violations, issue informal warnings, impose sanctions—such as electronic monitoring, mandated treatment, and days in jail—or pursue revocation, which, as discussed in Section IV, “Sentencing for Violations,” can result in substantial prison time.²⁶⁸

If a supervision officer pursues revocation, they can lodge a detainer, meaning the individual facing revocation will be detained pending revocation proceedings—which, as discussed below, could be weeks or months.²⁶⁹

Few Evidentiary Protections

Basic rights in the US criminal legal system do not apply in revocation proceedings.²⁷⁰ There is no presumption of innocence.²⁷¹ Decisionmakers can consider hearsay

²⁶⁷ Short of revocation, officers generally can impose sanctions without a hearing. PEW Charitable Trusts, “Policy Reforms Can Strengthen Community Supervision,” p. 26; PEW Charitable Trusts, “To Safely Cut Incarceration, States Rethink Responses to Supervision Violations,” July 16, 2019, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations>; Pennsylvania Board of Probation and Parole, “Con - CON II – Arrest Worksheet,” <https://www.pbpp.pa.gov/Parole%20Supervision/Documents/PBPP-347%20VSG.pdf>; Wisconsin Department of Corrections, “Evidence-Based Response to Violations,” October 3, 2016, <https://ffupstuff.files.wordpress.com/2018/11/doc-2016-guide-to-revoc.pdf>.

²⁶⁸ Ibid. As discussed in Section VI, “Racial Bias,” many jurisdictions, including Georgia, Pennsylvania, and Wisconsin, use algorithmic risk assessment tools (RATs) to determine appropriate sanctions, which can reinforce race and class biases.

²⁶⁹ See “Definition and Terms” for more detail on detainers.

²⁷⁰ The US Supreme Court outlined minimal due process protections required in revocation proceedings, including the right to notice of the alleged violations; disclosure of the evidence against them; the opportunity to be heard in person and to present evidence; a limited right to confront and cross-examine witnesses; a “neutral and detached” hearing body; and a written statement by the factfinder as to the evidence relied upon and the reasons for revoking supervision. *Morrisey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” *American Journal of Criminal Law*, vol. 31 (2003), p. 117, 118-19; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1040-41; Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 770.

²⁷¹ Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 767.

evidence.²⁷² In many states, including Georgia and Wisconsin, illegally obtained evidence is admissible.²⁷³

Further, while criminal charges must be proven beyond a reasonable doubt, most states only require supervision violations to be proven by a preponderance of the evidence—meaning more likely than not.²⁷⁴ The preponderance of the evidence standard is one of the lowest standards of proof in the US legal system.²⁷⁵

Given the lower standards in revocation proceedings, people can—and, in our focus jurisdictions, frequently do²⁷⁶—face revocation of their supervision for committing new offenses even when they are acquitted of those charges, or the judge dismisses them, in criminal court.

In some cases—particularly where an individual’s sentencing exposure following revocation is similar to what they would face for new charges—prosecutors do not pursue criminal charges once supervision officers petition for revocation.²⁷⁷ Instead, they wait to

²⁷² Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 153-55; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1040-41; Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 770.

²⁷³ Ibid.; see, for example, *State v. Thackston*, 289 Ga. 412 (Georgia 2011); Wis. Admin Code Ha 2.05 (6)(c). While Pennsylvania had long followed suit, in 2016 the state supreme court ruled that the exclusionary rule—which bars the admission of illegally-obtained evidence in criminal trials—does apply in revocation proceedings. *Commonwealth v. Arter*, 637 Pa. 541 (Pennsylvania 2016). The ruling rested on an interpretation of the state constitution. Other states, including New Mexico, Oregon, Washington, Texas, and Florida, also apply the exclusionary rule in revocation proceedings. Ibid, p. 561-63 (collecting cases). For a discussion of the application of the exclusionary rule in revocation proceedings, see Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 139-45.

²⁷⁴ Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 127-28. However, some states, including Minnesota and Nebraska, require probation violations to be proven by “clear and convincing evidence,” West Virginia requires proof by a “clear preponderance of the evidence,” which it defines as “exceeding the standard of a preponderance of evidence,” and Colorado applies the preponderance standard except for violations based on the commission of a new crime, which must be proven beyond a reasonable doubt. Ibid.

²⁷⁵ *Charlton v. FTC*, 177 U.S. App. D.C. 418, 543 F.2d 903, 907 (1976) (“It suffices for present purposes simply to recall that in American law a preponderance of the evidence is rock bottom at the fact-finding level of civil litigation.”); Linda Greenhouse, “The Mirror of Guantánamo,” *New York Times*, December 11, 2013, <https://www.nytimes.com/2013/12/12/opinion/greenhouse-the-mirror-of-guantanamo.html>.

²⁷⁶ See, for example, Human Rights Watch interview with Michael Estevez, Allouez, Wisconsin, November 21, 2019; Human Rights Watch Interview with Angel Ortiz, October 28, 2019; Human Rights Watch Interview with Persheen Williams, December 11, 2019; Human Rights Watch Interview with Caliph Muab’El, November 18 2019; Human Rights Watch interview with Robert Sanders, November 21, 2019; Human Rights Watch interview with Ruffin Toney, November 20, 2019; Human Rights Watch interview with Mark Rice, Milwaukee, Wisconsin, November 18, 2019; Human Rights Watch interview with Adrian Patterson, Milwaukee, Wisconsin, November 19, 2019; Human Rights Watch interview with Nathanyal May, November 20, 2019.

²⁷⁷ Rethinking Justice and Incarceration Panel, Makda Fessahaye, Milwaukee, Wisconsin, November 19, 2019; see also Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020; Human Rights Watch telephone interview with

see the outcome of the revocation process, which—with its lower evidentiary standards—usually results in incarceration, before deciding whether to press charges.²⁷⁸ As a Wisconsin Department of Corrections official explained, “it’s easier to just revoke them.”²⁷⁹ Georgia DCS Commissioner Michael Nail said this frequently occurs, explaining that “a lot of times, it’s about judicial economy.”²⁸⁰ This practice allows the government to secure incarceration for alleged crimes without having to prove the charges beyond a reasonable doubt in criminal court.²⁸¹

Angel Ortiz, a 39-year-old Latino man, grew up in a poor North Philadelphia neighborhood. “The easiest resource in my neighborhood is drugs . . . I remember in seventh grade, kids had to go to work but it wasn’t work, they went to sell drugs,” he said.²⁸² He soon got involved with drugs, primarily marijuana, as well, he said.

In 1999, soon after his 18th birthday, Ortiz was arrested on charges of drug possession with intent to distribute and criminal conspiracy.²⁸³ The next year, he pled guilty and was sentenced to three to 23 months of incarceration followed by four years of probation.²⁸⁴

In October 2002, while still on probation, Ortiz was convicted of drug possession and sentenced to five to six months in jail.²⁸⁵ The offense also violated the terms of his

Michael Nail, February 19, 2020; Human Rights Watch telephone interview with Mark Rice and David Liners, October 21, 2010; Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 131, 164; Andrew Cohen, “The Costs of Abusing Probationary Sentences,” p. 771.

²⁷⁸ Ibid.

²⁷⁹ Rethinking Justice and Incarceration Panel, Makda Fessahaye, Milwaukee, Wisconsin, November 19, 2019.

²⁸⁰ Human Rights Watch telephone interview with Michael Nail, February 19, 2020.

²⁸¹ Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 131, 164; Andrew Cohen, “The Costs of Abusing Probationary Sentences,” p. 767, 771, 782-83; Eli Hager, “At Least 61,000 Nationwide Are in Prison for Minor Parole Violations,” *The Marshall Project*, April 23, 2017, <https://www.themarshallproject.org/2017/04/23/at-least-61-000-nationwide-are-in-prison-for-minor-parole-violations>; Rethinking Justice and Incarceration Panel, Mark Rice, Milwaukee, Wisconsin, November 19, 2019.

²⁸² Human Rights Watch interview with Angel Ortiz, October 29, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.

²⁸³ Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-1205481-1999 (Philadelphia, Pennsylvania).

²⁸⁴ Ibid. Angel was also arrested for aggravated assault and drug possession with intent to distribute in two separate cases, and in 2000 he pled guilty to both cases to a total of 11.5 to 23 months in prison followed by two years of probation. Docket, *Commonwealth v. Angel Ortiz*, CR-51-CR-0910201-1999 (Philadelphia, Pennsylvania); Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-0406971-2000, Philadelphia, Pennsylvania).

²⁸⁵ Ibid.; Docket, *Commonwealth v. Angel Ortiz*, MC-51-CR-0316881-2002 (Philadelphia, Pennsylvania).

probation, and the judge sentenced Ortiz to another 11.5 to 23 months of incarceration followed by two more years of probation.²⁸⁶

Since then, Philadelphia police have arrested Ortiz multiple times, Ortiz said. On four occasions, he told us, courts dismissed the charges—in some cases because evidence was obtained unlawfully, he said.

Yet each time, the judge still revoked Ortiz’s probation for the same dismissed conduct and sentenced him to even more probation—for four, five, and even six years.²⁸⁷ Each time, Ortiz spent about a year in jail on a detainer while fighting the charges, he said.

When we met Ortiz in October 2019, he was still serving the same probation term imposed two decades ago and had three years and nine months more to go. He told us that he has a steady job at a sanitation company and feels like things are finally coming together. But, he recognizes, “There’s always the possibility [you] end up going back [to jail] when you’re on probation.”

²⁸⁶ Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-1205481-1999. The offense also violated one of his other prior convictions, and that judge imposed 15 to 30 months in prison, but no additional probation. Docket, *Commonwealth v. Angel Ortiz*, CR-51-CR-0910201-1999.

²⁸⁷ Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-1205481-1999. We looked for court records to corroborate this and could not find them, but Pennsylvania courts remove records from public record search data bases for dismissed cases. Human Rights Watch telephone communications with Oren Gur, Office of Philadelphia District Attorney, October 22, 2019.

Remote Proceedings

In many jurisdictions, including most of Wisconsin and parts of Georgia and Pennsylvania, people participate in their revocation hearings remotely via videoconference from the jail where they are detained.²⁸⁸

Videoconferencing creates additional obstacles to contesting revocation. Lawyers must choose between appearing in the courtroom—where they can speak clearly with the judge and question witnesses—or in the jail with their client, where they can confidentially review strategies and clarify facts.²⁸⁹ Video screens also create barriers to eye contact, body language, and other nonverbal cues—important factors when a judge is assessing someone’s credibility and character and deciding whether to take away their liberty.²⁹⁰

Limited Access to Lawyers

Compared with defendants in criminal proceedings, people facing supervision revocation have limited access to attorneys. In essence, the US Supreme Court has said that courts only need to appoint lawyers for revocation proceedings if someone has claims of

²⁸⁸ Georgia Board of Pardons and Paroles, “Parole’s Role in Public Safety, Annual Report FY 2018,” https://pap.georgia.gov/sites/pap.georgia.gov/files/Annual_Reports/2018%20Annual%20Report%20FY%2018.pdf, p. 28; Human Rights Watch telephone interview with Randy Kraft, spokesperson, and Adam Plotkin, legislative liaison, Wisconsin State Public Defender’s Office, December 3, 2019 (every jurisdiction but Milwaukee holds remote revocation proceedings); Human Rights Watch Court Observations, Delaware County, Pennsylvania, October 30, 2019; “Delaware County Judicial Report,” 2013-2015, https://www.delcopa.gov/courts/pdf/DelJudReport_2013-15.pdf, p. 29.

²⁸⁹ Ibid. Sometimes, hearings can occur from upwards of three separate locations: the defendant from jail, the factfinder from their office—often in another county—and the supervision officer from their office. Georgia Board of Pardons and Paroles, “Parole’s Role in Public Safety, Annual Report FY 2018,” p. 28; Human Rights Watch telephone interview with Randy Kraft and Adam Plotkin, December 3, 2019.

²⁹⁰ See for example, National Association for Public Defense, “NAPD Statement on the Issues with the use of Virtual Court Technology,” May 29, 2020, <https://idc.utah.gov/wp-content/uploads/2020/06/NAPD-Virtual-Court-Statement-8.o.pdf>; Shari Seidman Diamond et al., “Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions,” *Journal of Criminal Law and Criminology*, Summer 2010, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>; Camille Gourdet, et al., “Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology,” *RAND Corporation*, https://www.rand.org/pubs/research_reports/RR3222.html; Christina Goldbaum, “Videoconferencing in Immigration Court: High-Tech Solution or Rights Violation?,” *New York Times*, September 12, 2019, <https://www.nytimes.com/2019/02/12/nyregion/immigration-court-video-teleconferencing.html>; Beth Fertig, “Do Immigrants Get a Fair Day in Court When It’s by Video?,” *WNYC*, September 11, 2018, <https://www.wnyc.org/story/do-immigrants-get-fair-day-court-when-its-video/>.

innocence, strong mitigating factors, or the case is complicated.²⁹¹ Of course, without a lawyer, figuring out if those factors are present is difficult.²⁹²

Rules and regulations in many states, including Wisconsin and Pennsylvania, nevertheless provide a right to counsel in all revocation proceedings.²⁹³ Other states, such as Georgia, determine whether counsel is required in revocation proceedings on a case-by-case basis.²⁹⁴ However some Georgia courts, including those in Lowndes County, by policy permit people to have free lawyers in revocation cases.²⁹⁵

Yet in the Lowndes County misdemeanor court, access to counsel appears non-existent. Unlike many jurisdictions, which appoint counsel once a revocation petition is filed, in Lowndes County the court waits until the first court appearance—which, as discussed later in this section, often comes after months in detention—to appoint a lawyer.

Lowndes County Judge John Edwards told us that he appoints lawyers for anyone facing revocation who wants one.²⁹⁶ But while we observed hearings, we saw few people ask for one. At their first appearance, people facing revocation speak with the solicitor-general—a prosecutor.²⁹⁷ There is no defense lawyer available in the courtroom. The solicitor-general explains that they can sign an “Attorney Wavier” form and proceed that day without a lawyer—and possibly get out of jail—or reschedule court for another date so that they can

²⁹¹ The Supreme Court also instructed courts to consider whether the accused “appears to be capable of speaking effectively for himself.” *Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973).

²⁹² Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 136-37.

²⁹³ State of Wisconsin, Division of Hearings and Appeals, “Resource Handbook for Community Supervision Revocation Hearings,” 2016, [https://doa.wi.gov/DHA/Handbook%20Final%20\(9.1.2016\).pdf](https://doa.wi.gov/DHA/Handbook%20Final%20(9.1.2016).pdf), p. 15; *Bronson v. Commonwealth Bd. Of Probation and Parole*, 421 A.2d 1021, 1026 (Pennsylvania 1980); Pa. R. Crim. P. 708; Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 136, n. 128.

²⁹⁴ *Kitchens v. State*, 508 S.E.2d 176 (Georgia Court of Appeals 1998); Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 136 and n. 127.

²⁹⁵ The Georgia statewide public defender’s office is contracted to represent people in felony supervision revocation cases. However, in many counties, the public defender’s office is not contracted to represent people in misdemeanor supervision revocation cases. O.C.G.A. § 17-12-23 (explaining state public defender system represents people facing supervision revocation in superior court, where felony probation revocation hearings occurred); “Executive Summary Status of Indigent Defense in Georgia: A Study for the Chief Justice’s Commission on Indigent Defense, Part 1,” http://www.sado.org/fees/georgia_part_1.pdf (explaining which counties provide attorneys in revocation proceedings); Georgia Public Defender Council, “Frequently Asked Questions,” <http://www.gapubdef.org/index.php/36-frequently-asked-questions>; Human Rights Watch telephone interview with Kosha Tucker, staff attorney, ACLU of Georgia, November 15, 2019; Human Rights Watch interview with Todd Martin, December 12, 2019.

²⁹⁶ Human Rights Watch interview with Judge John Edwards, December 10, 2019.

²⁹⁷ Human Rights Watch interview with Justo Cabral, December 10, 2019.



Lowndes County, Georgia, courthouse and jail complex, December 2019. For people facing misdemeanor probation revocation, requesting an attorney means spending more time in jail. As a result, people overwhelmingly waive their right to counsel. © 2019 Allison Frankel/Human Rights Watch.

consult an attorney.²⁹⁸ If they wait, they will wait in jail. This inherent delay incentivizes people to proceed immediately without a lawyer. Indeed, an “overwhelming majority” of people waive their right to counsel, said Lowndes County Solicitor-General Justo Cabral.²⁹⁹ Many people we spoke with in Lowndes County told us they were not sure what the “Attorney Waiver” form meant—or even that people facing revocation could get a free lawyer.³⁰⁰

²⁹⁸ Ibid.

²⁹⁹ Human Rights Watch interview with Justo Cabral, December 10, 2019; Human Rights Watch telephone interview with Beau Mullen, December 20, 2019; Human Rights Watch Court Observations, Lowndes County State Court, Valdosta, Georgia, December 10, 2019.

³⁰⁰ Human Rights Watch interview with Marian Lundy, Valdosta, Georgia, December 10, 2019; Human Rights Watch interview with Erika Lewis (pseudonym), December 11, 2019.

Even when courts appoint counsel, it may come too late. As described later in this section, supervision officers in Georgia and Wisconsin routinely approach people in jail, sometimes before a lawyer has been appointed, with inducements to forgo their hearing rights. Accordingly, people often make fundamental decisions about their cases without talking to a lawyer.

Pre-Revocation Confinement

I don't know what hell is, but I know hell is a bad place and that's how I label DelCo Prison.

—Robert Thurgood, who was incarcerated in the George W. Hill Correctional Facility in Delaware County, Pennsylvania, pending revocation proceedings³⁰¹

Unlike in criminal cases when people, in theory anyway, can only be detained pre-trial if there is evidence that they will not return to court or, in some jurisdictions, that releasing them poses a genuine danger to public safety,³⁰² those accused of violating supervision are regularly held on “detainers,”³⁰³ sometimes for long periods of time, even before an initial court appearance.³⁰⁴

Detainers override any other pre-trial release determination. This means that even if someone on supervision is arrested for a criminal offense and a judge authorizes their release, the person will remain in jail until at least their first revocation proceeding due to the detainer.³⁰⁵

³⁰¹ Human Rights Watch interview with Robert Thurgood, October 31, 2019.

³⁰² Human Rights Watch, *Not in it For Justice: How California's Pre-Trial and Bail System Unfairly Punishes Poor People*, (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly>, p. 104-106. Of course, pre-trial procedures are deeply flawed. Andrea Woods and Portia Allen-Kyle, “America's Pretrial System is Broken. Here's Our Vision to Fix it,” post to ACLU (blog), April 2, 2019, <https://www.aclu.org/blog/smart-justice/bail-reform/americas-pretrial-system-broken-heres-our-vision-fix-it>; John Raphling and DeAnna Hoskins, “The Right Kind of Bail Reform: New York Must Learn from California's Bad Example,” Human Rights Watch, March 4, 2019, <https://www.hrw.org/news/2019/03/04/right-kind-bail-reform-new-york-must-learn-californias-bad-example>.

³⁰³ See “Definitions and Terms.”

³⁰⁴ Maura Ewing, “How Minor Probation Violations Can Lead to Major Time,” *The Atlantic*, June 9, 2017, <https://www.theatlantic.com/politics/archive/2017/06/philadelphia-detainer-holds/529758/>; Human Rights Watch telephone interview with Kendra Bradner, February 10, 2019; Human Rights Watch interview with Judge Karen Simmons, Philadelphia, Pennsylvania, October 29, 2019; Human Rights Watch interview with Brian Burke, November 18, 2019; Human Rights Watch interview with Michael Edwards, December 12, 2019; Human Rights Watch telephone interview with Michael Nail, February 19, 2020.

³⁰⁵ Maura Ewing, “How Minor Probation Violations Can Lead to Major Time,” *The Atlantic*.

Alternative Processes

In some states, authorities, recognizing there is a problem, have attempted to create alternative systems that reduce the time people spend in custody awaiting their revocation hearings. However, even with these systems, people end up getting arrested and held in custody for significant amounts of time, resulting in job loss and other disruptions.

For example, in Georgia, certain people accused of rule violations and “non-violent misdemeanor offenses” go through an alternative process called “Probation Options Management” (POM).³⁰⁶ These individuals are held in jail for a shorter period of time than those facing revocation—on average, eight days—before administrative sanctions are imposed.³⁰⁷ People have a right to an administrative hearing, but during a pilot study 83 percent of people waived their hearing.³⁰⁸ While the program reduces jail time pending resolution of violation proceedings, some public defenders are concerned it lacks sufficient checks on hearing officers’ decisions.³⁰⁹

Likewise, in Montgomery County, Pennsylvania, certain people on probation and parole are released more quickly from jail through administrative disposition hearings.³¹⁰ In Wisconsin, many people waive their rights to revocation hearings in exchange for “alternative to revocation” programs, which often involve 60 to 90 days of prison-based programming.³¹¹ As discussed below, many people feel pressure to waive their hearing rights and pursue alternatives just to get out of jail.

³⁰⁶ The sentencing judge determines whether someone is eligible for POM at the time of sentencing. Georgia Department of Community Supervision, “Probation Options Management” (POM) Program Assessment (on file with Human Rights Watch) (assessing effectiveness of POM program).

³⁰⁷ Ibid.

³⁰⁸ Applied Research Services, Inc., “An Evaluation of Georgia’s Probation Options Management Program: Executive Summary,” October 4, 2007, https://media.timesfreepress.com/docs/2009/07/POM_Executive_Summary_2007_0704.pdf.

³⁰⁹ Todd South, “Georgia New System Streamlines Probation Rules, Time,” *Times Free Press*, July 4, 2009, <https://www.timesfreepress.com/news/georgia/story/2009/jul/04/georgia-ew-system-streamlines-probation-rules-time/225876/>.

³¹⁰ Human Rights Watch interview with Hindi Kranzel, October 31, 2019; Human Rights Watch e-mail correspondence with Hindi Kranzel, March 17, 2020.

³¹¹ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 15.



Montgomery County, Pennsylvania Courthouse, October 2019. People in Montgomery County are nearly always detained pending revocation—and remain in custody for an average of 90 days before a hearing. © 2019 Allison Frankel/Human Rights Watch

Widespread Detention

Detention pending revocation proceedings is widespread across the United States.³¹² While some states limit officials' power to detain people who pose little risk of harm or flight,³¹³ in many jurisdictions where Human Rights Watch conducted research, supervision officers file detainers in nearly every revocation case, including for rule violations.³¹⁴

"Nobody walks in off the street for a probation violation hearing . . . no matter how minor, people get locked up," Dean Beer, the former chief of the Montgomery County, Pennsylvania, Public Defender

office explained.³¹⁵ The main exception appears to be charges for simple failure to pay, for

³¹² Wendy Sawyer, et al., "Technical Violations, Immigration Detainers, and Other Bad Reasons to Keep People in Jail," *Prison Policy Initiative*, March 18, 2020, <https://www.prisonpolicy.org/blog/2020/03/18/detainers/>; Andrew Cohen, "The Costs of Abusing Probationary Sentences," p. 766-67.

³¹³ PEW Charitable Trusts, "Policy Reforms Can Strengthen Community Supervision," p. 51; Minnesota R. Crim. P. 27.04 ("The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another."); 730 ILCS 5/5-6-4 (warrant permitted for supervision violations only "where there is danger of his fleeing the jurisdiction or causing serious harm to others or when the offender fails to answer a summons or notice from the clerk of the court or Sheriff"). Similar legislation is pending in states including New York: New York Senate Bill S1343 (2019-2020 Leg. Sess.), <https://www.nysenate.gov/legislation/bills/2019/s1343>.

³¹⁴ Human Rights Watch interview with Dean Beer, former chief public defender, Montgomery County, Pennsylvania, public defender, Norristown, Pennsylvania, October 31, 2019; Human Rights Watch telephone interview with Randy Kraft and Adam Plotkin, December 3, 2019; Human Rights Watch telephone interview with Jason Clark, defense attorney, Brunswick, Georgia, November 25, 2019; Human Rights Watch telephone interview with Beau Mullen, December 20, 2019; Samantha Melamed and Dylan Purcell, "Everyone is Detained," *The Philadelphia Inquirer*, December 27, 2019, <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-detainer-criminal-justice-system-20191227.html>; Maura Ewing, "How Minor Probation Violations Can Lead to Major Time," *The Atlantic*.

³¹⁵ Human Rights Watch interview with Dean Beer, October 31, 2019. Following our interview with Beer, in February 2019, Beer and deputy chief Keisha Hudson were abruptly fired. Their firing came soon after they filed a court brief exposing harmful bail practices in Pennsylvania. Samantha Melamed and Vinny Vella, "Montgomery County Has Fired its Two Top Public Defenders," *The Philadelphia Inquirer*, February 26, 2020, <https://www.inquirer.com/news/montgomery-county-public-defender-dean-beer-keisha-hudson-20200226.html>.

which people are generally at liberty pending revocation.³¹⁶ As explained in Section V, “Supervision is Feeding Mass Incarceration—The Numbers,” while data is limited, in some jurisdictions we studied, detainers account for a high proportion of local jail populations.

Some court officials we spoke to said detainers were justified to protect the public. “If [the violation is] so severe that we’re going to be recommending revocation,” Milwaukee Chief Supervision Officer Niel Thoreson said, “it doesn’t make sense to release them.”³²³ Other officials said that people cannot be trusted to return to court. “They’ve already demonstrated that they’re not complying with the terms [of release], and you know you’re

Supervision Holds in Wisconsin

In Wisconsin, supervision officers can put “holds” on people, similar to detainers, which can trigger arrest warrants and detention while officers investigate whether to pursue revocation.³¹⁷ This detention can last up to 15 business days.³¹⁸ During this period, people are not entitled to court-appointed lawyers—which are only appointed once a revocation petition is filed.³¹⁹

These kinds of holds are routine. In 2018, Wisconsin supervision officers ordered nearly 45,000 holds.³²⁰ On one day alone in April 2018, about 3,000 people were detained on holds in Wisconsin.³²¹ One third of all holds were for rule violations, not new offenses.³²²

³¹⁶ Human Rights Watch telephone interview with Dawn Sutphin, Delaware County, Pennsylvania, public defender, October 23, 2019; Human Rights Watch telephone interview with Wade Kruger, November 26, 2019. Georgia prohibits detainers in pure failure-to-pay cases. O.C.G.A. § 42-8-102(f)(2).

³¹⁷ Holds can also be used “for disciplinary purposes,” “[t]o prevent a possible violation,” and “[p]ending placement in a program as an alternative to revocation.” Wis. Admin. Code DOC 328.27(2); Cecelia Klingele, “Understanding Revocation from Community Supervision,” *Badger Institute*, 2019, <https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports-Documents/RevocationPDF.pdf>, p. 6; Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 12; Human Impact Partners, “Excessive Revocation in Wisconsin,” p. 31.

³¹⁸ Wis. Admin. Code DOC 328.27(3).

³¹⁹ Human Rights Watch interview with Brian Burke, November 18, 2019.

³²⁰ Alison Durr, “Probation Holds Clog Wisconsin Jails; Critics Say the Accused Suffer Without Due Process,” *Milwaukee Journal-Sentinel*, August 20, 2019, <https://www.jsonline.com/in-depth/news/local/milwaukee/2019/08/20/wisconsin-jails-probation-holds-seen-unfair-strain-defendants/1460376001/>.

³²¹ *Ibid.*

³²² *Ibid.*

³²³ Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

going to be pursuing revocation, what good is letting someone out on bond?” said Georgia DCS Commissioner Michael Nail.³²⁴

In many cases, the conduct for which people are detained pending revocation proceedings, such as missing meetings or using drugs, does not raise inherent safety or flight concerns. Even people accused of serious criminal conduct do not necessarily pose a flight risk, and, where those concerns are present, courts will likely detain people pending criminal proceedings in any case, making supervision detainers unnecessary.

Alternatives to Detention in Pennsylvania

Following reforms in Pennsylvania in 2012, some people charged with state parole rule violations, though not new offenses, are now detained in “Community Correction Centers”—akin to halfway houses, which allow people to work during the day and are generally closer to their communities—instead of jails.³²⁵

However, a range of conduct disqualifies people from accessing this reform,³²⁶ and the law does not apply to people serving county probation or parole—86 percent of Pennsylvania’s supervision population.³²⁷

³²⁴ Human Rights Watch telephone interview with Michael Nail, February 19, 2020; Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019 (“You never showed up, you never reported, you didn’t do anything you were supposed to do on probation. So why should I now think you’re gonna do something different, especially now that you have this felony arrest that’s open?”).

³²⁵ Pennsylvania Department of Corrections, “Act 122 Technical Parole Violator Placement Frequently Asked Questions (FAQs)”, <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/Act-122-of-2012-TPV-FAQs.aspx> (accessed May 21, 2020). Some people are also detained in “Community Correction Facilities,” which are privately-run. Ibid.

³²⁶ Ibid.; Pennsylvania Board of Probation and Parole, “Understanding the Technical Parole Violation Process in Pennsylvania,” December 2014, <https://www.oa.pa.gov/Services/Offenderunderparolesupervision/Violations/Documents/TPV%20Process%20December%202014.pdf>.

³²⁷ Pennsylvania Board of Probation and Parole, “County Adult Probation and Parole Annual Statistical Report,” 2018, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20CAPP%20Annual%20Statistical%20Report.pdf>, p. 1. See “Definitions and Terms” for an explanation of county and state parole.

Lengthy Confinement

People accused of supervision violations may spend anywhere from a few days, to a couple of weeks, to months or even years in jail pending revocation proceedings.³²⁸ In many of the places we visited, people spent long periods of time in custody before resolving the allegations, or even getting a hearing.

In Pennsylvania, there can be a substantial difference in total duration of confinement between people charged with probation rule violations and those charged with probation violations for new offenses: our analysis of data provided by Lehigh County, Pennsylvania, reveals that the former are incarcerated for a median of 23 days pending sentencing while the latter are locked up for a median of 57 days pending sentencing.³²⁹

³²⁸ People are typically detained pending revocation in local jails, but they may also be detained in state prisons or alternative facilities that are more akin to halfway houses. See, for example, 61 Pa.C.S. § 6138 (c)(1.3); (f); Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” May 2020, <https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf>, p. 32.

³²⁹ Human Rights Watch Analysis of Lehigh County, Pennsylvania Sheriff’s Department Data.

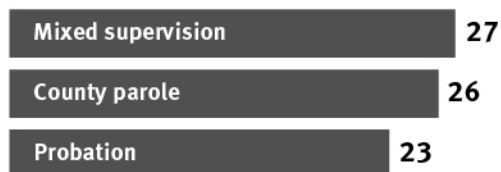
Median **Days in Jail** during Pre-Sentence **Detention**

Lehigh County, Pennsylvania, January 2016 – August 2019:

New offense violation

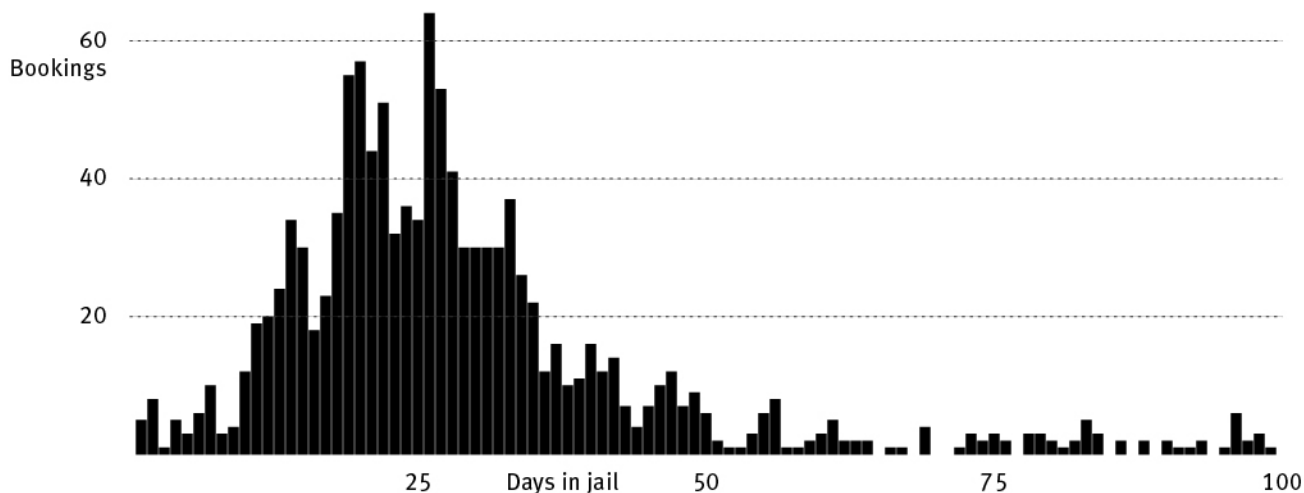


Rule violation



Source: Human Rights Watch analysis of Lehigh County Sheriff's Department data.

Pre-Sentence Detention for Parole Rule Violations in Lehigh County, Pennsylvania January 2016 – August 2019:



Note: This graph does not include outlier cases of more than 100 days.

Source: Human Rights Watch analysis of Lehigh County Sheriff's Department data.

Lengths of detention pending an initial hearing in Pennsylvania vary across the state. According to a *Philadelphia Inquirer* analysis, while Philadelphia County generally holds preliminary revocation hearings (discussed below in this section) within ten days of detention,³³⁰ people in nearby Montgomery County, Pennsylvania, and Dauphin County, which contains Harrisburg, regularly wait up to 90 days for their first hearing.³³¹

According to data provided to Human Rights Watch by the Wisconsin Department of Corrections, Wisconsin detained people pending investigation into alleged supervision violations for between five and 59 days more than 14,500 times between 2017 and 2019.³³² Public defenders and supervision officers told us that people often wait 30 to 45 days in

³³⁰ Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*.

³³¹ *Ibid.*

³³² Human Rights Watch Analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations (EBRV). The data did not break down detention into smaller increments of time.

jail before a hearing in Milwaukee; at least 70 days in parts of rural, northern Wisconsin; and 60 to 90 days in Dodge County, north of Milwaukee.³³³

Attorneys who regularly represent people facing revocation in Georgia told us that, in Chatham County, of which Savannah is a part, people wait between 45 and 90 days for a hearing.³³⁴ In Lowndes County, people facing felony revocation proceedings used to wait about 90 days for a hearing, but over the last three years, that has reduced to 30 to 45 days, a Lowndes County supervision officer said.³³⁵ The officer attributes this reduction to the fact that people are increasingly waiving their right to revocation hearings in exchange for set jail terms, usually of 30 to 90 days.³³⁶

Total detention periods can be particularly long for people facing both revocation and new criminal charges at the same time. A 2019 JFA Institute analysis of the Dane County, Wisconsin, jail, which contains Madison, revealed that people locked up on detainers spent an average of 44 days in jail, while those incarcerated on detainers and new charges spent an average of 97 days in jail.³³⁷ A *Philadelphia Inquirer* analysis found that people facing revocation and new charges in Philadelphia are detained for an average of 145 days pending resolution of both cases.³³⁸ Further, according to data made public by the First Judicial District of Pennsylvania, in May 2020, 54 percent of people who had spent more than a year in Philadelphia's jails were there due to detainers; 46 percent of them were also facing new charges, while 8 percent were held solely on the detainer.³³⁹

³³³ Human Rights Watch telephone interview with Adam Plotkin and Randy Kraft, December 3, 2019; Human Rights Watch telephone interview with [name withheld], supervision officer, Milwaukee, Wisconsin, June 17, 2020; Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

³³⁴ Human Rights Watch interview with Scott Robichaux, December 9, 2019 (estimating wait times of 60 to 90 days); Human Rights Watch telephone interview with Michael Nail, February 19, 2020 (estimating wait times of 45 to 60 days).

³³⁵ Human Rights Watch telephone interview with Danielle Paskin, March 10, 2020.

³³⁶ Ibid.

³³⁷ James Austin, et al., "Analysis of the Dane County Jail Population," The JFA Institute, August 2019, <https://cjc.countyofdane.com/documents/Analysis-of-the-Dane-County-Jail-Population-JFA-Institute.pdf>, Table 4 (CO Pretrial/Prob Hold: average stay of 97.3 days; P/P Violation (Hold): Average stay of 43.7 days).

³³⁸ Samantha Melamed and Dylan Purcell, "Everyone is Detained," *The Philadelphia Inquirer*.

³³⁹ Another 6 percent of people were sentenced and also had a detainer; such individuals are not counted in the data provided above. First Judicial District of Pennsylvania, Department of Research and Development, "Philadelphia Jail Population Report July 2015-May 2020," May 2020, <https://www.phila.gov/media/20200617162954/Full-Public-Jail-Report-May-2020.pdf>, p. 19.

Public defenders explained that these individuals are stuck in a catch-22.³⁴⁰ Because authorities generally do not release people pending resolution of their supervision violation (see below), they remain detained while their criminal case is pending. But admitting to the violation, and potentially getting out of jail, puts them in a poor position to challenge the criminal case. Resolving the criminal case first, however, generally takes longer, meaning more time in jail. The result is often months in detention as lawyers try to coordinate a joint resolution of the revocation and criminal proceedings.

For instance, when we met Darius Hill (pseudonym) at the Chatham County, Georgia, jail in December 2019, he had already been incarcerated for over ten months. Hill’s lawyer was trying to coordinate a resolution to his revocation and criminal charges for shoplifting—the latest in a string of arrests Hill said are related to his mental health conditions and lack of support services. When we spoke to Hill, his next court hearing was not for another three months.³⁴¹

Court and supervision officials generally blamed lengthy detention on overburdened court calendars and under-resourced staff, and expressed concern about these lengthy detention periods.³⁴²

Once detained, people have little opportunity to seek release. As discussed in “Definitions and Terms,” people generally have the right to a prompt preliminary revocation hearing, where, in addition to challenging whether probable cause exists for the supervision violation, people can also challenge their pre-revocation detention.³⁴³ Some jurisdictions require these hearings to be held within set time periods, such as within a few days or

³⁴⁰ Human Rights Watch telephone interview with Chris Tallarico, public defender, Lancaster County, Pennsylvania, October 2, 2019; Human Rights Watch telephone interview with James Yancey, December 5, 2019; Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 776-71.

³⁴¹ Human Rights Watch interview with Darius Hill (pseudonym), Savannah, Georgia, December 12, 2019.

³⁴² Human Rights Watch telephone interview with Michael Nail, February 19, 2020; Human Rights Watch telephone interview with Randy Kraft and Adam Plotkin, December 3, 2019; Human Rights Watch telephone interview with Dean Beer, October 15, 2019; Human Rights Watch telephone interview with Danielle Paskin, March 10, 2020; Human Rights Watch telephone interview with Marc Alstatt, March 9, 2020.

³⁴³ *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); Wisconsin DOC 331.05(1), (7) (detention based on consideration of whether the individual is believed to be “dangerous;” whether they are likely to flee, commit crimes, or violate their conditions of supervision; and whether they face a lengthy sentence upon revocation); O.C.G.A. § 42-9-50(h); Pennsylvania Department of Corrections & Pennsylvania Board of Probation and Parole, “Parole Handbook,” p. 24. However, some places, such as Georgia, do not provide preliminary hearings in probation revocation cases. *McElroy v. State*, 247 Ga. 355 (Ga. 1981).

weeks of detention, while others simply require them to be held in a “reasonable” time.³⁴⁴ Yet in many places, few of these hearings occur at all.³⁴⁵

We found this to be the case in our focus states. For example, of the nearly 9,000 preliminary state parole violation hearings scheduled in Pennsylvania between 2016 and 2019, 78 percent were waived, according to data provided to Human Rights Watch by the Pennsylvania Department of Probation and Parole (PBPP).³⁴⁶ According to a *Philadelphia Inquirer* analysis, 95 percent of people in Montgomery County, Pennsylvania, waived their preliminary probation violation hearings from 2017 to 2019—similar to rates of guilty pleas in criminal cases.³⁴⁷ Correctional officials in Wisconsin and Georgia told us that hardly anybody has preliminary hearings.³⁴⁸

Multiple factors contribute to the low number of preliminary hearings. For instance, in Wisconsin and Georgia, if an individual admits that they violated their supervision conditions, whether by breaking a rule or committing a new crime, they do not have the right to a preliminary hearing.³⁴⁹ Further, in states including Pennsylvania, Wisconsin, and Georgia, if a person is facing both revocation for a new offense and criminal charges for

³⁴⁴ 37 Pa. Code 71.2, 71.4 (preliminary hearing required within 14 days for rule violation and 30 days for new offense violation; final hearing required held within 120 days of preliminary hearing for rule violation and within 120 days of resolution of criminal case); Pa. R. Crim. P. 708(B) (probation revocation proceeding required “as speedily as possible”); Wis. Stat. § 302.335, Wis. Admin. Code HA 2.05(4) (preliminary hearing required within 15 days of detention and final hearing required within 50 days of detention, but both deadlines can be extended for cause); O.C.G.A. § 42-9-50(b) (preliminary hearing for parole violation required within “reasonable time” after arrest). Other states have stricter requirements. *See* Miss. Code Ann. § 47-7-37(3) (informal preliminary hearing required within 72 hours; final hearing required within 21 days; individual must be released and returned to probation if hearing not held within time period).

³⁴⁵ Cody Warner, “The Waiting Game.”

³⁴⁶ Human Rights Watch Analysis of Data Provided by Pennsylvania Board of Probation and Parole.

³⁴⁷ Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*; National Association of Criminal Defense Lawyers, “The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save it,” August 7, 2018, <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>.

³⁴⁸ Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch e-mail correspondence with Solicitor-General Justo Cabral, March 18, 2020 (on file with Human Rights Watch); Human Rights Watch interview with Todd Martin, December 12, 2019; Human Rights Watch telephone interview with [name withheld], supervision officer, Milwaukee, Wisconsin, June 17, 2020. Under Georgia law, while people on parole have a statutory right to a preliminary hearing (see O.C.G.A. § 42-9-50), those on probation there have no right to a preliminary hearing, *see McElroy v. State*, 247 Ga. 355 (Georgia 1981); O.C.G.A. § 42-8-38(b).

³⁴⁹ Wis. Stat. § 302.335(2)(a); Wis. Admin. Code 331.05; O.C.G.A. § 42-9-50(a); Georgia Board of Pardons and Paroles, “Parole Violations & Revocations,” <https://pap.georgia.gov/parole-violations-revocations> (as discussed in note 348, above, those on probation in Georgia have no right to a preliminary hearing in any case). For reasons discussed below, many people admit to some allegation. Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

that conduct, a probable cause finding in the criminal case automatically negates the individual's right to a preliminary hearing in the revocation proceeding.³⁵⁰

Officials justify the policies described above on the grounds that, if someone admits to violating their supervision rules or a court finds probable cause of a crime, probable cause is established for the alleged violations. Yet preliminary hearings serve also to determine whether—regardless of probable cause—there is sufficient justification to hold the individual pending a final revocation hearing rather than allow them to be out of custody during this period.³⁵¹ For instance, even if there is probable cause to believe that an individual violated their supervision by using drugs or missing a meeting, evidence might show they pose no demonstrable risk of committing harm or fleeing the jurisdiction, or that other factors, such as health issues that would be aggravated by incarceration or childcare obligations, counsel against incarceration. Such policies leave individuals in the position of having no formal mechanism to challenge their sometimes months or more of incarceration before their final revocation hearing.

Further, lengthy detention often pushes people to waive their preliminary hearing rights. Public defenders told us that, after spending weeks or months in jail, many people waive their right to a preliminary hearing in exchange for either a shorter sentence or release with time served.³⁵² Others proceed right to a final revocation hearing at their first court appearance, rather than risk losing a preliminary hearing and spending months more in jail awaiting a final hearing date.³⁵³ Indeed, according to a *Philadelphia Inquirer* analysis, people who lost their preliminary hearings in Montgomery County, Pennsylvania, spent about two more months in jail than those who waived those hearings.³⁵⁴

Preliminary hearings are also tough to win, especially if the person is incarcerated, in part because there is little opportunity obtain evidence and factfinders often defer to the

³⁵⁰ Ibid.; *Commonwealth v. Del Conte*, 277 Pa. Super. 296, 298 n. 2 (Pennsylvania Sup. Ct. 1979). However, the Pennsylvania Supreme Court does not appear to have ruled on this issue. For an analysis of state laws limiting access to preliminary revocation hearings, see Cody Warner, “The Waiting Game.”

³⁵¹ See “Definitions and Terms.”

³⁵² Human Rights Watch interview with Todd Martin, December 12, 2019; Human Rights Watch interview with Brian Burke, November 18, 2019; Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*.

³⁵³ Human Rights Watch interview with Todd Martin, December 12, 2019; Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*.

³⁵⁴ Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*.

supervision officer.³⁵⁵ According to data provided to Human Rights Watch, of the 1,175 Pennsylvania state parole violation preliminary hearings that were held between 2016 and 2019, the PBPP found “no probable cause” for revocation in a mere 42 hearings—just .04 percent of the cases.³⁵⁶ A *Philadelphia Inquirer* analysis of probation violation preliminary hearings in Philadelphia revealed that court officials lifted detainers, allowing people to remain out of custody pending their final hearing, in about 12 percent of cases.³⁵⁷ Further, of more than 100 such hearings observed by a reporter, the officials found probable cause in every single case.³⁵⁸

In addition to preliminary hearings, in some states, including Georgia, people can petition for release pending revocation proceedings on a “probation bond”—similar to bail pending trial in criminal cases. However, while use of probation bonds in the state is increasing somewhat, it remains the exception, Georgia public defenders said.³⁵⁹

Release Coordinators

In 2017, the Lowndes County, Georgia, state court, which oversees misdemeanor probation, hired a release services coordinator to reduce pre-revocation detention. The coordinator visits the jail to determine who is locked up on a detainer, and expeditiously schedules their hearing.³⁶⁰ Lowndes County Judge John Edwards said this effort reduced jail time by a total of 36,815 days in 2019.³⁶¹ Yet some local practitioners still report lengthy pre-revocation detention—on average, 45 days.³⁶²

³⁵⁵ Ibid.; Human Rights Watch interview with Brian Burke, November 18, 2019.

³⁵⁶ Human Rights Watch Analysis of Pennsylvania Board of Probation and Parole Data.

³⁵⁷ Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *Philadelphia Inquirer*. In Philadelphia, preliminary hearings are overseen by courthouse officials known as “trial commissioners,” who are not judges and are typically not lawyers. Ibid.

³⁵⁸ Ibid.

³⁵⁹ Human Rights Watch interview with Todd Martin, December 12, 2019; Human Rights Watch interview with Michael Edwards, December 12, 2019. State law also imposes some limits on probation bonds. O.C.G.A. § 17-10-1(a)(B).

³⁶⁰ Human Rights Watch interview with Judge John Edwards, December 10, 2019, Valdosta, Georgia; Human Rights Watch e-mail correspondence with Judge John Edwards, January 28, 2020.

³⁶¹ Human Rights Watch e-mail correspondence with Judge John Edwards, January 28, 2020.

³⁶² Human Rights Watch telephone interview with Beau Mullen, December 20, 2019.

Harmful Conditions and Consequences

Detention causes profound harm to the individual in confinement, their family, and their community. Even a few days in jail can mean stigma; lost jobs; missed time and estranged relations with loved ones; disrupted access to health care, education, services, and public benefits; loss of child custody or visitation; harm to children and others for whom the detained person is a caregiver; housing instability; harms to mental health; and exposure to violence, abuse and illness behind bars.³⁶³ Incarceration also creates ripple effects, weakening entire communities.³⁶⁴

“It may sound like it’s just one or two days in jail. But one or two days in jail for an individual, that can take away everything they have accomplished so far,” said Georgia Department of Community Supervision Commissioner Michael Nail.³⁶⁵ As discussed above, many people are detained for far longer.

People facing violation proceedings are also often detained in jails and prisons in overcrowded conditions, with inadequate health care. As discussed above, the 2020 Covid-19 pandemic has made abundantly clear the high risk of infectious disease outbreaks in jails and prisons due to conditions of confinement that include general lack of adequate sanitation and hygiene, co-sharing of facilities, inability to implement strict “social distancing,” and lack of adequate medical care. This is particularly problematic given high rates of underlying chronic disease among incarcerated people and an older population in prison especially susceptible to severe disease and death.³⁶⁶

³⁶³ See, for example, P.R. Lockhart, “America is Finally Being Exposed to the Devastating Reality of Prison Violence,” *Vox*, April 5, 2019, <https://www.vox.com/policy-and-politics/2019/4/5/18297326/prison-violence-ohio-alabama-justice-department-lawsuit>; Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 132; Health Impact Partners, “Excessive Revocations,” p. 41, 126-27; Alexander Holsinger, “Researching Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes,” *Crime and Justice Institute*, June 2016, http://www.crj.org/assets/2017/07/13_bond_supervision_report_R3.pdf; Craig Haney, U.S. Department of Health & Human Services, “From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities,” December 2001, <https://aspe.hhs.gov/basic-report/psychological-impact-incarceration-implications-post-prison-adjustment#II>; see also E. Ann Carson, “Mortality in Local Jails, 2001-2016 – Statistical Tables,” February 2020, <https://www.bjs.gov/content/pub/pdf/mljoo16st.pdf> (from 2006 to 2016, suicide was the leading single cause of death in local jails each year, accounting for one third of jail deaths in 2016).

³⁶⁴ Emily Von Hoffmann, “How Incarceration Infects a Community,” *The Atlantic*, March 6, 2015, <https://www.theatlantic.com/health/archive/2015/03/how-incarceration-infects-a-community/385967/>; Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 132.

³⁶⁵ Human Rights Watch telephone interview with Michael Nail, February 19, 2020.

³⁶⁶ Human Rights Watch, *Averting an Imminent Catastrophe: Recommendations to US State and Federal Officials on Response to COVID-19 in US Jails and Prisons*, April 29, 2020, <https://www.hrw.org/news/2020/04/29/averting-imminent>

Some of these conditions can rise to the level of being cruel and inhumane.³⁶⁷ In 2001, Wisconsin opened the Milwaukee Secure Detention Facility (MSDF)—the nation’s first correctional facility built exclusively for people who violate their supervision conditions.³⁶⁸ As pictured below, from the outside MSDF appears nondescript. But people are confined in a building within the building—one that allows no direct sunlight.³⁶⁹

“There’s no sunlight . . . There’s no fresh air. Your lips are dry, your mouth is dry,” said Aaron Alexander, who had been incarcerated at MSDF for ten months when we spoke to him there in November 2019.³⁷⁰ “You can’t see outside, smell outside, even know what it

catastrophe-recommendations-us-local-state-and-federal-officials; Udi Ofer and Lucia Tian, “New Model Shows Reducing Jail Population Will Lower Covid-19 Death Toll for All of Us,” *American Civil Liberties Union*, April 22, 2020, <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>.

³⁶⁷ Under international human rights law, conditions including abuse by correctional officials, prolonged solitary confinement, and failure to investigate allegations of cruel, inhuman, or degrading treatment can constitute cruel and inhumane treatment. UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), A/RES/70/175, Rules 1, 43, 57. In addition to the correctional facilities discussed in this report, journalists and advocacy organizations have documented cruel and inhumane conditions in jails and prisons throughout the US. Matt Ford, “The Everyday Brutality of America’s Prisons,” *The New Republic*, April 5, 2019, <https://newrepublic.com/article/153473/everyday-brutality-americas-prisons> (“The accounts are stomach-churning: The New York Times noted that one prisoner had been lying dead for so long that ‘his face was flattened,’ while another ‘was tied up and tortured for two days.’ . . . One prisoner was doused with bleach and beaten with a broken mop handle. Another was attacked with shaving cream so hot that it caused chemical burns, requiring treatment from an outside hospital”); Jennifer Lackey, “The Measure of a country is How it Treats its Prisoners. The U.S. is Failing,” *Washington Post*, February 6, 2019, https://www.washingtonpost.com/opinions/the-measure-of-a-country-is-how-it-treats-its-prisoners-the-us-is-failing/2019/02/06/8df29acc-2a1c-11e9-984d-9b8fba003e81_story.html (describing extreme heat and cold in correctional facilities; prolonged solitary confinement; sexual harassment and assaults by correctional officers; and other abuses in US jails and prisons); Ruth Delaney, et al., “Examining Prisons Today,” *Vera Institute for Justice*, September 2018, <https://www.vera.org/reimagining-prison-web-report/examining-prisons-today> (“People on the outside can’t see the ‘spoiled food, severe overcrowding, indifference to inmate grievances’ that the men inside have been enduring”); Jason Pohl, “California’s Jails Are in a Deadly Crisis. Here’s How Experts Suggest Fixing Them,” *ProPublica*, January 6, 2020, <https://www.propublica.org/article/californias-jails-are-in-a-deadly-crisis-heres-how-experts-suggest-fixing-them>; (describing unchecked violence, prolonged solitary confinement of people with mental health conditions, and other dangerous conditions in California’s jails); John Seewer, “Inmates Sue Over What They Call Inhumane Conditions at Jail,” *Associated Press*, April 24, 2019, <https://apnews.com/6995620a208245a9a629dbff5ffdd2eb> (discussing allegations of inadequate healthcare, unsanitary conditions, and overcrowding at an Ohio jail); Rosie Blunt, “Rikers Island: Tales From Inside New York’s Notorious Jail,” *BBC News*, October 20, 2019, <https://www.bbc.com/news/world-us-canada-50114468> (describing violence and other inhumane conditions at New York City jail); Human Rights Watch, *Callous and Cruel: Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons*, (New York: Human Rights Watch, 2015) <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>.

³⁶⁸ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 15; Correctional News, “On the Rise,” December 9, 2005, <http://correctionalnews.com/2005/12/09/on-the-rise/>. MSDF also holds people participating in court-ordered treatment programs and serving jail sentences following violation proceedings. *Ibid*.

³⁶⁹ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17; Human Rights Watch observations, November 20, 2019; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Brother RiceBey, Milwaukee, Wisconsin, November 19, 2019.

³⁷⁰ Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019.

looks like outside,” said Romelo Booker, who had been detained at MSDF for seven months when we met him in November 2019.³⁷¹

While MSDF is classified as a medium-security facility, conditions largely mirror maximum-security prisons.³⁷² People detained there are locked in their cells for twenty hours or more a day.³⁷³ There is no access to the outdoors.³⁷⁴ No in-person visits are permitted—only visits via televisit, a form of video conferencing, are allowed.³⁷⁵

And MSDF is overcrowded. The facility routinely crowds three people into 11-by-13-foot cells built for one, with two people in beds and the third in what is commonly referred to by people held in the facility and prison staff as a “boat”—a thin mattress on the ground where people sleep with their head inches from the toilet.³⁷⁶



The Milwaukee Secure Detention Facility (MSDF) in Milwaukee, Wisconsin, November 2019. People are detained in a building within this building—one that allows in no natural light. © 2019 Allison Frankel/Human Rights Watch

³⁷¹ Human Rights Watch interview with Romelo Booker, November 20, 2019.

³⁷² Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020; Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019.

³⁷³ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17; Barbara J. Miner, “To Treat Milwaukee’s Trauma, Stop Traumatizing People: Close Secure Detention Facility,” *Milwaukee Journal Sentinel*, July 13, 2018, <https://www.jsonline.com/story/opinion/contributors/2018/07/13/milwaukee-secure-detention-facility-should-shut-down/776114002/>; Latoya Dennis, “Group Pushes for Milwaukee Secure detention Facility Closure,” *WUWM*, June 30, 2017, <https://www.wuwm.com/post/group-pushes-milwaukee-secure-detention-facility-closure#stream/o>.

³⁷⁴ Ibid.

³⁷⁵ Ibid.; “MSDF Visitation,” Wisconsin Department of Corrections, <https://doc.wi.gov/Documents/OffenderInformation/AdultInstitutions/MSDFVisitingInformationEnglish.pdf>.

³⁷⁶ Evan Casey, “Temperatures Heating Up at the Milwaukee Secure Detention Facility,” *Shepherd Express*, July 19, 2018, <https://shepherdexpress.com/news/happening-now/temperatures-heating-up-at-the-milwaukee-secure-detention-fa/#/questions/>; Isiah Holmes, “‘Close MSDF!’ Protestors Declare,” *Wisconsin Examiner*, April 26, 2019, <https://urbanmilwaukee.com/2019/04/26/close-msdf-protestors-declare/>; Human Rights Watch interview with Mark Rice,

“MSDF is a human rights disaster,” concluded Mark Rice, an advocate for supervision reform who spent six months at MSDF, including weeks in a “boat,” waiting for his revocation hearing for dismissed disorderly conduct charges that he attributes to his schizophrenia.³⁷⁷ Rice said he was given so much medication at MSDF that he was “sick and sleeping all day,” while he saw others being denied access to medication, he said.³⁷⁸ MSDF’s conditions have been blamed for some of the facility’s reported 17 in-custody deaths since it opened in 2001.³⁷⁹

We also documented inhumane conditions at George W. Hill Correctional Facility (also called DelCo Prison) in Delaware County, Pennsylvania.³⁸⁰ George W. Hill is Pennsylvania’s only private jail,³⁸¹ and many people held there are facing revocation.³⁸²

A correctional officer, who spoke with us under conditions of anonymity, said there was rampant overcrowding—including the use of “boats” on the floor to squeeze more people into cells—as well as unsanitary conditions and lack of training for staff.³⁸³ Further, media reports described racial discrimination by management against Black correctional officers, such as the use of racial slurs against non-white employees and targeting Black officers for extra work assignments.³⁸⁴ Others formerly detained at George W. Hill have made similar

November 18, 2019; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Lavelle Jackson, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Brother RiceBey, November 19, 2019.

³⁷⁷ Rethinking Justice and Incarceration Panel, Mark Rice, November 19, 2019.

³⁷⁸ Human Rights Watch Interview with Mark Rice, November 18, 2020.

³⁷⁹ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17.

³⁸⁰ Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch]; Human Rights Watch interview with Robert Thurgood, October 31, 2019; Human Rights telephone interview with Mark Davis (pseudonym), April 14, 2020.

³⁸¹ Due to concerns of mismanagement and poor conditions, as of March 2020, Delaware County is shifting George W. Hill Correctional Facility from private to public management. Robert Moran and Vinny Vella, “Private Contractor Offers to End Running Delco Prison,” *The Philadelphia Inquirer*, March 10, 2020, <https://www.inquirer.com/news/delaware-county-george-hill-prison-geo-group-contract-20200311.html>; Kathleen E. Carey, “Council Takes First Steps to Deprivatize Prison,” *DelCo Times*, February 6, 2020, https://www.delcotimes.com/news/local/council-takes-first-steps-to-deprivatize-prison/article_70c7124a-4850-11ea-ad22-3f9131fc60f4.html.

³⁸² Alexander Lekhtman, “Why Private Prisons are at the Center of a Pennsylvania Prosecutor Race,” *Filter Mag*, November 4, 2019, <https://filtermag.org/delco-private-jail/>; Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch].

³⁸³ Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch].

³⁸⁴ Vinny Vella, et al., “Boss of Delaware County’s Private Jail Accused of Racism, Abuse of Power,” *The Philadelphia Inquirer*, November 8, 2019, <https://www.inquirer.com/news/george-hill-jail-john-reilly-delaware-county-pennsylvania-n-word-geo-group-20191108.html>; Vinny Vella, “Delaware County Prison Chief to Retire After Inquirer Investigation into Allegations of

claims, as well as allegations of violence by officers, including in lawsuits.³⁸⁵

The overcrowding is particularly severe in the jail's intake cell, where people are detained until their cellblock is assigned. At times more than 50 people are housed in the cell.³⁸⁶ On the day we spoke with the officer, in November 2019, the officer said there were 59 people held in it.³⁸⁷ In the cell, people must sleep on the floor.³⁸⁸ There are no toilets.³⁸⁹ Correctional officers sometimes deny peoples' requests to use a bathroom, leaving them to urinate on themselves or into milk cartons.³⁹⁰ Because the jail is so overcrowded, people may remain in intake for a week.³⁹¹

Robert Thurgood, who was incarcerated at the facility pending revocation for driving under the influence and drug charges, said, "I don't know what hell is, but I know hell is a bad place and that's how I label DelCo Prison."³⁹²

Since 2002, 15 people held at George W. Hill have died, at least three of them from suicide.³⁹³ In 2015, Janene Wallace—a 35-year-old woman who had been diagnosed with

Racism," *The Philadelphia Inquirer*, November 11, 2019, <https://www.inquirer.com/news/pennsylvania/john-reilly-george-w-hill-prison-delaware-county-20191111.html>.

³⁸⁵ Delaware County Prison Coalition, "Our Stories," <https://delcocpr.org/our-stories>; Vinny Vella, et al., "Boss of Delaware County's Private Jail Accused of Racism, Abuse of Power," *The Philadelphia Inquirer*; Dana Bate, "Better Prison Oversight Overdue, Delco Dems Say, as Superintendent Faces Accusations of Misconduct," *WHYY*, November 8, 2019, <https://whyy.org/articles/better-prison-oversight-overdue-delco-dems-say-as-superintendent-faces-accusations-of-misconduct/>; Nicholas Malfitano, "Former Delco Prisoner Says Corrections Guard, a Former Boxer, Beat him While in Custody," *Pennsylvania Record*, January 24, 2019, <https://pennrecord.com/stories/511733234-former-delco-prisoner-says-corrections-guard-a-former-boxer-beat-him-while-in-custody>; Memorandum Opinion, *Brandon v. George W. Hill Correctional Facility*, et al., No. 18-4852 (E.D. Pa. December 18, 2018), <https://cases.justia.com/federal/district-courts/pennsylvania/paedce/2:2018cv04852/549401/6/o.pdf?ts=1545302874>; (pro se complaint alleging overcrowding and unsanitary conditions, dismissed due to pleading errors); Opinion, *McClorin v. George W. Hill Correctional Facility*, No. 18-1464 (E.D. Pa April 18, 2018), <https://casetext.com/case/mcclorin-v-george-w-hill-corr-facility> (similar); Human Rights Watch interview with Robert Thurgood, October 31, 2019; Human Rights Watch telephone interview with Mark Davis (pseudonym), April 14, 2020; Human Rights Watch telephone interview with Sophia Brown (pseudonym), May 27, 2020.

³⁸⁶ Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch]; Human Rights Watch interview with Robert Thurgood, October 31, 2019.

³⁸⁷ Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch].

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Ibid.

³⁹² Human Rights Watch interview with Robert Thurgood, October 31, 2019.

³⁹³ Vinny Vella, "Jailed Security Guard Hangs Himself on Christmas Day Just Hours Before 5 Inmates Overdose," *The Philadelphia Inquirer*, December 30, 2019, <https://www.inquirer.com/news/austin-mulhern-suicide-george-w-hill-jail->

depression and paranoia and was being detained pending revocation—hanged herself after spending 52 days in solitary confinement.³⁹⁴ According to a lawsuit, which the jail settled for \$7 million, the day Wallace took her life, a guard had called her a “dirty bitch” and told her to go kill herself.³⁹⁵

In 2016, the Chatham County, Georgia, jail—where many people await revocation hearings—hired a jail monitor to scrutinize the facility’s healthcare services following the deaths of seven people, including at least five by suicide, over a period of 30 months.³⁹⁶ The monitor uncovered inadequate mental health services, such as failure to provide medications and the absence of policies on support for people with suicidal ideations.³⁹⁷ Journalists have also reported allegations of sexual harassment and assault by correctional officers and under-staffing at the jail.³⁹⁸

Coercive Pleas

I can’t count the number of times I had client conversations saying ‘yes [I could contest revocation] but I have to get out of here.’

—Michael Edwards, former Chatham County, Georgia, Chief Public Defender

In the states where we conducted research, few people contest revocation. In Pennsylvania between 2016 and 2019, more than 12,200 final state parole revocation hearings were scheduled. Yet people waived those hearings in 78 percent of the cases.³⁹⁹ Another 11

delaware-county-20191230.html; Kathleen Carey, “Suicide, Fatal OD Add to Delco Prison Woes,” *DelCo Times*, January 1, 2020, https://www.delcotimes.com/news/local/suicide-fatal-od-add-to-delco-prison-woes/article_46bo81do-2bf4-11ea-959b-d3eeee1d363d.html.

³⁹⁴ Kathleen Carey, “Family of Prison Suicide Victim Asks County for Better Oversight,” *Delco Times*, November 29, 2017, https://www.delcotimes.com/news/family-of-prison-suicide-victim-asks-county-for-better-oversight/article_2ce11485-5e6f-51c3-abe2-a869coa722d2.html; David Gambacorta, “\$7 Million Settlement over Delco Inmate’s Suicide,” *The Philadelphia Inquirer*, November 9, 2017, <https://www.inquirer.com/philly/news/george-hill-inmate-suicide-lawsuit-7-million-settlement-geo-group-20171109.html>.

³⁹⁵ Ibid.

³⁹⁶ Ned Parker, et al., “Death and Politics Roil a Georgia Jail,” *Reuters*, September 4, 2019, <https://www.reuters.com/investigates/special-report/usa-jails-monitor/>.

³⁹⁷ Ibid.

³⁹⁸ Ibid.; Kelly Quimby, “Vacancies, Overtime, Assaults Plague Chatham County Sheriff’s Department, Jail,” *Savannah Now*, June 10, 2017, <https://www.savannahnow.com/crime-courts/news/2017-06-10/vacancies-overtime-assaults-plague-chatham-county-sheriff-s-department>; WTOC Staff, “Chatham County Correctional Officer Arrested, Charged with Sexual Assault of an Inmate,” *WTOC*, February 18, 2020, <https://www.wtoc.com/2020/02/18/chatham-county-correctional-officer-charged-with-sexual-assault-an-inmate/>.

³⁹⁹ Human Rights Watch Analysis of Pennsylvania Department of Probation and Parole Data.

percent of final hearings were re-scheduled.⁴⁰⁰ Less than 1 percent of those hearings were actually held.⁴⁰¹ In Lowndes County, Georgia, the solicitor-general estimated that 95 percent of probation revocation proceedings end with the person admitting to the violation.⁴⁰²

Jail itself is a coercive environment. Away from loved ones, at risk of losing jobs and housing, and subject to dangerous conditions, people face immense pressure to get out as quickly as possible.⁴⁰³ Since fighting revocation almost always means more time in jail, people often admit to the violations.⁴⁰⁴

In Wisconsin and parts of Georgia, supervision officers also blatantly pressure people to waive their rights. Supervision officers in these jurisdictions routinely approach people while they are incarcerated, without an attorney present—in some cases before counsel has even been appointed and other times before they have had the chance to speak with their lawyer.⁴⁰⁵ The officers tell people that they can contest the allegations at a revocation hearing and risk years in prison, or take a deal where they admit to the violations, waive their hearing rights, and receive a more lenient punishment—often a few months in jail, a treatment program, or even time served.⁴⁰⁶ Many people jump at the chance to get out of jail.⁴⁰⁷

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Human Rights Watch interview with Justo Cabral, December 11, 2019.

⁴⁰³ Vera Institute of Justice, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention,” April 2019, <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>, pp. 2-6; Somil Trivedi, “Coercive Plea Bargaining has Poisoned the Criminal Justice System. It’s Time to Suck the Venom Out,” *American Civil Liberties Union*, January 13, 2020, <https://www.aclu.org/news/criminal-law-reform/coercive-plea-bargaining-has-poisoned-the-criminal-justice-system-its-time-to-suck-the-venom-out/>; John Raphling, “Plead Guilty, Go Home. Plead Not Guilty, Stay in Jail,” *Los Angeles Times*.

⁴⁰⁴ Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 767-70.

⁴⁰⁵ Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch telephone interview with Wade Kruger, November 26, 2019; Human Rights Watch interview with Scott Robichaux, December 9, 2019; Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

⁴⁰⁶ Ibid. For instance, a standard offer in Wisconsin is 60 to 90 days in jail or in an incarceration-based treatment program; in Lowndes County, Georgia, it is 14, 30, or 90 days in jail. Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020.

⁴⁰⁷ Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch telephone interview with Wade Kruger, November 26, 2019; Human Rights Watch interview with Scott Robichaux, December 9, 2019.

Coercive pleas are not unique to the supervision violation process. Throughout the criminal legal system, prosecutors leverage pre-trial detention and the threat of severe sentences to induce pleas.⁴⁰⁸ But in criminal cases, the accused at least in theory are supposed to have more access to competent legal counsel, who can advise them on plea deals and other matters. “Many clients suffer from mental [health conditions], have substance abuse problems or are poorly educated. They simply are at a tremendous disadvantage making a decision that can send them back to prison—often for years,” said Milwaukee Chief Public Defender Tom Reed.⁴⁰⁹ People facing criminal charges are also more likely to remain at liberty while their charges are pending than those facing revocation.⁴¹⁰

Required Confessions in Wisconsin

In Wisconsin, supervision officers mandate confessions. When someone is detained pending revocation, a supervision officer approaches them—in jail, without a lawyer present—and requests a statement describing what happened.⁴¹¹ The officer must warn the individual that the statement cannot be used against them in a criminal case, as opposed to the revocation proceeding.⁴¹² These statements are not optional in any meaningful sense: refusing to provide a statement is itself grounds for revocation.⁴¹³ Because anything a person says in the statement can be used against them during their revocation hearing, the statements can relieve the government of its

⁴⁰⁸ Human Rights Watch, *Not In It For Justice*; Human Rights Watch, *An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty*, (New York: Human Rights Watch, 2013), <https://www.hrw.org/report/2013/12/05/offer-you-cant-refuse/how-us-federal-prosecutors-force-drug-defendants-plead>.

⁴⁰⁹ Human Rights Watch e-mail correspondence with Tom Reed, March 19, 2020 (on file with Human Rights Watch).

⁴¹⁰ Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer*; Thomas H. Cohen and Brian A. Reaves, “State Court Processing Statistics, 1990-2004,” *Bureau of Justice Statistics*, Pretrial Release of Felony Defendants in State Court,” November 2007, <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.

⁴¹¹ Human Rights Watch telephone interview with Randy Kraft and Adam Plotkin, December 3, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

⁴¹² *State v. Evans*, 77 Wis. 2d 225, 235 (Wis. 1977). For further analysis of the protection against self-incrimination in revocation proceedings, see Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation,” p. 145-53.

⁴¹³ *State v. Evans*, 77 Wis. 2d 225, 228 (Wis. 1977); State of Wisconsin, “Resource Handbook for Community Supervision Revocation Hearings,” p. 21.

burden of proving the allegations.⁴¹⁴ And admitting in the statement to any conduct that violates supervision means the individual automatically forfeits their right to a preliminary hearing.⁴¹⁵ “It’s really on us to try to get them to admit to some type of violation, not mattering how low level it is,” to avoid holding a preliminary hearing, explained a Dodge County, Wisconsin, supervision officer.⁴¹⁶

Costs of Fighting Charges

Willie White, whose case is discussed in the “Background” section above, is one of the rare people in Georgia who is challenging revocation. At the time we met with him, White was facing probation revocation for possessing marijuana and a pill that police claim tested positive for the synthetic drug “Flakka” in a field test.⁴¹⁷

White is adamant that the pill was not Flakka, but a lawful sex enhancement pill.⁴¹⁸ According to media reports, such pills, commonly available over the counter, are often contaminated with other substances.⁴¹⁹ Media reports have questioned the reliability

⁴¹⁴ State of Wisconsin, “Resource Handbook for Community Supervision Revocation Hearings,” p. 21; Human Rights Watch telephone interview with Randy Kraft and Adam Plotkin, December 3, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

⁴¹⁵ Wis. Admin Code 331.05(2)(b). Moreover, since being truthful to the officer is typically a supervision condition, lying can also trigger revocation. State of Wisconsin, “Resource Handbook for Community Supervision Revocation Hearings,” p. 21.

⁴¹⁶ Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

⁴¹⁷ Officers first conduct “field tests” to determine a substance’s contents, and then confirm those contents through a “lab test.” Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch court observations, Lowndes County Superior Court, Valdosta, Georgia, December 11, 2019; Lia Fernandez, “Putting Law Enforcement’s Drug Testing Kits to the Test,” *WRDW*, August 21, 2019, <https://www.wrdw.com/content/news/Putting-law-enforcements-drug-testing-kits-to-the-test-557792751.html>. As described in Section VI, “Racial Bias,” White’s arrest appears racially biased.

⁴¹⁸ Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch court observations, Lowndes County Superior Court, Valdosta, Georgia, December 11, 2019.

⁴¹⁹ “MLB Warns Players Against Dangers of Over-the-Counter Sexual Enhancements,” *The Guardian*, August 21, 2019, <https://www.theguardian.com/sport/2019/aug/21/mlb-sexual-enhancement-pills-failed-ped-tests>; U.S. Food and Drug Administration, “Tainted Sexual Enhancement Products,” <https://www.fda.gov/drugs/medication-health-fraud/tainted-sexual-enhancement-products>.

of Georgia’s field test instruments—\$2 disposable kits that are not designed to serve as final confirmation of what a substance is.⁴²⁰

White spent two months in jail waiting for a hearing.⁴²¹ At his hearing in December 2019, the judge agreed to withhold his ruling on the case until Georgia’s central drug testing lab—which confirms all field test results—conclusively identifies the pill.⁴²²

But Georgia’s drug lab is severely backlogged.⁴²³ It can take several months or even a year to get test results.⁴²⁴ As of February 2020, White was still in jail waiting for test results that he is confident will prove his innocence.

⁴²⁰ Lia Fernandez, “Putting Law Enforcement’s Drug Testing Kits to the Test,” *WRDW*; Randy Travis, “Look How Often Field Drug Tests Send Innocent Georgians to Jail,” *Fox 5 Atlanta*, October 29, 2018, <https://www.fox5atlanta.com/news/look-how-often-field-drug-tests-send-innocent-georgians-to-jail>.

⁴²¹ Human Rights Watch Court Observations, Lowndes County Court, December 11, 2019; Human Rights Watch interview with Willie White, December 11, 2019.

⁴²² *Ibid.*

⁴²³ Samantha Max, “It Can Put a Lot of Lives on Hold’: Huge Backlog at Crime Lab Hinders Justice, Attorneys Say,” *The Telegraph*, July 20, 2018, <https://www.macon.com/news/local/crime/article215186255.html>.

⁴²⁴ *Ibid.*

IV. Excessive Punishments

They're putting us in here for technical violations. You lose your job, you lose your family, you lose your house, you lose everything.⁴²⁵

—Juan Richardson, currently incarcerated for violations related to his homeless status

Sentencing for Violations

Revocation can trigger various sentences, from release back to supervision, to mandatory treatment, to incarceration, sometimes for years or decades. These sentences may be negotiated as part of a deal or imposed after a revocation hearing. The amount of time people face varies dramatically based on the jurisdiction and type of supervision they are serving.

Parole and Extended Supervision Violation Sentences

Revocations of parole and extended supervision generally expose people to incarceration for up to the remainder of their sentence—often called “back time.”⁴²⁶ For instance, if someone has five years more of a parole sentence to serve at the time of revocation, they face up to five years in prison.

Georgia and Pennsylvania generally require people to serve full back time following revocation of supervision for certain new offenses.⁴²⁷ However, recent reforms in Pennsylvania limit sentences for many people charged with state parole rule violations to six months in a “parole violator center,” similar to a minimum-security prison.⁴²⁸ The

⁴²⁵ Human Rights Watch interview with Juan Richardson, December 11, 2019.

⁴²⁶ Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” *University of Minnesota, Robina Institute*, https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/parole_landscape_report.pdf, p. 43-44; O.C.G.A. § 42-9-51; Wis. Stat. § 302.113(9)(am); 61 Pa.C.S. § 6138(a).

⁴²⁷ O.C.G.A. § 42-9-51(a) (Parole Board must sentence anyone who has been sentenced to prison for a felony offense, or misdemeanor involving “physical injury,” to full back time); 61 Pa.C.S. § 6138(a)(2), 37 Pa. Code 75.1, 75.2 (Parole Board must sentence anyone convicted of a new misdemeanor or felony offense to full back time; however, they are eligible for re-parole).

⁴²⁸ 61 Pa.C.S. § 6138(c); see Pennsylvania Board of Probation and Parole and Pennsylvania Department of Corrections, “Parole Handbook,” February 2019, <https://www.cor.pa.gov/parole-supervision/Documents/Parole%20Publications/Final%20Parole%20Handbook.pdf>, p. 27-28; Pennsylvania Board of

reforms do not apply to people who engage in certain misconduct,⁴²⁹ or to those charged with new offense violations or county parole or probation violations.⁴³⁰

In Wisconsin, if an Administrative Law Judge finds that someone violated their extended supervision conditions, they must then consider a range of factors to determine if revocation is warranted, including whether confinement is “necessary to protect the public,” the need for “correctional treatment,” whether declining to revoke supervision would “unduly depreciate the seriousness of the violation,” and alternatives to revocation.⁴³¹ They then determine the appropriate sentence based on factors including the underlying offense; record in prison and on supervision; and the imperative to “protect the public,” “prevent the undue depreciation of the seriousness of the violation,” or provide “correctional treatment” in custody.⁴³²

Probation Violation Sentences

For probation violations, at least 16 states impose some limits on sentences.⁴³³ For instance, in cases involving rule violations or certain low-level offenses, Georgia law requires judges to first consider alternatives to imprisonment.⁴³⁴ State law then imposes

Probation and Parole, “Understanding the Technical Parole Violation Process in Pennsylvania,” December 2014, <https://www.oa.pa.gov/SafetyandSupport/Testimony/Violations/Documents/TPV%20Process%20December%202014.pdf>. In addition to parole violator centers, individuals may also be detained in “community corrections centers” (similar to a halfway house) or “community corrections facilities” (similar to a halfway house but run by a private contractor). 61 Pa.C.S. § 6138(f).

⁴²⁹ Specifically, under Pennsylvania law, if any of the following factors are present, the individual will instead be incarcerated in a jail or state prison for six months for the first rule violation, nine months for a second violation, or one year for subsequent violations: the violation was “sexual in nature;” the violation involved “assaultive behavior” or a “credible threat” to cause bodily injury; the violation involved weapons; the individual “absconded” and “cannot be safely diverted” to a non-jail facility; the individual poses “an identifiable threat to public safety;” or the violation involved an “intentional and unexcused” failure to follow programming or conditions on more than three occasions and the individual cannot be “safely diverted” to a non-jail facility. 61 Pa.C.S. § 6138(c)(1.3). Additionally, violating conditions in the parole violator center triggers incarceration in jail or state prison. *Ibid*.

⁴³⁰ 61 Pa.C.S. § 6138(a); Pennsylvania Board of Probation and Parole & Pennsylvania Department of Corrections, “Parole Handbook,” February 2019, <https://www.cor.pa.gov/parole-supervision/Documents/Parole%20Publications/Final%20Parole%20Handbook.pdf>, p. 27-28.

⁴³¹ *State ex rel. Plotkin v. Dep’t of Health & Soc. Servs.*, 63 Wis.2d 535, 544 (Wis. 1974); Wis. Admin. Code HA 2.05(7)(b)3.

⁴³² Wis. Admin. Code HA 2.05(f).

⁴³³ Pew Charitable Trusts, “To Safely Cut Incarceration, States Rethink Responses to Supervision Violations.”

⁴³⁴ O.C.G.A. § 42-8-34.1(c) (for felony probation violations, requiring court to consider alternative sanctions, including community service and probation detention centers—similar to minimum-security prisons—for violations aside from the commission of a new felony offense); O.C.G.A. § 42-8-102(f)(4) (similar for misdemeanor probation violations). Courts consider whether an individual committed a new felony offense based on the preponderance of the evidence standard—not based on whether they were convicted of the new offense in court. *See* O.C.G.A. § 42-8-34.1(d).

maximum sentences based on the type of offense and the form of probation.⁴³⁵ These limits vary sharply: Sentences for violating “general” felony probation conditions are capped at two years, while violating a “special” condition—discretionary terms including curfews, obtaining a GED, and “no contact” orders⁴³⁶—can trigger incarceration for the entire remainder of the probation term.⁴³⁷ Since Georgia courts impose lengthy probation sentences—for instance, 10 years for felony shoplifting (shoplifting more than \$500 value of goods)⁴³⁸ is common—this can be severe. If probation is revoked for rule violations or certain minor offenses, people serve their sentences in non-prison facilities, such as “probation detention centers,” similar to minimum-security prisons, or in local jails.⁴³⁹

In other states—including Pennsylvania and Wisconsin—following revocation, judges can impose up to the maximum sentence available for the original offense.⁴⁴⁰ As discussed above in “Supervision Today,” this can mean decades in prison.

Until January 2020, Pennsylvania had no guidelines for sentences following revocation. The only limit was that, in order to impose imprisonment, judges must find that the defendant was convicted of a crime, likely will commit another crime, or the sentence “is essential to vindicate the authority of the court.”⁴⁴¹ As discussed below in “Disproportionate Incarceration Terms,” judicial interpretations of this law vary, and most people are incarcerated following revocation.

⁴³⁵ O.C.G.A. § 42-8-102(f)(4) (sentencing scheme for misdemeanor probation violations); O.C.G.A. § 42-8-34.1 (sentencing scheme for felony probation violations).

⁴³⁶ Georgia Department of Community Supervision, “Special Conditions of Supervision,” <https://dcs.georgia.gov/special-conditions-supervision-o>.

⁴³⁷ O.C.G.A. § 42-8-34.1(e)

⁴³⁸ O.C.G.A. § 16-8-14.

⁴³⁹ O.C.G.A. § 17-10-1(a)(3)(A).

⁴⁴⁰ Kelly Lyn Mithell, Kevin R. Reitz, Alexis Watts, “Profiles in Probation Revocation: Examining the Legal Frameworks in 21 States,” *University of Minnesota, Robina Institute*, 2014, http://www.pacenterofexcellence.pitt.edu/documents/Probation%20revocation%20project_Legal%20issues.pdf, p. 7, 76, 92-93.

⁴⁴¹ If those factors are not met, judges must instead impose “partial confinement,” which includes minimum-security correctional facilities where people can, for instance, leave during the day to work. 42 Pa.C.S. § 9771; 42 Pa. C.S. § 9756 (describing total confinement), 42 Pa.C.S. § 9755 (describing partial confinement); Samantha Melamed and Dylan Purcell, “When it Comes to Probation, Pennsylvania Leaves Judges to Impose Wildly Different Versions of Justice,” *The Philadelphia Inquirer*, October 24, 2019, <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-judges-criminal-justice-system-20191024.html>.

In January 2020, the Pennsylvania Sentencing Commission for the first time released discretionary guidelines for lengths of sentences following probation revocation.⁴⁴² The Commission contends the guidelines will increase uniformity in sentencing.⁴⁴³ However, advocates fear they will lead to longer prison terms.⁴⁴⁴ For instance, the guidelines call for heightened penalties for any violation involving a new criminal conviction—regardless of the type of offense or individual circumstances.⁴⁴⁵

In most of Wisconsin, judges “withhold” sentence when they impose probation terms, meaning that, if someone’s supervision is revoked, they return to the sentencing judge, who may then impose any sentence authorized for the original offense.⁴⁴⁶ But in some jurisdictions, such as Milwaukee, judges generally “impose and stay” prison terms when they sentence people to probation.⁴⁴⁷ This means the judge sets the consequence for a violation at the initial sentencing—following revocation, the individual is automatically incarcerated for the stayed sentence, no matter the circumstances.⁴⁴⁸

⁴⁴² Pennsylvania Commission on Sentencing, Title 204 Part VIII Chapter 307, “Resentencing Guidelines,” January 1, 2020, <http://pcs.la.psu.edu/guidelines/resentencing/resentencing-guidelines>.

⁴⁴³ Samantha Melamed, “How Pennsylvania’s New Sentencing Guidelines for Probation Violators ‘Could Increase Mass Incarceration,’” *The Philadelphia Inquirer*, January 6, 2020, <https://www.inquirer.com/news/probation-pennsylvania-sentencing-commission-resentencing-guidelines-20200106.html>; Pennsylvania Sentencing Commission, “Revocation and Resenting Data Analysis for Resentencing Guidelines,” 2019, <http://pcs.la.psu.edu/guidelines/resentencing/resentencing-analysis-2019>.

⁴⁴⁴ Samantha Melamed, “How Pennsylvania’s New Sentencing Guidelines for Probation Violators ‘Could Increase Mass Incarceration,’” *The Philadelphia Inquirer*.

⁴⁴⁵ *Ibid.*; Pennsylvania Commission on Sentencing, “Resentencing Guidelines,” 307.3(b).

⁴⁴⁶ Kelly Lyn Mithell, Kevin R. Reitz, Alexis Watts, “Profiles in Probation Revocation: Examining the Legal Frameworks in 21 States,” *University of Minnesota, Robina Institute*, p. 92-93; Wisconsin Department of Corrections, “Community Corrections-General Information,” <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx>; Human Rights Watch interview with Brian Burke, November 18, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020.

⁴⁴⁷ Kelly Lyn Mithell, Kevin R. Reitz, Alexis Watts, “Profiles in Probation Revocation: Examining the Legal Frameworks in 21 States,” *University of Minnesota, Robina Institute*, p. 6; Human Rights Watch interview with Brian Burke, November 18, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020.

⁴⁴⁸ *Ibid.* In Wisconsin, the sentencing judge determines the sentence, while an Administrative Law Judge handles revocation proceedings, and, in these cases, must impose the stayed sentence. See *ibid.*; Kelly Lyn Mithell, Kevin R. Reitz, Alexis Watts, “Profiles in Probation Revocation: Examining the Legal Frameworks in 21 States,” *University of Minnesota, Robina Institute*, p. 91-92.

Consequences Beyond Incarceration

Supervision violations carry consequences beyond incarceration. Under federal law, supervision violations can render people ineligible for public assistance programs including food stamps, social security disability, and public housing.⁴⁴⁹ Sixteen states, including Pennsylvania, deprive people of the right to vote while they are incarcerated, and another 21 states, including Georgia and Wisconsin, bar people from voting until they complete supervision.⁴⁵⁰ Long-term supervision can deny people the right to vote for decades or even life.

“Supervision Time” Credits

Separate from supervision, when people are sentenced, they generally receive “time credit” toward their sentence for each day they serve in jail or prison. Many jurisdictions, including Georgia, also give people time credit for the days they successfully serve under supervision—which we refer to in this report as “supervision time” credit.⁴⁵¹ Others, including Pennsylvania and Wisconsin, do not always confer supervision credits.⁴⁵² This can have serious implications.

⁴⁴⁹ 42 U.S.C. § 608(a)(9)(A)(ii) (prohibition on assistance under Temporary Assistance to Needy Families (TANF) for “probation and parole violators”); 7 U.S.C. § 2020(e)(8)(E)(i) (same for Supplemental Nutrition Assistance Program (SNAP) benefits); 42 U.S.C. § 1382(e)(4)(A)(ii) (same for social security disability); 42 U.S.C. § 1437d(l)(9) (same for public housing); 42 U.S.C. § 1437f(d)(1)(B)(v) (same for Section 8 housing); Pub. L. No. 108-203 §203, 118 Stat. 493 §203 (same bar for Old-Age, Survivor, and Disability Insurance program); Fiona Doherty, “Obey All Laws and Be Good,” p. 351; Christie Scott-Hayward, “The Failure of Parole,” p. 428.

⁴⁵⁰ National Conference of State Legislatures, “Felon Voting Rights,” <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. In Georgia, people serving misdemeanor probation, but not felony probation, are eligible to vote. Georgia Justice Project, “Criminal Records Voting PSA,” <https://www.gjp.org/criminal-records-voting-psa/>. Pennsylvania automatically restores voting rights upon release from incarceration. National Conference of State Legislatures, “Felon Voting Rights.”

⁴⁵¹ “Supervision time credits” are most common for parole. Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” *University of Minnesota, Robina Institute*, p. 44 (in three quarters of jurisdictions studied, people receive credit for time served on parole); Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” *University of Minnesota, Robina Institute*, p. 12 (Alabama) (“significant weight” given to time spent on probation); O.C.G.A. § 42-8-38 (credit for time served on probation in Georgia); O.C.G.A. § 42-9-51 (same for parole). “Supervision time” credits differ from “earned compliance credits,” which, as discussed in Section VIII, “The Path Forward,” give people time reductions on their total supervision sentence for compliance with the terms of their supervision.

⁴⁵² Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” *University of Minnesota, Robina Institute*, p. 44 (one quarter of jurisdictions studied do not give “supervision time” credit); University of

Consider a person sentenced to a 10-to-20-year prison term. After completing the minimum 10 years in custody, they are released to parole for good behavior. For the next nearly nine years, they meet all their parole requirements. However, in year nine, they violate a parole condition and their parole is revoked.

In a jurisdiction that gives “supervision time” credit, that person might have to serve the last year of parole in jail—because the 10 years in custody and nine years on supervision count as time served on their sentence. But in a jurisdiction without “supervision time” credit, they face incarceration for the entire 10 years they did not serve in custody.⁴⁵³

Following 2012 reforms in Pennsylvania, people charged with state parole (but not county parole or probation) rule violations receive “supervision time” credit.⁴⁵⁴ Such credits are only optional, however, for new offense violations, and are prohibited for those charged with crimes considered violent⁴⁵⁵ or sex offenses.⁴⁵⁶

Minnesota, Robina Institute, *Profiles in Probation Revocation*, p. 24 (Colorado), 40 (Maine), 48 (Minnesota), 60 (New York), 80 (Texas); Pennsylvania Department of Corrections and Pennsylvania Board of Probation and Parole, “Parole Handbook,” February 2019, <https://www.cor.pa.gov/parole-supervision/Documents/Parole%20Publications/Final%20Parole%20Handbook.pdf>, p. 22; Patrick J. Fiedler, “Truth in Sentencing II: Extended Supervision & Its Revocation,” *Wisconsin State Public Defender*, January 2003, <https://www.wisprd.org/images/AppellateFolder/templates/forms/ESrevocation.pdf>; Wis. Gen. Stat. 973.155 (sentencing credit only awarded for time in custody); Human Rights Watch telephone interview with Dan Crowley, October 2, 2019. Separately, in some jurisdictions people do not receive credit toward their total supervision term for time periods during which they are deemed to have stopped reporting or “absconded” (see Section II, “Conduct Triggering Violations”)—thus lengthening their underlying supervision term. O.C.G.A. § 42-8-105 (Georgia misdemeanor probation); O.C.G.A. § 42-8-36 (Georgia felony probation); Cal. Penal Code § 3000(b)(6), 3064.

⁴⁵³ See, for example, Anthony Cotton, “On the Defensive: The Case for ‘Good Time’ on Extended Supervision,” *Wisconsin Law Journal*, September 16, 2016, <https://wislawjournal.com/2016/09/19/on-the-defensive-the-case-for-good-time-on-extended-supervision/>; Human Rights Watch telephone interview with David Crowley, October 2, 2019.

⁴⁵⁴ 61 Pa.C.S. § 6138(a)(2.1); Human Rights Watch e-mail communications with David Crowley, February 6, 2020.

⁴⁵⁵ See note 70, above, discussing problems with defining what constitutes a “violent” crime.

⁴⁵⁶ 61 Pa.C.S. § 6138(a)(2.1). As Human Rights Watch has documented, “sex offense” is a broad term that, in many states, encompasses both serious sexually assaultive behavior as well as conduct such as consensual sex among teenagers, adults who sell sex to other adults, and public urination. See Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, (New York: Human Rights Watch, 2007), <https://www.hrw.org/report/2007/09/11/no-easy-answers/sex-offender-laws-us>, p. 5. Further, restrictions imposed on people convicted of sex offenses are often overbroad in scope and duration, cause great harm to people subject to them, and do not demonstrably protect public safety. *Ibid*, p. 3; Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, (New York: Human Rights Watch, 2013), <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>.

Sentences to Treatment Programs

Once you [plead to a program], you gotta complete it. That's the racket.⁴⁵⁷

—Adrian Patterson, who was kicked out of a prison-based drug treatment program in Wisconsin

[T]he offender failed to realize that his failure in the program was that he did not go deep enough in addressing why he made the choices that he did[.]⁴⁵⁸

—Decision revoking probation following program termination in Wisconsin

People frequently plead to sentences involving mandated treatment, such as behavioral or substance use courses. Often, these programs are housed in correctional facilities.⁴⁵⁹ For instance, in Milwaukee, Wisconsin, many people admit to supervision violations in exchange for “Alternative to Revocation” (ATR) programs—without realizing that many of those programs are housed in MSDF, the same prison where they are often held pending revocation proceedings, and where they may serve a sentence following revocation.⁴⁶⁰ “I don’t understand how something is an alternative to revocation if it’s in a prison. Why isn’t it just a shorter revocation?,” Wisconsin State Representative Evan Goyke told us. “We shouldn’t call something in prison an ‘alternative to prison.’”⁴⁶¹

In many places, limited resources have fed program overcrowding. As a result, people in custody sentenced to a treatment program often wait in detention until a spot opens up. This can sometimes take weeks or months, lengthening their period of incarceration.⁴⁶² For

⁴⁵⁷ Human Rights Watch interview with Adrian Patterson, November 19, 2019.

⁴⁵⁸ ALJ Decision, *Wisconsin v. Ruffin Toney*.

⁴⁵⁹ Milwaukee Secure Detention Facility, “Annual Report, Fiscal Year 2018-19,”

<https://doc.wi.gov/Documents/OffenderInformation/AdultInstitutions/MSDFAnnualReport.pdf>, p. 10-11; Georgia

Department of Corrections, “Residential Substance Use Treatment,”

<http://www.dcor.state.ga.us/Divisions/InmateServices/RiskReduction/RSAT>; Pennsylvania Department of Corrections,

“Treatment Programs,” <https://www.cor.pa.gov/Inmates/Pages/Treatment-Programs.aspx>.

⁴⁶⁰ Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Adrian Patterson, November 19, 2019; Human Rights Watch telephone interview with Wisconsin State Representative Evan Goyke, March 16, 2020.

⁴⁶¹ Human Rights Watch telephone interview with Representative Evan Goyke, March 16, 2020.

⁴⁶² Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch interview with Scott Robichaux, December 9, 2019.

instance, from 2017 to 2019, Wisconsin held people in prison for five to 59 days awaiting treatment program placement 6,214 times, and for more than 60 days nearly 2,700 times.⁴⁶³

Once people enter the program, they must successfully complete it, following all program rules, which sometimes comes down to subjective judgments about a person's commitment and attitude, as well as the correctional facility's rules. As discussed above in Section II, "Conduct Triggering Revocation," being accused of violating rules often leads to incarceration.

For example, Aaron Alexander, a 32-year-old Milwaukee resident, was arrested for child enticement—for having unlawful contact with a girl under 18 in 2015, when he was 28 years old.⁴⁶⁴ He was convicted and sentenced to 15 months in prison followed by four years of extended supervision.⁴⁶⁵

Alexander was released from prison in 2016, and began serving his extended supervision term, which entailed several standard sex-offense specific conditions, including a ban on being around children, set by both the judge and his supervision officer.⁴⁶⁶ According to the court docket, the judge later amended the conditions to exempt Alexander's three own children—now ages five through 13—from that standard rule.⁴⁶⁷ But Alexander's probation officer did not apply the judge's exemptions,⁴⁶⁸ and refused to let him see his kids, Alexander said.

Because of this prohibition, Alexander said, he stopped reporting. He told us that he remained living with and caring for his children. In September 2017, Alexander was

⁴⁶³ Human Rights Watch Analysis of Wisconsin Department of Corrections Data.

⁴⁶⁴ Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Docket, *Wisconsin v. Aaron Alexander*, 2015CF2007 (Milwaukee, Wisconsin). All information in this case study is from Human Rights Watch's interview with Aaron Alexander unless otherwise noted.

⁴⁶⁵ Docket, *Wisconsin v. Aaron Alexander*, 2015CF2007 (Milwaukee, Wisconsin).

⁴⁶⁶ *Ibid.*

⁴⁶⁷ Docket, *Wisconsin v. Aaron Alexander*, 2015CF2007 (Milwaukee, Wisconsin) (judge ordered that "defendant Aaron Alexander, is prohibited from having unsupervised contact with children age 16 and under, except for his own minor children.)

⁴⁶⁸ In Wisconsin, both probation officers and judges can set conditions of probation. This can lead to confusion where officials set different conditions. Wisconsin Department of Corrections, "Community Corrections – General Information," <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx>.

arrested, charged with “absconding” (see Section II, “Failure to Report”), and detained at MSDF. After spending seven months incarcerated pending revocation, Alexander said, his supervision officer offered him an “Alternative to Revocation” deal: if Alexander completed a cognitive behavioral therapy program, his supervision would not be revoked. Alexander took the deal.

Alexander spent two more months in jail before a spot in the program opened up, he said, “only to find out the [program] was right here” in MSDF, the same facility where he had been confined. “How is that community-based?,” he asked.

Shortly after enrolling in the program, staff terminated Alexander’s placement based on prison disciplinary violations. These included using a typewriter—which was permitted only for education and work—to write a horror book, he said. For this, he was required to remain in his cell for five days. Alexander said that he left his cell after what he had understood to be five days, but apparently had miscalculated the time and left a day early. That led to another sanction, Alexander explained, and expulsion from the program.

Alexander was released from MSDF in November 2018, but he soon stopped reporting to supervision, as he describes, due to depression and feeling “messed up in the head” after jail—problems for which he said he did not receive treatment. After about two months, Alexander said, he turned himself in to “make things right” and he re-enrolled in the same behavioral therapy program as an alternative to revocation.⁴⁶⁹

Alexander spent more than three months in MSDF waiting for a spot to open in the program.⁴⁷⁰ He finally began the program in May 2019, but after one month, the program terminated Alexander again. According to his program discharge paperwork, Alexander’s treatment provider agreed that he “attended all groups” and “completed all required homework assignments.”⁴⁷¹ The program did not accuse him of any illegal conduct.⁴⁷² Rather, the program claimed that he behaved poorly as a student, for instance

⁴⁶⁹ Wisconsin Department of Corrections Records, Aaron Alexander, “Movement.”

⁴⁷⁰ Ibid. (showing admission to MSDF on January 28, 2019); Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander (on file with Human Rights Watch) (showing program began May 6, 2019).

⁴⁷¹ Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Conduct Reports,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Warning Card,” Aaron Alexander (on file with Human Rights Watch).

⁴⁷² Ibid.

participating “in waves”—sometimes too actively and other times too passively—failing to accept accountability for his actions, and talking back to staff.⁴⁷³ The program also noted two prison misconduct reports, for disruptive conduct (for talking back to a guard) and disobeying orders (for passing food to someone), and two warnings—one for “tucking and tying” his shirt, which was not permitted, and another for only making required journal entries on weekdays, when, Alexander said, he had not realized his “daily” journal entry assignment included weekends.⁴⁷⁴

Ironically, Alexander said, the treatment was working: “I actually used the grounding technique [they taught] on the day of my termination,” he said.⁴⁷⁵

Once the program terminated Alexander, his supervision officer filed revocation papers. A judge revoked Alexander’s supervision and sentenced him to 21 months in jail—80 percent of his “back time,” or the time remaining in his supervision sentence.⁴⁷⁶

As discussed in Section VI, “Substance Use,” experts have raised concerns with locating treatment programs in the criminal legal system generally, and inside correctional facilities specifically. Many people we interviewed reported that grappling with the stress of prison life (see Section III, “Harmful Conditions”) on top of following program and prison rules made it hard to engage in treatment.⁴⁷⁷ “I think that the majority of MSDF programs could be taking place somewhere better and safer and more humane . . . There’s hundreds of men in MSDF tonight on these programs and there’s no reason why they need to be there,” said Representative Goyke, who told us he believes programming should occur in peoples’ communities or other, less restrictive, facilities.⁴⁷⁸

⁴⁷³ Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Conduct Reports,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Warning Card,” Aaron Alexander (on file with Human Rights Watch).

⁴⁷⁴ Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander. Aaron said that he since made up the missed assignments.

⁴⁷⁵ Wisconsin Department of Corrections, Statement to Probation Officer, Aaron Alexander (on file with Human Rights Watch) [required statement following violation proceedings in Wisconsin].

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Adrian Patterson, November 19, 2019; Human Rights Watch interview with Toney Ruffin, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Wayne Murphy, November 18, 2019.

⁴⁷⁸ Human Rights Watch telephone interview with Representative Evan Goyke, March 16, 2020.

Never-Ending Probation

After 19 years let's be real, I should've been done with it. You keep giving me probation over and over.

—Angel Ortiz, who has been serving the same probation term for nearly two decades⁴⁷⁹

Revocation can extend a person's period of probation, keeping people under correctional control for years or decades.

This practice is particularly common in Pennsylvania, which does not cap probation terms.⁴⁸⁰ Philadelphia Judge Rayford Means has explained that he sentences people to additional probation following revocation so that he can continue setting conditions, such as obtaining a GED and getting a job, that he believes will help people get back on their feet.⁴⁸¹

Yet more probation often means more violations. Angel Ortiz, mentioned above, has been under Judge Means' probation for the last 19 years—on what began as a four-year probation term in 1999, when he was 18 years old.⁴⁸² Ortiz explained: “in jail you think you're getting a deal with probation and you realize . . . this isn't really helping me.”⁴⁸³

Judge Means has revoked Ortiz's probation five times, each time imposing more probation: two years in 2002, four years in 2006, four years in 2007, six years in 2009, and five years in 2018.⁴⁸⁴

“I've been on probation damn near half my life,” said Ortiz, who still had nearly four years left on his probation term when we met him in October 2019. “[Y]ou can't do this forever. Some places got life parole, I don't have that, why are you dragging it out as if I do have

⁴⁷⁹ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

⁴⁸⁰ Samantha Melamed, “When it Comes to Probation, Pennsylvania Leaves Judges Unchecked to Impose Wildly Different Versions of Justice,” *The Philadelphia Inquirer*.

⁴⁸¹ *Ibid.*

⁴⁸² Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-12054810f-1999 (Philadelphia, Pennsylvania).

⁴⁸³ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

⁴⁸⁴ Docket, *Commonwealth v. Angel Ortiz*, CP-51-CR-1205481-1999.

life? . . . After 19 years let's be real, I should've been done with it. You keep giving me probation over and over.”⁴⁸⁵

Ortiz is not alone. Several people we spoke to in all three states told us they had served more than a decade under probation, frequently for terms that started out at much less.⁴⁸⁶ People often felt that, no matter how hard they tried, at some point they would again violate one or another condition of their probation—whether forgetting a meeting, using drugs, or getting arrested.⁴⁸⁷ Darius Hill (pseudonym), whom Georgia courts keep sentencing to more probation even though he says he has mental health conditions—including paranoia and depression—that make it hard to hold down a job or get to supervision-mandated meetings, told us that probation is “like a ghost that’s sneaking up on me.”⁴⁸⁸

For nearly two decades, Earnest Burgess, a 41-year-old Milwaukee resident, kept getting sentenced to more supervision following revocations for drug charges. Burgess told us he was floored when, in 2017, he finally completed it. When he received his supervision discharge paperwork in the mail, he said: “I didn’t know what to do. Nobody I knew got discharged, I’d never been discharged. Everyone was just on probation forever.”⁴⁸⁹

Studies show, and our interviews reflect, that many people prefer short incarceration terms to lengthy probation sentences, given probation’s burdensome conditions and the looming threat of incarceration.⁴⁹⁰ Some judges let people choose between another shot at supervision or a set term of incarceration—after which they are free from supervision.⁴⁹¹

⁴⁸⁵ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

⁴⁸⁶ Human Rights Watch interview with Adrian Patterson, November 19, 2019; Human Rights Watch interview with Juan Richardson, December 11, 2019; Human Rights Watch interview with Angel Ortiz, October 29, 2019; Human Rights Watch interview with Caliph Muab’El, November 18, 2019; Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch interview with Wayne Murphy, November 18, 2019; Human Rights Watch interview with Robert Collins, Philadelphia, Pennsylvania, October 28, 2019; Human Rights Watch interview with Earnest Burgess, Milwaukee, Wisconsin, November 19, 2019.

⁴⁸⁷ Ibid.

⁴⁸⁸ Human Rights Watch interview with Darius Hill (pseudonym), Savannah, Georgia, December 12, 2019.

⁴⁸⁹ Human Rights Watch interview with Earnest Burgess, Milwaukee, Wisconsin, November 19, 2019; Earnest Burgess, Inmate Classification Report (on file with Human Rights Watch).

⁴⁹⁰ Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1059; Ronald Corbett, “The Burdens of Leniency,” p. 1711; Human Rights Watch Interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch Interview with Angel Ortiz, November 28, 2019.

⁴⁹¹ Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019.

Disproportionate Incarceration Terms

In many cases, judges impose lengthy incarceration terms following revocation—sometimes longer than the penalties typically imposed when people not on supervision engage in the same conduct.⁴⁹²

In Pennsylvania, according to a state Sentencing Commission study of probation revocations from 2016 to 2019, while judges sentencing people to terms of probation for low-level offenses rarely imposed sentences higher than those recommended in Pennsylvania’s sentencing guidelines, they frequently imposed sentences above those guidelines when sentencing people following revocation.⁴⁹³

The study also showed that Pennsylvania judges often sentence people to jail and prison time following revocation. Of the 12,241 probation revocations during those years, 50 percent were re-sentenced to county incarceration—which in Pennsylvania is up to two years of confinement—while 39 percent were resentenced to more probation, and seven percent were sentenced to state prison, meaning a term of two years or more.⁴⁹⁴

Some attorneys who regularly handle supervision cases say that harsh sentences stem from the perception that people “screwed up” their chance on supervision.⁴⁹⁵ “I gave you a chance on probation, and you blew it . . . Now, it’s more punishment than anything,” said Green Bay, Wisconsin, Judge Timothy Hinkfuss when sentencing someone following

⁴⁹² Fiona Doherty, “Testing Periods,” pp. 1729, 1738-1748; Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 765-66; see, for example, Sidney Madden, “Meek Mill’s Sentencing Generates Protest, Calls for Probation and Parole Reform,” *NPR*, November 15, 2017, <https://www.npr.org/sections/therecord/2017/11/15/564385830/meek-mill-sentencing-protest-probation-parole-reform>; “Wynonna Judd’s Daughter, Grace Kelley, is Sentenced to 8 Years in Prison for Probation Violation,” *The 107.7 WOLF Country*, June 27, 2018, <http://www.wbszfm.com/2018/06/27/wynonna-judds-daughter-grace-kelley-is-sentenced-to-8-years-in-prison-for-probation-violation/>; Jeff Corcino, “Tibbens Gets Lengthy State Prison Sentence for Probation Violation,” *The Progress News*, April 20, 2020, http://www.theprogressnews.com/news/crime/tibbens-gets-lengthy-state-prison-sentence-for-probation-violation/article_aa091457-5086-547f-b4af-bc8c46edd8eb.html; Kathy Laird, “Galion Woman Gets Prison Sentence for Parole Violation,” *CrawfordCountyNow*, April 20, 2020, <https://crawfordcountynow.com/local/galion-woman-gets-prison-sentence-for-parole-violation/>.

⁴⁹³ Pennsylvania Commission on Sentencing, “Revocation and Resentencing Data Analysis for Resentencing Guidelines,” 2019, <http://pcs.la.psu.edu/guidelines/resentencing/resentencing-analysis-2019>, p. 26, 28, 33-34. During the time period of the study, judges were not required to follow the sentencing guidelines after revocation. *Ibid.*, p. 1.

⁴⁹⁴ *Ibid.*, Exhibit 9.

⁴⁹⁵ Human Rights Watch telephone interview with Jim Knight, Georgia defense attorney, December 3, 2019; Human Rights Watch telephone interview with Wade Kruger, November 26, 2019.

revocation of his supervision.⁴⁹⁶ (Notably, however, in the proceedings observed by Human Rights Watch, Judge Hinkfuss did not impose the heightened sentences requested by the prosecution.)

Some judges said that harsh sentences are sometimes needed to preserve the integrity of the supervision system. When someone disobeys a court order, they said, consequences must follow.⁴⁹⁷ In Pennsylvania, “vindicat[ing] the authority of the court” is a statutory basis for imposing prison sentences following revocation.⁴⁹⁸

Yet other officials recognize that incarceration can leave people worse off. “By sending them to prison [for violations] . . . are we being beneficial? I don’t know . . . I ain’t got an answer,” said Marc Alstatt, a senior supervision officer in Savannah, Georgia.⁴⁹⁹

In Georgia, a loophole exists that enables longer sentences. As described earlier in this section, Georgia’s sentencing caps do not apply to violations of “special” conditions. But “special” conditions can be nearly identical to “general” conditions.⁵⁰⁰ When supervision officers pursue revocation for these duplicative “special” conditions, then judges can impose lengthier prison terms.⁵⁰¹

Other times, when for example judges are ruling on revocation of supervision in cases involving “impose and stay” sentences, discussed earlier in this section, they may feel compelled to impose longer sentences than they think are appropriate.⁵⁰² For instance, in November 2019, Human Rights Watch observed a revocation hearing in Milwaukee, Wisconsin, for a man who had originally been sentenced to 10 years of probation with a

⁴⁹⁶ Human Rights Watch Court Observations, Brown County Courthouse, Green Bay, Wisconsin, November 22, 2019.

⁴⁹⁷ Human Rights Watch interview with Judge Karen Simmons, Philadelphia, Pennsylvania, October 29, 2019; Human Rights Watch interview with [judge, name withheld], September 26, 2019; Samantha Melamed and Dylan Purcell, “Judges Rule,” *The Philadelphia Inquirer*, October 24, 2019, <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-judges-criminal-justice-system-20191024.html>; Andrew Horwitz, “The Costs of Abusing Probationary Sentences,” p. 763.

⁴⁹⁸ 42 § Pa.C.S. 9771.

⁴⁹⁹ Human Rights Watch telephone interview with Marc Alstatt, March 9, 2020.

⁵⁰⁰ For instance, even though general probation conditions prohibit violating the law, judges often impose a “special” condition prohibiting people from violating the law. Human Rights Watch interview with Scott Robichaux, December 9, 2019; Human Rights Watch telephone interview with Marc Alstatt, March 9, 2020; Human Rights Watch interview with Charles Hill, Savannah, Georgia, December 12, 2019.

⁵⁰¹ Ibid.

⁵⁰² Human Rights Watch telephone interview with Tom Reed, October 25, 2019.

five-year “impose and stay” prison term. The judge believed revocation was warranted, but expressed concern that the five-year prison sentence was too high, and wished he had discretion to pick a specific term, he said.⁵⁰³ But torn between the mandated penalty or no penalty at all, the judge imposed the five-year prison sentence.⁵⁰⁴

Hidden Sentences

When people charged with minor violations finally get their day in court, the judge may simply sentence them to time served. We saw this dynamic often in Georgia.⁵⁰⁵ But given lengthy pre-revocation detention, time served can easily be upwards of 60 or 90 days—far longer than what may be considered appropriate for missing meetings or failing to pay court costs.⁵⁰⁶

For instance, Shaquisha McDaniel is a 27-year-old Black mother of three. According to court records, in August 2018 McDaniel was arrested in Lowndes County, Georgia, for stealing \$145 of clothing from a Walmart and traffic infractions.⁵⁰⁷ A few months later, she pled guilty and was sentenced to a year of probation plus more than \$3,800 in fines, restitution, and 40 hours of community service.⁵⁰⁸ Her sister, Marian Lundy, whom we met in court while McDaniel was being held for a court appearance, said McDaniel had no way to pay.⁵⁰⁹

Fearful she would lose her children if she admitted she did not have money, McDaniel stopped reporting, Lundy said.⁵¹⁰ About six months later, on July 18, 2019, police arrested and detained McDaniel for trespassing at a sporting goods store and giving a

⁵⁰³ Human Rights Watch Court Observations, Milwaukee Secure Detention Facility, November 20, 2019.

⁵⁰⁴ Revocation Decision, In the Matter of [docket number withheld], Milwaukee, Wisconsin, (on file with Human Rights Watch).

⁵⁰⁵ Human Rights Watch Court Observations, Chatham County Superior Court, Savannah, Georgia, December 9, 2019; Human Rights Watch Court Observations, Lowndes County State Court, Valdosta, Georgia, December 10, 2019.

⁵⁰⁶ Human Rights Watch telephone interview with Wade Kruger, November 26, 2019.

⁵⁰⁷ Docket, *Georgia v. Shaquisha McDaniel*, 2018SC13998 (Lowndes County, Georgia); Arrest Warrant, *Georgia v. Shaquisha McDaniel*, 2018SC13998 (Lowndes County, Georgia).

⁵⁰⁸ Ibid.

⁵⁰⁹ Human Rights Watch interview with Marian Lundy, Valdosta, Georgia, December 10, 2019.

⁵¹⁰ Ibid.; Petition for Revocation of Probation, *Georgia v. Shaquisha McDaniel*, 2018SC13998 (Lowndes County, Georgia, December 10, 2019).

false name to the officer.⁵¹¹ Her probation officer sought revocation for that conduct, as well as failing to report or to perform community service.⁵¹²

In August 2019, McDaniel pleaded guilty to the criminal charges and was sentenced to two more years of probation, 40 hours of community service, and a \$1,600 fine.⁵¹³ But she remained in jail pending revocation, without a lawyer. Lundy explained that McDaniel struggles to read and write, and she likely did not understand the form that she signed which waived her right to a lawyer (see Section III, “Limited Access to Attorneys”).⁵¹⁴ Meanwhile, Lundy struggled to care for McDaniel’s children on top of her own three kids with just \$75 a month in food stamps.⁵¹⁵

During McDaniel’s revocation hearing on December 10, 2019, the judge sentenced her to time served, converted her fines into community service hours, and released her to continue probation.⁵¹⁶ Rather than paying the fines, she would now have to do community service hours.⁵¹⁷ By the time of her sentence, she had spent 146 days in jail.⁵¹⁸

⁵¹¹ Ibid.; Docket, *Georgia v. Shaquisha McDaniel*, 2019SC11923 (Lowndes County, Georgia).

⁵¹² Petition for Revocation of Probation, *Georgia v. Shaquisha McDaniel*, 2018SC13998 (Lowndes County, Georgia, December 10, 2019).

⁵¹³ Ibid.

⁵¹⁴ Ibid.; Human Rights Watch interview with Marian Lundy, December 10, 2019.

⁵¹⁵ Human Rights Watch interview with Marian Lundy, December 10, 2019.

⁵¹⁶ Human Rights Watch Court Observations, Lowndes County Court, Valdosta, Georgia, December 10, 2019; Order on Petition to Revoke Probation, *Georgia v. Shaquisha McDaniel*, 2018SC13998 (December 10, 2019).

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

Harmful Prison Conditions

In addition to the cruel and inhumane conditions in which many people awaiting their supervision violation hearings are detained, as described in Section III, some people sentenced to prison terms following revocation proceedings are also held in conditions that raise serious human rights concerns.⁵¹⁹

For instance, in Wisconsin, we spoke with people who were incarcerated following revocation at Green Bay Correctional Institution (GBCI), a maximum-security prison built in 1898 that advocates and local officials largely agree should be shut down.⁵²⁰ People described health hazards including Black mold, rats, and overcrowding.⁵²¹ Individuals also said they have limited access to programming, such as job training or educational courses.⁵²²

We also interviewed many people who had been placed in solitary confinement following revocation, some of them for prolonged periods of time, in violation of international human rights standards.⁵²³ Solitary confinement should only be used in exceptional cases, as a last resort, and for as short a time as possible.⁵²⁴ While there may be instances in which people need to be temporarily separated from the general

⁵¹⁹ For more information on harms of prisons, see note 367, above, discussing cruel and inhumane conditions in US prisons and jails.

⁵²⁰ While many officials are concerned about prison conditions, others want to redevelop the land, which is in a desirable Green Bay suburb. Doug Schneider, “Close Green Bay Correctional, Reduce Wisconsin’s Prison Population? The Effort Faces Uphill Battle,” *Green Bay Press Gazette*, November 20, 2019, <https://www4.w.greenbaypressgazette.com/story/news/2019/11/20/allouez-prison-should-closed-groups-say-but-obstacles-remain/4243832002/>; Mark Leland, “Fox11 Investigates New Concerns Facing GBCI, Push to Close Prison,” *Fox 11 News*, April 18, 2019, <https://fox11online.com/news/fox-11-investigates/fox11-investigates-new-concern-facing-gbci-push-to-close-prison>.

⁵²¹ Human Rights Watch interview with Quentin Apkarian, Allouez, Wisconsin, November 21, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; Human Rights Watch interview with Robert Sanders, November 21, 2019.

⁵²² Ibid.

⁵²³ Under international human rights law, solitary confinement is prolonged if it exceeds 15 consecutive days. UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), A/RES/70/175, Rule 44. See Human Rights Watch interview with Angel Ortiz, October 29, 2019; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Adrian Patterson, November 19, 2019; Human Rights Watch interview with Michael Estevez, November 21, 2019; Human Rights Watch interview with Robert Sanders, November 21, 2019; Human Rights Watch interview with Nathanyal May, November 20, 2019; Human Rights Watch interview with Will Harrell, November 18, 2019; Human Rights Watch interview with Quentin Apkarian, November 21, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; Human Rights Watch telephone interview with Mark Davis (pseudonym), April 14, 2020.

⁵²⁴ UN Nelson Mandela Rules, Rule 45.

population in order to protect prison safety and security, our research has shown that in the United States, lengthy periods of isolation are often imposed for minor misconduct.⁵²⁵ It also suggests that alternatives to solitary are equally effective at furthering prison safety, and that the conditions of solitary confinement are needlessly harsh, counterproductive, harmful to people’s mental health, and inconsistent with recognition of each person’s basic humanity and dignity.⁵²⁶ Prolonged solitary confinement, or confinement of children or people with mental or psychosocial disabilities, violates the international prohibition against cruel, inhuman, and degrading treatment and may amount to torture.⁵²⁷

Angel Ortiz, whose case is described above, was held in solitary at various times while imprisoned for supervision violations. At one point, when he was 21 years old, he said, he spent 22 months of a 30-month sentence following revocation for drug possession, which he says was for marijuana, in solitary. He says six of those months of solitary—which he and others held in solitary call “the hole” —happened in a single stretch. “The hole eats away at your brain a little bit . . . You’re sitting there drilling

⁵²⁵ “Memo of Support for S.1623/A.2500, the New York State HALT Solitary Confinement Act,” Human Rights Watch memo, April 30, 2019, <https://www.hrw.org/news/2019/04/30/human-rights-watch-memo-support-new-york-state-halt-solitary-confinement-act#>; Letter from Human Rights Watch to US Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, “US: Look Critically at Widespread Use of Solitary Confinement,” June 18, 2012, <https://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>; American Civil Liberties Union, “Caged In: Solitary Confinements’ Devastating Harm on Prisoners with Physical Disabilities,” January 2017, https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf; Human Rights Watch & American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, (New York: Human Rights Watch, 2012), <https://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>, p. 81-88; American Civil Liberties Union, “The Dangerous Overuse of Solitary Confinement in the United States,” August 2014, https://www.aclu.org/sites/default/files/field_document/stop_solitary_briefing_paper_updated_august_2014.pdf; Association of State Correctional Administrators & Liman Center for Public Interest Law at Yale Law School, “Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell,” 2018, https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf.

⁵²⁶ Ibid.

⁵²⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994; Nelson Mandela Rules, Rule 45; Human Rights Watch, “*I Needed Help, Instead I Was Punished*”: Abuse and Neglect of Prisoners with Disabilities in Australia, (Sydney: Human Rights Watch, 2018), https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf, p. 40-42.

yourself, beating yourself down for certain things. You have nothing to do but think,”⁵²⁸ he said.



Green Bay Correctional Facility, a maximum-security prison in Allouez, Wisconsin, November 2019. People who have been detained in the facility following revocation described health hazards including black mold, rats, and overcrowding. © 2019 Allison Frankel/Human Rights Watch

⁵²⁸ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

V. Supervision is Feeding Mass Incarceration—The Numbers

[Probation is] like a prison sentence outside of jail. You walk around with a rope tied around your leg to the prison door. Anything can lead to revocation.⁵²⁹

—James Yancey, Georgia defense attorney

National Trends

After a nearly 500 percent increase in the US jail and prison population from 1980 to 2007,⁵³⁰ and nearly 400 percent rise in probation and parole populations,⁵³¹ incarceration and supervision growth is finally slowing.⁵³² States across the country are gradually reforming laws and policies to reduce their reliance on incarceration.⁵³³

Yet many reforms have failed to tackle the role of probation and parole in perpetuating mass incarceration.⁵³⁴ Human Rights Watch examined four decades of Bureau of Justice Statistics (BJS) reports showing state and federal prison admissions for certain types of supervision violations, figures that do not include admissions to local or county jails, for which there is little nationwide data (see below). The data show that, between 1978 and

⁵²⁹ Human Rights Watch telephone interview with James Yancey, December 5, 2019.

⁵³⁰ Columbia University Justice Lab, “Too Big to Succeed,” p. 2; “Background” section, above.

⁵³¹ Ibid.

⁵³² Columbia University Justice Lab, “Too Big to Succeed,” p. 2; The Sentencing Project, “U.S. Prison Population Trends: Massive Buildup and Modest Decline,” 2019, <https://www.sentencingproject.org/wp-content/uploads/2019/09/U.S.-Prison-Population-Trends.pdf>, p. 1; John Gramlich, “America’s Incarceration Rate is at a Two-Decade Low,” *PEW Research Center*, May 2, 2018, <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>; Campbell Robertson, “Crime is Down, Yet U.S. Incarceration Rates Are Still Among the Highest in the World,” *New York Times*, April 25, 2019, <https://www.nytimes.com/2019/04/25/us/us-mass-incarceration-rate.html>. Prison population reductions are modest. For instance, of the 39 states that reduced imprisonment levels, 14 states downsized by less than five percent. As the Sentencing Project reports, at this pace it would take 72 years to just cut the prison population in half. The Sentencing Project, “U.S. Prison Population Trends: Massive Buildup and Modest Decline,” p. 1.

⁵³³ Cameron Kimble and Ames Gawert, “Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem,” *Brennan Center for Justice*, August 6, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/between-2007-and-2017-34-states-reduced-crime-and-incarceration-tandem>; PEW Charitable Trusts, “State Reforms Reverse Decades of Incarceration Growth,” March 21, 2017, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/03/state-reforms-reverse-decades-of-incarceration-growth>.

⁵³⁴ Michelle Phelps, “The Paradox of Probation,” *Law Policy*, p. 4 (explaining advocacy by myriad nonprofit organizations to reduce reliance on incarceration by diverting people to supervision).

2008, the proportion of US state and federal prison admissions that resulted from violations of parole, extended supervision, or “split sentence” probation⁵³⁵ doubled.⁵³⁶ In the late seventies, 16 percent of state and federal prison admissions stemmed from such violations; by 2008, that number was 36 percent.⁵³⁷ This proportion declined sharply in 2011, likely due in large part to California’s “realignment” policy, which, among other things, limited imprisonment for supervision violations—leading to a sizeable reduction in prison admissions for these violations.⁵³⁸

Since 2011, the proportion has increased (see Table below). In 2018, the last year for which such data is available, 28 percent of all state and federal prison admissions resulted from parole, extended supervision, and “split sentence” probation violations.⁵³⁹ This data may be an underestimate as some states did not provide admission type data.⁵⁴⁰ It also does not account for prison admissions resulting from probation violations when the person was not first incarcerated.⁵⁴¹

⁵³⁵ “Split sentence” probation means a probation term served following a term of incarceration, rather than a probation term served in lieu of a term of incarceration. E. Ann Carson and Daniela Golinelli, Bureau of Justice Statistics, “Prisoners in 2012: Trends in Admissions and Releases, 1991-2012,” 2014, <https://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>, p. 30. The BJS refers to these forms of supervision collectively as “conditional release” violations. Ibid.

⁵³⁶ E. Ann Carson and Daniela Golinelli, Bureau of Justice Statistics, “Prisoners in 2012: Trends in Admissions and Releases, 1991-2012,” 2014, <https://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>, Table 1; Bureau of Justice Statistics, Prisoners Series (2015 – 2018). During this time, the state prison population also soared, and—correspondingly—the number of people released onto parole in the first place climbed, from just under 100,000 in 1978 to just over 500,000 in 2008. Accordingly, scholar John Pfaff argues, “violations aren’t driving [prison] growth so much as they are being driven by it.” John Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform*, p. 38-39.

⁵³⁷ E. Ann Carson and Daniela Golinelli, “Prisoners in 2012,” Table 1; Bureau of Justice Statistics, Prisoners Series (2015 – 2018).

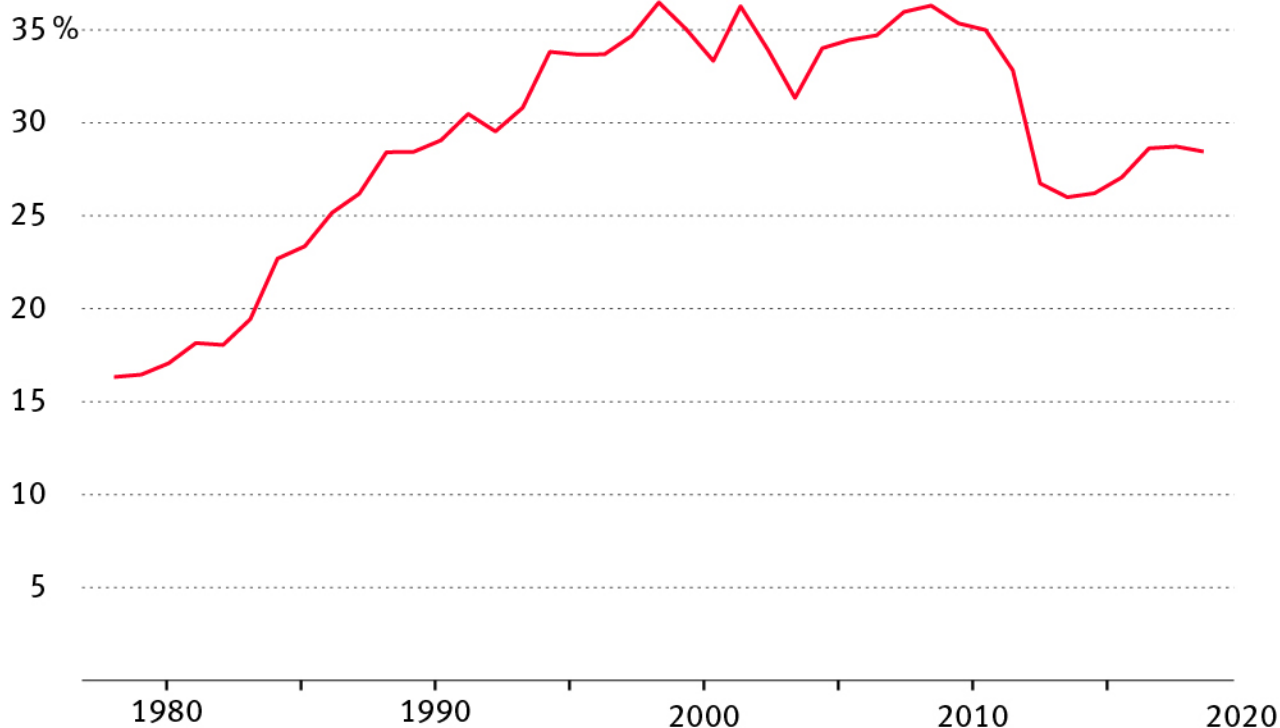
⁵³⁸ Following realignment, California prison admissions for parole, extended supervision, and “split sentence” probation violations dropped from 65 percent in 2010 to 23 percent in 2012. E. Ann Carson and Daniela Golinelli, “Prisoners in 2012,” p. 2, 19.

⁵³⁹ E. Ann Carson, “Prisoners in 2018,” *Bureau of Justice Statistics*, <https://www.bjs.gov/content/pub/pdf/p18.pdf>, Table 8.

⁵⁴⁰ E. Ann Carson, “Prisoners in 2018,” *Bureau of Justice Statistics*, <https://www.bjs.gov/content/pub/pdf/p18.pdf>, Table 8.

⁵⁴¹ As discussed above in note 535, the data only accounts for violations of “split sentence” probation terms, meaning probation terms that were served following incarceration terms.

Proportion of **Admissions** to US **State** and **Federal Prisons** that were for Violations of **Parole**, **Extended Supervision**, and **Split Sentence Probation**



Source: Bureau of Justice Statistics, Prisoners series (2012 - 2018).

However different data from the Council of State Governments (CSG) from one year earlier does include all probation violations—though it is limited to state prisons. It shows that, in 2017, 45 percent of state prison admissions nationwide—or nearly 265,000—resulted from probation and parole violations.⁵⁴² In 20 states, including Wisconsin and Pennsylvania, more than half of all state prison admissions in 2017 resulted from supervision

⁵⁴² Council of State Governments Justice Center, “Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets,” 2019, <https://csgjusticecenter.org/confinedandcostly/>.

violations.⁵⁴³ In six states—Utah, Montana, Wisconsin, Idaho, Kansas, and South Dakota—supervision violations accounted for more than two thirds of such admissions.⁵⁴⁴

This data also shows that high numbers of people are imprisoned for supervision violations on any given day. In 2018, 280,000 people in state prisons, or nearly 1 in 4, were confined for a supervision violation. In 13 states, including Wisconsin, it was more than 1 in every 3 people.⁵⁴⁵

This CSG data does not include the 226,000 people held in federal jails or prisons,⁵⁴⁶ and neither the CSG nor BJS data include most of the 631,000 people confined in county or local jails⁵⁴⁷—such as anyone jailed pending violation proceedings⁵⁴⁸—or those held in “partial confinement” detention facilities, such as probation detention centers, similar to minimum-security prisons.⁵⁴⁹

⁵⁴³ Council of State Governments Justice Center, “Confined and Costly.” While Georgia, one of the focus states for our report, is not included among states with the highest proportions of its state prison population resulting from supervision violations, the absolute numbers of people admitted to prison for supervision violations are still high—more than 6,000 people were admitted to state prisons for supervision violations in 2017.

⁵⁴⁴ Ibid.

⁵⁴⁵ Council of State Governments Justice Center, “Confined and Costly.”

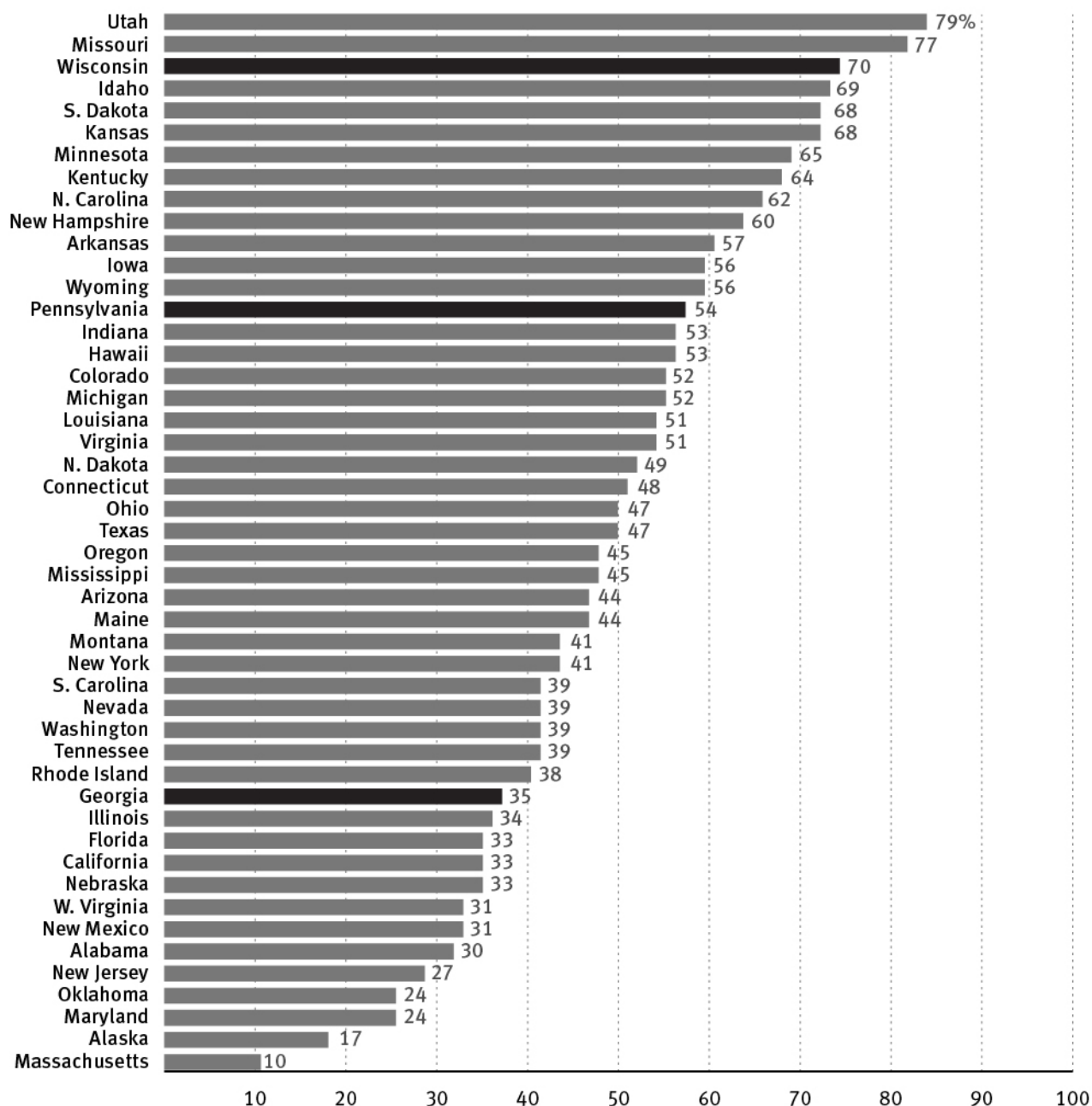
⁵⁴⁶ Wendy Sawyer & Peter Wagner, “Mass Incarceration: The Whole Pie 2020,” *Prison Policy Initiative*, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

⁵⁴⁷ Ibid. There is little nationwide data on admissions to jails for supervision violations. BJS has produced such data for 1996 and 2002. It shows that, in 1996, 45 percent of people admitted to jails were on probation (32 percent) or parole (13 percent) at the time of their arrest; in 2002, this number slightly increased to 46 percent—with nearly 34 percent on probation, and 13 percent on parole. Caroline Wolf Harlow, “Profile of Jail Inmates 1996,” *Bureau of Justice Statistics*, 1998, <https://www.bjs.gov/content/pub/pdf/pji96.pdf>, p. 1; Doris J. James, “Profile of Jail Inmates, 2002,” *Bureau of Justice Statistics*, 2004, <https://www.bjs.gov/content/pub/pdf/pjio2.pdf>, p. 1.

⁵⁴⁸ The BJS data cited in this section does not include any admissions to county or local jails. E. Ann Carson, “Prisoners in 2018,” *Bureau of Justice Statistics*, p. 32. The CSG data cited in this section only includes admissions to county or local jails if the incarceration is funded or reimbursed by the state, which only occurs in some states. Regardless, the CSG data does not include people jailed pending violation proceedings. Council of State Governments Justice Center, “Confined and Costly Methodology,” <https://csgjusticecenter.org/publications/confined-and-costly-methodology/>; Human Rights Watch e-mail correspondence with Megan Quattlebaum, director, Council of State Governments Justice Center, April 17, 2020 (on file with Human Rights Watch).

⁵⁴⁹ Ibid. For more information on “partial confinement” facilities, see, for example, Georgia Department of Corrections, “Probation Detention Centers,” http://www.dcor.state.ga.us/sites/all/themes/gdc/files/Info_Sheets_Probation_Transitional_Centers.pdf (accessed June 2, 2020); Pennsylvania Board of Probation and Parole and Pennsylvania Department of Corrections, “Parole Violator Center Program,” March 2016, <https://www.ova.pa.gov/SafetyandSupport/Testimony/Violations/Documents/Parole%20Violator%20Centers%20FINAL%20DECEMBER%202014.pdf>.

Proportion of State Prison Admissions that are Due to Supervision Violations 2017:



Source: Council of State Governments Justice Center, Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets, June 2019, <https://csgjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf>.

Human Rights Watch also examined data regarding people whose supervision terms ended, extracted from 10 years of BJS reports.⁵⁵⁰ This data includes people whose supervision term ended because they completed their supervision sentence; their supervision was revoked (see “Definitions and Terms”) and they were sentenced to jail or prison; or their term ended for some other reason, such as that they “absconded” or died.

With respect to parole, from 2007 through 2016, more than 4.83 million⁵⁵¹ people’s parole terms ended.⁵⁵² The annual rate of parole completion improved over the last decade from a low of 46 percent in 2007 to 61 percent in 2016.⁵⁵³

But high numbers of people do not complete their parole terms each year—leading many of them right back to jail or prison. Over this 10-year period, about one third of people whose parole terms ended—or nearly 1.5 million people—had their parole revoked and were sent back to state or federal jails or prisons.⁵⁵⁴ As discussed below in “Violation Types,” about two-thirds of them were locked up due to rule violations, not new convictions.

Numbers for probation revocations are also high. The BJS did not publish probation data in a consistent way over the same 10-year period. We therefore had to examine two recent periods separately, 2007 – 2010 and 2015 – 2016.⁵⁵⁵ In the four-year period between 2007 and 2010, nearly 8.7 million people’s probation terms ended—as discussed above, due to factors including completing probation, revocation of their probation and incarceration, or death.⁵⁵⁶ About 16 percent of these individuals had their probation revoked and were sent to state or federal jail or prison.⁵⁵⁷ In 2015 and 2016, of the 3.8 million people whose probation terms ended, about 14 percent of them had their probation revoked and were

⁵⁵⁰ The BJS refers to these as supervision “exits.”

⁵⁵¹ The reason supervision ended was known to the BJS in over 4.7 million of these cases. The percentages shown here are computed using only cases where reason for the ending of supervision was known. Rates of incarceration do not include cases where the cause of incarceration is unknown.

⁵⁵² Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid. As explained in “Definitions and Terms,” when a person’s supervision is revoked, they may face lengthy periods of incarceration.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid.

sent to state or federal jails or prisons.⁵⁵⁸ This equals hundreds of thousands of people who annually wind up in jail or prison following revocation. In 2016, it was about 270,000 people.⁵⁵⁹ As with parole revocations, the majority of these individuals are incarcerated for rule violations, not new convictions.

Even these figures undercount the extent to which people are being incarcerated for supervision violations because they only account for people who were incarcerated following revocation. The numbers do not include, for instance, people jailed pending violation proceedings—which, as discussed in Section III, “Lengthy Confinement,” can take months—or those serving days, weeks, or months in jail as a sanction short of revocation.⁵⁶⁰

Pennsylvania

In the states where we conducted field research for this report, we saw even sharper trends. For instance, Pennsylvania’s prison population has fallen by six percent since its peak in 2011.⁵⁶¹ But admissions for parole violations are rising. While prison admissions following convictions (called “court commitments,” which include probation violations⁵⁶²) decreased by 21 percent from 2008 to 2018—from 10,783 to 8,563—admissions due to parole violations increased by 40 percent during that period, from 6,101 to 8,559.⁵⁶³

Pennsylvania does not systematically track jail and prison admissions for probation violations, so we were unable to ascertain the number of “court commitment” admissions that resulted from probation violations. However, in 2014, the only year for which we could find such data, the Pennsylvania Department of Corrections reported that 23 percent of the

⁵⁵⁸ Ibid.

⁵⁵⁹ About 15 percent of peoples’ probation terms ended for “unknown” reasons, so the number may be higher. Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.

⁵⁶⁰ See Section III, “Coercive Pleas;” “Definitions and Terms.”

⁵⁶¹ The Sentencing Project, “U.S. Prison Population Trends: Massive Buildup and Modest Decline,” 2019, <https://www.sentencingproject.org/wp-content/uploads/2019/09/U.S.-Prison-Population-Trends.pdf>, p. 4-5.

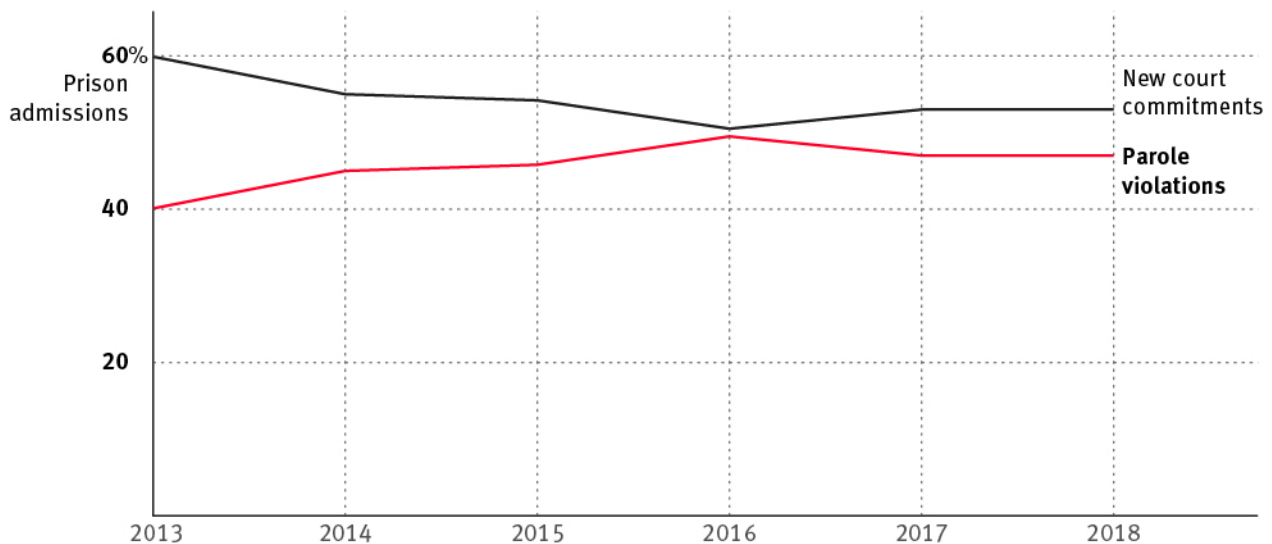
⁵⁶² See Statement of Carl Reynolds, Senior Legal & Policy Advisor, The Council of State Governments Justice Center, “Probation in Pennsylvania,” 2019, <https://judiciary.pasenategop.com/wp-content/uploads/sites/42/2019/06/carl-reynolds.pdf>, p. 8.

⁵⁶³ Pennsylvania Department of Corrections, “Annual Statistical Report 2018,” <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20Annual%20Statistical%20Report.pdf>, p. 2. For a detailed breakdown of Pennsylvania’s jail and prison populations, see ACLU Smart Justice, “Blueprint for Smart Justice: Pennsylvania,” 2018, <https://50stateblueprint.aclu.org/states/pennsylvania/>.

10,313 admissions following court proceedings were on probation at the time of prison admission, suggesting they were incarcerated following probation violations.⁵⁶⁴

Indeed, between 2013 and 2018, over 54,000 people entered Pennsylvania’s prisons for state parole violations alone—not including county parole or probation violations—accounting for nearly half of the state’s prison population.⁵⁶⁵ In 13 Pennsylvania counties, the majority of prison admissions from 2013 to 2018 resulted from state parole violations.⁵⁶⁶ Philadelphia has 12 percent of Pennsylvania’s population, but nearly 20 percent of all prison admissions for state parole violations—nearly 11,000 people over those years.⁵⁶⁷

Nearly half of prison admissions in Pennsylvania include parole violations.



Source: Human Rights Watch analysis of Pennsylvania Department of Corrections data.

⁵⁶⁴ Statement of Carl Reynolds, Senior Legal & Policy Advisor, The Council of State Governments Justice Center, p. 8.

⁵⁶⁵ Human Rights Watch analysis of Pennsylvania Department of Corrections Data.

⁵⁶⁶ Human Rights Watch analysis of Pennsylvania Department of Corrections Data. These figures do not include people incarcerated for violating county parole or probation.

⁵⁶⁷ Ibid.

Percentage of Prison Admissions that included Parole Violations in Pennsylvania

By County, 2013 – 2018:



Source: Human Rights Watch analysis of Pennsylvania Department of Corrections data.

Supervision violations are also significant contributors to jail populations in Philadelphia, where reforms in some areas have reduced jail populations, but have failed to meaningfully address the role of supervision violations in contributing to incarceration. According to the First Judicial District of Pennsylvania, between July 2015 and May 2020, Philadelphia cut its jail population by more than half, from 8,082 to 3,935.⁵⁶⁸ Yet the proportion of people locked up on detainers has increased, from 46 percent in 2015 to 58 percent in 2020.⁵⁶⁹ People confined on Philadelphia detainers with pending charges grew from the third-largest confinement group in 2015 (then accounting for 14 percent of the jail population) to the single largest group of people in jail by 2020, comprising 25 percent of the jail population.⁵⁷⁰

Further, as of 2019, 34 percent of people jailed in Dauphin County, Pennsylvania, which contains Harrisburg, were detained on supervision-related charges.⁵⁷¹ In Montgomery County, near Philadelphia, on one day in October 2019 more than 40 percent of those in jail were in on detainers—42 percent of them for alleged rule violations.⁵⁷²

Wisconsin

We saw similar trends in Wisconsin. Bucking national trends, after a period of decline, Wisconsin's jail and prison populations have recently been growing.⁵⁷³ Much of this growth stems from supervision violations. From 2000 to 2019, Wisconsin consistently admitted about twice as many people to prison for supervision violations as for new convictions (for those not on supervision).⁵⁷⁴

⁵⁶⁸ First Judicial District of Pennsylvania, Department of Research and Development, "Philadelphia Jail Population Report July 2015-May 2020," <https://www.phila.gov/media/20200617162954/Full-Public-Jail-Report-May-2020.pdf>, p. 6.

⁵⁶⁹ *Ibid.*, p. 11-12. Figures exclude people who have been sentenced and have detainers.

⁵⁷⁰ *Ibid.*, p.6.

⁵⁷¹ Wendy Sawyer, et al., "Technical Violations, Immigration Detainers, and Other Bad Reasons to Keep People in Jail," *Prison Policy Initiative*, March 18, 2020, <https://www.prisonpolicy.org/blog/2020/03/18/detainers/>, Table 2.

⁵⁷² Human Rights Watch e-mail correspondence with Dean Beer, Pennsylvania, July 14, 2020 (on file with Human Rights Watch) (Beer said he obtained this data from the Montgomery County probation department).

⁵⁷³ Rob Mentzer and Keegan Kyle, "Rising Inmate Population in Wisconsin Strains Local Jails," *WPR*, January 16, 2020, <https://www.wpr.org/rising-inmate-population-wisconsin-strains-local-jails>; Ximena Conde, "Report Shows Record Number of Adults in Wisconsin Prisons," *WPR*, October 31, 2018, <https://www.wpr.org/report-shows-record-number-adults-wisconsin-prisons>. For a detailed breakdown of Wisconsin's jail and prison populations, see American Civil Liberties Union, Smart Justice, "Blueprint for Smart Justice: Wisconsin," 2019, <https://50stateblueprint.aclu.org/states/wisconsin/>.

⁵⁷⁴ Wisconsin Department of Corrections, "Prison Admissions: 2000-2010," May 2020, <https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf>, Table 6; Wisconsin Department of Corrections, "Prison Admissions Interactive Dashboards," <https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx>.

In addition, many people in Wisconsin's jails and prisons are incarcerated while awaiting violation proceedings. According to the JFA Institute, in April 2019, nearly 45 percent of the jail population of Dane County, Wisconsin, was confined for reasons related to supervision violations:⁵⁷⁵ 17 percent were locked up solely on detainers; 12 percent were incarcerated on detainers and new charges;⁵⁷⁶ 10 percent were serving portions of their probation term in jail; and 5 percent were incarcerated following extended supervision sanctions.⁵⁷⁷

In Milwaukee, Wisconsin, people accused of violating their supervision are generally confined in the Milwaukee Secure Detention Facility (MSDF)—a state prison opened in 2001 for the primary purpose of detaining people under supervision, pre- or post-revocation—the first such facility in the US.⁵⁷⁸ The opening of MSDF dramatically increased pre-revocation detention in the Wisconsin state prison system: in the five years since the facility opened, Wisconsin prison admissions grew by 62 percent, and 65 percent of that increase was due to increased detainers.⁵⁷⁹ From 2002 through 2019, people detained pending revocation proceedings accounted for more than a quarter of all state prison admissions.⁵⁸⁰

Georgia

According to the Georgia Department of Corrections, while prison admissions for new convictions in Georgia dropped from 14,001 in 2014 to 12,617 in 2019, admissions for

The remaining ten percent of admissions were “other,” which includes people serving “Alternative to Revocation” (ATR) programs following supervision violations; incarceration pending revocation proceedings; admissions for short-term sanctions; and admissions after completions of sentences from other states. Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” p. 9. In 2017, more than 97 percent of those admitted for “other” reasons were locked up to complete ATR programs. Data provided by Wisconsin Department of Corrections in response to records request from Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).

⁵⁷⁵ The JFA Institute, “Analysis of the Dane County Jail Population,” August 2019, <https://cjc.countyofdane.com/documents/Analysis-of-the-Dane-County-Jail-Population-JFA-Institute.pdf>, Tables 3, 4.

⁵⁷⁶ Ibid.

⁵⁷⁷ The remaining 1 percent were incarcerated on other holds. Ibid. For an explanation of extended supervision, see “Definitions and Terms.”

⁵⁷⁸ Jarred Williams, et al, “Wisconsin Community Corrections Story,” p. 15.

⁵⁷⁹ Ibid.; Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” p. 32; Table 13.

⁵⁸⁰ The vast majority of people detained in state prisons pending revocation are held at MSDF, but some are held at other Wisconsin Department of Corrections facilities. Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” Table 13.

supervision violations rose from 5,001 to 6,298 over that same period.⁵⁸¹ In 2019, supervision revocations accounted for one third of all Georgia prison admissions.⁵⁸² These figures do not include people in county jails or “partial confinement” facilities such as probation detention centers.

With respect to jail populations, Human Rights Watch examined data scraped from jail rosters in nine Georgia counties from June 1 to October 31, 2019. The data indicated that, depending on the county, between 23 and 43 percent of all jail bookings during that period involved a parole or probation violation.⁵⁸³ As discussed below in “Violation Types,” many such bookings involved only parole or probation violations, without any other criminal charges.

The prevalence of bookings for supervision violations in each county varied, from 34 violation bookings per every 10,000 residents in Gilmer County, Georgia, near the Tennessee border, to 210 such bookings for every 10,000 residents in Jeff Davis County, in southeastern Georgia.⁵⁸⁴

⁵⁸¹ Georgia Department of Corrections, “Inmate Statistical Profile: Inmates Admitted During CY2014,” February 2 2015, http://www.dcor.state.ga.us/sites/all/files/pdf/Research/Annual/Profile_inmate_admissions_CY2014.pdf, p. 20; Georgia Department of Corrections, “Inmate Statistical Profile: Inmates Admitted During CY2019,” January 2, 2020, http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_inmate_admissions_CY2019.pdf, p. 21. For a detailed breakdown of Georgia’s jail and prison population, see American Civil Liberties Union, Smart Justice, “Blueprint for Smart Justice: Georgia,” 2018, <https://5ostateblueprint.aclu.org/states/georgia/>.

⁵⁸² Georgia Department of Corrections, “Inmate Statistical Profile: Inmates Admitted During CY2019,” p. 21.

⁵⁸³ Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters. *See* “Methodology.” About 23 percent of all charges resulted from probation violations, while another 1.3 percent stemmed from parole violations. *Ibid.*

⁵⁸⁴ *Ibid.*

Jail Bookings in Select Georgia Counties 6/1/2019 - 10/31/2019				
County	Total bookings	Percentage of bookings including a parole or probation violation	Percentage of bookings with only a parole or probation violation	Rate of Probation or Parole Violation Bookings per 10,000 County Residents
Catoosa	736	40%	17%	43
Decatur	591	31%	13%	68
Gilmer	434	23%	9%	34
Gordon	921	39%	13%	64
Haralson	614	26%	11%	56
Jeff Davis	877	36%	14%	210
Newton	1,273	43%	18%	50
Tift	679	30%	11%	50
Ware	714	36%	12%	72

Violation Types

Nationwide, most people incarcerated for violating their supervision were in custody for rule violations, not for new offenses.⁵⁸⁵ Human Rights Watch examined data extracted from BJS reports from 2007 to 2016, which considers conduct to be a “new offense” violation only if it resulted in a criminal conviction.⁵⁸⁶ We removed all cases where the reason for incarceration was unknown.

The data showed that, of people who had their parole revoked and were sent back to state and federal jails and prisons, about two-thirds of them were locked up for rule violations, not new offenses.⁵⁸⁷ In 2016, the most recent year for which such data is available, 67

⁵⁸⁵ Danielle Kaebler, “Probation and Parole in the United States, 2016,” Tables 3, 7. For a discussion of how jurisdictions define “rule” and “new offense” violations, see “Definitions and Terms” and “Methodology.”

⁵⁸⁶ Human Rights Watch e-mail correspondence with Bureau of Justice Statistics, April 17, 2020 (on file with Human Rights Watch).

⁵⁸⁷ Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.

percent of people incarcerated following revocation were there for rule violations, while 30 percent were confined for new offense violations, and 3 percent were incarcerated to receive treatment or for other reasons.⁵⁸⁸ Similarly, about 58 percent of those who had their probation terms revoked and were sent to state and federal jails and prisons in 2015 and 2016 were incarcerated for rule violations.⁵⁸⁹ In 2016, 59 percent of people incarcerated following revocation were locked up for rule violations, 38 percent were incarcerated for new offense violations, and 3 percent were locked up to receive treatment or for other reasons.⁵⁹⁰ None of these figures include people who were jailed pending violation proceedings or serving incarceration terms short of revocation, or those held in “partial confinement” facilities such as probation detention centers.⁵⁹¹

People imprisoned for rule violations—both up to and including revocation—comprise a sizeable proportion of all state prison admissions. According to CSG data, in 2017, 25 percent of all state prison admissions nationwide resulted from rule violations, while 20 percent of all such admissions stemmed from new offense violations.⁵⁹² As discussed above, CSG’s figures do not even include people confined in county-funded jails or federal jails and prisons or those in “partial confinement” facilities.⁵⁹³ Since many people charged with rule violations are sentenced to jails or partial confinement facilities instead of prison, they likely constitute a sizeable share of the population in those facilities.⁵⁹⁴ Accordingly, the actual number of those incarcerated for rule violations is likely much higher.

Pennsylvania

In Pennsylvania, our analysis of data provided by the Pennsylvania Board of Probation and Parole (PBPP), and data made public by the Pennsylvania Sentencing Commission, show

⁵⁸⁸ Danielle Kaeble, “Probation and Parole in the United States, 2016,” Table 7.

⁵⁸⁹ Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.

⁵⁹⁰ Danielle Kaeble, “Probation and Parole in the United States, 2016,” Table 3.

⁵⁹¹ *Ibid.*, p. 5; “Definitions and Terms.”

⁵⁹² Council of State Governments Justice Center, “Confined and Costly,” p. 1. In this dataset, each state categorized violations as “rule” or “new offense” violations according to their own definition. *Ibid.*, p. 1 n.1.

⁵⁹³ Council of State Governments Justice Center, “Methodology: Confined and Costly.”

⁵⁹⁴ O.C.G.A. § 17-10-1(a)(3)(A); Pennsylvania Board of Probation and Parole and Pennsylvania Department of Corrections, “Parole Handbook,” February 2019, <https://www.cor.pa.gov/parole-supervision/Documents/Parole%20Publications/Final%20Parole%20Handbook.pdf>, p. 27-28.

that the types of violations that lead to incarceration differ sharply between people serving state parole and county probation.

Human Rights Watch analysis of PBPP data reveals that, out of more than 32,000 state parole violation proceedings in Pennsylvania between 2016 and 2019, 56 percent resulted from new offense violations, while 42 percent resulted from rule violations.⁵⁹⁵ This dataset considers conduct to be a rule violation if the conduct did not result in a criminal conviction.⁵⁹⁶

Meanwhile, according to the Pennsylvania Sentencing Commission, the vast majority—78 percent—of county probation revocations during those years were for rule violations, while only 22 percent of revocations resulted from new offenses.⁵⁹⁷ As each county reported data differently, there was no standard definition of rule or new offense violations in this dataset.⁵⁹⁸

Wisconsin

In Wisconsin, the majority of supervision violations do not involve new criminal convictions. Human Rights Watch analyzed data provided by the Wisconsin Department of Corrections (WI DOC) for all supervision violations that resulted in any sanction—from warnings, to months in jail, to revocation⁵⁹⁹—between 2017 and 2019 (“sanctions dataset”).⁶⁰⁰ In that dataset, the WI DOC coded violations based on the underlying conduct: if the supervision officer alleged that the conduct constituted only a rule violation, they coded it as a rule violation, and if the supervision officer alleged that the conduct constituted a new offense—whether or not charges were filed—they coded it as a new offense violation.⁶⁰¹

⁵⁹⁵ The remaining two percent of hearings resulted from both rule and new offense violations. Human Rights Watch Data analysis of data provided by Pennsylvania Department of Probation and Parole.

⁵⁹⁶ Human Rights Watch e-mail correspondence with David Butts, May 21, 2020; see “Definitions and Terms;” “Methodology.”

⁵⁹⁷ Pennsylvania Commission on Sentencing, “Revocation and Resentencing Data Analysis for Resentencing Guidelines,” 2019, <http://pcs.la.psu.edu/guidelines/resentencing/resentencing-analysis-2019>, p. 5.

⁵⁹⁸ Human Rights Watch e-mail correspondence with Mark Bergstrom and Matthew Kleiman, Pennsylvania Sentencing Commission, April 29, 2020 (on file with Human Rights Watch); see “Methodology.”

⁵⁹⁹ See “Definitions and Terms.”

⁶⁰⁰ See “Methodology.”

⁶⁰¹ Human Rights Watch e-mail correspondence with Megan Jones, December 18, 2019 (on file with Human Rights Watch); see “Definitions and Terms;” “Methodology.”

The sanctions dataset revealed that more than 61 percent of supervision violations that resulted in any sanction, and 50 percent of violations that resulted in incarceration sanctions, were for rule violations—meaning people had not allegedly engaged in behavior that constituted a criminal offense.⁶⁰²

Human Rights Watch also analyzed a public WI DOC dataset comprised of people who were subjected to the harshest sanction available for a supervision violation: revocation of supervision and confinement in state prison (“prison admissions dataset”).⁶⁰³ In this dataset, the WI DOC coded conduct as a rule violation as long as it did not result in a new conviction and sentence for a crime.⁶⁰⁴ Unlike in the sanctions dataset, people admitted to prison for rule violations in this dataset may or may not have been accused of conduct that constituted a crime.

The prison admissions dataset shows that Wisconsin has consistently imprisoned high numbers of people who fall into this category—those who had their supervision revoked for rule violations, meaning they were not convicted and sentenced for a new offense—over the last two decades. From 2000 through 2019, this category constituted the single largest category of state prison admissions, accounting for 34 percent of them—above admissions for new convictions of people not under supervision (30 percent), revocations for new offenses (26 percent), and a category of “other” (10 percent).⁶⁰⁵ In 2019, rule violations accounted for nearly 40 percent of all prison admissions in Wisconsin.⁶⁰⁶ Further, at the end of 2017, more than six times as many people were incarcerated at MSDF (the primary prison for supervision violations) following revocation for rule violations as for new offense violations.⁶⁰⁷

⁶⁰² Human Rights Watch Analysis of WIDOC Data. As discussed in Section II, “Conduct Triggering Violations,” the most common rule violations in Wisconsin were drug use; consuming alcohol or entering bars; and violating rules of supervision-mandated programs.

⁶⁰³ People who were sentenced to sanctions short of revocation, like a few months in jail, or a prison-based treatment program, are not included in this dataset.

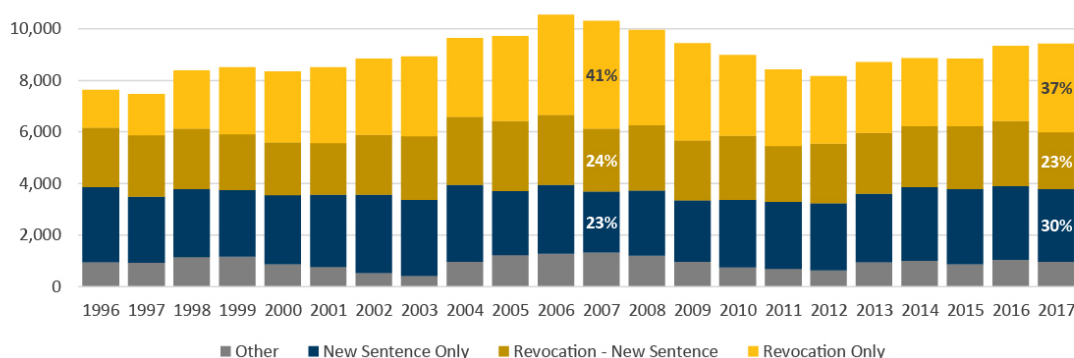
⁶⁰⁴ Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” p. 9; see “Definitions and Terms” and “Methodology.” WI DOC refers to revocations for rule violations as “revocation only” prison admissions, and to revocations for new offense violations as “revocation new sentence” admissions. See Wisconsin Department of Corrections, “Prison Admissions Dashboard,” <https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx> (accessed June 28, 2020).

⁶⁰⁵ Wisconsin Department of Corrections, “Prison Admissions Dashboard,” <https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx> (accessed June 2, 2020). “Other” includes people incarcerated pending revocation or serving sanctions short of revocation, as well as people serving sentences from another state. *Ibid.*

⁶⁰⁶ Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” Table 6.

⁶⁰⁷ Columbia University Justice Lab, “Wisconsin Community Corrections Story,” p. 15.

People admitted to Wisconsin prisons, by reason for admission, 1996-2017



Sources: Wisconsin Department of Corrections 2017c; 2018b. Note: These data represent a count of admissions to Wisconsin prisons in a calendar year, rather than a count of unique people admitted in that year. A person may be counted more than once in a year if they were admitted multiple times in the course of that year. These data do not include people admitted to Wisconsin prisons on probation or parole "holds"

Source: Columbia University Justice Lab, Wisconsin Community Corrections Story, <https://justicelab.columbia.edu/sites/default/files/content/Wisconsin%20Community%20Corrections%20Story%20final%20online%20copy.pdf>, Figure 7.

Human Rights Watch also obtained a preliminary processed WI DOC dataset ("merged dataset"), which contains a subset of people who were admitted to prison following revocation for rule violations from January 2017 to June 2018, drawn from the prison admissions dataset, along with the alleged underlying conduct triggering revocation, based on the sanctions dataset. WIDOC officials warned that the data "should be interpreted with caution as there are still a number of data entry errors that need to be corrected."⁶⁰⁸ According to this dataset, 73 percent of the nearly 4,000 prison admissions for rule violations in those years allegedly involved conduct that constituted a crime.⁶⁰⁹ This 4,000 figure constitutes just a small subset of the 135,121 supervision violations analyzed in the sanctions dataset. The most common alleged offenses in the merged dataset were, in order, drug offenses, unlawful firearm possession, misdemeanor battery, failure to comply with sex offense registration rules, and operating a vehicle under the influence.⁶¹⁰

⁶⁰⁸ Data provided by Wisconsin Department of Corrections to Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid. As discussed in Section II, "Conduct Triggering Violations," the most common new offense violations in the sanctions dataset were, in order, public order conduct; assaultive conduct, which was largely for misdemeanor offenses; drug possession; and theft or property conduct.

Georgia

Human Rights Watch was not able to obtain as much data on the types of violations driving jail and prison admissions in Georgia as in other states.⁶¹¹ However, our analysis of data scraped from jail bookings in nine Georgia counties revealed that, from June 1 to October 31, 2019, between 9 and 18 percent of all jail bookings were solely for probation or parole violations—without any other criminal charges.⁶¹²

Entrenching Racial Disparities

There are marked racial disparities in incarceration for supervision violations. As discussed above in “Background,” nationwide, Black people are disproportionately subjected to supervision.⁶¹³ Further, while there are no nationwide figures, studies in multiple jurisdictions show significant racial disparities in rates of incarceration for violations.⁶¹⁴

For instance, a study of people exiting parole in Kentucky, Michigan, New York, and Utah in 2000 revealed that Black people were 19 percent more likely than whites to have their parole revoked for a new offense, and 50 percent more likely than whites to have their parole revoked for a rule violation.⁶¹⁵ Another study examining parole revocation data across 24 states between 1990 and 2009 found that parole revocation is significantly more likely for Black people, contributing to racial disparities in prison admissions.⁶¹⁶

⁶¹¹ See “Methodology.”

⁶¹² Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters.

⁶¹³ PEW Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” Figure 4.

⁶¹⁴ Kendra Bradner and Vincent Schiraldi, “Racial Inequities in New York Parole Supervision,” *Columbia University Justice Lab*, March 2020, <https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf> (collecting studies); Michelle Phelps, “Mass Probation and Inequality,” p. 49; ACLU, “Set Up to Fail: Montana’s Probation & Parole System,” 2018, https://www.aclumontana.org/sites/default/files/field_documents/setuptofailmontanasprobationparolesystem.pdf, p. 45-46; Caitlin Curry, “Do Parole Revocations Contribute to Racial Disproportionality in Imprisonment? A Multilevel Analysis of State Prison Admissions from 1990-2009,” 2016, <https://scholarworks.uark.edu/etd/1573/>; Jesse Jannetta, et al., “Examining Racial and Ethnic Disparities in Probation Revocation,” *Urban Institute*, 2014, <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>; Sara Steen and Tara Opsal, “Punishment on the Installment Plan: Individual-Level Predictors of Parole Revocation in Four States,” *The Prison Journal*, vol. 87, issue 3, 2007, <https://journals.sagepub.com/doi/pdf/10.1177/0032885507304526>.

⁶¹⁵ Sara Steen and Tara Opsal, “Punishment on the Installment Plan,” p. 356.

⁶¹⁶ Caitlin Curry, “Do Parole Revocations Contribute to Racial Disproportionality in Imprisonment?”

Human Rights Watch analysis of data in Pennsylvania and Wisconsin reveals stark racial disparities. For instance, while Black people make up 11 percent of Pennsylvania's population,⁶¹⁷ they comprise 43 percent of the population under state parole supervision,⁶¹⁸ 46 percent of people in Pennsylvania state prisons,⁶¹⁹ and 43 percent of people incarcerated for state parole violations.⁶²⁰

Disparities are particularly glaring in Wisconsin, which, as of 2014, had the highest racial disparities in its incarcerated population in the United States, with 11.5 Black individuals locked up for every one white person.⁶²¹ In 2017, while Black people made up just 6 percent of Wisconsin's population,⁶²² they comprised 25 percent of the state's supervision population and 42 percent of those incarcerated following revocation.⁶²³ According to Human Rights Watch analysis of WI DOC data, the proportion of Black people sanctioned for violations is four times greater than their representation in Wisconsin's population.⁶²⁴ The proportion of Native Americans sanctioned for violations is seven times higher than their proportion of the state population.⁶²⁵

In some counties, disparities are even higher. As of 2018, Black people made up 26 percent of Milwaukee County's population,⁶²⁶ but 64 percent of people under supervision there,⁶²⁷ and 78 percent of those admitted to prison from the county following revocation.⁶²⁸ In 2017, Black people comprised 76 percent of the population incarcerated following revocation at MSDF (a Milwaukee prison for people charged with violating their

⁶¹⁷ U.S. Census Bureau, "Race American Community Survey 1-year estimates," 2018, <https://censusreporter.org>.

⁶¹⁸ Pennsylvania Board of Probation and Parole, "Monthly Statistics Report," December 2019, <https://www.pardoc.pa.gov/Information/Documents/Monthly%20Program%20Reports/FY%2019%2020/December%202019%20Stats%20Report.pdf>, Table 5.

⁶¹⁹ Pennsylvania Department of Corrections, "Annual Statistical Reports: Inmate Statistics - As of December 31, 2019," 2019, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2019%20Inmate%20Profile.pdf>.

⁶²⁰ Human Rights Watch analysis of PBPP Data.

⁶²¹ The Sentencing Project, "State-by-State Data: Wisconsin," <https://www.sentencingproject.org/the-facts/> (accessed June 2, 2020).

⁶²² U.S. Census Bureau, "Race American Community Survey 1-year estimates."

⁶²³ Jarred Williams, et al., "Wisconsin Community Corrections Story," p. 18.

⁶²⁴ Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations.

⁶²⁵ Ibid.

⁶²⁶ U.S. Census Bureau, "Race American Community Survey 1-year estimates," 2018.⁶²⁷ Jarred Williams, et al., "Wisconsin Community Corrections Story," p. 15.

⁶²⁷ Jarred Williams, et al., "Wisconsin Community Corrections Story," p. 15.

⁶²⁸ Wisconsin Department of Corrections, "Prison Admissions Interactive Dashboards."

supervision)—and of those, 88 percent did not have new convictions.⁶²⁹ In nearby Racine County, Black people comprised 12 percent of the population in 2018,⁶³⁰ but more than 60 percent of the county’s prison admissions for revocation.⁶³¹

These disparities result from decades of systemic racial discrimination—meaning discrimination that is built into societal institutions.⁶³² Across the country, Black and brown people are less likely to have advantages, such as housing, wealth, reliable transportation, and jobs, that make completing supervision feasible.⁶³³ They are also disproportionately likely to be surveilled, stopped, and searched by law enforcement—making it more likely that any violations will be uncovered.⁶³⁴

While these disparities exist across the country, they are particularly harsh in some jurisdictions covered for this report. For instance, for the last three years Milwaukee and nearby Racine—cities with entrenched segregation, massive income inequality, and huge

⁶²⁹ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 15; Figure 12.

⁶³⁰ U.S. Census Bureau, Race American Community Survey 1-year estimates.

⁶³¹ Wisconsin Department of Corrections, “Prison Admissions Interactive Dashboards.”

⁶³² See, for example, Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” *Washington Post*, (collecting studies); David Remnick, “Ten Years After ‘The New Jim Crow,’” *The New Yorker*, January 17, 2020, <https://www.newyorker.com/news/the-new-yorker-interview/ten-years-after-the-new-jim-crow>; Alexi Jones, “Police Stops are Still Marred by Racial Discrimination, New Data Shows,” *Prison Policy Initiative*, October 12, 2018, <https://www.prisonpolicy.org/blog/2018/10/12/policing/>; Runa Rajagopal, “Building Justice: How Segregation Enables Over-Policing of Communities of Color,” *City Limits*, September 26, 2016, <https://citylimits.org/2016/09/26/how-segregated-housing-enables-over-policing-of-low-income-communities-of-color/>; Elizabeth Hinton, et al., “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System,” *Vera Institute for Justice*, 2018, <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; Tushar Kansal, “Racial Disparity in Sentencing: A Review of the Literature,” *The Sentencing Project*, 2005, https://www.opensocietyfoundations.org/publications/racial-disparity-sentencing#publications_download; Human Rights Watch, *Get on the Ground*, p. 30-31; Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 42-43.

⁶³³ See, for example, Tyrmaine Lee, “A Vast Wealth Gap, Driven by Segregation, Redlining, Evictions, and Exclusions, Separates Black and White America; Angela Hanks, et al., “Systemic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap,” *Center for American Progress*, February 21, 2018, <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>; Allergnon Austin, “To Move is to Thrive: Public Transit and Economic Opportunity for People of Color,” *Demos*, November 15, 2017, <https://www.demos.org/sites/default/files/publications/Public%20Transit.pdf>.

⁶³⁴ See, for example, Emma Pierson, et al., “A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States,” *Stanford Open Policing Project*, March 13, 2019, <https://5harad.com/papers/100M-stops.pdf>; Runa Rajagopal, “Building Justice,” *City Limits*; Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” *Washington Post*; Alexi Jones, “Police Stops are Still Marred by Racial Discrimination, New Data Shows,” *Prison Policy Initiative*. Lynn Langton and Matthew Durose, “Police Behavior During Traffic and Street Stops,” *US Department of Justice, Bureau of Justice Statistics*, October 27, 2016, <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>; Human Rights Watch, *Get on the Ground*, p. 30-31; Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 42-43.

racial disparities in incarceration—have been ranked among the worst cities in the country to live for African Americans.⁶³⁵

⁶³⁵ Alana Watson, “Report: Milwaukee, Racine Rank as Worst Cities for African Americans to Live,” *NPR*, November 15, 2019, <https://www.wpr.org/report-milwaukee-racine-rank-worst-cities-african-americans-live>; John Schmid, “Milwaukee’s Trauma Care Initiatives are Meant to Heal. Now They are at the Heart of the City’s Racial Divide,” *Milwaukee Journal Sentinel*, June 18, 2019, <https://www.jsonline.com/story/news/solutions/2019/06/18/centuries-old-racism-haunts-efforts-treat-milwaukee-trauma-epidemic/2580146002/>; Alyssa Mauk, “How did We Get Here? A Look Back at Redlining in Racine County,” *The Journal Times*, November 18, 2019, https://journaltimes.com/news/local/how-did-we-get-here-a-look-back-at-redlining/article_239b8714-55cc-5a23-ae9f-a431c27f98ec.html; George Joseph, “How Wisconsin Became the Home of Black Incarceration,” *CityLab*, August 17, 2016, <https://www.citylab.com/equity/2016/08/how-wisconsin-became-the-home-of-black-incarceration/496130/>; Columbia University Justice Lab, “Wisconsin Community Corrections Story,” p. 18-22. Indeed, in April 2019, Milwaukee County leaders declared racism a public health crisis. Mary Spicuzza, “‘Racism is a Public Health Crisis’: Milwaukee County Leaders Call for Racial Equity,” *Milwaukee Journal Sentinel*, April 4, 2019.

VI. Factors Driving Violations

Our research shows that many violations result from social and economic disadvantages, including poverty, housing insecurity, problematic drug use, mental health conditions, and racial bias. In most cases, these factors are present in combination. For example, Black and brown people are more likely to be poor and homeless than their white counterparts, and many people with mental health conditions use drugs to cope with their symptoms. Meanwhile, poverty and homelessness can exacerbate mental health conditions.

Poverty

You come out under the gun already, you got all these fines and costs, and then they wanna' violate you for that.⁶³⁶

—Sarah Martin (pseudonym for last name), navigating probation in Pennsylvania

At root, many violations stem from poverty. People on supervision, who are disproportionately poor,⁶³⁷ must choose between paying their court debt or program fees and putting food on the table.⁶³⁸ Financial insecurity can also lead people to commit offenses like shoplifting for basic necessities.⁶³⁹ People with childcare obligations face even higher financial and logistical barriers to meeting their supervision obligations.⁶⁴⁰

⁶³⁶ Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.

⁶³⁷ Mack Finkel, “New Data: Low Incomes-But High Fees-For People on Probation;” Elizabeth Kneebone and Richard Reeves, “The Intersection of Race, Place, and Multidimensional Poverty, Brookings Institute.”

⁶³⁸ Travis Loller, “Fines, Jail, Probation, Debt: Court Policies Punish the Poor,” *Associated Press*, <https://apnews.com/574ad2412cca45dea74dc5419aeef8co>, July 10, 2019; Elizabeth Brico, “The Cost of Drug Testing is Making it Harder for Poor People to Afford Treatment,” *Talk Poverty*, May 15, 2018, <https://talkpoverty.org/2018/05/15/cost-drug-testing-making-harder-poor-people-afford-treatment/>; Human Rights Watch, *Set Up to Fail*; American Civil Liberties Union, “Set Up to Fail: Montana’s Probation & Parole System,” 2018, https://www.aclumontana.org/sites/default/files/field_documents/setuptofailmontanasprobationparolesystem.pdf, p. 31-45; Human Impact Partners, “Excessive Revocations in Wisconsin,” p. 33-38.

⁶³⁹ Michelle Phelps, “Mass Probation and Inequality,” p. 50; Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 1, 2019; Human Rights Watch interview with Marian Lundy, Valdosta, Georgia, December 10, 2019.

⁶⁴⁰ Human Rights Watch and American Civil Liberties Union, *You Miss So Much When They’re Gone: The Lasting Harm of Jailing Mothers Before Trial in Oklahoma*, (New York: Human Rights Watch, 2018), https://www.hrw.org/sites/default/files/report_pdf/us0918_web_o.pdf, p. 78-95.

Unsurprisingly, research shows that people with more access to resources have an easier time completing supervision.⁶⁴¹

Take Dewayne Thompson (pseudonym). In September 2015, Thompson, a 27-year-old Black resident of Valdosta, Georgia, was arrested for several traffic offenses, including driving under the influence, driving without insurance, and failure to maintain his lane.⁶⁴² A few months later, he pled guilty and was sentenced to four years of probation in Lowndes County, Georgia.⁶⁴³ He owed more than \$2,000 in fines and \$35 in monthly supervision fees.⁶⁴⁴ While Thompson was locked up pending revocation proceedings, his aunt, Erika Lewis, relayed his story, which we summarize below:

Thompson had been working at Sunset Farms, a sausage company, to support himself and pay his court debt. But in the fall of 2018, his grandmother—who had Alzheimer’s—fell ill with pneumonia. The only family member strong enough to lift her, Thompson quit his job to take care of her.

Without a job, Thompson could no longer make his probation payments. His probation officer told him that, if he did not bring her the money, she would tell the court and he could face jail. Scared, Thompson stopped reporting.

In February 2019, the court revoked Thompson’s probation for failing to report and sentenced him to time served, which had been 20 days, and returned him to his probation sentence.⁶⁴⁵

When Thompson was released, his family’s struggles had not gone away. Over the next year, his grandmother’s health worsened. Thompson remained at home to care for her, missing more probation appointments as a result.

⁶⁴¹ Michelle Phelps, “Mass Probation and Inequality,” p. 44, 49.

⁶⁴² Dockets, *Georgia v. Dewayne Thompson* (pseudonym) (Lowndes County, Georgia); Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019. All information in this case study is from Human Rights Watch’s interview with Erika Lewis (pseudonym) unless otherwise noted.

⁶⁴³ Ibid.

⁶⁴⁴ Ibid.

⁶⁴⁵ Order on Petition to Revoke Probation, *Georgia v. Dewayne Thompson* (pseudonym), February 15, 2019; Petition for Revocation of Probation, *Georgia v. Dewayne Thompson* (pseudonym), February 1, 2019.

In August 2019, Thompson was arrested again for failing to report.⁶⁴⁶ That month, while Thompson was incarcerated, his grandmother passed away. Thompson spent three months in jail just waiting for a hearing, only to be sentenced to another month in jail.⁶⁴⁷

Poverty can also keep people under supervision longer. As discussed in Section I, “Requirements of Supervision,” courts can extend or reduce peoples’ supervision terms based on whether they have paid their court debt. “That hits the poor really hard,” explained Beau Mullen, who regularly represents people facing probation revocation in Lowndes County, Georgia. “It can take people months or years to save up the money to terminate probation.”⁶⁴⁸

More time on probation means more monthly supervision fees and more time to mess up—which can trigger additional fines and incarceration.⁶⁴⁹ For example, after years under supervision for drugs and driving while intoxicated charges in Pennsylvania, around 2016 Robert Thurgood thought he was finally free. He told us, “I was happy because I was like ‘I did it, I finally walked probation off.’”⁶⁵⁰ But then he learned he would remain on probation until he finished paying the \$300 he owed in restitution. Thurgood thought, “dang, why would they keep me on [probation] for [that]?”⁶⁵¹ In June 2018, Robert said, he missed an appointment and was locked up for two weeks.⁶⁵² A person who could pay the \$300 right away would have already been off probation.

⁶⁴⁶ Ibid.

⁶⁴⁷ Ibid.

⁶⁴⁸ Human Rights Watch telephone interview with Beau Mullen, December 20, 2019.

⁶⁴⁹ Human Rights Watch, *Set Up to Fail*, p. 35-36; Human Rights Watch, *Profiting from Probation*, p. 3, 27-28.

⁶⁵⁰ Interview with Robert Thurgood, October 31, 2019.

⁶⁵¹ Ibid.

⁶⁵² Ibid.

Housing Instability

Things would be better on probation if I had a steady place where I can lay my head.⁶⁵³

—Darius Hill (pseudonym), navigating probation while homeless in Chatham County, Georgia

Criminal records make finding housing tough, with criminal background checks often preventing people with records from obtaining private housing and bans on public housing for certain convictions.⁶⁵⁴ On top of this, Black and brown people are less likely to be approved for mortgages and rentals.⁶⁵⁵ Nationwide, an estimated 15 to 27 percent of people in prisons expect to live in a homeless shelter upon release.⁶⁵⁶

The lack of stable housing often leads to heightened physical and mental health issues.⁶⁵⁷ People, and particularly women, who are experiencing homelessness are also subjected to high levels of violence, including sexual violence.⁶⁵⁸ These factors make it hard to follow

⁶⁵³ Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.

⁶⁵⁴ Teresa Wiltz, “To Keep Former Inmates Out of Prison, States Find Them Housing,” *Christian Science Monitor*, April 24, 2019, <https://www.csmonitor.com/USA/Justice/2019/0424/To-keep-former-inmates-out-of-prison-states-find-them-housing>; Amanda Geller and Marah A. Curtis, “A Sort of Homecoming: Incarceration and the Housing Security of Urban Men,” *Social Science Research* (2011): 3, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3173782/pdf/nihms285302.pdf>; Human Impact Partners, “Excessive Revocations: The Health Impacts of Locking People Up Without a New Conviction in Wisconsin,” 2016, <http://www.rocwisconsin.org/wp-content/uploads/2015/10/Excessive-Revocations-in-Wisconsin-Health-Impact-Report-WISDOM.pdf>, p. 33-38; Human Rights Watch, *No Second Chance*.

⁶⁵⁵ Keeanga-Yamahtta Taylor, “Housing Market Racism Persists Despite ‘Fair Housing’ Laws,” *The Guardian*, January 24, 2019, <https://www.theguardian.com/commentisfree/2019/jan/24/housing-market-racism-persists-despite-fair-housing-laws>; Jamelle Bouie, “The Racism Right Before Our Eyes,” *New York Times*, November 22, 2019, <https://www.nytimes.com/2019/11/22/opinion/racism-housing-jobs.html>; Teresa Wiltz, “‘A Pileup of Inequities’: Why People of Color are Hit Hardest by Homelessness,” *PEW Charitable Trusts*, March 29, 2019, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/29/a-pileup-of-inequities-why-people-of-color-are-hit-hardest-by-homelessness>.

⁶⁵⁶ Alicia Bannon, et al., “Criminal Justice Debt,” *Brennan Center for Justice*, p. 4; American Civil Liberties Union, *Set Up to Fail*, p. 36-37 (35 percent of respondents in Montana were homeless upon release).

⁶⁵⁷ “Health and Homelessness,” American Psychological Association, 2011, <https://www.apa.org/pi/ses/resources/publications/homelessness-health>; Health Affairs, “Housing And Health: An Overview of the Literature,” June 2018, https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/HPB_2018_RWJF_01_W.pdf; Seiji Hayashi, “How Health and Homelessness are Connected—Medically,” *The Atlantic*, January 25, 2016, <https://www.theatlantic.com/politics/archive/2016/01/how-health-and-homelessness-are-connectedmedically/458871/>; Human Impact Partners, “Excessive Revocations,” p. 33-34; Human Rights Watch Telephone Interview with Falen Cox, December 9, 2019.

⁶⁵⁸ Michael Alison Chandler, “For Homeless Women, Violence is a Pervasive Part of their Past and Present, Report Shows,” *Washington Post*, February 19, 2018, https://www.washingtonpost.com/local/social-issues/for-homeless-women-violence-is-a-pervasive-part-of-their-past-and-present-report-shows/2018/02/19/b928d74c-10e6-11e8-9065-e55346f6de81_story.html; Sara Short, “Op-Ed: We Don’t Need Protection from the Homeless. The Homeless Need Protection From Us,” *Los Angeles Times*, October 15, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-shortt-homeless-victims-20181015-story.html>.

supervision conditions like holding down a job and attending mandatory meetings. A 2002 study found that people navigating parole from New York homeless shelters were seven times more likely to stop reporting than New Yorkers who had housing.⁶⁵⁹ According to a Georgia study, people on parole who experienced periods of homelessness had three times the rate of revocations compared to those on parole who had stable housing.⁶⁶⁰

Living in public also leaves people vulnerable to arrest under laws that criminalize homelessness, such as panhandling and loitering bans, as well as drug, trespass, and disorderly conduct laws.⁶⁶¹

Darius Hill (pseudonym), who has been homeless in Savannah, Georgia, for the last five years, explained: “You come home [from prison] with \$25. You gotta report [to probation]. I tell them, ‘I’m homeless, I need somewhere to stay. I’m in a shelter which is full of drugs.’ But they don’t help me.”⁶⁶² As discussed in Section VI, “Mental Health Conditions,” Hill—who says he has a substance use disorder and mental health conditions including paranoia, and has not received supportive services—keeps getting locked up for probation violations, largely for shoplifting. Hill said he wished probation would “give me a place to live, vouchers for clothes, something to help me get on my feet so I can do right.”⁶⁶³

Most often, housing instability leads to violations for failing to report address changes.⁶⁶⁴ As Lancaster County, Pennsylvania, public defender Chris Tallarico explained, when people are constantly on the move, “they’re left to scramble and so the last thing on their mind is ‘I have to forward my mail or contact my PO to give them the good address.’”⁶⁶⁵ Lowndes County Chief Public Defender Wade Kruger called this “de facto criminalization

⁶⁵⁹ Christine Scott-Hayward, “The Failure of Parole,” p. 426 (citing Stephen Metreaux and Dennis P. Culhane, “Homeless Shelter Use and Reincarceration Following Prison Release,” *Criminology & Public Policy*, vol. 3 (2004), p. 139).

⁶⁶⁰ Human Impact Partners, “Excessive Revocations,” p. 38 (citing Faith E. Lutze, Jeffrey W. Rosky, and Zachary K. Hamilton, “Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders,” *Criminal Justice Behavior*, 41 (2013): 471–491, doi:10.1177/0093854813510164).

⁶⁶¹ Lucius Couloute, “Nowhere to Go: Homelessness Among Formerly Incarcerated People,” *Prison Policy Initiative*, August 2018, <https://www.prisonpolicy.org/reports/housing.html>; National Law Center on Homelessness and Poverty, “Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities,” December 2019, <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

⁶⁶² Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.

⁶⁶³ Ibid.

⁶⁶⁴ As discussed in Section II, “Conduct Triggering Violations,” moving without permission is the most common state parole violation leading to incarceration in Pennsylvania.

⁶⁶⁵ Human Rights Watch telephone interview with Chris Tallarico, October 2, 2019; Malika Lovelace during Community Supervision Roundtable, Philadelphia, Pennsylvania, November 12, 2019.

of homelessness.”⁶⁶⁶

In 2017, Juan Richardson, a 31-year-old Valdosta, Georgia, resident, was arrested and pled guilty to criminal interference with government property.⁶⁶⁷ The court sentenced him to five years of probation, along with a \$1,500 fine, \$600 in court fees, a \$32 monthly supervision fee, and 80 hours of community service.⁶⁶⁸ At the time, he was also serving nine years of probation for a 2009 aggravated assault conviction.⁶⁶⁹ Richardson relates these convictions to his longstanding alcohol dependence.⁶⁷⁰ As discussed in Section VI, “Substance Use,” few people receive evidence-based treatment for substance use disorder while incarcerated, or other forms of support that are important to recovery once released, making them likely to continue violating supervision for reasons related to their substance use when they are released.⁶⁷¹

A few months later, Richardson was arrested for driving with a suspended license and battery, and the court revoked his probation.⁶⁷² He spent about half a year in jail as a result, and still had more probation to serve when he got out, he said. In the interim, Richardson explained, his wife—stressed by Richardson’s incarceration and unable to pay the bills without him—had moved with their infant son from their Valdosta, Georgia, home to New Jersey.

“So I came out homeless,” Richardson said. Probation required him to report his address—but, Richardson described, that was difficult when he bounced daily from couches to benches to shelters.

⁶⁶⁶ Human Rights Watch telephone interview with Wade Kruger, November 26, 2019.

⁶⁶⁷ Docket, *Georgia v. Juan Richardson*, 2017cr296 (Lowndes County, Georgia).

⁶⁶⁸ *Ibid.*

⁶⁶⁹ Docket, *Georgia v. Juan Richardson*, 2008CR604 (Lowndes County, Georgia).

⁶⁷⁰ Human Rights Watch interview with Juan Richardson, December 11, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.

⁶⁷¹ Human Rights Watch, *Barred from Treatment*; National Institute of Drug Abuse, “Drug Abuse and Addiction: One of America’s Most Challenging Public Health Problems,” <https://archives.drugabuse.gov/publications/drug-abuse-addiction-one-americas-most-challenging-public-health-problems/addiction-chronic-disease>; Marianne Möllmann and Christine Mehta, “Neither Justice Nor Treatment: Drug Courts in the United States,” *Physicians for Human Rights*, June 2017, https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf; Drug Policy Alliance, “Drug Courts are Not the Answer: Toward a Health-Centered Approach to Drug Use,” 2011, http://www.drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20the%20Answer_Final2.pdf.

⁶⁷² Order Revoking Revocation, *Georgia v. Juan Richardson*, 2008CR604 (Lowndes County, Georgia).

Additionally, he said, the only people he knew on the streets—and most of the people who could shelter him—used methamphetamine. Richardson told us that he often feared admitting where he was living to his probation officer, since being around drugs would violate his conditions. “It’s hard when you have nothing,” Richardson said. “I basically had a choice between going back to the streets or to the meth house where at least it’ll be warm.” Meanwhile, Richardson began using methamphetamine.

In August 2018, Richardson’s supervision was revoked for failing to report a change of address and the court sentenced him to 30 days in jail.⁶⁷³ Two months later, his probation officer again pursued revocation for failing to report his address change, as well as for possessing methamphetamine—for which Richardson separately faced criminal charges.⁶⁷⁴ After Richardson spent 80 days in jail, in January 2019, the court sentenced him to two more years of probation for methamphetamine possession and time served for the violations.⁶⁷⁵

Later that year, Richardson said, he tried to get drug treatment from Behavioral Health Services, a local health services agency that provides such treatment. However, he says they turned him away because he did not have an ID. He described, “I was like, ‘I’m homeless, I need help, isn’t that what you’re here for?’ I didn’t have a social security card. I didn’t have ID. I was homeless.”

In October 2019, Richardson’s probation officer again could not find him. The officer had left messages at his last reported address. But already on the move, Juan explained, he never got them. “I have no phone, no job, no income, it’s hard to get in touch,” he explained.⁶⁷⁶ The officer again filed for revocation and Juan was detained.⁶⁷⁷

⁶⁷³ Petition for Revocation of Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia August 10, 2018); Motion to Amend Probated Sentence, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia September 14, 2018).

⁶⁷⁴ Petition for Revocation of Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia October 15, 2018); Order Revoking Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia January 9, 2019); Docket, *Georgia v. Juan Richardson*, 2019CR0006 (Lowndes County, Georgia).

⁶⁷⁵ Docket, *Georgia v. Juan Richardson*, 2019CR0006 (Lowndes County, Georgia); Petition for Revocation of Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia October 15, 2018); Order Revoking Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia January 9, 2019).

⁶⁷⁶ Richardson clarified that he possesses a phone but cannot afford a data plan, so he can only use it when he has a Wi-Fi connection.

⁶⁷⁷ Petition for Revocation of Probation, *Georgia v. Juan Richardson*, 2017CR296 (Lowndes County, Georgia October 19, 2019).

When we met Richardson in December 2019, he was still in the Lowndes County Jail pending revocation proceedings. He told us he needed to get out of Lowndes County and start over. He wants to move to South Carolina, where his mom lives and can help him find housing and a job. Plus, her boyfriend is a parole officer—"so there's no worries about me messing up," he quipped.

But Richardson's probation officer was making him pay the \$100 fee to process the interstate compact—the form required to transfer probation to another state.⁶⁷⁸ He doesn't have it. Richardson sighed, "You gotta have money to help yourself and \$100 is costing me my life."

Legislated into Homelessness—or Revocation

Laws in at least 30 states, including Pennsylvania, Georgia, and Wisconsin, restrict people convicted of certain sex crimes from living near schools or other areas where children congregate.⁶⁷⁹ These restrictions can put entire neighborhoods or even towns off limits.⁶⁸⁰ While governments must take sex crimes seriously, contrary to widely held belief, experts have concluded that there is no evidence that restricting where people live reduces the likelihood they will commit another sex offense against a child.⁶⁸¹ And, too often, these restrictions push people into homelessness, unemployment, and isolation.⁶⁸²

⁶⁷⁸ Interstate Commission for Adult Offender Supervision, "Fees," <https://www.interstatecompact.org/fees>.

⁶⁷⁹ Association for the Treatment of Sexual Abusers, "Sexual Offender Residence Restrictions," 2014, <http://www.atsa.com/pdfs/Policy/2014SOREsidenceRestrictions.pdf>; John Kip Cornwell, "Sex Offender Residency Restrictions: Government Regulation of Public Health, Safety, and Morality," *William & Mary Bill of Rights Journal*, 24 (2015) (compiling statutes).

⁶⁸⁰ Beth Schwartzapel and Emily Kassie, "Banished," *The Marshall Project*, October 3, 2018, <https://www.themarshallproject.org/2018/10/03/banished>; Human Rights Watch, *No Easy Answers*, p. 117.

⁶⁸¹ Human Rights Watch, *No Easy Answers*, p. 115-118; Jill Levenson, Kristen Zgoba, and Richard Tewksbury, "Sex Offense Residence Restrictions: Sensible Crime Policy or Flawed Logic?," *Federal Probation* 71, (2007): 3, https://www.uscourts.gov/sites/default/files/71_3_1_0.pdf; Jesse Singal, "There's Literally No Evidence that Restricting Where Sex Offenders Can Live Accomplishes Anything," *New York Magazine*, August 25, 2014, <http://nymag.com/scienceofus/2014/08/sex-offender-housing-restrictions-are-pointless.html>; Allison Frankel, "Pushed Out and Locked In: The Catch-22 for New York's Disabled, Homeless Sex-Offender Registrants," *Yale Law Journal*, vol. 129, November 2019, <https://www.yalelawjournal.org/forum/pushed-out-and-locked-in> (collecting sources).

⁶⁸² *Ibid.*; Human Rights Watch telephone interview with Falen Cox, December 9, 2019.

Alonzo Flucas understands these harms well. In 2018, a Lowndes County, Georgia, court sentenced Flucas to 10 years of probation for statutory rape committed in 2015, when he was 24 years old.⁶⁸³ Because of his conviction, Georgia law forbid Flucas from living within 1,000 feet of a school, church, or park.⁶⁸⁴

Flucas wanted to live with his girlfriend, Ashlee Andrews, age 25, but she has two young children, and Flucas's supervision conditions forbid him from living with anyone under 18 years old. Flucas explained that the only affordable room he could find that met Georgia's residency restriction was a dingy Traveler's Inn for \$250 a week. Andrews told us the place had "rust coming out of the water."⁶⁸⁵ Unable to handle the filth, Flucas explained, he eventually began leaving the motel at night and sleeping in nearby Tifton, Georgia.

Although Flucas says he gave probation the Tifton address, in March 2018 a Lowndes County court revoked his probation for failing to report his address. In October 2018, the court sentenced him to 160 days in a probation detention center, akin to a minimum-security prison.⁶⁸⁶ Flucas also pleaded guilty to criminal charges for failing to register—for living at the unapproved address—and was sentenced to another five years of probation.⁶⁸⁷

When Flucas was released in July 2019, he said, his church helped him find a decent house. Flucas told us that the police agreed the address complied with his residency restrictions, and he moved right in. But soon after, Flucas continued, his probation officer told him the house was too close to a church. The church "doesn't show up on

⁶⁸³ Human Rights Watch interview with Alonzo Flucas, Valdosta, Georgia, December 10, 2019; Human Rights Watch telephone interview with Ashlee Andrews, December 13, 2019; Docket, *Georgia v. Alonzo Flucas*, No. 16CR514 (Lowndes County, Georgia). All of the details that follow in this case description come from these interviews except where otherwise noted.

⁶⁸⁴ O.C.G.A. § 42-1-15.

⁶⁸⁵ Human Rights Watch e-mail correspondence with Beau Mullen, January 2020 (describing reports of poor conditions in the Travelers' Inn where Flucas stayed) (on file with Human Rights Watch).

⁶⁸⁶ Order Revoking Probation, *Georgia v. Alonzo Flucas*, 16CR514 (Lowndes County, Georgia October 4, 2018); Georgia Department of Corrections, "Probation Detention Center," <http://www.dcor.state.ga.us/Divisions/Facilities/ProbationDetentionCenters>.

⁶⁸⁷ Docket, *Georgia v. Alonzo Flucas*, 2018CR663 (Lowndes County, Georgia).

the map,” Flucas explained. More importantly, “The church isn’t even running. It doesn’t operate. There’s no minister.”

Flucas says he tried to scrape together enough money to go back to a hotel and avoid revocation, but he could not get it together in time. So, he stayed in the house.

In October 2019, Flucas’s supervision officer initiated revocation proceedings for failing to register—by living at the unapproved address—as well as failing to report as directed on Halloween and failing to complete community service.⁶⁸⁸ Though the revocation papers suggest that he “absconded,” Flucas told us, “They came right to my address to pick me up. . . They knew exactly where I was.”

Flucas spent about two months in jail waiting for his revocation hearing.⁶⁸⁹ Once he finally got his day in court in January 2020, the judge revoked Flucas’s supervision and sentenced him to serve another two months in jail before returning to probation.⁶⁹⁰

Mental Health Conditions

I don’t report [to probation], I can’t do it. You all know I’m not gonna do it . . . I’ve had a problem all my life. Jail ain’t gonna solve the problem.

—Darius Hill (pseudonym), describing his trouble following basic supervision rules, which he attributes to undiagnosed mental health issues

Many people incarcerated for supervision violations have underlying mental health conditions.⁶⁹¹ Nationwide, rates of mental health conditions among people on probation or

⁶⁸⁸ Delinquent Report, *Georgia v. Alonzo Flucas*, 16CR514 (Lowndes County, Georgia, November 1, 2019); Delinquent Report, *Georgia v. Alonzo Flucas*, 18CR663 (Lowndes County, Georgia, November 1, 2019).

⁶⁸⁹ Ibid.

⁶⁹⁰ Order Revoking Probation, *Georgia v. Alonzo Flucas*, 16CR514 (Lowndes County, Georgia, January 8, 2020); Order Revoking Probation, *Georgia v. Alonzo Flucas*, 18CR663 (Lowndes County, Georgia, January 8, 2020).

⁶⁹¹ Though beyond the scope of this report, many people in prison have other disabilities, including Traumatic Brain Injury—rates of which are seven times greater in the prison population than the general population—that can make navigating supervision conditions difficult. Katherine Harmon, “Brain Injury Rate 7 Times Greater Among U.S. Prisoners,” *Scientific American*, February 4, 2012, <https://www.scientificamerican.com/article/traumatic-brain-injury-prison/>; Human Rights Watch telephone interview with Susan Mizner, disability counsel, American Civil Liberties Union, March 10, 2020.

parole are two to four times higher than in the general population.⁶⁹² Further, as of 2012, the last year for which data is available, the US Department of Justice reported that 37 percent of people in prison and 44 percent of those in jail had previously been told by a mental health professional that they had a mental health condition.⁶⁹³ These numbers are particularly stark for incarcerated women in the US—more than two-thirds of whom report a history of mental health conditions⁶⁹⁴—and Black people, who are both disproportionately incarcerated and disproportionately likely to experience mental health issues, though they are less likely to be diagnosed or have access to support services and treatment.⁶⁹⁵

Twenty-six percent of people in Pennsylvania’s prisons in 2016 were receiving mental health services,⁶⁹⁶ more than half of those admitted to Georgia’s prisons in 2019 were receiving such treatment,⁶⁹⁷ and 41 percent of people in Wisconsin’s prisons in 2018 were considered to have a mental health condition.⁶⁹⁸ Further, in Wisconsin, nearly half of the people admitted to prison for supervision violations from 2016 through 2019,⁶⁹⁹ and 62 percent of people detained at MSDF in 2017,⁷⁰⁰ had a diagnosed mental health condition.

⁶⁹² Council of State Governments Justice Center & John D. McArthur Foundation, “Improving Outcomes for People with Mental Illness Under Community Corrections Supervision,” 2009, <https://csgjusticecenter.org/wp-content/uploads/2020/02/Community-Corrections-Research-Guide.pdf>, p. 11.

⁶⁹³ Jennifer Bronson and Marcus Berzofsky, “Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates,” *U.S. Department of Justice, Bureau of Justice Statistics*, 2011-12, June 2017, <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>, Table 1.

⁶⁹⁴ Manuel Villa, “The Mental Health Crisis Facing Women in Prison,” *The Marshall Project*, June 22, 2017, <https://www.themarshallproject.org/2017/06/22/the-mental-health-crisis-facing-women-in-prison>.

⁶⁹⁵ Leah Pope, “Racial Disparities in Mental Health and Criminal Justice,” *National Alliance on Mental Illness*, July 24, 2019, <https://www.nami.org/Blogs/NAMI-Blog/July-2019/Racial-Disparities-in-Mental-Health-and-Criminal-J>; Thomas A. Vance, “Addressing Mental Health in the Black Community,” *Columbia Psychiatry*, February 8, 2019, <https://www.columbiapsychiatry.org/news/addressing-mental-health-Black-community>; Shervin Assari, et al., “Racial Discrimination During Adolescence Predicts Mental Health Deterioration in Adulthood: Gender Differences Among Blacks,” *Frontiers in Public Health*, May 29, 2017, <https://www.frontiersin.org/articles/10.3389/fpubh.2017.00104/full#B21>.

⁶⁹⁶ Pennsylvania Department of Corrections, “Mental Health Services,” May 10, 2016, <https://www.cor.pa.gov/About%20Us/Initiatives/Pages/Mental-Health-Services.aspx>.

⁶⁹⁷ Georgia Department of Corrections, “Inmates Admitted During CY2019,” http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_inmate_admissions_CY2019.pdf, p. 40.

⁶⁹⁸ Wisconsin Justice Initiative, “40 Percent of WI Inmates Have Mental Health Issues,” December 12, 2018, <https://www.wjiinc.org/blog/40-percent-of-wi-inmates-have-mental-health-issues>; Wisconsin Department of Corrections, “Inmate Profile 2018,” November 2019, <https://doc.wi.gov/DataResearch/DataAndReports/InmateProfile.pdf>, p. 3 (39 percent of male prisoners, and 86 percent of female prisoners, have a mental health condition).

⁶⁹⁹ Data provided by Wisconsin Department of Corrections.

⁷⁰⁰ Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17. MSDF is a Milwaukee prison that was designed to incarcerate people accused of supervision violations. See Section V, “Supervision is Feeding Mass Incarceration—The Numbers.”

Meanwhile, much of the United States lacks community-based mental health services.⁷⁰¹ Instead, many people with mental health conditions end up in hospital emergency rooms and in US correctional facilities where they cannot get the care they want and need.⁷⁰²

Having a mental health condition can make revocation more likely. Many people rely on drugs and alcohol to try to cope with anxiety, depression, post-traumatic stress, and other mental health conditions, leaving them at risk of revocation for substance use.⁷⁰³ Mental health conditions can also make it harder for people to hold down jobs and get to supervision-related appointments, leading to rule violations.⁷⁰⁴ Some people with mental health conditions at times behave publicly in ways that lead to arrest, particularly when they lack access to mental health services.⁷⁰⁵ Further, people showing signs of mental health conditions are more likely to be arrested than people who engage in the same behavior without exhibiting those signs.⁷⁰⁶

⁷⁰¹ Vera Institute of Justice, “The Burden of Mental Illness Behind Bars,” 2016, <https://www.vera.org/the-human-toll-of-jail/inside-the-massive-jail-that-doubles-as-chicagos-largest-mental-health-facility/the-burden-of-mental-illness-behind-bars>; “Deinstitutionalization: A Psychiatric ‘Titanic,’” *PBS Frontline*, <https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html>; Kathleen Rowan, et al., “Access and Cost Barriers to Mental Health care by Insurance Status, 1999 to 2010,” *National Institutes of Health*, 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4236908/pdf/nihms606584.pdf>; National Alliance on Mental Illness, “The Doctor is Out: Continuing Disparities in Access to Mental and Physical Health Care,” 2017, <https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/The-Doctor-is-Out/DoctorIsOut>.

⁷⁰² Vera Institute of Justice, *The Burden of Mental Illness Behind Bars*; “Deinstitutionalization: A Psychiatric ‘Titanic,’” *PBS Frontline*; Alisa Chang, “‘Insane’: America’s 3 Largest Psychiatric Facilities are Jails,” *NPR*, April 25, 2018, <https://www.kcur.org/post/insane-americas-3-largest-psychiatric-facilities-are-jails#stream/0>; Anne Zink, “Mental Health Patients, With Nowhere Else to Go, are Overwhelming Emergency Departments,” *STAT News*, October 18, 2018, <https://www.statnews.com/2018/10/18/mental-health-care-emergency-departments/>.

⁷⁰³ Jacques Baillargeon, et al., “Parole Revocation Among Prison Inmates with Psychiatric and Substance Use Disorders,” *Psychiatric Services*, November 2009, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2981345/pdf/nihms208351.pdf>, p. 2; Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch interview with Wayne Murphy, November 19, 2019; Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.

⁷⁰⁴ Seth Jacob Prins and Laura Draper, “Improving Outcomes for People with Mental Illnesses Under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice,” *Council of State Governments Justice Center*, 2012, <https://csgjusticecenter.org/publications/improving-outcomes-for-people-with-mental-illnesses-under-community-corrections-supervision-a-guide-to-research-informed-policy-and-practice/>, p. 9.

⁷⁰⁵ *Ibid.*, p. 8; Human Rights Watch interview with Mark Rice, November 18, 2019; Human Rights Watch Court Observations, Milwaukee Secure Detention Facility, November 20, 2019.

⁷⁰⁶ Arthur Lurigio, “Examining Prevailing Beliefs About People with Serious Mental Illness in the Criminal Justice System,” *Federal Probation* 75 (undated), https://www.uscourts.gov/sites/default/files/75_1_3_o.pdf, p. 2; Linda A. Teplin, “Keeping the Peace: Police Discretion and Mentally Ill Persons,” *National Institute of Justice Journal*, July 2000, <https://www.ncjrs.gov/pdffiles1/jr000244c.pdf>, p. 12. In addition, people with mental health conditions—and particularly Black people—are disproportionately likely to be shot by the police. Dr. Ashwin Vasani, “Defund the Police to Protect the Mentally Ill,” *New York Daily News*, June 18, 2020, <https://www.nydailynews.com/opinion/ny-oped-defund-the-police-to-protect-the-mentally-ill-20200618-fm2cy4nqozghxeti9fmxax2e-story.html>; Liz Szabo, “People with Mental Illness More Likely to be Killed by Police,” *USA Today*, December 15, 2016, <https://www.usatoday.com/story/news/2015/12/10/people-mental-illness-16-times-more-likely-killed-police/77059710/>.

Legal Requirements

The Americans with Disabilities Act (ADA) requires supervision departments to provide “reasonable accommodations,” or modifications in policies and procedures to ensure accessibility for people with mental health conditions and other disabilities, to give them an equal opportunity to successfully complete supervision. Supervision departments also must notify people of their right to these accommodations.⁷⁰⁷ However, according to leading disability experts, supervision departments often fail to follow the ADA’s requirements.⁷⁰⁸

Darius Hill (pseudonym), mentioned above, is a 53-year-old Black man in Chatham County, Georgia. Hill has been in jail or on probation for nearly four decades, primarily for drug and property offenses, and is currently sentenced to five years of probation for a 2015 escape.⁷⁰⁹ When we met Hill in December 2019, he was incarcerated in the Chatham County jail awaiting both revocation and criminal proceedings for shoplifting from dollar stores and a grocery store, and obstructing an officer.⁷¹⁰

Hill told us that he has never been able to handle probation. “I don’t report. I can’t do it,” he said. Hill believes he has an undiagnosed mental health condition. Drugs and alcohol ease his paranoia and other symptoms, he explained. “I could be working,” he described. “But all of the sudden something feels wrong inside me. I get jittery, uneasy. It makes me want to go drink or get high.” Hill told us he has lost jobs and a home, and he steals to get drugs. “I know I have a problem,” he said. “I keep doing the same thing.”

Rather than help, probation has only caused him to experience more anxiety. “You know when you get out you gonna fail because the probation is gonna put so much pressure on

⁷⁰⁷ Americans with Disabilities Act, 42 U.S.C. § 12101; see United States Department of Justice Civil Rights Division, “Ensuring Equality in the Criminal Justice System for People with Disabilities,” <https://www.ada.gov/criminaljustice/>; Human Rights Watch telephone interview with Susan Mizner, March 10, 2020.

⁷⁰⁸ Human Rights Watch telephone interview with Susan Mizner, March 10, 2020; *Cobb, et al. v. Georgia Department of Community Supervision* (N.D. Georgia filed July 19, 2019) (suit charging Georgia Department of Community Supervision with violating rights of deaf people on probation and parole).

⁷⁰⁹ Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Docket, *Georgia v. Darius Hill* (pseudonym) (Chatham County, Georgia). All information is from Human Rights Watch’s interview with Hill unless otherwise noted.

⁷¹⁰ *Ibid.*; *Georgia v. Darius Hill* (pseudonym) (Chatham County, Georgia).

you . . . If you put pressure on me, I'm going to burst," he told us. "They don't care you're homeless, and that pressure is gonna make you drink more and stop reporting and there we go again! It's like a cycle."

In 2018, Hill said, his probation officer put him in Grace House, an emergency men's shelter that offers re-entry services—but, still dependent on cocaine, jobless, and without any support system, he left. "I couldn't do it . . . The demons sneaked up on me." Courts continue imposing probation and jail—without assessing or adequately addressing his mental health needs, he said. In December 2019, when we last spoke to Hill, he had been incarcerated pending revocation for more than ten months.⁷¹¹

Trauma

In urban, low-income communities—where most people we interviewed grew up—nearly one in four adults experience post-traumatic stress disorder.⁷¹² Enduring traumatic events significantly increases a person's odds of having contact with the criminal legal system.⁷¹³ Studies also show that many people who perpetrate harm have previously themselves experienced trauma as a victim.⁷¹⁴

These numbers are particularly stark for women. Studies suggest that as many as 90 percent of women in prison experienced traumatic events prior to their incarceration—most often interpersonal or sexual violence.⁷¹⁵

Many people we interviewed connected their incarceration to traumatic experiences. Valerie Todd (see Section II, "Failure to Pay") described that at age 12, she began sleeping in abandoned houses along Philadelphia's railroad tracks, because it felt safer than the violence, drugs, and sexual abuse she experienced at home.⁷¹⁶ By age 21, Todd was on

⁷¹¹ *Georgia v. Darius Hill* (pseudonym) (Chatham County, Georgia).

⁷¹² Lena J. Jäggi, et al, "The Relationship Between Trauma, Arrest, and Incarceration History Among Black Americans: Findings from the National Survey of American Life," *Society and Mental Health*, November 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079438/pdf/nihms792632.pdf>, p. 2.

⁷¹³ *Ibid.*, p. 2-3, 11.

⁷¹⁴ Vittoria Ardino, "Offending Behaviour: The Role of Trauma and PTSD," *European Journal of Psychotraumatology*, (2012): 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3402156/pdf/EJPT-3-18968.pdf>.

⁷¹⁵ US Commission on Civil Rights, "Women in Prison: Seeking Justice Behind Bars," February 2020, <https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf>, p. 23.

⁷¹⁶ Human Rights Watch interview with Valerie Todd, October 29, 2019.

probation for robbery, kidnapping, and conspiracy convictions.⁷¹⁷ Todd said it took years of counseling, both in prison and once she was released, to recognize the impact of her childhood trauma—and even that she had been a victim.⁷¹⁸

Angel Ortiz, now 39 years old (see Section III, “Few Evidentiary Protections”), has been on probation or parole since he was 18 years old. One of the first places he was detained was Glen Mills juvenile detention center in Pennsylvania, where a 2019 media investigation reported that correctional officers routinely abuse the children in their care, and where Ortiz witnessed physical abuse by officers.⁷¹⁹ Upon returning home after spending two years there, “I would [over-]react without a thought to certain things,” he said.⁷²⁰ Probation exacerbates his anxiety, Ortiz said.

I feel apprehensive all the time. It’s a heavy burden . . . I get dreams constantly feeling like I’m being chased . . . not chas[ed] to get hurt but chased to be [detained] . . . It’s constantly always in your head. I’m always thinking like, ‘I hope I’m not getting in trouble today because I’m on probation and I can’t afford it.’ Not that I’m doing anything to get in trouble but it’s the thought that’s in your head.⁷²¹

Quentin Apkarian spent two years in the likewise infamous Lincoln Hills juvenile facility in Wisconsin.⁷²² Apkarian—who won a lawsuit against the institution for abuse—described a culture of blatant racism and rampant violence.⁷²³ According to court files, one time in 2014, after Apkarian and his roommate got into a fight, officers assaulted Apkarian. They punched and choked him “to the point that he thought he was going to pass out” and sexually assaulted him.⁷²⁴

⁷¹⁷ Ibid.; *Commonwealth of Pennsylvania v. Valerie Todd*, CP-51-CR-1024461-1992 (Philadelphia, Pennsylvania).

⁷¹⁸ Human Rights Watch interview with Valerie Todd, October 29, 2019.

⁷¹⁹ Human Rights Watch interview with Angel Ortiz, October 29, 2019; Lisa Gartner, “Beaten, then Silenced,” *The Philadelphia Inquirer*, February 20, 2019, <https://www.inquirer.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html>.

⁷²⁰ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

⁷²¹ Ibid.

⁷²² Human Rights Watch interview with Quentin Apkarian, November 21, 2019; Molly Beck and Patrick Marley, “Feds End Investigation into Wisconsin’s Troubled Lincoln Hills Youth Prison Without Filing Criminal Charges,” *Milwaukee Journal Sentinel*, April 12, 2019, <https://www.jsonline.com/story/news/politics/2019/04/12/lincoln-hills-investigation-ends-no-federal-charges/3451458002/>.

⁷²³ Human Rights Watch interview with Quentin Apkarian, November 21, 2019.

⁷²⁴ Ibid.; Opinion and Order, *Apkarian v. McAllister*, No. 17-cv-309 (W.D. Wisconsin September 9, 2019).

Apkarian was released from Lincoln Hills to a group home in 2015, when he was 18 years old, but—without social supports or treatment for his longstanding substance use disorder, he said—he ran away. Apkarian was soon caught—within an hour of leaving the home, he said—and arrested for resisting arrest.⁷²⁵ He was convicted and sentenced to one year of adult probation and a stayed 175-day jail term. Within a month of his release to probation in 2015, Apkarian was arrested again for carjacking.⁷²⁶ He was convicted and sentenced to eight years in prison followed by six years of extended supervision.⁷²⁷ When we met Apkarian in November 2019, he was still incarcerated at the Green Bay Correctional Institution, a maximum-security prison.

Inadequate Mental Health Services Behind Bars

According to experts, many people do not receive adequate mental health services in jail or prison. This stems from numerous factors, including insufficient mental health screening; limited and/or poor quality mental health services, particularly in jails where people frequently cycle in and out; stigma against seeking mental health services; and the fact that incarceration itself is traumatizing for many people and can create or exacerbate mental health issues.⁷²⁸

Many people we spoke to reported difficulty obtaining mental health services. For instance, Nathanyal May (see Section II, “Failure to Report”), now 21 years old, spent months in MSDF in Wisconsin in 2019 awaiting revocation proceedings for allegedly

⁷²⁵ Human Rights Watch interview with Quentin Apkarian, November 21, 2019; Docket, *Wisconsin v. Quentin Apkarian*, 2015CF692 (Waukesha, Wisconsin June 2, 2015).

⁷²⁶ Docket, *Wisconsin v. Quentin Apkarian*, 2016CF86 (Milwaukee, Wisconsin).⁷²⁷ Ibid.

⁷²⁷ Ibid.

⁷²⁸ Jennifer Reingle Gonzalez, “Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity,” *American Journal of Public Health*, (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232131/>; Vera Institute for Justice, “The Burden of Mental Illness Behind Bars,” 2016, <https://www.vera.org/the-human-toll-of-jail/inside-the-massive-jail-that-doubles-as-chicagos-largest-mental-health-facility/the-burden-of-mental-illness-behind-bars>; Substance Abuse and Mental Health Services Administration and Center for Substance Abuse Treatment, “Substance Abuse Treatment for Adults in the Criminal Justice System,” 2005, <https://www.ncbi.nlm.nih.gov/books/NBK64145/>; Elizabeth Ford, “Why We Shouldn’t Stigmatize Mentally Ill Prisoners,” *Time*, May 17, 2017, <https://time.com/4782404/prison-mental-health-stigma-suicide/>; World Health Organization & International Committee of the Red Cross, “Information Sheet, Mental Health and Prisons,” https://www.who.int/mental_health/policy/mh_in_prison.pdf.

“absconding.”⁷²⁹ May described how, one day in August 2019, he learned he would likely lose his revocation hearing. May felt anxious and asked to speak with a psychiatrist, but a correctional officer told him he would need to wait, he said. In reaction, May said, “I punched the wall a few times. Then I punched the door so hard I dislocated my hand.” A psychiatrist eventually came, he said, “But only because I did such a big action by dislocating my hand. I had to dislocate my hand for them to see me.” A few days later, May went to the hospital for his injury, he said.

When we met May in MSDF in November 2019, he told us that MSDF had not scheduled another counseling appointment.

Contrary to international human rights standards,⁷³⁰ US jails and prisons often charge for needed medical care.⁷³¹ MSDF charges \$7.50 for a medical appointment.⁷³² May wanted pain medication for his hand, but, he said, “I only have \$30 in my account from my birthday and that’s all I get the rest of my time here.”

Many people we interviewed want access to free and voluntary supportive mental health and substance use services in their communities, where they can receive ongoing care and talk openly about their experiences without fear of criminal sanctions.⁷³³ Jasmine Jackson (see Section II, “Failure to Report”) who is on probation in Philadelphia, told us: “I swear, instead of send[ing] people to probation, send them to counseling. This shit comes from

⁷²⁹ Human Rights Watch Interview with Nathanyal May, November 20, 2019; Wisconsin Department of Corrections Inmate Locator, “Nathanyal May: Movement” (accessed February 13, 2020). All information in this case study is from Human Rights Watch’s interview with Nathanyal May unless otherwise noted.

⁷³⁰ UN Nelson Mandela Rules, Rule 24.

⁷³¹ Wendy Sawyer, “The Steep Cost of Medical Co-Pays in Prison Puts Health at Risk,” *Prison Policy Initiative*, April 19, 2017, <https://www.prisonpolicy.org/blog/2017/04/19/copays/>; Michelle Andrews, “Even in Prison, Health Care Often Comes With a Copay,” *NPR*, September 30, 2015, <https://www.npr.org/sections/health-shots/2015/09/30/444451967/even-in-prison-health-care-often-comes-with-a-copay>.

⁷³² Wisconsin Department of Corrections, “Message from Secretary Kevin A. Carr,” April 2, 2020, [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx) (noting that otherwise-applicable \$7.50 fee for medical appointments is waived during Covid-19 pandemic); Human Rights Watch e-mail Correspondence with Emma Shakeshaft, Equal Justice Works fellow, American Civil Liberties Union of Wisconsin, December 3, 2019.

⁷³³ Human Rights Watch interview with Jasmine Jackson, October 29, 2019; Human Rights Watch interview with Wayne Murphy, November 28, 2019; Human Rights Watch court observations, Delaware County Court, October 30, 2019; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.

the homes.” Jackson said she has never been offered mental health services. “I need [counseling], I want it, I’ve got a lot of shit I’m going through.”⁷³⁴

Substance Use

They didn’t want to hear that I need help; they just gave me time.⁷³⁵

—Monique Taylor (pseudonym), on supervision in Pennsylvania for conduct she attributes to her substance use disorder

It’s so easy to find a bag of heroin and so hard to find treatment.⁷³⁶

—Dr. Erin Zerbo, Addiction Psychiatry Specialist

As of 2011, the federal government reported that 60 to 80 percent of people under correctional control used illicit drugs or were convicted of drug offenses or of crimes to support their drug use.⁷³⁷ Additionally, nearly 68 percent of people in jail, and more than 50 percent of those in state prisons, have diagnosable substance use disorders.⁷³⁸ Rates of substance use disorder are two to three times higher among people under supervision than in the general population.⁷³⁹ For those who are struggling with substance use disorder—a chronic, relapsing condition—relapse is common in the recovery process.⁷⁴⁰

⁷³⁴ Human Rights Watch interview with Jasmine Jackson, October 29, 2019. Throughout the United States and in our focus jurisdictions, people—particularly those with limited financial means—face high barriers to accessing community-based mental health services. Brett Sholtis, “Pa. Ranks Below National Average for Mental Health Care Providers,” *WHYY*, May 23, 2018, <https://whyy.org/articles/pa-ranks-below-national-average-for-mental-health-care-providers/>; John Schmid, “As Epidemic of U.S. Mental Illness Worsens, so Does the Funding Gap to Provide Care,” *Milwaukee Journal Sentinel*, November 13, 2018, <https://www.jsonline.com/story/news/2018/11/13/only-one-wisconsin-foundation-devoted-mental-health-initiatives/1906863002/>; Ariel Hart and Sheila M. Poole, “Controversy Over Georgia’s Mental Health Budget as Needs Grow,” *Atlanta Journal Constitution*, February 1, 2020, <https://www.ajc.com/news/state--regional-govt--politics/controversy-over-georgia-mental-health-budget-needs-grow/ED01y4v94z6LNEwa29HZgK/>; see also note 701.

⁷³⁵ Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 2019 [actual date withheld but on file with Human Rights Watch].

⁷³⁶ Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.

⁷³⁷ Thomas E. Freucht and Joseph Gfoerer, “Mental and Substance Use Disorders Among Adult Men on Probation or Parole: Some Success Against a Persistent Challenge,” *Substance Abuse and Mental Health Services Administration*, May 2011, <https://www.ncjrs.gov/pdffiles1/nij/235637.pdf>, p. 2; Vera Institute of Justice, “The Burden of Mental Illness Behind Bars.”

⁷³⁸ Vera Institute of Justice, “The Burden of Mental Illness Behind Bars.”

⁷³⁹ Freucht and Gfoerer, “Mental and Substance Use Disorders Among Adult Men on Probation or Parole,” *Substance Abuse and Mental Health Services Administration*, p. 4.

⁷⁴⁰ Human Rights Watch, *Barred from Treatment*; National Institute of Drug Abuse, “Drug Abuse and Addiction: One of America’s Most Challenging Public Health Problems,” <https://archives.drugabuse.gov/publications/drug-abuse-addiction-one-americas-most-challenging-public-health-problems/addiction-chronic-disease>.

Most of the people we interviewed reported regularly using illicit drugs, prescription drugs, and/or alcohol for a variety of reasons, in some cases problematically. Sometimes, the anxiety of navigating supervision drove them to use drugs, they said.⁷⁴¹

Drug use often leads to violations.⁷⁴² Many people are violated after testing positive for illicit drugs.⁷⁴³ Substance use disorder can also make it hard to maintain a job or steady schedule, leading to violations for failure to report.⁷⁴⁴ As discussed in Section IV, relapses during court-mandated treatment can trigger program termination and revocation.

People are also incarcerated for low-level crimes, such as retail theft and small drug sales, they commit to support their drug use.⁷⁴⁵ Sarah Martin (pseudonym for last name), who has been on probation for decades, said: “When I use drugs, I commit crimes . . . shoplifting, bad checks, petty thefts . . . all to pay for my drug habits . . . It’s a revolving door.”⁷⁴⁶

Monique Taylor’s Story

In 2010, Monique Taylor (pseudonym), a Black mother from Philadelphia, Pennsylvania, then age 21, was arrested for shoplifting and marijuana possession in nearby Delaware County.⁷⁴⁷ She pled guilty and was sentenced to four years of

⁷⁴¹ Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Juan Richardson, December 11, 2019.

⁷⁴² See Section II, “Conduct Triggering Violations.”

⁷⁴³ Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Persheen Williams, December 12, 2019; Human Rights Watch interview with Brother Ricebey, November 19, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; *see also* Cecelia Klingele, “Understanding Revocation from Community Supervision,” p. 7, 11-12.

⁷⁴⁴ Cecelia Klingele, “Understanding Revocation from Community Supervision,” p. 7, 11-12; Samantha Melamed and Dylan Purcell, “Punishing Addiction,” *The Philadelphia Inquirer*, October 24, 2019, <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-addiction-criminal-justice-system-20191024.html>.

⁷⁴⁵ *Ibid.*; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.

⁷⁴⁶ Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.

⁷⁴⁷ Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 2019 [actual date withheld but on file with Human Rights Watch]; Human Rights Watch Court Observations, Delaware County, October 2019 [actual date withheld but on file with Human Rights Watch]. All information in this case study is from Human Rights Watch’s interview with Taylor and court observations unless otherwise noted.

probation.⁷⁴⁸ Taylor had been arrested and sentenced to probation before, she said, always for drug possession or petty crimes to support her drug use. “I asked for programs but . . . they didn’t want to hear that I need help; they just gave me time,” she said.

In 2015, while Taylor was still on probation, Philadelphia police arrested her for retail theft—for what she said was stealing two cans of milk from a Walgreens to feed her newborn daughter.⁷⁴⁹ Taylor was released from jail, but she knew her probation officer would pursue revocation for the arrest. Fearful she would be ripped away from her daughter, Taylor said, she stopped reporting.

The next year, Taylor was arrested in New Hampshire for forgery-related charges. “Every way I tried to go I just fell,” she told us.

Taylor pled guilty and served seven months in jail, she said. While incarcerated, Taylor turned to religion, obtained her GED, completed a drug treatment program, and “walked away a different woman.” She returned to Philadelphia, got a steady factory job, and had another child. “Everything came together for me,” she said.

In July 2019, Taylor, then six months pregnant with her third child, decided to turn herself in to probation, hoping for leniency since she had turned her life around. Her father, who has prostate cancer, agreed to care for her then one- and four-year-old children. Taylor said her employer promised her job would be waiting if she got released.

Instead, Taylor was incarcerated on a probation detainer and stayed in jail for nearly three months waiting for her revocation hearing.⁷⁵⁰ On October 30, 2019, just days before her due date, Taylor appeared for her hearing via videoconference from the George W. Hill Correctional Facility, where, as described in Section III, we documented

⁷⁴⁸ Docket, *Commonwealth of Pennsylvania v. Monique Taylor* (pseudonym) (Delaware County, Pennsylvania).

⁷⁴⁹ Docket, *Commonwealth of Pennsylvania v. Monique Taylor* (pseudonym) (Philadelphia, Pennsylvania).

⁷⁵⁰ In the interim, Taylor also appeared for sentencing in Philadelphia for the 2015 retail theft charge and was sentenced to three years of probation. Docket, *Commonwealth of Pennsylvania v. Monique Taylor* (pseudonym) (Philadelphia, Pennsylvania).

inhumane conditions. Her probation officer recommended nine to 23 months of incarceration. Her court-appointed lawyer made no argument on her behalf. Taylor read the following from a carefully pressed letter kept in a notebook:

I made this decision to come in on my own because I have been turning my life around for the better . . . Your honor, the last thing I want to happen is for my new baby girl to wind up in the hands of the system . . . My father . . . is unable to care for another child. He's barely managing with the two he already has. He now needs my support . . . I have never felt so empowered to put the past behind me and live a normal life with my family . . . I pray for the opportunity to start fresh with all that I now know and the truth that I have embraced for a healthy life. Thank you for your time and consideration.

Unflinchingly, the judge adopted the probation officer's recommendation and sentenced Taylor to nine to 23 months in jail, with credit for the time she had served since July.⁷⁵¹

A few days after the hearing, Human Rights Watch researchers spoke with Taylor at the jail. Describing her case, she said: "I cried so hard the day I was sentenced. My dad promised he wouldn't let my baby go into the foster care system, but he can't do it alone." Her father later told us, "She violated the law but she needs to come home to her babies."⁷⁵²

Taylor gave birth while incarcerated and described a terrifying labor where her newborn turned blue, stopped breathing, and had seizures. Thankfully, after a few weeks in the ICU, Taylor said, her daughter is healthy.

After Taylor gave birth, she was returned to jail, and her father struggled to care for all three young children while managing his own health issues. Finally, in February 2020, Taylor, now age 31, was released to continue her supervision sentence. She told us

⁷⁵¹ *Commonwealth of Pennsylvania v. Monique Taylor* (pseudonym) (Delaware County, Pennsylvania).

⁷⁵² Human Rights Watch telephone interview with [name withheld], Monique Taylor's (pseudonym) father, October 31, 2019.

she is grateful to be home with her children, and is focusing on putting her life back together.

Government officials increasingly recognize that incarceration will not end problematic substance use.⁷⁵³ Judge Timothy Hinkfuss of Brown County, Wisconsin, which contains Green Bay, said: “We’re not going to build our way [through prisons] or prosecute our way out of this problem.”⁷⁵⁴ “If [treatment’s] the goal then the [incarceration] system we’re putting someone into is not capable of the outcome that’s being desired, so why would we start down that path?” said Wisconsin State Representative Evan Goyke of Milwaukee.⁷⁵⁵ Lowndes County, Georgia, Solicitor-General Justo Cabral told us, “Jail can only do so much. Most of the time, they don’t come out better than they came in.”⁷⁵⁶

Yet these jurisdictions still rely on incarceration. Some officials believe incarceration gives people space to recover. A Wisconsin judge said that “correctional treatment includes the notion of a time out. . . You’re gonna have to have a sit down away from your family, away from your recreation,” and become “re-motivated to rehabilitate yourself.”⁷⁵⁷

Others feel they lack alternatives to prevent harmful drug use. Every judge, prosecutor, and supervision officer interviewed by Human Rights Watch said they wanted more treatment options.⁷⁵⁸ For now, many seem to rely on detention. “I would rather people go through withdrawal in prison than die on the street,” Philadelphia Judge Robert Coleman told us.⁷⁵⁹ Milwaukee supervision chief Neil Thoreson echoed this sentiment: “[It’s] tough for agents,

⁷⁵³ Human Rights Watch interview with Judge Timothy Hinkfuss, November 22, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch telephone interview with Michael Nail, February 19, 2019; Human Rights Watch telephone interview with Wisconsin State Representative Evan Goyke, March 16, 2020; Samantha Melamed and Dylan Purcell, “Punishing Addiction,” *The Philadelphia Inquirer*.

⁷⁵⁴ Human Rights Watch interview with Judge Timothy Hinkfuss, November 22, 2019.

⁷⁵⁵ Human Rights Watch telephone interview with Representative Evan Goyke, March 16, 2020.

⁷⁵⁶ Human Rights Watch interview with Justo Cabral, December 11, 2019.

⁷⁵⁷ Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020.

⁷⁵⁸ See, for example, Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch interview with Judge Robert Coleman, Philadelphia, Pennsylvania, October 28, 2019; Human Rights Watch interview with Judge Karen Simmons, Philadelphia, Pennsylvania, October 29, 2019; Human Rights Watch interview with Judge Timothy Hinkfuss, November 22, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch interview with Justo Cabral, December 11, 2019.

⁷⁵⁹ Human Rights Watch interview with Judge Robert Coleman, Philadelphia, Pennsylvania, October 28, 2019.

knowing jail is the only thing that will keep [people] alive but wanting to give them chances in the community.”⁷⁶⁰

But health experts largely disagree that jail helps people recover from substance use disorder.⁷⁶¹ As Dr. Erin Zerbo, an addiction psychiatry specialist, explained, jail is “so anti-therapeutic” that even a day or two behind bars “makes it more likely [people are] going to get upset and want to use again.”⁷⁶² Only 11 to 17 percent of people with substance use disorder actually receive treatment while incarcerated.⁷⁶³ What treatment is available, is often not evidence-based: for example, hardly any prisons or jails offer Medication-Assisted Treatment (MAT), the gold standard for opioid use disorder.⁷⁶⁴ Meanwhile, incarceration does not necessarily keep people away from drugs, which are readily-accessible in many jails and prisons.⁷⁶⁵ While little data exists, many people die in jail and prison from withdrawal.⁷⁶⁶ Given the lack of evidence-based treatment in jails and prisons, many more people use drugs again when they leave, and because of their reduced tolerance to drugs after spending time behind bars, they are much more likely to overdose

⁷⁶⁰ Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.

⁷⁶¹ Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, *Commonwealth v. Eldred*, No. SJC-12279 (Commonwealth of Mass., 2017); Drug Policy Alliance, “Drug Courts are Not the Answer,” p. 11-12; Samantha Melamed and Dylan Purcell, “Punishing Addiction,” *The Philadelphia Inquirer*; Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.

⁷⁶² Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019; Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, *Commonwealth v. Eldred*, p. 41 (people are more likely to relapse following incarceration).

⁷⁶³ Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, *Commonwealth v. Eldred*, p. 40.

⁷⁶⁴ Jon Berg, et al., “Breaking the Cycle; Medication Assisted Treatment (MAT) in The Criminal Justice System,” *Substance Abuse and Mental Health Services Administration*, March 15, 2019, <https://blog.samhsa.gov/2019/03/15/breaking-the-cycle-medication-assisted-treatment-mat-in-the-criminal-justice-system>; Peter D. Friedmann, et al., “Medication-Assisted Treatment in Criminal Justice Agencies Affiliated with the Criminal Justice-Drug Abuse Treatment Studies (CJ_DATS): Availability, Barriers & Intentions,” *Substance Abuse*, 33 (2012): 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3295578/pdf/nihms359080.pdf>.

⁷⁶⁵ See Dan Rosen, “The Never-Ending Drug Hustle Behind Bars,” The Marshall Project, November 7, 2019, <https://www.themarshallproject.org/2019/11/07/the-never-ending-drug-hustle-behind-bars>; Steven Greenhut, “The State Can’t Keep Drugs Out of Prisons. How Was it Ever Going to Keep Them Out of America?,” Reason, May 24, 2019, <https://reason.com/2019/05/24/the-state-cant-keep-drugs-out-of-prisons-how-was-it-ever-going-to-keep-them-out-of-america/>; Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch] (George W. Hill Correctional Facility officer describing easy access to drugs in that facility in Pennsylvania); Human Rights Watch telephone interview with Sophia Brown (pseudonym), May 27, 2020 (mother of person incarcerated at George W. Hill Correctional Facility describing reports of widespread drug use within the facility).

⁷⁶⁶ Julia Lurie, “Go to Jail. Die from Drug Withdrawal. Welcome to the Criminal Justice System,” *Mother Jones*, February 2017, <https://www.motherjones.com/politics/2017/02/opioid-withdrawal-jail-deaths/>; “Drug Withdrawal,” *Marshall Project*, <https://www.themarshallproject.org/records/2090-drug-withdrawal>; Christopher Zoukis, “Drug Addicts Suffer Preventable Deaths in U.S. Jails,” *Prison Legal News*, January 8, 2018, <https://www.prisonlegalnews.org/news/2018/jan/8/drug-addicts-suffer-preventable-deaths-us-jails/>.

and die upon release.⁷⁶⁷ By contrast, providing MAT behind bars has been shown to significantly reduce overdose fatalities after incarceration.⁷⁶⁸

Human Rights Watch and the ACLU, along with a host of governmental and non-governmental organizations around the world, have accordingly called on states to decriminalize the possession of drugs for personal use.⁷⁶⁹ While governments have a legitimate interest in preventing problematic drug use, criminalization is a disproportionate response that is utterly ineffective at achieving its supposed aims. As we have documented, locking up people who use drugs has caused devastating harm to people and their families and discriminates against Black and brown people, while failing to meaningfully reduce or respond to problematic drug use.⁷⁷⁰

Perils of Court-Mandated Treatment

Courts are increasingly turning to drug courts and mandated treatment as responses to drug use.⁷⁷¹ While governments should make voluntary, evidence-based treatment

⁷⁶⁷ Scottie Andrew, “Prison Inmates 40 Times More Likely to Die from Opioid Overdose Two Weeks After Release,” *Newsweek*, July 21, 2018, <https://www.newsweek.com/study-opioid-deaths-40-times-more-likely-prisoners-1035281>; Vera Institute of Justice, “Changing Course in the Overdose Crisis,” p. 18-19; Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, *Commonwealth v. Eldred*, p. 42.

⁷⁶⁸ Traci Green, et al. “Postincarceration Fatal Overdose After Implementing Medications for Addiction Treatment in a Statewide Correctional System,” *Jama Network*, April 2018, <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2671411>.

⁷⁶⁹ Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 22-27, 180; United Nations Chief Executives Board, Summary of Deliberation, 2nd Regular Session of 2018, CEB/2018/2, January 18, 2019, <https://www.unsceb.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>; United Nations Programme on HIV/AIDS (UNAIDS), “Health, Rights, and Drugs: Harm Reduction, Decriminalization, and Zero Discrimination for People Who Use Drugs,” 2019, https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf; Marianne Møllmann and Christine Mehta, “Neither Justice Nor Treatment: Drug Courts in the United States,” *Physicians for Human Rights*; Drug Policy Alliance, “It’s Time for the U.S. to Decriminalize Drug Use and Possession;” World Health Organization, “Joint United Nations Statement on Ending Discrimination in Health Care Settings,” June 27, 2017, <https://www.who.int/en/news-room/detail/27-06-2017-joint-united-nations-statement-on-ending-discrimination-in-health-care-settings>; International Federation of Red Cross and Red Crescent Societies, Statement to the United Nations Commission on Narcotic Drugs, 55th Session, <http://www.ifrc.org/en/news-and-media/opinions-and-positions/speeches/2012/to-the-commission-on-narcotic-drugs-55th-session/>; Global Commission on Drug Policy, “Taking Control: Pathways to Drug Policies That Work,” 2014, <http://www.gcdpsummary2014.com/>.

⁷⁷⁰ Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 22-27.

⁷⁷¹ Vera Institute of Justice, “Changing Course in the Overdose Crisis: Moving from Punishment to Harm Reduction and Health,” February 2020, <https://www.vera.org/publications/changing-course-in-the-overdose-crisis>, p. 16-17; Marianne Møllmann and Christine Mehta, “Neither Justice Nor Treatment: Drug Courts in the United States,” *Physicians for Human*

widely available and accessible to people struggling with substance use disorder, involuntary treatment within the criminal legal system raises health and human rights concerns.⁷⁷²

Addiction psychiatry specialist Dr. Erin Zerbo cautioned that when “judges start acting like clinicians from the bench,” it can raise problems. “Treatment is treatment,” she said, “that’s for the healthcare sector to take care of.”⁷⁷³

Most court-mandated programs include requirements, such as abstinence, that are not evidence-based.⁷⁷⁴ Relapse is a normal part of recovery from substance use disorder, so insisting on abstinence guarantees that many people in “treatment” will fail. Setting unrealistic expectations can also create anxiety that increases the likelihood of relapse.⁷⁷⁵

Mandated programs also report slip-ups back to the court, so they can sow distrust.⁷⁷⁶ Wayne Murphy, who continued using drugs after completing drug treatment in a

Rights; Drug Policy Alliance, “Drug Courts are Not the Answer: Toward a Health-Centered Approach to Drug Use,” 2011, http://www.drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20the%20Answer_Final2.pdf; Fiona Doherty, “Testing Periods,” p. 1741-44; Allegra McLeod, “Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law,” *Georgetown Law Journal*, 100, (2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2385233; Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019. Although this section refers to “court-mandated” treatment, we also include programming mandated by parole boards or other entities with the power to impose supervision conditions.

⁷⁷² *Ibid.*; United Nations Human Rights Special Procedures, “Drug Courts Pose Dangers of Punitive Approaches Encroaching on Medical and Health Care Matters, UN Experts Say,” March 20, 2019, https://www.unodc.org/documents/commissions/CND/2019/Contributions/UN_Entities/InfoNote20March2019.pdf; Jasmine Tyler, “Criminal Justice Reformers are Hooked on Drug Courts; They Should Kick the Habit,” *The Hill*, August 5, 2017, <https://thehill.com/blogs/pundits-blog/crime/345371-criminal-justice-reformers-are-hooked-on-drug-courts-they-should>. Jurisdictions are also increasingly turning to other types of “problem-solving” courts, such as mental health courts, which can raise similar concerns. Allegra McLeod, “Decarceration Courts,” Center for Court Innovation, “Mental Health Courts: Challenges, Questions, and Tensions,” August 8, 2005, <https://www.courtinnovation.org/articles/mental-health-courts-challenges-questions-and-tensions>.

⁷⁷³ Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.

⁷⁷⁴ Vera Institute of Justice, “Changing Course in the Overdose Crisis,” p. 50; Drug Policy Alliance, “Drug Courts Are Not the Answer,” p. 16; German Lopez, “How America’s Prisons and Jails Perpetuate the Opioid Epidemic,” *Vox*, January 31, 2020, <https://www.vox.com/policy-and-politics/2020/1/30/21078618/prison-opioid-epidemic-buprenorphine-suboxone-methadone>.

⁷⁷⁵ Vera Institute of Justice, “Changing Course in the Overdose Crisis,” p. 50; Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, *Commonwealth v. Eldred*, p. 40-41; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019 (“Probation is triggering me to get high.”).

⁷⁷⁶ Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019; Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019.

Wisconsin prison, told us: “You can’t truly heal when you’re doing what other people tell you in order to get out.”⁷⁷⁷ Angel Ortiz, who underwent similar treatment in Philadelphia, explained: “When someone’s making you do [treatment], it’s the moment you don’t want to do it. You’re not receptive and become disruptive. . . . That don’t help people.”⁷⁷⁸

Finally, court-ordered programs often do not allow for Medication-Assisted Treatment (MAT)—which uses medications like methadone and buprenorphine, typically in combination with counseling, to treat substance use disorder. Health experts consider MAT to be the gold-standard of opioid treatment.⁷⁷⁹ Yet court-ordered programs and correctional facilities often forbid MAT, given their emphasis on abstinence.⁷⁸⁰ Notably, however, since 2016, correctional systems in at least six states—including Pennsylvania—have established MAT programs, partly in response to the dramatic escalation in overdose deaths in recent years, to which people recently released from incarceration are especially vulnerable.⁷⁸¹

⁷⁷⁷ Human Rights Watch interview with Wayne Murphy, November 18, 2019.

⁷⁷⁸ Human Rights Watch interview with Angel Ortiz, October 29, 2019.

⁷⁷⁹ Kimberly Sue, *Getting Wrecked: Women, Incarceration, and the American Opioid Crisis* (California: California Press, 2019), p. 22, 119; Vera Institute of Justice, “Changing Course in the Overdose Crisis,” p. 12; German Lopez, “How America’s Prisons and Jails Perpetuate the Opioid Epidemic,” *Vox*, January 31, 2020, <https://www.vox.com/policy-and-politics/2020/1/30/21078618/prison-opioid-epidemic-buprenorphine-suboxone-methadone>. In addition, the federal government imposes unique restrictions on buprenorphine (a form of MAT commonly known by its brand name, Suboxone) prescriptions that, health experts say, are not grounded in science and that disincentivize people from prescribing the potentially life-saving drug. Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019; New York State Department of Health, press release, “New York State Department of Health Leads Multistate Effort to Call on the Federal Government to Improve Access to Buprenorphine to Treat Opioid Disorder,” April 8, 2019, https://www.health.ny.gov/press/releases/2019/2019-04-08_access_to_buprenorphine.htm. Additionally, according to media reports, the Buprenorphine that is prescribed disproportionately goes to white people. Martha Bebinger, “Opioid Addiction Drug Going Mostly to Whites, Even as Black Death Rate Rises,” *NPR*, May 8, 2019, <https://www.npr.org/sections/health-shots/2019/05/08/721447601/addiction-medicine-mostly-prescribed-to-whites-even-as-opioid-deaths-rose-in-bla>.

⁷⁸⁰ *Ibid.* Jail and prison officials are also often concerned that medication will get diverted to people who are not drug dependent, which could permit them to develop a high. However, as experts explain, these concerns can be managed. Alison Shames and Ram Subramanian, “A Path to Recovery: Treating Opioid Use in West Virginia’s Criminal Justice System,” *Vera Institute of Justice*, October 2017, <https://www.vera.org/downloads/publications/a-path-to-recovery-treating-opioid-use-west-virginia-criminal-justice-system.pdf>; Dionna King, “Medication assisted Treatment is a Proven Method of Recovery,” *Drug Policy Alliance*, September 1, 2017, <https://www.drugpolicy.org/blog/medication-assisted-treatment-mat-proven-method-recovery>;

⁷⁸¹ JB Nicholas, “Drug Treatment is Reaching More Prisons and Jails,” *The Appeal*, July 31, 2019, <https://theappeal.org/a-shot-over-the-bow-to-all-jails-and-prisons/>; Substance Abuse and Mental Health Services Administration, “Medication-Assisted Treatment (MAT) in the Criminal Justice System: Brief Guidance to the States,” 2019,

Since she was 15 years old, Sarah Martin (pseudonym for last name), a now 60-year-old white woman, has been arrested multiple times in Montgomery County, Pennsylvania, for drug and property crimes that she said were associated with her dependence on opioids.⁷⁸² These offenses led to years of supervision, jail, and prison time. The court-mandated counseling she attended never helped, nor did her probation officer, she said. “[My PO] was no support, she made me feel worse than I already felt, and I already felt like shit,” Martin told us. Despite Martin’s longstanding opioid use disorder, she says her probation officer never mentioned MAT.

One day, in 2007, a friend told Martin about methadone substitution therapy, a form of MAT, and she was able to access it. It worked, she said. Since then, Martin earned a Master’s degree and has had steady employment. Aside from a relapse in 2016—prompted, she said, by prescription opiates after she fractured her wrist— Martin finally felt like she was on the right track.

After her relapse, Martin asked her new probation officer if she could use Suboxone, a brand name for buprenorphine, another standard medication used for opioid use disorder. She said that the officer, who had no medical training, discouraged her. Martin was shocked: “It’s like telling a diabetic you can’t take insulin.” With Suboxone, “the propensity for me to use will not be there and I won’t commit crimes and won’t go to jail,” she said. “I was like ‘If I don’t do this I’m going to be in jail. I’m 60 years old, I’m not doing this anymore.’”

Ultimately, Martin started taking Suboxone. For the last three years, she has been caring for her grandchildren and working steadily for the Pennsylvania Department of Health and Human Services, and as a facilitator for people with substance use disorder.

<https://store.samhsa.gov/product/Medication-Assisted-Treatment-MAT-in-the-Criminal-Justice-System-Brief-Guidance-to-the-States/PEP19-MATBRIEFCJS>.

⁷⁸² Human Rights Watch interview with Sarah Martin (pseudonym for last name), Norristown, Pennsylvania, October 31, 2019. All information in this case study is from Human Rights Watch’s interview with Martin unless otherwise noted.

Racial Bias

It's really difficult being on probation. You always feel like, just the slightest mess up and you can lose your life . . . I don't feel like I can drive. I could easily get stopped for just a traffic violation and then I would be back in jail. It makes you nervous to just live your daily life.⁷⁸³

—Robert Collins, a Black Philadelphia man who has been on probation since age 15

As discussed throughout this report, the requirements of supervision exacerbate systemic racial inequalities in the United States. Black and brown people are less likely to have resources such as jobs, adequate transportation, and stable housing, making it much more difficult for them to comply with supervision rules, and increasing the likelihood that they will engage in behavior that violates them.⁷⁸⁴ Black men also disproportionately have criminal records, making it harder for people in predominantly Black communities to comply with requirements to stay away from those with criminal convictions.⁷⁸⁵

Black people are also simply more likely to get arrested in the United States; often, this is due to racially biased policing.

Biased Policing

Black and brown people are more likely to get arrested for offenses that trigger supervision and caught for supervision violations than their white counterparts. As Human Rights Watch, the ACLU, and other organizations have documented, police disproportionately stop, search, and arrest Black and brown people—particularly young men.⁷⁸⁶ According to a 2017 study of nearly 100,000 traffic stops across the US, Black drivers are, on average,

⁷⁸³ Human Rights Watch interview with Robert Collins, Philadelphia, Pennsylvania, October 28, 2019.

⁷⁸⁴ Kendra Bradner and Vincent Schiraldi, “Racial Inequities in New York’s Parole Supervision,” *Columbia University Justice Lab*, p. 3-5; Section V, “Entrenching Racial Disparities.”

⁷⁸⁵ Sarah Shannon, et al., “The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010.,” *Demography* 54, <https://link.springer.com/article/10.1007/s13524-017-0611-1>.

⁷⁸⁶ See, for example, Emma Pierson, et al., “A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States,” Stanford Open Policing Project; Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” Washington Post; Alexi Jones, “Police Stops Are Still Marred by Racial Discrimination, New Data Shows,” *Prison Policy Initiative*, October 12, 2018, <https://www.prisonpolicy.org/blog/2018/10/12/policing/>; Lynn Langton and Matthew Durose, “Police Behavior During Traffic and Street Stops,” *US Department of Justice, Bureau of Justice Statistics*, October 27, 2016, <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>; Human Rights Watch, *Get on the Ground*, p. 30-31; Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 42-43.

20 percent more likely to be stopped by police than white drivers.⁷⁸⁷ Black people are also more likely to be searched following vehicle stops, though they are less likely to be found with contraband.⁷⁸⁸

These disparities are particularly pernicious in many counties studied by Human Rights Watch. According to a 2018 study, the traffic stop rate for Black drivers in Milwaukee, Wisconsin, is more than 500 percent higher than the traffic stop rate for whites.⁷⁸⁹ Once stopped, Black people are 50 percent more likely to be searched than whites—even though searches of Black drivers are 20 percent less likely to yield drugs than searches of white drivers.⁷⁹⁰ Black people are also 500 percent more likely than white people to be targets of stops on the street.⁷⁹¹

According to a 2015 study, between 2008 and 2013, 44 percent of people jailed in Milwaukee following citations for behavior such as disorderly conduct, loitering, and traffic offenses were from five of city's poorest zip codes—which are heavily populated by Black and brown people.⁷⁹² Another 26 percent of people were from the neighboring four zip codes, which also largely consist of low-income people and Black and brown people.⁷⁹³ Further, 42 percent of all people jailed for these citations were also locked up on supervision detainees.⁷⁹⁴

⁷⁸⁷ Emma Pierson, et al., “A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States,” *Stanford Open Policing Project*; Sarah Ruiz-Grossman, “Study Finds Racial Bias in Police Traffic Stops and Searches,” *Huffington Post*, March 19, 2019, https://www.huffpost.com/entry/white-black-drivers-police-stops-searches-racial-bias_n_5c916558e4bof7ed945d4ba3; Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” *Washington Post*.

⁷⁸⁸ *Ibid.*

⁷⁸⁹ Report of David Abrams, Ph.D., *Collins v. The City of Milwaukee, et al.*, No. 17-cv-00234-JPS, E.D. Wi. Feb. 20, 2018, <https://www.aclu.org/legal-document/expert-report-david-abrams-phd>, p. 4 (“Abrams Report”); Nusrat Choudhury, “New Data Reveals Milwaukee Police Stops Are About Race and Ethnicity,” *American Civil Liberties Union*, February 23, 2018, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/new-data-reveals-milwaukee-police-stops-are-about-race-and?>

⁷⁹⁰ Abrams Report, p. 5.

⁷⁹¹ *Ibid.*

⁷⁹² John Pawasarat and Marilyn Walzak, “Cited in Milwaukee: The Cost of Unpaid Municipal Citations,” *ETI Publications*, 2015, https://dc.uwm.edu/cgi/viewcontent.cgi?article=1000&context=eti_pubs, p. 3. The zip codes are: 53206, 53210, 53204, 53208, and 53215. *Ibid.*

⁷⁹³ *Ibid.* The zip codes are 53212, 53209, 53216, and 53218.

⁷⁹⁴ *Ibid.*

In Philadelphia, a study revealed that, in 2017, Black people constituted 48 percent of the population but 69 percent of police stops.⁷⁹⁵ In Philadelphia's 14th District, which contains largely Black and poor neighborhoods, as well as some wealthy enclaves, data shows that Black drivers are more than three times more likely to be searched than white drivers.⁷⁹⁶ Data further reveals that, in the city's 9th District—where in 2018, during an incident that received widespread media attention, police arrested two Black men waiting for their friend at a Starbucks—Black people made up 67 percent of pedestrian stops in 2017, but just 3 percent of the population.⁷⁹⁷

Similar disparities exist throughout Georgia. Data from 2011 to 2015 shows that, in both Fayette County, near Atlanta, and Houston County, by Macon, Black people comprised about one quarter of the population, but about 65 percent of all traffic arrests during those years.⁷⁹⁸ In Roswell, near Atlanta, Latinx people made up 13 percent of the population but 63 percent of all traffic arrests.⁷⁹⁹

Many people interviewed by Human Rights Watch described arrests leading to supervision violation proceedings that appear racially biased.

Lowndes County, Georgia, police officers spotted Willie White (described in Section I), who is Black, as he rode his bicycle in October 2019.⁸⁰⁰ At the time, White was on probation for marijuana possession with intent to distribute and traffic infractions.

During his revocation hearing in December 2019, officers testified that they became suspicious when White looked at them and then quickly looked the other way. The officers

⁷⁹⁵ American Civil Liberties Union of Pennsylvania, "Analysis of Philadelphia Police Stop-and-Frisk Data Shows Illegal Stops Continue with Limited Progress," January 8, 2018, <https://www.aclupa.org/en/press-releases/analysis-philadelphia-police-stop-and-frisk-data-shows-illegal-stops-continue-limited>.

⁷⁹⁶ Bobby Allyn, "In Racially Diverse 14th District, Philly Police Target Black Drivers 3 Times More than Whites, Analysis Shows," *WHYY*, January 11, 2019, <https://whyy.org/articles/in-racially-diverse-14th-district-philly-police-target-black-drivers-3-times-more-than-whites-analysis-shows/>.

⁷⁹⁷ AJ Willingham, "The ACLU Says There's a Large Disparity in Police Stops in Area Where Starbucks Arrest Happened," *CNN*, April 17, 2018, <https://www.cnn.com/2018/04/17/us/starbucks-philadelphia-aclu-stop-frisk-trnd/index.html>.

⁷⁹⁸ Tasnim Shamma, "Study of 3 Ga. Locations: Black, Latino Drivers Pulled Over More," *WABE*, March 29, 2016, <https://www.wabe.org/study-3-ga-locations-black-latino-drivers-pulled-over-more/>. Specifically, Black people constitute 21 percent of Fayette County, and 28 percent of Houston County. *Ibid.*

⁷⁹⁹ *Ibid.*

⁸⁰⁰ Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch Court Observations, Lowndes County Superior Court, Valdosta, Georgia, December 11, 2019. All information is from Human Rights Watch's interview with Willie White or court observations unless otherwise noted.

made a U-Turn to approach him. White—as he describes, scared—biked in the other direction, dropping a Tupperware container he had been holding as he fled. After White later ran a stop sign on his bike, the officers stopped him for littering.

The officers discovered that White had a warrant for misdemeanor probation rule violations—for failure to report, a positive marijuana test, and failure to complete community service. They also contended that his Tupperware contained a pill with the synthetic drug “Flakka,” though White asserts it is not Flakka but a lawful pill.⁸⁰¹ As of March 2020, when we last spoke with his attorney, White had already been incarcerated for more than five months fighting revocation proceedings stemming from this arrest.⁸⁰²

In May 2019, police stopped Ruffin Toney, a Black man, for sitting in a parked car outside of a Milwaukee County, Wisconsin, Kwik Trip convenience store. According to the police report, after seeing a female driver in a parked car with a male passenger, the officer ran the car’s plates.⁸⁰³ The officer learned that the woman, who is white, had previously been stopped for a traffic violation while driving with a man. The officer then pulled that man’s file and found open warrants.⁸⁰⁴

The officer had no idea whether the man he saw that day was the same man with the warrants. As the officer reported, “I took out my binoculars” but “I could only tell that the subject was a male.”⁸⁰⁵

After watching the two individuals sit in the car for 15 minutes, the officer approached them. He “immediately observed” that the passenger was not the same man he was looking for.⁸⁰⁶

Nevertheless, the officer asked for this man’s identification. A search revealed that the man—Toney—was on probation for driving under the influence. The officer asked if he had anything illegal, and Toney admitted to having cocaine. When the officer tried to arrest

⁸⁰¹ For more information on the drug charges against White, see Section III, “Coercive Pleas.”

⁸⁰² Human Rights Watch telephone conversation with Jim Jarvis, attorney for Willie White, March 23, 2020.

⁸⁰³ Revocation Packet, *Wisconsin v. Ruffin Toney*, 17CF1231 (Milwaukee, Wisconsin, November 6, 2019), p. 16 (on file with Human Rights Watch).

⁸⁰⁴ *Ibid.*

⁸⁰⁵ *Ibid.*

⁸⁰⁶ *Ibid.*

him, Toney ran but soon tripped, fell, and was arrested for drug possession, loitering, and resisting arrest.⁸⁰⁷

Police dropped the charges, but Toney’s probation officer pursued revocation. Toney admitted the violations and enrolled in a drug treatment program in MSDP, the Milwaukee prison created for people accused of supervision violations, as an “alternative to revocation” (see Section IV)—only to be kicked out of the program for allegedly failing to sufficiently accept responsibility for his drinking problem. A judge re-sentenced him to two years in prison.⁸⁰⁸

Milwaukee police tried to stop Lavelle Jackson, a 38-year-old Black man, as he pulled his bicycle onto his mom’s front porch in March 2018. Jackson was under supervision for gun possession (which was illegal because of a 2001 conviction for robbery, committed at age 18).⁸⁰⁹ He had completed two years of supervision and had one year to go. Police claimed that Jackson did not have proper bike lights, and, Jackson told us, argued that his block was known for gangs and prostitution.⁸¹⁰ “You can’t walk in your own neighborhood without getting pulled over,” Jackson told us.

Believing he had a right to enter his own home, Jackson explained, he refused the police’s order to stop. Jackson said that he, along with his sister and his mom, who were inside, all told the police they could not enter without a warrant.⁸¹¹ But the police followed him inside anyway.⁸¹² Ultimately, the police found a gun inside a bedroom and arrested Jackson for unlawful gun possession.⁸¹³ Though Jackson insisted the gun belonged to a relative, his supervision officer pursued revocation for his alleged possession of the gun, as well as for failing to follow police commands to stop and identify himself.⁸¹⁴

⁸⁰⁷ Ibid., p. 16-21.

⁸⁰⁸ Human Rights Watch interview with Ruffin Toney, November 20, 2019; Revocation Decision, *Wisconsin v. Ruffin Toney*, 2017CF1231 (Milwaukee, Wisconsin, November 22, 2019).

⁸⁰⁹ Human Rights Watch interview with Lavelle Jackson, Milwaukee, Wisconsin, November 20, 2019; *Wisconsin v. Lavelle Jackson*, No. 2000CF005852 (Milwaukee, Wisconsin); *Wisconsin v. Lavelle Jackson*, No. 2002CF005742 (Milwaukee, Wisconsin). All information in this case study is from Human Rights Watch’s interview with Lavelle Jackson unless otherwise noted.

⁸¹⁰ Revocation Decision, *Wisconsin v. Lavelle Jackson*, 2000CF5852 (Milwaukee, Wisconsin August 23, 2019), p. 4.

⁸¹¹ Ibid.

⁸¹² Ibid.

⁸¹³ Ibid.

⁸¹⁴ Ibid.

The prosecutor dropped the criminal charges, and, a few months later, a judge found insufficient grounds for revocation based on the shakiness of the evidence that the gun belonged to Jackson.⁸¹⁵ But in 2019, prosecutors renewed criminal charges and, in August 2019, a judge revoked Jackson’s supervision and sentenced him to two years and two days in prison.⁸¹⁶

In October 2019, Lowndes County, Georgia, police stopped Bruce Lee Hallman, who is Black, as he drove home from work.⁸¹⁷ Hallman believes the officers racially profiled him.⁸¹⁸ At the time, Hallman was serving five years of probation for possession of cocaine with intent to distribute and attempting to flee from an officer.⁸¹⁹ During the stop, the officers found 1.48 grams of marijuana in Hallman’s car.⁸²⁰ They also learned that there was an outstanding warrant against him, for failing to pay over \$2,600 in supervision fees and failing to report to one probation meeting in July 2019—a meeting Hallman says he missed because he took his mom, who had recently been diagnosed with cancer, to a medical appointment.⁸²¹ Officers arrested Hallman for marijuana possession, traffic infractions, and the probation violations.⁸²²

After spending 51 days in jail awaiting revocation proceedings and fighting the criminal charges, in November 2019 Hallman pleaded guilty to possessing marijuana, obstructing an officer, failure to yield, and driving with a suspended license in exchange for another three years of probation, \$3,600 in fines, and 40 hours of community service.⁸²³ When we met Hallman in December 2019, he was still in jail awaiting his probation revocation hearing.

⁸¹⁵ Ibid., p. 2.

⁸¹⁶ Ibid., p. 2-8. The Administrative Law Judge dismissed the violation for refusing to identify himself because “refusal to provide one’s name to police officers is not a basis for a charge of obstructing an officer,” but found that Jackson refused the officer’s commands and unlawfully possessed a firearm. Ibid., p. 5.

⁸¹⁷ Human Rights Watch interview with Bruce Lee Hallman, December 10, 2019.

⁸¹⁸ Ibid.

⁸¹⁹ Ibid.; *Georgia v. Bruce Lee Hallman*, 2014CR223 (Lowndes County, Georgia).

⁸²⁰ Human Rights Watch interview with Bruce Lee Hallman, December 10, 2019; Affidavit for Arrest, *Georgia v. Bruce Lee Hallman*, 2019SC15240 (Lowndes County, Georgia).

⁸²¹ Petition for Revocation, *Georgia v. Bruce Lee Hallman*, No. 2014cr223 (Lowndes County, Georgia).

⁸²² Ibid.

⁸²³ Human Rights Watch interview with Bruce Lee Hallman, December 10, 2019; Sentence and Probation Order, *Georgia v. Bruce Lee Hallman*, No. 2019SC15240 (Lowndes County, Georgia).

Angel Ortiz, described above, explained that, in his largely Black and Latino, poor, North Philadelphia neighborhood, “you see a cop every three minutes.”⁸²⁴ Ortiz said that police often stopped and searched him without cause.

One time, in 2005, Ortiz said police ordered him up against a wall as he was leaving a barber shop, claiming that an object in his mouth was a marijuana joint. Then in 2009, as Ortiz was standing at a North Philadelphia bus stop, he said that police ordered him up against a car—and arrested him for “resisting” when he asked why they had stopped him.

As discussed in Section III, Ortiz said that Philadelphia courts dismissed both charges, but the court still revoked his probation and resentenced him to even more supervision.⁸²⁵

Today, Ortiz—who is still on probation for a crime committed in 1999—lives in constant fear of arrest just for being in his neighborhood: “Walking from down my block to the bar, every corner there are drug spots. What am I supposed to do, float over them? I’m gonna get in trouble just going to the store.”

Persheen Williams’s Story

One evening in November 2015, a police officer watched a “Black male” and a “White female” enter a Motel 6 in Richmond Hill, Georgia, near Savannah.⁸²⁶ For no discernible reason, the officer checked the guest list, identified the Black man as Persheen Williams, and ran a background check—revealing that Williams was on felony probation for marijuana possession and obstructing an officer.⁸²⁷ At the time,

⁸²⁴ Human Rights Watch interview with Angel Ortiz, October 29, 2019. All information in this case study is from Human Rights Watch’s interview with Angel Ortiz unless otherwise noted.

⁸²⁵ As explained in Section III, “Few Evidentiary Protections,” given minimal procedural protections in revocation proceedings, courts often revoke supervision based on evidence that would be inadmissible in criminal courts.

⁸²⁶ Human Rights Watch interview with Persheen Williams, Savannah, Georgia, December 12, 2019; Police Report Narrative, Persheen Williams (on file with Human Rights Watch). All information in this case study is from Human Rights Watch’s interview with Persheen Williams unless otherwise noted.

⁸²⁷ *Ibid.*

Williams was also on misdemeanor probation, supervised by a private probation company, for driving with a suspended license.⁸²⁸

The officer knocked on Williams's hotel door, and, claiming he smelled marijuana,⁸²⁹ asked to search the room.⁸³⁰ Williams said that he and his then-fiancé, who were eating dinner, gave permission. When the officer found nothing illegal, he asked to search their car, which, Williams explained, was parked on the other side of the hotel.⁸³¹ After searching the car for about 30 minutes, Williams said, the officer found a small amount of marijuana and arrested both Williams and his fiancé.⁸³² Upon jailing them, Williams said officers called his fiancé “a nigger lover.”

A local defense lawyer, outraged by what happened, took the case pro bono and convinced the prosecutor and felony probation officer to drop the charges, given the racist arrest.⁸³³ However, Williams's misdemeanor probation officer still pursued revocation for the new charges as well as failing to pay \$285 in fines and fees and failing to complete some community service hours and a “substance abuse evaluation.”⁸³⁴ Williams spent three days in jail for the violations, he said.

Then, while he was driving with another white woman in November 2019, Chatham County, Georgia, police stopped Williams for driving with a broken taillight.⁸³⁵ Claiming to smell marijuana, the officers asked to search his car.⁸³⁶ At the time,

⁸²⁸ Human Rights Watch has previously documented distinct concerns with private probation companies in Georgia. See above note 13; Human Rights Watch, *Profiting from Probation*.

⁸²⁹ Some courts have held that claiming to smell marijuana is an illegitimate basis for a search. Joseph Goldstein, “Officers Said They Smelled Pot. The Judge Called them Liars,” *New York Times*, September 12, 2019, <https://www.nytimes.com/2019/09/12/nyregion/police-searches-smelling-marijuana.html>; Vanessa Romo, “Maryland Court Rules Marijuana Odor Not Enough to Search a Person,” *NPR*, August 16, 2019, <https://www.npr.org/2019/08/16/751783763/maryland-court-rules-marijuana-odor-not-enough-to-search-a-person>.

⁸³⁰ Police Report Narrative, Persheen Williams (on file with Human Rights Watch).

⁸³¹ *Ibid.*

⁸³² *Ibid.*

⁸³³ E-mail communications between David Utter, attorney for Persheen Williams, and Chatham County prosecutor, December 4, 2015 (on file with Human Rights Watch).

⁸³⁴ Violation of Probation Hearing, Persheen Williams, February 2, 2016 (on file with Human Rights Watch).

⁸³⁵ Arrest Report, Persheen Williams, November 11, 2019 (on file with Human Rights Watch).

⁸³⁶ *Ibid.*

Williams was serving four years of felony probation and participating in drug court following convictions for drug possession.⁸³⁷

Knowing his rights from his last police encounter, Williams said, he asked why they thought he had marijuana. The officers then ordered Williams to put up his hands and handcuffed his left wrist—claiming, in the police report, that they needed to detain Williams to search his car.⁸³⁸ When Williams demanded to know what he was being arrested for, he said, the officers brutally assaulted him. The arresting officers claim Williams began resisting arrest.⁸³⁹

The officers then tased Williams—as Williams described, dozens of times—ultimately bringing him to the ground, where they continued to tase him and began striking him, with what Williams described as punches to the face.⁸⁴⁰ Ultimately, seven officers were holding Williams down, claiming he continued to resist arrest.⁸⁴¹ Police then arrested Williams for possessing drugs they found in the car after tasing him.⁸⁴² Williams said they did not belong to him.

Being tased, Williams described, is “the worst thing ever. Your body locks up. It’s like being shocked by electricity but like ten times worse.” Williams told us the assault left him with lasting spine, leg, and eye damage. The police report filed by his arresting officers says that they took Williams to the hospital, which conducted tests and found no injuries.⁸⁴³

When Human Rights Watch researchers met Williams in the Chatham County jail more than a month later, he still walked with a cane and reported trouble seeing. We saw white marks on Williams’s forearms where he said the handcuffs had dug into his skin.

⁸³⁷ *Georgia v. Persheen Williams*, No. SPCR18-00379-J7 (Chatham County, Georgia).

⁸³⁸ Arrest Report, Persheen Williams, November 11, 2019 (on file with Human Rights Watch).

⁸³⁹ *Ibid.*

⁸⁴⁰ *Ibid.*

⁸⁴¹ *Ibid.*

⁸⁴² *Ibid.*

⁸⁴³ *Ibid.*

When we last spoke to Williams’s attorney in May 2020—about six months after the arrest—Williams was still in jail awaiting probation revocation proceedings.⁸⁴⁴

Biased Supervision Enforcement

The ways in which supervision rules are imposed and enforced can also exacerbate racial inequalities. For example, many jurisdictions, including Georgia, Pennsylvania, and Wisconsin, use algorithmic risk assessment tools (RATs) to determine the level of supervision required and which sanctions to impose.⁸⁴⁵ As Human Rights Watch and others have documented, these tools rely on data, such as criminal history, residential stability, and employment history, that contain race and class biases.⁸⁴⁶ The results replicate and reinforce these biases, which can disproportionately label poor people and Black and brown people as “high risk”—subjecting them to harsher supervision conditions and tougher sanctions.⁸⁴⁷

Further, some studies, as well as anecdotal evidence, show that supervision officers sometimes treat people differently based on their race and class, or fail to adequately take into account the barriers that low-income people face in complying with supervision conditions.⁸⁴⁸ Tom Reed, Milwaukee’s chief public defender, said that Black and brown

⁸⁴⁴ Docket, *Georgia v. Persheen Williams*, No. SPCR18-00379-J7 (Chatham County, Georgia); Human Rights Watch e-mail correspondence with David Utter, April 22, 2020 (on file with Human Rights Watch); Human Rights Watch e-mail correspondence with Scott Robichaux, May 4, 2020 (on file with Human Rights Watch).

⁸⁴⁵ Ebony L. Ruhland, et al., “The Continuing Leverage of Releasing Authorities,” p. 42-43; Georgia Department of Community Supervision, “2018 Annual Report,” p. 8; Pennsylvania Board of Probation and Parole, “Violations,” <https://www.pbpp.pa.gov/Parole%20Supervision/Parole%20Offices/Pages/Violations.aspx>; Wisconsin Department of Corrections, “Electronic Case Reference Manual,” 2016, <https://ffupstuff.files.wordpress.com/2018/11/doc-2016-guide-to-revoc.pdf>.

⁸⁴⁶ “Statement to the California Judicial Council Pretrial Reform and Operations Workgroup,” Human Rights Watch statement, February 11, 2020, <https://www.hrw.org/news/2020/02/11/human-rights-watch-statement-california-judicial-council-pretrial-reform-and#>; Chelsea Barbaras, et al., “The Problems with Risk Assessment Tools,” *N.Y. Times*, July 17, 2019, <https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html>; Massachusetts Institute of Technology, letter, “Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns,” July 16, 2019, https://dam-prod.media.mit.edu/x/2019/07/16/TechnicalFlawsOfPretrial_ML%20site.pdf; Matt Henry, “Risk Assessment: Explained,” *The Appeal*, March 25, 2019, <https://theappeal.org/risk-assessment-explained/>; Julia Angwin, et al., “Machine Bias,” *ProPublica*, May 23, 2016, <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

⁸⁴⁷ *Ibid.*; Michelle Phelps, “Mass Probation and Inequality,” p. 49-50; Sara Steen and Tara Opsal, “Punishment on the Installment Plan,” p. 352, 358; Fiona Doherty, “Obey All Laws and Be Good,” p. 352-53; Jesse Jannetta, et al., “Examining Racial and Ethnic Disparities in Probation Revocation,” *Urban Institute*, p. 9.

⁸⁴⁸ Ronald P. Corbett, Jr., “The Burdens of Leniency,” p. 1718-19 (citing social science research); Jesse Jannetta, et al., “Examining Racial and Ethnic Disparities in Probation Revocation,” *Urban Institute*, p. 3; Michelle Phelps, “Mass Probation

people living in disadvantaged neighborhoods face added barriers to complying with supervision. “When they fail to comply that too often results in their not receiving the benefit of the doubt. This is much less common with clients who come from more privileged backgrounds,” he explained.⁸⁴⁹

The experience of a white, well-educated, steadily employed man in a Philadelphia suburb illustrates these disparities. Matthew Carrier, a mortgage analyst for a bank, spent years on probation for four driving while under the influence convictions related to his problematic alcohol use.⁸⁵⁰

Carrier told us that he often violated his probation—getting drunk, disobeying instructions, skipping classes, even moving to another state. While his probation officer threatened to lock him up, he explained, she never resorted to jail sanctions.

Carrier connected his positive treatment to his background: “She knew I lived in a nice area,” he explained. “I had a good job,” “she knew I made good money,” and “I didn’t get any other charges besides these DUIs.”

Ultimately, Carrier said, his girlfriend kicked him out and he checked himself into a rehab facility, which he could afford, and went into recovery.⁸⁵¹ Carrier told us, “My PO has a lot to do with saving my life. She could have thrown me back in jail and I probably would never have been sober today. She saw the good in me, I would say.”

None of the other people Human Rights Watch interviewed—most of whom were poor and people of color—reported receiving such support.

and Inequality,” p. 49-50. As discussed above in “Background,” race in the United States intersects strongly with socioeconomic status.

⁸⁴⁹ Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Toriano Goldman, January 24, 2020 (Goldman, a Black man on probation in Philadelphia, described overhearing his white probation officer act more friendly, and more lenient, to white people under supervision).

⁸⁵⁰ Human Rights Watch interview with Matthew Carrier, Philadelphia, Pennsylvania, October 29, 2019. All information in this case study is from Human Rights Watch’s interview with Matthew Carrier.

⁸⁵¹ Ibid.

VII. International Human Rights Law and US Law

This report describes a range of abuses that violate rights guaranteed under international human rights law and US law.

Proportionality and Necessity

Under international human rights standards, sentences should be proportionate to the crime and the culpability of the individual, and should be no greater than necessary to meet the purposes of punishment—retribution, deterrence, incapacitation, and rehabilitation. These principles reflect three basic human rights precepts: the inherent dignity of the individual; the right to be free of cruel, inhuman or degrading punishment; and the right to liberty. These rights are crystalized in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which the United States has ratified.⁸⁵²

Draconian prison terms may constitute arbitrary deprivations of liberty “if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained.”⁸⁵³ Disproportionately long prison terms may also violate the prohibition on cruel and inhuman punishment. In either case, they are inconsistent with respect for human dignity.⁸⁵⁴

In the United States, mandatory minimum sentencing, habitual offender statutes, and unduly harsh sentencing schemes routinely lead to disproportionately long sentences, as

⁸⁵² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, Preamble, Arts. 9, 10; UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (Eightieth session, 2004), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/21/Rev.1/Add. 1326 (2004), para. 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994,

⁸⁵³ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and Security of the Person), U.N. Doc. CCPR/C/GC/35, December 16, 2014, para 14.

⁸⁵⁴ Human Rights Watch, *An Offer You Can't Refuse*, p. 119-20. For a discussion of proportionality in US constitutional jurisprudence addressing the length of sentences, see Richard S. Frase, “Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: ‘Proportionality’ Relative to What?” *Minnesota Law Review*, vol. 89, (2005), p. 571.

Human Rights Watch and the ACLU have documented repeatedly.⁸⁵⁵ As a result, often the original sentence that has been imposed on someone who is on parole or probation is itself inconsistent with international human rights standards. That initial injustice is compounded by overly punitive responses to violations of supervision.

The United Nations Human Rights Committee, the international expert body that interprets the ICCPR, has specifically stated that revocation of probation or parole due to violation of conditions “must also be carried out in accordance with law and must not be arbitrary and, in particular, not disproportionate to the seriousness of the breach.”⁸⁵⁶ In other words, proportionality principles apply directly to the decision to revoke supervision.

This report documents many cases for which revocation and incarceration was grossly disproportionate to the conduct that violated the conditions, or to the culpability of the person under supervision. These include cases in which people were sentenced to jail or prison time for failing to report, using or possessing drugs, or moving without telling their supervision officer. These sanctions were also not necessary given that providing people with the means to obtain jobs, housing, evidence-based voluntary treatment, and educational opportunities have proven more effective than incarceration at addressing the underlying conduct.

⁸⁵⁵ Human Rights Watch, *A Nation Behind Bars: A Human Rights Solution*, (New York: Human Rights Watch, 2014), https://www.hrw.org/sites/default/files/related_material/2014_US_Nation_Behind_Bars_o.pdf; American Civil Liberties Union of Washington, “About Time: How long and Life Sentences Fuel Mass Incarceration in Washington State,” February 2020, <https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state>; American Civil Liberties Union, “False Hope – How Parole Systems Fail Youth Serving Extreme Sentences,” November 2016, <https://www.aclu.org/report/report-false-hope-how-parole-systems-fail-youth-serving-extreme-sentences>; Human Rights Watch, *An Offer You Can’t Refuse*, p. 119-20; American Civil Liberties Union, “A Living Death: Life Without Parole for Nonviolent Offenders,” November 2013, https://www.aclu.org/sites/default/files/field_document/111813-lwop-complete-report.pdf; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, (New York: Human Rights Watch, 2012), http://www.hrw.org/sites/default/files/reports/usprisonso112webwcover_o.pdf; Jamie Fellner (Human Rights Watch), “The Human Rights Paradigm: The Foundation for a Criminal Justice System We Can Be Proud Of,” commentary, *The Sentencing Project: 25 Experts Envision the Next 25 Years of Reform*, March 21, 2012, <http://www.hrw.org/news/2012/03/21/human-rights-paradigm-foundation-criminaljustice-system-we-can-be-proud>; Human Rights Watch, *The Answer is No: Too Little Compassionate Release in US Federal Prisons*, (New York: Human Rights Watch, 2012), <http://www.hrw.org/sites/default/files/reports/us1112ForUploadSm.pdf>; Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, (New York: Human Rights Watch), 2005, <https://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>; Human Rights Watch, *Cruel and Usual: Disproportionate Sentences for New York Drug Offenders*, Vol. 9, No. 2 (B), 1997, <http://www.hrw.org/reports/1997/usny/>.

⁸⁵⁶ UN Human Rights Committee, General Comment No. 35, para 20.

Equal Protection

The ICCPR, along with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States has ratified, and the Fourteenth Amendment of the US Constitution, guarantee the right to equal treatment and protection under law, without discrimination along racial and other lines.⁸⁵⁷

US constitutional law requires a finding of discriminatory intent before courts will rule unconstitutional discriminatory practices that disproportionately burden a racial group.⁸⁵⁸ But ICERD goes further, prohibiting policies and practices that have either the purpose or effect of restricting rights on the basis of race.⁸⁵⁹ It proscribes apparently race-neutral practices that affect fundamental rights—for example, the right to liberty—regardless of racist intent, if those practices create unwarranted racial disparities. The Committee on the Elimination of Racial Discrimination, which interprets the ICERD, has specifically stated that “indirect—or *de facto*—discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”⁸⁶⁰

⁸⁵⁷ ICCPR, Art. 26; International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, G.A. Res. 2106 (XX), 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), entered into force January 4, 1969, ratified by the United States on October 21, 1994, Art. 1; US Const. Art. XIV.

⁸⁵⁸ Human Rights Watch, *Targeting Blacks*, p. 56-58. The requirement of proof of intent has been a formidable barrier for victims of discrimination in the criminal legal system seeking judicial relief. “Developments in the Law: Race and the Criminal Process,” *Harvard Law Review*, vol. 101 (1988); Jody Feder, “Racial Profiling: Legal and Constitutional Issues,” *Congressional Research Service*, April 16, 2012, <https://fas.org/sgp/crs/misc/RL31130.pdf>, p. 4-9 (summarizing caselaw). In certain other contexts—such as statutory claims of employment or housing discrimination under civil rights laws—practices and procedures that have a disparate impact on a racial group can also trigger liability under United States law. See Lawrence Rosenthal, “Saving Disparate Impact,” *Cardozo Law Review* 34 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045688.

⁸⁵⁹ Under ICERD, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” ICERD, Part I, Article 1(1).

⁸⁶⁰ CERD, “Consideration of Reports Submitted by State Parties under Article 9 of the Convention: Concluding Observations, United States of America,” CERD/C/USA/CO/6, February 2008, para. 10, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf>; Human Rights Watch, United States – Submission to the Committee on the Elimination of Racial Discrimination, vol. 20, no. 2(G), February 2008, <http://hrw.org/reports/2008/uso208/>.

Under the ICERD, governments may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather must act affirmatively to prevent or end policies with unjustified discriminatory impacts.⁸⁶¹ Governments are obligated to “prohibit and eliminate racial discrimination ... notably in the enjoyment of ... the right to equal treatment before the tribunals and all other organs administering justice.”⁸⁶² The Committee on the Elimination of Racial Discrimination has raised concerns over the disproportionate arrest, incarceration, and sentencing of Black people in the US.⁸⁶³

There are multiple examples of ways in which the US criminal legal system and policing target or disproportionately burden Black and brown people. For instance, while Black and white people in the US use drugs at similar rates, nationwide Black people are much more likely to be arrested for drug possession.⁸⁶⁴ Likewise, Black people across the US are disproportionately stopped and searched by police while driving or walking—though they are less likely to be found with “contraband.”⁸⁶⁵ Studies of various jurisdictions in the US also suggest that Black people are more likely to have their supervision revoked than their white counterparts.⁸⁶⁶

Additionally, the US Constitution forbids wealth-based discrimination and international human rights law requires governments to ensure that a person’s economic status does not have the consequence of “nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁸⁶⁷ Incarcerating

⁸⁶¹ ICERD, Part I, Article 2(1)(a).

⁸⁶² *Ibid.*, Article 5(a).

⁸⁶³ CERD, “Concluding observations on the combined seventh to ninth periodic reports of United States of America,” August 29, 2014, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf, para. 20.

⁸⁶⁴ See Section II, “Conduct Triggering Violations.”

⁸⁶⁵ See Sections V, “Entrenching Racial Disparities;” VI, “Racial Bias.”

⁸⁶⁶ *Ibid.*

⁸⁶⁷ *Bearden v. Georgia*, 461 U.S. 660 (1983); UN Human Rights Committee, General Comment No. 18, Nondiscrimination (Thirty-seventh session, 1989), <https://www.refworld.org/docid/453883fa8.html>, para. 7; International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 2; UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, 2005, para. 26 (b) (calling on states to ensure “That the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner appropriate to the situation of persons belonging to such groups, who are often in straitened economic circumstances, so as to prevent this requirement from leading to discrimination against such persons”).

people solely because they cannot pay supervision-mandated costs discriminates against them based on their financial means: People with adequate financial resources are able to pay their required costs and avoid incarceration, while those who cannot pay those costs wind up in jail or prison.

International and US law also prohibit governments from discriminating against people on the basis of disability.⁸⁶⁸ This includes an affirmative obligation under US law to provide “reasonable accommodations,” or modifications in policies and procedures to ensure accessibility for people with disabilities, to give them an equal opportunity to participate in services and programs; international human rights law also requires reasonable accommodations to ensure that persons with disabilities can enjoy or exercise “on an equal basis with others all human rights and fundamental freedoms.”⁸⁶⁹ This means that supervision departments and courts need to make reasonable accommodations for people with mental health conditions and other disabilities so that they can successfully complete supervision.

Right to Liberty

The ICCPR, which protects the right to liberty, imposes limits on pre-trial detention.⁸⁷⁰ States may only detain people prior to conviction as a “means of last resort,” and only then for the shortest duration possible.⁸⁷¹ Further, if imprisonment is “not to be expected” as punishment, every effort should be made to avoid pre-trial detention.⁸⁷²

⁸⁶⁸ Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; The Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, annex I, U.N. GAOR, 61st Sess., (No. 49) at 65, U.N. Doc A/61/49 (2006), entered into force May 3, 2008. The United States has signed, but not ratified, the CRPD.

⁸⁶⁹ 42 U.S.C. § 12132; 29 U.S.C. § 794(a). CRPD, Articles 2 and 5.

⁸⁷⁰ ICCPR, art. 9.

⁸⁷¹ UN Human Rights Committee, General Comment No. 8, Right to liberty and security of persons (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (vol. I)(2008), para. 3; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45.110, para 6.1.

⁸⁷² Centre for Human Rights, Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention* (New York and Geneva: United Nations, 1994), https://www.un.org/ruleoflaw/files/training3_en.pdf, para 80; see also Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/54/2, 26 March 2015, paras. 76 and 77.

This means that people should not be reflexively incarcerated pending violation proceedings; rather, detention pending such proceedings “must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”⁸⁷³ The factors to consider in determining whether detention is permissible need to be set out in law, and should not include “vague and expansive standards, such as ‘public security.’”⁸⁷⁴ If detention is appropriate, it should only last as long as is necessary to achieve a legitimate aim.

The right to liberty also requires that anyone detained on a charge be brought promptly before a person exercising judicial authority who is “independent, objective and impartial in relation to the issues dealt with.”⁸⁷⁵ The Human Rights Committee recommends that any delay should last no longer than 48 hours.⁸⁷⁶ This requirement “applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it.”⁸⁷⁷ Also, “the person detained is entitled to trial within a reasonable time or to release.”⁸⁷⁸ Prolonged detention pending charges can jeopardize the presumption of innocence, another right.⁸⁷⁹ What is reasonable depends on the circumstances, but budgetary constraints or understaffing do not justify delays.⁸⁸⁰ Delays can amount to arbitrary detention.

In the jurisdictions examined for this report, people are routinely incarcerated pending violation proceedings, even for rule violations.⁸⁸¹ None of these jurisdictions provide people with an opportunity to challenge this detention within 48 hours.⁸⁸² Further, in many

⁸⁷³ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, December 16, 2014, para 38.

⁸⁷⁴ *Ibid.*

⁸⁷⁵ UN Human Rights Committee, General Comment No. 35, para 32.

⁸⁷⁶ *Ibid.*, para 33. Human Rights Watch believes that no one should be detained for any reason without being brought before a judicial authority within 48 hours.

⁸⁷⁷ *Ibid.*, para 32.

⁸⁷⁸ *Ibid.*, para 37.

⁸⁷⁹ *Ibid.*

⁸⁸⁰ *Ibid.*

⁸⁸¹ See Section III, “Pre-Revocation Confinement.”

⁸⁸² Delaware requires everyone arrested to be brought before an official—who is generally not an attorney—within 24 hours of arrest. However, according to public defenders, these proceedings lack sufficient procedural protections, and often result in people being detained. 11 Del. C. 1909; Human Rights Watch telephone interview with Misty Seemans, Delaware Public Defender, June 9, 2020. Mississippi requires such proceedings within 72 hours. See Miss. Code Ann. 47-7-37(3).

jurisdictions, people wait weeks or months before proceedings—or even before an initial hearing.⁸⁸³ These delays amount to arbitrary detention.

The ICCPR and the US Constitution’s Fourteenth Amendment also protect against vague laws, which fail to give people adequate notice of what conduct is prohibited.⁸⁸⁴ The Human Rights Committee has said that grounds for any detention—whether pre-trial or post-conviction—“should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application” by those empowered to enforce the rules.⁸⁸⁵ Supervision conditions requiring people to, for instance, avoid “disreputable people” and “vicious habits,” do not provide people with specific notice of prohibited conduct, and give wide latitude to supervision officers.

Fair Trial Rights

The ICCPR and the Fifth, Sixth, and Fourteenth Amendments to the US Constitution require fair trials.⁸⁸⁶ These rights include the rights to access to counsel and to the presumption of innocence, prompt proceedings, and the right against self-incrimination.⁸⁸⁷

The US Supreme Court has held that, while revocation proceedings need not provide the same fair trial protections as criminal proceedings, revocation involves a “serious deprivation” of liberty and accordingly minimum due process protections apply.⁸⁸⁸ The UN Human Rights Committee has not commented on the extent to which fair trial rights apply in this context.⁸⁸⁹

⁸⁸³ See Section III, “Pre-Revocation Confinement.”

⁸⁸⁴ ICCPR Art. 9; US Const. Art. XIV; *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966); *City of Chicago v. Morales*, 527 U.S. 41 (1999).

⁸⁸⁵ UN Human Rights Committee, General Comment No. 35, para 22.

⁸⁸⁶ ICCPR Art. 14; US Const. Arts. V, VI, XIV.

⁸⁸⁷ *Ibid.*

⁸⁸⁸ *Gagnon v. Scarpelli*, 411 U.S. 778, 781 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). For discussions of due process protections in revocation proceeding under US law, see Daniel F. Piar, “A Uniform Code of Procedure for Revoking Probation” and Andrew Horwitz, “The Costs of Abusing Probationary Sentences.”

⁸⁸⁹ As previously noted, the Human Rights Committee has stated that the principle of proportionality, associated with the right to liberty, does apply independently to punishments imposed for provisional release violations, but it has not commented on the extent to which fair trial rights are applicable as well. Because the right to a fair trial is critical to securing the right to liberty, there is a basis for applying fair trial rights in this context, where liberty is at stake. However, there is little jurisprudence on this matter, and the practice of states has not been to apply the full panoply of fair trial rights in revocation proceedings.

Nonetheless, a number of the practices documented in this report raise serious concerns over fairness. These concerns are especially acute in the United States supervision context because US supervision violation proceedings can lead to deprivation of liberty for extended periods.

Concerning practices we documented include revocation proceedings that limit access to attorneys, do not proceed promptly, lack sufficient evidentiary protections, and require people to admit their guilt.

The use of a “preponderance of the evidence” standard of proof in revocation proceedings is particularly concerning. The right to the presumption of innocence under international human rights law “imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”⁸⁹⁰ With the right to liberty at stake in revocation proceedings, the standard of proof should be “beyond a reasonable doubt.”

In addition, due process under US law bars real or perceived conflicts of interest, particularly by officers of the court. Appellate courts in the US have found that probation officers serve as “arms of the court,” and therefore should be governed by the same rules regarding impartiality and neutrality that apply to judicial officials.⁸⁹¹ Where a court’s probation service is a private company whose profits depend on their ability to collect money from people under their supervision, asking that probation company to determine whether a person under supervision can pay the company’s own fees, to recommend consequences for non-compliance that generate profits for the company, or to use the threat of arrest or incarceration to induce payment present the perception of and potential for conflicts of interest.⁸⁹² Such potential real or perceived conflicts also exist for government-run probation and parole agencies where those agencies, or the court system

⁸⁹⁰ UN Human Rights Committee, General Comment No. 32, Article 14 (Right to equality before courts and tribunals and to fair trial), CCPR/C/GC/32, August 23, 2007, para 30.

⁸⁹¹ *US v. Johnson*, 935 F.2d 47 (4th Circuit); *US v. Woody*, 567 F.2d 1353 (5th Circuit); *US v. Jackson*, 886 F.2d 838 (7th Circuit); *US v. Gonzales*, 765 F.2d 1393 (9th Circuit). See also “Policing and Profit,” *Harvard L. Rev.* 1723, 128 (2015), <https://harvardlawreview.org/2015/04/policing-and-profit/>.

⁸⁹² Human Rights Watch, *Set Up to Fail*, p. 30, 83.

for which they work, depend in part on fines and fees owed by people under supervision to raise revenue for their operations.⁸⁹³

Right to an Adequate Standard of Living

Under international human rights standards, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), governments are obligated to respect individuals' rights to adequate standards of living, including housing, food, and living conditions.⁸⁹⁴ They are also prohibited from interfering with people's ability to access and enjoy these rights.⁸⁹⁵

The practical import of these rights in this context is that government authorities should not incarcerate people solely because they cannot pay fines, court costs, and supervision fees when doing so would impair their ability to feed, clothe, house, or provide health care for themselves and their dependents. Authorities also should not extend peoples' supervision terms—putting them at risk of further incarceration for violations—for failure to pay because they cannot afford their costs.

While many US states require courts to waive court costs for people who are “indigent,” this term is often left ambiguous and some court officials appear to interpret it as including only cases of absolute material deprivation. Further, rather than waiving costs, some jurisdictions impose civil judgment. While this may eliminate the threat of incarceration, it negatively affects the credit scores of those against whom civil judgment gets entered, preventing them from obtaining loans or lines of credit for housing, cars, or

⁸⁹³ Matthew Menendez, et al., “The Steep Costs of Criminal Justice Fees and Fines: a Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, November 21, 2019, https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf; Joseph Shapiro, “As Court Fees Rise, the Poor are Paying the Price,” *NPR*, May 19, 2014, <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

⁸⁹⁴ International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 11; UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 25. The United States has signed, but not ratified, the ICESCR. As a UN member state, the United States endorses the Universal Declaration of Human Rights, a foundational human rights document that is commonly considered a statement of customary international law. ICCPR article 11, which prohibits imprisoning someone merely for failure to fulfill a contractual obligation, may be relevant in circumstances in which probation fees, which normally flow from a court order rather than a civil contract, are owed to private for-profit companies. Human Rights Watch, *Set Up to Fail*, p. 82.

⁸⁹⁵ A state is also required to work towards the progressive realization of these economic, social and cultural rights over time “to the maximum of its available resources.” ICESCR, art. 2(1).

education, for example. This in turn impacts their ability to move forward and advance in society.

Right to Health

The ICCPR places a heightened duty of care on governments towards people in their custody.⁸⁹⁶ The Human Rights Committee has stated that “the duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health.”⁸⁹⁷

The ICESCR also provides that everyone has the right to “the highest attainable standard of physical and mental health.”⁸⁹⁸ The UN Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that: “The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, [and] work[.]”⁸⁹⁹ The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), also provide that incarcerated people “should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”⁹⁰⁰

The failure to provide evidence-based and adequate treatment for substance use disorder to people in custody, including Medication-Assisted Treatment where appropriate, and the imposition of punishment for relapse (given that substance use disorder is chronic and relapsing) is inconsistent with these standards.⁹⁰¹

⁸⁹⁶ UN Human Rights Committee, General Comment No. 36, Article 6 (Right to life), CCPR/C/GC/35, September 3, 2019, para 25.

⁸⁹⁷ *Ibid.*; Convention Against Torture, Art. 1.

⁸⁹⁸ ICESCR, art. 12.

⁸⁹⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, Article 12 (The right to the highest attainable standard of health), E/C. 12/2000/4, August 11, 2000, para 3.

⁹⁰⁰ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rules 24-34.

⁹⁰¹ International Centre on Human Rights and Drug Policy, UNAIDS & World Health Organization, “International Guidelines on Human Rights and Drug Policy,” March 2019, https://www.undp.org/content/dam/undp/library/HIV-AIDS/HRDP%20Guidelines%202019_FINAL.PDF; Human Rights Watch & American Civil Liberties Union, *Every 25 Seconds*, p. 165-180; Human Rights Watch, *Barred from Treatment*, p. 17 & n.35.

Further, people on supervision should not be punished for violations relating to personal drug use and possession when the authorities failed to provide appropriate treatment for the individuals while they were incarcerated.

In addition, Human Rights Watch and the ACLU have taken the position that criminalizing drug use and possession for personal use violates international human rights standards on privacy and basic principles of autonomy that underlie all rights, and is per se a disproportionate response.⁹⁰² Accordingly, personal drug use and possession for personal use should not trigger prosecution or supervision violations.⁹⁰³

⁹⁰² Human Rights Watch & American Civil Liberties Union, *Every 25 Seconds*, p. 22-27.

⁹⁰³ *Ibid.*

VIII. The Path Forward

There is an emerging consensus that, as this report documents, supervision is in large part failing to achieve its aims of diverting people from incarceration and helping them get back on their feet.⁹⁰⁴ Rather than steering people away from incarceration, supervision is leading them back to jails and prisons in high numbers.⁹⁰⁵ Far from promoting rehabilitation, supervision's high costs and onerous requirements often destabilize peoples' lives, while in many cases failing to connect them with services.⁹⁰⁶

Incarcerating people for supervision violations is also very expensive for governments. According to the Council of State Governments, locking people up for supervision violations costs states collectively more than \$9.3 billion annually.⁹⁰⁷ Such incarceration costs \$194 million a year in Georgia,⁹⁰⁸ \$334 million in Pennsylvania,⁹⁰⁹ and \$451 million in Wisconsin.⁹¹⁰ These figures do not even include the costs to incarcerate people in county-run jails or other local detention facilities.⁹¹¹

Finally, supervision as it works in the United States is not necessary to prevent crime. Numerous experts agree that supervision terms of more than a few months or a couple of

⁹⁰⁴ See, for example, Columbia University Justice Lab, "Too Big to Succeed;" PEW Charitable Trusts, "Policy Reforms Can Strengthen Community;" Beth Schwartzappel, "Want to Shrink the Prison Population? Look at Parole," *The Marshall Project*, February 11, 2019, <https://www.themarshallproject.org/2019/02/11/want-to-shrink-the-prison-population-look-at-parole>; Sarah Lustbader and Vaidya Gullapalli, "Is a Total Overhaul of Parole and Probation Possible?," *The Appeal*, January 30, 2019, <https://theappeal.org/is-a-total-overhaul-of-parole-and-probation-possible-2/>; Tim Waltz and Mike Parson, "Criminal Justice Reform Shouldn't Just focus on People Behind Bars. Here's How We Can Improve the Lives of Millions More," *Time*, October 15, 2019, <https://time.com/5700747/parole-probation-incarceration/>; Columbia Justice Lab, "Launching ExiT: Executives Transforming Probation and Parole," August 19, 2019, <https://justicelab.columbia.edu/news/launching-exit-executives-transforming-probation-and-parole>; Cecelia Klingele, "Rethinking the Use of Community Supervision," p. 1054-65; Michelle Phelps, "Ending Mass Probation," p. 136.

⁹⁰⁵ See Section V, "Supervision is Feeding Mass Incarceration—The Numbers."

⁹⁰⁶ See Sections I, "Requirements of Supervision", VI, "Factors Driving Violations."

⁹⁰⁷ Council of State Governments Justice Center, "Confined and Costly."

⁹⁰⁸ Council of State Governments Justice Center, "Confined and Costly: Georgia," <https://csgjusticecenter.org/publications/confined-costly/?state=GA#primary>.

⁹⁰⁹ Council of State Governments Justice Center, "Confined and Costly: Pennsylvania," <https://csgjusticecenter.org/publications/confined-costly/?state=PA#primary>.

⁹¹⁰ Council of State Governments Justice Center, "Confined and Costly: Wisconsin," <https://csgjusticecenter.org/publications/confined-costly/?state=WI#primary>.

⁹¹¹ Council of State Governments Justice Center, "Confined and Costly."

years have little safety or rehabilitative value.⁹¹² Further, in our focus states, most violations stem from rule violations or public order, drug, and property crimes. There is little or no evidence that locking people up for such violations enhances public safety or reduces recidivism.⁹¹³ Conversely, studies show that incarcerating people, particularly for a long time, makes it harder for them to re-enter their communities and can increase recidivism.⁹¹⁴

Where people on supervision are suspected of engaging in serious crime, there are already mechanisms in place to address it, from arrest through to prosecution. In our focus jurisdictions, pursuing violation proceedings on top of criminal charges typically leads to longer pre-adjudication incarceration (as people typically remain incarcerated pending resolution of both proceedings); subjects people to an additional set of sanctions; and provides fewer procedural protections against unfair process and arbitrary detention, given lesser due process protections in revocation proceedings. (See Section III, “Few Evidentiary Protections.”)

⁹¹² Executives Transforming Probation and Parole, “Statement on the Future of Probation & Parole in the United States,” 2019, <https://www.exitprobationparole.org/statement> (supervision terms should not exceed 18 months); PEW Charitable Trusts, Policy Reforms Can Strengthen Community Supervision, p. 29 (supervision terms should be limited to two years); Jarred Williams, et al., “The Wisconsin Community Corrections Story,” p. 23 (supervision terms should be limited to one to three years); Vincent Schiraldi, “The Pennsylvania Community Corrections Story,” p. 5 (supervision should not exceed two years); Philadelphia District Attorney’s Office (DAO), “Philadelphia DAO’s Policies to End Mass Supervision,” March 21, 2019, <https://medium.com/philadelphia-justice/philadelphia-daos-policies-to-end-mass-supervision-fd5988cfe1f1> (noting studies showing supervision beyond 13 months is problematic); Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1062-63 (supervision most effective in the initial months and years).

⁹¹³ New York State Bar Association, “Report of the New York State Bar Association Task Force on the Parole System,” November 2019, <https://nysba.org/NYSBA/Advocacy%20and%20Leadership/House%20of%20Delegates/November%202019/NYSBA%20Task%20Force%20on%20the%20Parole%20System%20Final%20Report.pdf>, p. 3-5; PEW Charitable Trusts, “Policy Reforms Can Strengthen Community Supervision,” p. 45; Human Impact Partners, *Excessive Revocations*, p. 23-24; Dr. James Austin, et al., “How Many Americans are Unnecessarily Incarcerated?,” *Brennan Center for Justice*, 2019, https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_o.pdf; Vincent Schiraldi, “Do We Really Need Probation and Parole?,” *The Crime Report*, January 24, 2019, <https://thecrimereport.org/2019/01/24/do-we-really-need-probation-and-parole/>; Washington State Institute for Public Policy, “Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?,” 2012, https://www.wsipp.wa.gov/ReportFile/1106/Wsipp_Confinement-for-Technical-Violations-of-Community-Supervision-Is-There-an-Effect-on-Felony-Recidivism_Full-Report.pdf.

⁹¹⁴ Ibid.; Marc Mauer, “Long-Term Sentences: Time to Reconsider the Scale of Punishment,” *Sentencing Project*, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

Meanwhile, local organizations working to promote affordable housing, access to jobs, usable public spaces, and recreational programs can improve public safety.⁹¹⁵ While causes of crime reduction are complex and contested, a leading sociologist credits such organizations with—often overlooked—contributions to marked reductions in crime rates since the 1990s.⁹¹⁶ This is likely because as people’s basic needs are met they are less likely to engage in unlawful behavior.⁹¹⁷

Such programs can also improve public health, especially when paired with affordable and accessible health care in the community, including for people with substance use disorder and mental health issues.⁹¹⁸

In August 2019, a group of more than 60 current and former supervision officers issued a statement calling on all jurisdictions to enact reforms including: limit the imposition of probation, shorten supervision sentences, allow people to earn time off of supervision through achieving certain milestones, reduce conditions and costs, and limit incarceration for violations—while increasing investment in community-based services.⁹¹⁹ Former New York State Parole Director and New York City Probation Commissioner Martin Horn has

⁹¹⁵ Patrick Sharkey, et al., “Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime,” *Am. Sociological Review*, October 25, 2017, <https://www.rootcausecoalition.org/wp-content/uploads/2018/08/Community-and-the-Crime-Decline-The-Causal-Effect-of-Local-Nonprofits-on-Violent-Crime.pdf>; Emily Badger, “The Unsung Role that Ordinary Citizens Played in the Great Crime Decline,” *New York Times*, November 9, 2017, <https://www.nytimes.com/2017/11/09/upshot/the-unsung-role-that-ordinary-citizens-played-in-the-great-crime-decline.html>; Vincent Schiraldi, “Do We Really Need Probation and Parole?,” *The Crime Report*, January 24, 2019, <https://thecrimereport.org/2019/01/24/do-we-really-need-probation-and-parole/>; Alex Vitale, *The End of Policing* (New York: Verso Books, 2017); Leah Sakala, et al., “Public Investment in Community-Driven Safety Initiatives: Landscape Study and Key Considerations,” *Urban Institute*, November 2018, https://www.urban.org/research/publication/public-investment-community-driven-safety-initiatives/view/full_report.

⁹¹⁶ Patrick Sharkey, et al., “Community and the Crime Decline;” Emily Badger, “The Unsung Role that Ordinary Citizens Played in the Great Crime Decline;” Vincent Schiraldi, “Do We Really Need Probation and Parole?;” Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls, “Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy,” *Science Mag*, 277(1997), https://scholar.harvard.edu/files/sampson/files/1997_science_o.pdf. For a discussion of other theories for the decline in crime, see John Pfaff, *Locked In*, p. 105-124.

⁹¹⁷ Emily Badger, “The Unsung Role that Ordinary Citizens Played in the Great Crime Decline;” Patrick Sharkey, et al., “Community and the Crime Decline;” Alisha M., “Applying a Different Lens to Understand and Reduce Trauma, Prevent Violence,” *International Journal of Public Health & Safety*, 2018, <https://www.hilarispublisher.com/open-access/applying-a-different-lens-to-understand-and-reduce-trauma-prevent-violence.pdf>.

⁹¹⁸ For instance, in 2001, Portugal decriminalized the possession of illicit drugs for personal use and invested substantial resources in treatment and other services. Since then, overdose deaths and rates of infection with HIV and Hep C have plummeted, and the number of people receiving drug treatment has increased, with no significant increase in problematic drug use. Human Rights Watch and American Civil Liberties Union, *Every 25 Seconds*, p. 182-83.

⁹¹⁹ Executives Transforming Probation & Parole (EXiP), “Statement on the Future of Probation & Parole in the United States,” <https://www.exitprobationparole.org/statement>.

proposed abolishing parole altogether and reinvesting savings from reduced revocations into vouchers to give directly to people on supervision to buy their own services.⁹²⁰

Recent Reforms

In recent years, at least 35 states have made reforms to reduce the burdens of supervision.⁹²¹ For instance, from 1996 to 2014, New York City reduced its probation population by 69 percent, following reforms that included shifting two-thirds of its probation population from in-person reporting to monthly check-ins at electronic kiosks; shortening lengths of probation terms; and increasingly granting early discharges from probation.⁹²² Meanwhile, the city opened probation offices in communities with high numbers of people under supervision, and contracted with community-based organizations to offer accessible, voluntary services for both people under supervision and others in the community.⁹²³ The city also reduced its probation department budget and staff, while increasing expenditures per person on probation and expanding contracts with community-based organizations.⁹²⁴ During this period, crime, incarceration, and re-arrest for people on probation all dropped.⁹²⁵ However, these reforms are limited to New York City's probation system; they do not impact people serving parole, which is operated by

⁹²⁰ Vincent Schiraldi, "Do We Really Need Probation and Parole?", *The Crime Report*, January 24, 2019, <https://thecrimereport.org/2019/01/24/do-we-really-need-probation-and-parole/>.

⁹²¹ PEW Charitable Trusts, "To safely Cut Incarceration, States Rethink Responses to Supervision Violations," July 16, 2019, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations>; Samantha Harvell, et al., "Reforming Sentencing and Corrections Policy: The Experience of Justice Reinvestment Initiative States," *Urban Institute*, December 2016, https://www.urban.org/sites/default/files/publication/86691/reforming_sentencing_and_corrections_policy_2.pdf; Michael Jacobson, et al., "Less Is More: How Reducing Probation Populations Can Improve Outcomes," *Harvard Kennedy School Program in Criminal Justice Policy and Management*, 2017, www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf; Judith Greene and Vincent N. Schiraldi, "Better by half: The New York City story of winning largescale decarceration while increasing public safety," *Federal Sentencing Reporter* 29 (2016): 22-38, doi.org/10.1525/fsr.2016.29.1.22.

⁹²² Columbia University Justice Lab, "Too Big to Succeed," p. 7; Michael P. Jacobson, et al., "Less is More: How Reducing Probation Populations Can Improve Outcomes," *Harvard Kennedy School Program in Criminal Justice Policy and Management* p. 9-10.

⁹²³ Columbia University Justice Lab, "Too Big to Succeed," p. 7-8; Michael P. Jacobson, et al., "Less is More," p. 10-11; Samantha Melamed, "What if the Probation Office was a Place of Joy Instead of Fear? New York City Shows How," *The Philadelphia Inquirer*, January 10, 2020, <https://www.inquirer.com/crime/probation-nyc-new-york-neons-philadelphia-solutions-mass-incarceration-vincent-schiraldi-20200110.html>.

⁹²⁴ Michael P. Jacobson, et al., "Less is More," p. 10-11.

⁹²⁵ Columbia University Justice Lab, "Too Big to Succeed," p. 7-8; Michael P. Jacobson, et al., "Less is More," p. 10-11.

New York State, and through which people are still re-incarcerated for violations at high rates, with a disproportionate impact on Black and brown people.⁹²⁶

In 2017, Georgia enacted reforms that can substantially shorten the lengths of supervision terms. After two years under supervision, except in limited circumstances people are presumptively placed on “inactive probation”—which has far fewer requirements.⁹²⁷ In addition, some people qualify for complete termination of probation after three years.⁹²⁸ However, conduct such as failing to pay restitution makes people ineligible for these reforms.⁹²⁹ Georgia also created the role of “community coordinator,” to work within supervision departments to help connect certain people under probation with existing community-based resources, such as supportive housing, though some coordinators reportedly lack sufficient funding.⁹³⁰

In 2019, Philadelphia District Attorney Larry Krasner instructed prosecutors, absent special circumstances, not to request supervision terms beyond one year for misdemeanors or three years for felonies; to ask that terms run concurrently, meaning at the same time, rather than consecutively; and to generally recommend no incarceration for rule violations and no more than one to two years in custody for new offense violations.⁹³¹

Colorado represents another innovative example. In 2014, through a program called Work and Gain Education and Employment Skills (WAGEES), Colorado’s Department of Corrections shifted money from corrections directly into voluntary, community-led re-entry services for people returning home from prison, in areas including education, employment, and housing.⁹³² Many of the organizations providing these services are led by people who

⁹²⁶ Kendra Bradner and Vincent Schiraldi, “Racial Inequities in New York Parole Supervision,” *Columbia University Justice Lab*, p. 5-6.

⁹²⁷ O.C.G.A. § 17-10-1 (a)(2)(A).

⁹²⁸ O.C.G.A. § 17-10-1(a)(1)(B).

⁹²⁹ O.C.G.A. § 17-10-1 (a)(2)(A) (rendering ineligible people who fail to pay restitution or who have certain gang-related or sex offense-related convictions), (1)(B) (rendering ineligible people who have been arrested for conduct other than a “nonserious traffic offense,” have not paid restitution, or who have not complied with their probation conditions).

⁹³⁰ Human Rights Watch telephone interview with Kelley Saxon, Lowndes County, Georgia Community Coordinator, March 11, 2019.

⁹³¹ Philadelphia District Attorney’s Office, “Philadelphia DAO’s Policies to End Mass Supervision,” March 21, 2019, <https://medium.com/philadelphia-justice/philadelphia-daos-policies-to-end-mass-supervision-fd5988cfe1f1>.

⁹³² Chelsea Thompson, et al., “Investing Justice Resources to Address Community Needs: Lessons Learned from Colorado’s Work and Gain Education and Employment Skills (WAGEES) Program,” *Urban Institute, Justice Policy Center*, February 2018, https://www.urban.org/sites/default/files/publication/96341/investing_justice_resources_to_address_community_needs.pdf.

have been incarcerated, and who have deep ties to the neighborhoods they serve.⁹³³ Further, participation is strictly voluntary—while parole officers refer people to these programs and encourage participation, there are no penalties for not following through with programming.⁹³⁴ While WAGEES has faced barriers including funding stream delays and insufficient housing for people returning from prison, it has largely been considered successful in helping people stay out of prison and gain stability in their lives.⁹³⁵

Indeed, many communities are providing vital support to their residents in areas from health and mental health services, to education, to employment. For instance, many states are expanding access to community-based services for substance use disorder, such as Medication-Assisted Treatment.⁹³⁶ In states where Human Rights Watch conducted research, a range of organizations led by people who have been incarcerated are connecting people returning from jail and prison with job training, education, art programs, and other services.⁹³⁷ Unlike court-mandated programs, which often require that people, for instance, abstain from drugs, many of these organizations provide services without preconditions. However, these programs operate with little funding, and they do not exist in many places, particularly rural areas.⁹³⁸

To divert people from prosecution on the front end, states have increasingly been implementing Law Enforcement Assisted Diversion (LEAD), a pre-booking diversion program piloted in Seattle, Washington. LEAD allows people charged with drug and prostitution offenses to engage with housing, job, and drug treatment services instead of facing charges.⁹³⁹ Importantly, LEAD operates under a “harm reduction” model, a public

⁹³³ Ibid., p. 9-10.

⁹³⁴ Ibid., p. 14-15.

⁹³⁵ Ibid., p. 8.

⁹³⁶ Legal Action Center, “State Strategies to Expand Access to Medication-Assisted Treatment,” February 2019, <https://lac.org/wp-content/uploads/2019/03/february-2019-LAC-State-Strategies-to-Expand-Access-to-MAT.pdf>; Vera Institute of Justice, “Changing Course in the Overdose Crisis.”

⁹³⁷ A few examples of the many community-led organizations in our focus jurisdictions include the Youth Art & Self Empowerment Project, <http://www.yasproject.com/> (Pennsylvania); Restoring Our Communities Wisconsin, <https://www.rocwisconsin.org/>; and Deep Center, <http://www.deepcenter.org/> (Georgia).

⁹³⁸ David Reich, et al., “Block-Granting Low-Income Programs Leads to Large Funding Declines Over Time, History Shows,” *Center on Budget and Policy Priorities*, February 22, 2017, <https://www.cbpp.org/research/federal-budget/block-granting-low-income-programs-leads-to-large-funding-declines-over-time>; PEW Charitable Trusts, “Opioid Use Disorder: Challenges and Opportunities in Rural Communities.”

⁹³⁹ King County, “Law Enforcement Assisted Diversion (LEAD): Diversion and Reentry Services,” <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry->

health approach based upon reducing harms associated with drug use rather than implementing sanctions for drug use.⁹⁴⁰ Studies show that, compared to people who do not participate in LEAD, people are substantially more likely to access housing, employment, and income supports, while they are less likely to get arrested and charged with felony offenses.⁹⁴¹ However, those charged with other offenses, such as theft, are not eligible for LEAD.

A promising development is the growing use of community-based restorative justice processes.⁹⁴² These programs, which require the agreement of the person who was harmed and the person who committed the harm to participate, are designed to hold people accountable for their actions while at the same time support those who have been harmed. They acknowledge that prisons can result in further harm and that other mechanisms might better hold people accountable for their actions. They therefore encourage things like service in and for communities, restitution, acknowledgement of harm, and apology over incarceration as a solution.⁹⁴³ While they are still in relatively early stages of

services/lead.aspx (accessed February 18, 2020); Drug Policy Alliance, “Law Enforcement Assisted Diversion (LEAD): Reducing the Role of Criminalization in Local Drug Control,” February 2016, http://www.drugpolicy.org/sites/default/files/DPA%20Fact%20sheet_Law%20Enforcement%20Assisted%20Diversion%20%28LEAD%29%20_%28Feb.%202016%29.pdf; Katherine Beckett, “Seattle’s Law Enforcement Assisted Diversion Program: Lessons Learned From the First Two Years,” *Ford Foundation*, March 21, 2014, <https://www.fordfoundation.org/media/2543/2014-lead-process-evaluation.pdf>; LEAD National Support Bureau, home page, <https://www.leadbureau.org/> (accessed February 21, 2020).

⁹⁴⁰ Ibid.

⁹⁴¹ Seema L. Clifafesi, Heather S. Lonczak, and Susan E. Collins, “Seattle’s Law Enforcement Assisted Diversion (LEAD) Program: Within-Subjects Changes on Housing, Employment, and Income/Benefits Outcomes and Associations with Recidivism,” *Crime & Delinquency* (2017), https://56ec6537-6189-4c37-a275-02c6ee23efeo.filesusr.com/ugd/6f124f_8381833oce894828a01a62363a77b1c1.pdf; Susan E. Collins, et al., “Seattle’s Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes,” *Elsevier*, 2017, https://56ec6537-6189-4c37-a275-02c6ee23efeo.filesusr.com/ugd/6f124f_f4eed992eaff402f88ddb4a649a9f5e6.pdf.

⁹⁴² Rebecca Beitsch, “States Consider Restorative Justice as Alternative to Mass Incarceration,” *PBS News Hour*, July 20, 2016, <https://www.pbs.org/newshour/nation/states-consider-restorative-justice-alternative-mass-incarceration>; Tyler Kingkade, “Sexual Assault Survivors Who Want Restorative Justice Have Limited Options,” *The Appeal*, December 10, 2019, <https://theappeal.org/sexual-assault-survivors-who-want-restorative-justice-have-limited-options/>; Katherine Beckett and Martina Kartman, “Violence, Mass Incarceration and Restorative Justice: Promising Possibilities,” *University of Washington*, June 20, 2016, https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2017/02/Restorative_Justice_Report_Beckett_Kartman_2016.pdf.

⁹⁴³ Howard Zehr, *The Little Book of Restorative Justice* (Pennsylvania: Good Books, 2002); U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Effectiveness of Restorative Justice Programs,” July 2017, <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250995.pdf>; Katherine Beckett and Martina Kartman, “Violence, Mass Incarceration and Restorative Justice;” Jeff Latimer, et al., “The Effectiveness of Restorative Justice Practices: A Meta-Analysis,” *The Prison Journal*, June 2005, https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj_meta%20analysis.pdf; Caroline M. Angel, et al., “Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a

development, well-implemented restorative justice processes have in some settings demonstrably decreased incarceration and reduced recidivism, and have been reported to better help survivors heal.⁹⁴⁴ However, there are few restorative justice programs operating in the United States and expanding their use will require more investment, as well as careful monitoring and evaluation.⁹⁴⁵ Officials need to ensure that restorative justice processes and other alternatives to incarceration adequately ensure accountability for serious offenses and protect the rights of both victims and the accused, including by not ultimately expanding the net of correctional control or unduly pressuring people into admitting guilt.⁹⁴⁶

Pending Reforms in Focus States

In 2019, Pennsylvania's House and Senate introduced bills to eliminate burdensome probation conditions, shorten probation terms, and lessen sentences for violations.⁹⁴⁷ However, amendments to both bills have eliminated significant reforms and added provisions that would make probation substantially worse.⁹⁴⁸

randomized controlled trial," *Journal of Experimental Criminology* 10 (2014), https://www.researchgate.net/publication/271659858_Short-term_effects_of_restorative_justice_conferences_on_post-traumatic_stress_symptoms_among_robbery_and_burglary_victims_a_randomized_controlled_trial, p. 291-307; Human Rights Watch telephone interview with Sharon Lerman, restorative justice practitioner in Wisconsin, December 2, 2019.

⁹⁴⁴ Ibid.

⁹⁴⁵ Tyler Kingkade, "Sexual Assault Survivors Who Want Restorative Justice Have Limited Options," *The Appeal*; Katherine Beckett and Martina Kartman, "Violence, Mass Incarceration and Restorative Justice."

⁹⁴⁶ M. Eve Hanan, "Decriminalizing Violence: A Critique of Restorative Justice and Proposal for Diversionary Mediation," *New Mexico Law Review*, 46(2016): 132-135, https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2028&context=all_fac.

⁹⁴⁷ Ian Pajer-Rogers, "The State of Probation Reform in Pennsylvania," American Civil Liberties Union of Pennsylvania, January 24, 2020, <https://www.aclupa.org/en/news/state-probation-reform-pennsylvania>; An-Li Herring, "Probation Reform Bill Passes Pa. House Committee, but Undergoes Major Changes First," *WHYY*, December 10, 2019, <https://www.aclupa.org/en/news/state-probation-reform-pennsylvania>.

⁹⁴⁸ For instance, amendments would prohibit courts from terminating probation if someone owes restitution, increase incarceration for violations, and allow courts to bar defendants from using prescription drugs, including medication-assisted treatment and medical marijuana. Elizabeth Hardison, "Changes to landmark Senate bill overhauling Pa.'s probation system costs it support among criminal justice reformers," *The Philadelphia Tribune*, June 25, 2020, https://www.phillytrib.com/news/state_and_region/changes-to-landmark-senate-bill-overhauling-pa-s-probation-system-costs-it-support-among-criminal/article_6e54e484-5408-5864-b866-e80b4f5562a3.html; American Civil Liberties Union of Pennsylvania, "SB 14 Probation Reform," <https://www.aclupa.org/en/legislation/sb-14-probation-reform>; American Civil Liberties Union of Pennsylvania, "HB 1555 Probation Reform," <https://www.aclupa.org/en/legislation/hb-1555-probation-reform>; Pennsylvania General Assembly, Regular Session 2019-2020, House Bill 1555, <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=o&body=H&type=B&bn=1555>; Pennsylvania

Meanwhile, Wisconsin’s Assembly introduced legislation, A.B. 831 and A.B. 832, to reduce prison sentences following revocation for rule violations and to shorten supervision terms.⁹⁴⁹ These reforms would be limited—largely excluding people on supervision who are charged with new offenses or with absconding, as well as people on the sex-offense registry.⁹⁵⁰ Nevertheless, if enacted they would make significant improvements to existing law and policy and would constitute an important step forward. However, in April 2020, the bills failed to pass.

General Assembly, Regular Session 2019-2020, Senate Bill 14, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&slnd=0&body=S&type=B&bn=0014>.

⁹⁴⁹ Michael Schmidt, “Tony Evers, Democratic Lawmakers Unveil Bill Package as ‘First Step’ Toward Criminal Justice Reform,” *Wisconsin State Journal*, January 9, 2020, https://madison.com/wsj/news/local/govt-and-politics/tony-evers-democratic-lawmakers-unveil-bill-package-as-first-step/article_1ce1adc8-3do6-526e-b6ec-b5a547e3549a.html; American Civil Liberties Union, “Testimony in Support of Assembly Bills 830 and 831,” February 13, 2020, <https://www.aclu-wi.org/en/news/aclu-testifies-support-bills-aiming-combat-mass-incarceration>; Wisconsin Legislature 2019-2020, 2019 Assembly Bill 831, <https://docs.legis.wisconsin.gov/2019/related/proposals/ab831>; Wisconsin Legislature 2019-2020, 2019 Assembly Bill 832, <https://docs.legis.wisconsin.gov/2019/related/proposals/ab832>. A third bill, Assembly Bill 830, would expand early release from prison. Wisconsin Legislature 2019-2020, 2019 Assembly Bill 830, <https://docs.legis.wisconsin.gov/2019/related/proposals/ab830>.

⁹⁵⁰ *Ibid.*

Recommendations

The central recommendation of this report is that jurisdictions in the United States should divest resources from supervision and incarceration and invest in jobs, housing, education, evidence-based treatment for substance use disorder, and access to mental health services. Human Rights Watch and the ACLU offer the following recommendations to limit supervision, reduce incarceration for violations, and increase support for voluntary, community-based services.

These recommendations are informed by the experiences and perspectives of people who have been incarcerated for violations and their loved ones, current and former supervision officers, lawmakers, lawyers, judges, and local and national advocates.

To State and Local Supervision Departments:

- Do not impose or seek incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized at all, including possession of drugs for personal use or consensual sex work.⁹⁵¹
 - In the case of non-compliance with rules, impose sanctions that are proportionate to the underlying conduct—such as proportionate, flexible community service requirements or deprivation of “good time” credits for a proportionate period of time (see recommendations to state lawmakers below) and make sure all efforts have been exhausted to grant rewards for compliance rather than sanctions for non-compliance, as well as to connect people with needed services and resources. Consider sanctions that restrict liberty in some form only as a last resort.

⁹⁵¹ Although Human Rights Watch did not interview anyone whose supervision was violated for reasons related to consensual sex work, such conduct should also be decriminalized for similar reasons. Human Rights Watch, “Why Sex Work Should be Decriminalized,” August 7, 2019, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#>.

- Do not impose or seek any sanctions, up to and including incarceration, for conduct that is beyond an individual’s control or directly related to a person’s economic, housing, or other status, such as failure to pay court costs when someone is incapable of doing so, failure to report an address when homeless, or failure to attend required meetings when the person has no means of transportation.
- Do not impose or seek any sanctions, up to and including incarceration, for the use of drugs or alcohol. If, as a result of or in the context of that substance use, people engage in actions that cause harm to others, defer to the criminal legal system. For those who are struggling with substance use disorder, refer people to voluntary harm reduction and evidence-based treatment programs and services in the community.
- Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
 - In cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work, incarceration is never appropriate.
 - In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.
- If criminal proceedings result in an acquittal or dismissal, do not pursue violation proceedings for the same underlying conduct.
- Significantly scale back the number and nature of supervision conditions imposed, including by:
 - Narrowly tailoring conditions to peoples’ needs, capabilities, and goals.
 - Ensuring conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
 - Not imposing conditions that ban personal drug use or alcohol use or that test for such substances. Where people have committed a serious offense in connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to

Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.

- Not imposing vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”
- Develop guidelines that require supervision officers to inquire into why people failed to abide by conditions before imposing sanctions, including by affirmatively attempting to contact people who fail to report before deeming them to have violated their conditions of supervision for failure to report or “absconding.” Officers should not impose sanctions if the conduct can be addressed through connections to needed resources and services.
- Develop guidelines to reward positive behavior by people under supervision, including completing programming, graduating from high school or college, demonstrably seeking or keeping a job, or caregiving for family members or others. Tie supervision officers’ positive performance reviews to the extent to which they encouraged such conduct by those under their supervision.
- Wherever possible, locate supervision offices in communities where people are commonly under supervision so that people can more easily attend mandatory appointments.
- Develop guidelines that allow people to report remotely, rather than in person, wherever possible, and limit the frequency of required reporting as much as possible.

To State and Local Judges, Court Systems, and Parole Boards:

- Significantly limit or end the use of probation sentences, especially for cases that do not involve any intentional injury or threat of harm or other egregious conduct, and instead utilize true alternatives to incarceration, such as unconditional discharges, proportionate and flexible community service requirements, or proportionate fines.
- Where supervision is used, impose short terms. Where people are facing sentencing for multiple offenses, supervision sentences should run concurrently rather than consecutively.
- Eliminate split sentences for probation. Supervision should always be imposed in lieu of incarceration, not in addition to incarceration.

- Where supervision is used, sharply limit the number and nature of supervision conditions (for more concrete suggestions, see above recommendation to Supervision Departments).
- Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
 - In cases involving rule violations—aside from absconding willfully for the purpose of subverting supervision—or conduct that should not be criminalized at all, incarceration is never appropriate (see above recommendation to Supervision Departments).
 - In all other cases, only permit detention for a potential supervision violation following an individualized determination pursuant to a hearing by a neutral arbiter, within 48 hours of detention, that detention is reasonable and necessary for a legitimate purpose, for example because a person presents a known risk to deliberately flee the jurisdiction to avoid the charges. Ensure the right to counsel during such proceedings.
- Appoint counsel within 24 hours of arrest for a supervision violation or before the first appearance relating to the alleged violation, whichever is earlier, and ensure access to counsel before the first appearance relating to the alleged violation.
- Develop a system to ensure that detention, preliminary, and final revocation hearings are conducted expeditiously, and with due process and evidentiary protections in place, particularly where people are detained pending violation proceedings (see recommendation to State Lawmakers below).
- Allow people facing violation proceedings to attend all proceedings in person, as opposed to requiring videoconferencing.
- Enact the following reforms to eliminate or reduce court debt:⁹⁵²
 - Refrain from imposing fees, including fees for any requirements of supervision, such as treatment programs, drug testing, and monthly fees for being on supervision. Instead, government entities should pay all costs related to court and/or parole board proceedings and supervision.
 - Where costs are imposed, develop a system to conduct thorough ability-to-pay hearings to determine whether fines and fees should be waived or reduced prior to sentencing, applying a standard that takes into account

⁹⁵² Some of these recommendations were drawn from the following report, which contains detailed recommendations on how to implement proportionate financial sanctions: Sharon Brett and Mitali Nagrecha, “Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform,” *Harvard Law School Criminal Justice Policy Program*, September 2019, http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

each individual's economic needs and obligations, and their right to an adequate standard of living. Whenever capacity to pay is an issue, waive or reduce costs.

- Where costs are imposed, do not make payment of costs a condition of supervision. Such conditions disproportionately harm people with limited financial means and put them at risk of incarceration or lengthier supervision terms for nonpayment.
- Do not incarcerate people, extend their supervision terms, or suspend their driver's licenses for failure to pay costs. Further, do not rely on civil debt collection enforcement mechanisms, which can lead to an abrupt loss of wages or benefits that are necessary for someone's daily needs, and can result in harmful credit ratings which may impede access to housing, automobiles, or other needed loans either immediately or in the future. Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; waiving, reducing, or suspending costs based on inability to pay; and sending notifications reminding people of their obligations in a non-threatening manner that comports with due process.
- Where restitution is imposed, consider an individual's ability to pay when setting the restitution amount and offer flexible payment plans. Consider implementing restorative alternatives to monetary restitution, such as proportionate and flexible community service, or finding other ways for individuals to compensate people for their losses.
 - Prioritize collection of restitution over fines or fees.
 - Do not incarcerate people, extend their supervision terms, or suspend their driver's licenses for failure to pay restitution. Further, do not rely on civil debt collection (see above). Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; deferring payments; and considering alternatives to monetary restitution (see above).
- Limit the use of mandated treatment or drug courts to cases involving serious offenses, based on a diagnosis of substance use disorder. Mandatory treatment should not apply to people based on mere possession of drugs for personal use,

- which should not be criminalized, or to people who may use drugs but are not struggling with substance use disorder. To the extent such mechanisms are used, ensure treatment programs are free, evidence-based, and include access to Medication-Assisted Treatment where appropriate, that officials ground their decisions on expert opinions on matters related to treatment, and that participants are not sanctioned with jail time or terminated solely due to behavior that is related to substance use.
- Create “safe surrender” days where people can voluntarily turn themselves in to the criminal legal system after they stop reporting or “abscond” in exchange for lighter sentences, where there is a presumption of a non-incarceration response to the self-surrender.

To State Lawmakers:

- Enact legislation that eliminates incarceration for any conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized, such as personal drug possession or use or consensual sex work (see above recommendation to Supervision Departments).
- Enact legislation that eliminates the imposition of sanctions for conduct that is beyond an individual’s control or is directly related to a person’s economic, housing, or other status, or for the use of drugs or alcohol (see above recommendations to Supervision Departments).
- Enact legislation that significantly limits the maximum lengths of supervision terms.
- Limit the number and nature of supervision conditions, including by enacting legislation that:
 - Eliminates conditions mandated by law or policy, instead requiring officials to narrowly tailor them to the needs, capabilities, and goals of each individual.
 - Ensures conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
 - Eliminates conditions that ban personal drug or alcohol use or that test for such substances. Where people have committed a serious offense in

connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.

- Eliminates vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”
- Prohibits the use of algorithmic risk assessment tools to determine conditions, the level of supervision required, or sanctions.
- Decriminalize the possession of all drugs for personal use.
- Decriminalize consensual sex work.
- Improve due process and evidentiary protections in violation proceedings, including by enacting legislation that:
 - Establishes time limits for conducting expeditious detention, preliminary, and final revocation hearings.
 - Permits all people to have an individualized detention hearing by a neutral arbiter within 48 hours of detention, during which they have a right to counsel (see above recommendation to Judges, Court Systems, and Parole Boards).
 - Given statutory schemes in many states that forfeit peoples’ preliminary hearing rights solely based on a probable cause finding, and the fact that people may spend months in detention waiting for their final revocation hearings, permits all people facing supervision revocation to have a prompt preliminary hearing where:
 - If probable cause has not been admitted or otherwise found in a criminal court of record, they can contest probable cause for the alleged violation, and;
 - Regardless of whether probable cause has been admitted or found, they can contest their detention (if they have not previously had a detention hearing) pending a final revocation hearing.
 - Establishes the right to counsel in all violation proceedings within 24 hours of arrest or before the first appearance relating to the violation proceedings, and ensures access to counsel before the first appearance relating to the violation proceedings. This includes providing sufficient funding for court-appointed counsel.

- Prohibits the introduction of illegally obtained evidence in revocation proceedings.
 - Raises the burden of proof to “beyond a reasonable doubt.”
- Repeal statutes that require people to serve “extended supervision” or other forms of mandatory supervision following their prison terms, while still allowing for supervision to substitute for reduced jail or prison sentences without adding to the length of their overall sentence.
- Enact legislation that provides incentives, such as “good time” credit for each day served on supervision, to end supervision early, and do so regardless of whether people have paid their court costs or completed restitution. In addition to credits for each day served on supervision, provide additional “good time” credit for achievement of certain goals, such as obtaining a high school diploma, demonstrably seeking or keeping a job, or completing a program.
- Provide “supervision time” credits for each day people serve under supervision, so that if they are incarcerated for a violation, each day served under supervision counts toward their total sentence.⁹⁵³
- Given research that supervision terms beyond a couple years have little safety or rehabilitative value, enact legislation that presumptively terminates peoples’ supervision within the first couple years, regardless of whether they have paid their court costs or completed restitution.
- Repeal statutes that permit the extension of supervision terms for failure to abide by supervision conditions, including failure to pay court costs or restitution. Instead, develop proportionate responses to nonpayment of court costs or restitution (see above recommendations to Judges, Court Systems, and Parole Boards).
- Enact legislation to eliminate court-imposed fees, including fees related to supervision requirements (see above recommendation Judges, Court Systems, and Parole Boards).
- Enact legislation that prohibits the suspension of driver’s licenses for non-safety-related reasons (see above recommendation to Judges, Court Systems, and Parole Boards).
- Require prosecutors, courts, and supervision and corrections departments to track, retain, and make public data on supervision, including conditions violated;

⁹⁵³ For a discussion of “supervision time” credits, see Section IV, “Sentencing for Violations.”

whether the violation was considered a “rule” or “new offense” violation, and—for rule violations—whether someone had pending criminal charges or uncharged criminal conduct; sanctions imposed up to and including revocation; length of detention pending violation hearings; and whether hearings were waived; as well as race, ethnicity, age, sex, county of conviction, and other demographic data.

- Eliminate statutes, rules, or regulations that automatically bar those convicted of crimes and people serving terms of supervision from voting.
- Eliminate statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.
- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs that help to address the underlying causes of supervision violations. Additionally, appropriate sufficient funds to support restorative justice initiatives and other alternatives to incarceration. This includes redirecting saved funding from reducing supervision, jail, and prison populations.
- Enact measures to ensure that courts and parole boards have sufficient funding to operate without imposing fees, including by redirecting saved funding from reducing supervision, jail, and prison populations.

To Wisconsin Lawmakers:

- Enact strengthened versions of Assembly Bills 831 and 832, which shorten supervision terms and limit incarceration for violations, as a first step toward reform.
- Consider closing the Milwaukee Secure Detention Facility (MSDF), as running a correctional facility solely for the purpose of incarcerating people for supervision violations risks creating perverse incentives to incarcerate people under supervision. Instead, Wisconsin should eliminate or severely limit its use of detention pending violation proceedings, as well as incarceration for supervision violations.
- Enact legislation to appoint counsel within 24 hours of an individual’s arrest on a hold, regardless of whether a revocation petition has been filed.
- Prohibit supervision officers from questioning people accused of supervision violations, or from seeking a waiver of their right to a preliminary hearing, without

an attorney present, and from mandating that they provide statements about the alleged violations.

To Pennsylvania Lawmakers:

- Enact legislation, along the lines of Senate Bill 14 as originally introduced—before amendments in 2020 eliminated significant reforms and added language that would make probation worse—to reduce the lengths of probation terms and limit incarceration for violations, as a first step toward reform.

To Georgia Lawmakers:

- Prohibit enhanced penalties for violations of “special” conditions of felony probation where those conditions are duplicative of “general” conditions.
- Decriminalize nonserious traffic offenses,⁹⁵⁴ which often lead to probation terms for traffic violation convictions only because of the individual’s inability to pay the required fines and fees on their court date.
- Eliminate pay-only probation, which allows judges to place people on probation solely because they cannot pay their court-ordered fines and surcharges. Given monthly supervision fees, people already facing financial challenges are required to pay even more than people convicted of the same crime who could afford the fine.

To State and Local Prosecutors:

- Refrain from prosecuting those accused of simple drug possession or consensual sex work.
- Significantly limit requests for probation sentences and instead utilize true alternatives to incarceration, including through cooperation with restorative justice programs.
- Where supervision is sought, significantly limit the lengths of sentences requested (see above recommendation to Judges, Court Systems, and Parole Boards).
- Do not request a sentence of incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).

⁹⁵⁴ Under Georgia law, “serious traffic offenses” are found in Title 40, Chapter 6, Article 15 of the Georgia Code.

- Do not seek any sanctions, up to and including incarceration, for conduct that is beyond an individual's control or for the use of drugs or alcohol (see above recommendation to Supervision Departments).
- Do not seek detention pending violation proceedings in cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work. In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.

To State and Local Governments:

- Provide sufficient re-entry services for all people coming out of jails and prisons, and ensure that re-entry assessment and support begins sufficiently prior to release.
- If programs and services are supervision-mandated, locate such programs in the community, not within jails or prisons. Further, provide sufficient resources for them, as well as transportation costs to and from those services and any other required meetings.
- Fund, promote, and encourage initiatives and enterprises that engage people in impoverished communities and formerly incarcerated people in areas including employment, housing, education, and health.
- Develop and preserve low-income housing for people who are homeless or at risk of homelessness, including housing with supportive services for those who need them.
- Develop and fund accessible community-based mental health services, which include professionals to conduct outreach and to provide support for people with mental health conditions, as well as to respond comprehensively to emergencies that may be related to these conditions.
- Develop and provide sufficient voluntary, community-based drug treatment facilities to meet the needs of all who seek treatment. Ensure access to evidence-based treatment, such as Medication-Assisted Treatment.

- Fund, promote, and encourage community-based restorative justice processes grounded in human rights principles for cases that would otherwise typically trigger incarceration.

To State Governors:

- Presumptively commute sentences of people who are incarcerated for violating their supervision by engaging in conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).
- Given research that supervision terms beyond a couple years have little safety or rehabilitative value, presumptively commute supervision sentences of people after no more than two years under supervision.

To Local Police Departments:

- Given that many of the underlying offenses that trigger supervision, as well as the stops and arrests that can lead to violation proceedings, stem from over-policing, particularly in poor and minority communities, develop and implement a plan, with specific metrics, to reduce disparate treatment of people based on race, poverty, and geography.
- Since many of the arrests that trigger violation proceedings are for minor offenses such as for crimes related to homelessness, poverty, or simple drug possession, that should not be criminalized to begin with, create a policy that ends or vastly reduces arrests for these offenses.

Federal Government

To the United States Congress:

- Decriminalize the possession of all drugs for personal use.
- Eliminate federal statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.
- Condition any federal funding to law enforcement agencies on their enforcing a ban on racial profiling and on their documenting, collecting, and publicly sharing data

on pedestrian and traffic stops, arrests, and searches by race, ethnicity, gender, and location, designating funds for such data collection if needed.

- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs, including Medication-Assisted Treatment, that will help to address the underlying causes of supervision violations, as well as in restorative justice and other alternatives to incarceration.

To the United States Department of Health and Human Services

- Fund and encourage programs, including pilot programs, emphasizing public health approaches to substance use disorder that focus on harm reduction and evidence-based treatment rather than punitive measures within the criminal legal system.

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REVOKED

How Probation and Parole Feed Mass Incarceration in the United States

Probation and parole in the United States are promoted as alternatives to incarceration that help people get back on their feet. But in reality, arbitrary and overly harsh supervision regimes are driving high numbers of people into jail and prison—feeding mass incarceration. Given generations of structural racism, Black and brown people are disproportionately subjected to supervision and incarcerated for violations.

Based on 164 interviews and new data analysis, this joint report by Human Rights Watch and the American Civil Liberties Union (ACLU) documents the tripwires that lead people from supervision to incarceration in three US states where the problem is particularly acute: Pennsylvania, Wisconsin, and Georgia.

Revoked: How Probation and Parole Feed Mass Incarceration in the United States finds that supervision systems in the three states impose wide-ranging and unnecessarily onerous conditions, and in large part fail to connect people with the resources they need to comply. As a result, many people wind up incarcerated for violations involving drug use, failing to report address changes, and public order offenses like disorderly conduct. At root, these violations often stem from poverty and a lack of support to address underlying health, housing, or other problems. Incarceration is a grossly disproportionate response, and further upends their lives.

Human Rights Watch and the ACLU urge governments to divest from supervision and incarceration and invest in jobs, housing, and health care. The report also provides detailed recommendations authorities should follow to substantially reduce the use of supervision and limit incarceration for violations.

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