

III Cicero Institute

The Rebound Act: Incentivizing Better Performance in Community Supervision

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Community supervision in Georgia is in crisis. Even as crime and incarceration rates in the Peach State fall, community supervision continues to grow, resulting in the highest “justice-involvement” rate in the country. Georgia’s community supervision system too often fails in its primary goal of rehabilitating offenders and reintegrating them into society. Besides the obvious social ramifications of these supervision failures—broken families and broken lives—they are a serious fiscal issue: more than one-third of admissions to Georgia state prisons every year are the result of supervision failures, costing taxpayers tens of millions of dollars. Meanwhile, the huge number of cases overstresses probation and parole officers, whose large caseloads make it difficult for them to focus on higher-risk supervisees.

Reforming community supervision¹ has been a priority for the Georgia legislature in recent years. Laws have been enacted to reduce the number of misdemeanor probationers that are incarcerated because they are unable to pay fines and fees, and to shift more probationers to unsupervised status. These laws, once fully implemented, will be helpful in reducing the supervised population, but changes to supervision practices are critical. Re-incarcerations during supervised release thwart meaningful reductions in the rate of justice involvement. Reform efforts must effectively target failures in community supervision, rehabilitation, and the re-entry process if they are to alleviate Georgia’s over-stressed corrections system and reduce its rate of justice involvement.

One method that has effectively addressed community supervision failures in other states is

performance incentive funding. This funding rewards probation and parole districts for successful reductions in supervision failures, based on the implementation of evidence-based practices, returning to them a share of the costs averted when supervisees successfully avoid incarceration. Expanding incentive funding opportunities for local field offices and districts gives probation and parole officers—the persons with the best knowledge of what works and what doesn’t in terms of rehabilitation—a more direct stake in the success of their programs.

Our performance incentive funding model is based on programs that have been successful around the country. If Georgia adopts this model and passes the proposed “Rebound Act,” we estimate that over \$40 million will be saved over the next decade.

Reforming probation and parole in order to reduce the number of people on active supervision is also a critical part of the criminal justice system’s response to the COVID-19 crisis. Especially in large, urban departments with thousands of supervisees, in-person reporting is a serious safety issue during a viral pandemic. This is true for both supervisees, who often spend hours in waiting rooms while reporting in-person, and officers, who meets dozens of supervisees every day. Moreover, the use of jail sanctions for technical violations puts supervisees at high risk, since jails (especially large jails in cities like Chicago and New York) have been shown to be vectors for the spread of coronavirus. Supervision offices have already responded to the danger: a survey by the American Probation and Parole Association, a professional group for supervision officers and executives, found that 92 percent of

¹ “Community supervision” is a blanket term for two separate programs, probation and parole. *Probation* is a form of community supervision that offenders often serve in lieu of or in addition to a prison or jail sentence. Probationers are supervised and monitored by a probation officer, who ensures their compliance with conditions of supervision. *Parole* is granted after a defendant has already served part of his sentence and the appropriate body—in Georgia, the Board of Pardons and Parole—agrees that rehabilitative and public safety factors support early release into the community. Like those on probation, individuals on parole meet regularly with a supervision officer and are subject to supervision conditions.

offices had suspended in-person visitation and 62 percent had suspended arrests for technical violations in response to the pandemic.

The reality is that coronavirus will be with us for many months or years to come, requiring adjustments to the operations of all of our institutions, including the criminal justice system. Reducing the number of supervisees overall will reduce the number of persons reporting every week to county and city probation offices and court houses, which will reduce the chance that these busy places will cause the virus to spread further. Reducing the number of supervisees revoked for technical violations will permit greater distancing in jails and reduce the number of people exposed to the virus in those institutions. Capping the length of supervision sentences, reducing the use of incarceration as a sanction, and using evidence-based practices to move people off the supervision rolls and into productive lives is not just smart public safety reform, but a vital public health measure.

GEORGIA CORRECTIONS AT A CRISIS POINT

Georgia has one of the highest justice-involvement rates in the country and indeed, of any polity in the world—though its crime rates are only slightly higher than the national average. This high rate of justice involvement persists, despite recent drops in the crime and incarceration rates, because of the explosive growth of community supervision.

According to the Georgia Bureau of Investigation, the crime rate in Georgia has fallen steadily for nearly a decade. From 2009 to 2017, the violent

crime rate (murder, rape, robbery, and assault) fell from 410.6 to 350.2 per 100,000, while the property crime rate fell from 3557.7 to 2797.1 per 100,000 in the same period.² Georgia's crime rate is only slightly higher than the national average, placing it 21st among the 50 states and the District of Columbia, and is lower than surrounding states such as Tennessee (#4), South Carolina (#10), and Florida (#18).³ But Georgia's incarceration rate (though it has fallen somewhat in recent years) is staggeringly high. Counting state prisons, jails, immigration centers, and juvenile justice facilities, about 102,000 people, or 970 of every 100,000 Georgians are behind bars. America has the highest incarceration rate in the world at 698 persons per 100,000—but Georgia's incarceration rate is nearly one-third higher than the national average. Indeed, if Georgia were its own country, its incarceration rate would be the fourth highest in the world, after three other U.S. states.⁴

Incarceration is just the tip of the criminal justice iceberg in Georgia. Georgia's probation rate of 6,161 per 100,000 is the highest in the country—more than *four times* the national rate, and up to six times higher than neighboring states. All told, one in every 18 adult Georgians is on probation or parole, as compared to one in every 55 nationally.⁵ In 2016, more than 430,000 Georgians were under some form of supervision, making Georgia's probation population the second-largest in the country in absolute terms.⁶ The Georgia Department of Community Supervision oversees more than 265,000 adult felony and juvenile supervisees—comprising about 23,000 parolees, 10,000 juveniles, and 232,000 felony probationers—with counties and cities overseeing misdemeanor probationers, often

² "2009 Summary Report Uniform Crime Reporting (UCR) Program." Georgia Bureau of Investigation. 2009. <https://gbi.georgia.gov/document/publication/2009-crime-statistics-summary-report/download>; "2017 Summary Report Uniform Crime Reporting (UCR) Program." Georgia Bureau of Investigation. 2017. <https://gbi.georgia.gov/document/publication/2017-crime-statistics-summary-report/download>.

³ "Crime in the United States, 2016." Federal Bureau of Investigation. 2016. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/violent-crime.pdf>

⁴ See generally "Georgia State Profile." Prison Policy Initiative. 2018. <https://www.prisonpolicy.org/profiles/GA.html>; Peter Wagner and Wendy Sawyer. "States of Incarceration: The Global Context 2018." Prison Policy Initiative. June 2018. <https://www.prisonpolicy.org/global/2018.html>.

⁵ "Report of the First Probation Subcommittee Meeting." Georgia Council on Criminal Justice Reform. July 6, 2016. https://csjjusticecenter.org/wp-content/uploads/2016/07/JR-in-GA_First-Presentation.pdf (hereinafter, "GCCJR 2016 Report").

⁶ Danielle Kaeble. "Probation and Parole in the United States 2016." U.S. Department of Justice Bureau of Justice Statistics. April 2018. <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.

by contracting with for-profit supervision companies.⁷

More than a decade ago, state officials were warning that Georgia's expansive criminal justice system was fiscally unsustainable. In 2008, the Governor's budget office was prompted to analyze the reasons for increased incarceration rates because of the toll the criminal justice system was taking on state finances.⁸ In 2010, media reports noted that the state prison system was consuming "1 of every 17 state dollars," or more than \$1 billion per year.⁹ The annual budget of the Department of Community Supervision, which oversees parolees and felony probationers, is about \$180 million.¹⁰

Community supervision, of course, is far less expensive than incarceration; in Georgia, the state pays about \$54 per day for each prisoner, as compared to \$2.12 for parolees.¹¹ (There is no figure available for probationers, given the widely varied forms of supervision for those on probation.) But besides direct costs, community supervision has substantial collateral costs because huge numbers of parolees and probationers return to incarceration each year. In 2017, more than one-third of prison admissions were the result of a supervision violation, at an annual cost of \$194 million, making supervision reform a fiscal as well as criminal justice priority. This cycle of re-incarceration increases the number of Georgians who are involved with the criminal justice system: As of 2018, 43

percent of the state's prison population had been incarcerated in Georgia at least once before.¹²

Community supervision is supposed to be the path from jail or prison back to normal life for people in the criminal justice system. But incarcerated persons exiting to community supervision face severe challenges as they attempt to re-enter society. People released from Georgia prisons receive little assistance, typically a bus ticket and \$25 in "gate money."¹³ Most struggle with drug abuse or alcoholism. Many have poor educational credentials, and their search for steady employment—the single most important factor in reducing recidivism—is hampered by state laws that lock felons out of almost all licensed professions (including cutting hair, arranging flowers, or driving a truck) and frequently revoke their driver's licenses, regardless of whether the offense was auto-related.¹⁴ Nationally, the unemployment rate for formerly incarcerated people is 27 percent, which is higher than national unemployment rates during the Great Depression.¹⁵ In Georgia, the enormous number of people on community supervision makes it difficult for probation and parole officers to address supervisees' needs: caseloads are among the highest in the nation, at about 130 supervisees per officer.¹⁶

SUPERVISION REFORM: CHALLENGES AND OPPORTUNITIES

Georgia courts give extremely lengthy probation sentences in felony cases, which drives up the

⁷ "Annual Report FY 2019." Georgia Department of Community Supervision. 2019. <https://view.joomag.com/dcs-annual-report-2019-annual-report-design/0959570001570133657?short> (hereinafter, "GDCS 2019 Annual Report")

⁸ "Factors That Influence Incarceration Rates." Governor's Office of Planning and Budget. October 2008. <https://opb.georgia.gov/document/publication/factors-influence-incarceration-rates-o/download>

⁹ Carrie Teegardin. "Georgia prison population, costs on rise." *Atlanta Journal-Constitution*. April 7, 2010.

<https://www.ajc.com/news/local/georgia-prison-population-costs-rise/uOrgkjs6Uqj47Hfi6NULO/>

¹⁰ GDCS 2019 Annual Report.

¹¹ "Parole Population in Georgia." Georgia Board of Pardons and Paroles. <https://pap.georgia.gov/parole-population-georgia>.

¹² "Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets." Council of State Governments Justice Center. October 2019. <https://csjusticecenter.org/confinedandcostly/>.

¹³ John Biewen. "Hard Time: Life After Prison." American Public Radio. March 2003.

<http://americanradioworks.publicradio.org/features/hardtime/>.

¹⁴ "Increasing Employment Opportunities for Ex-Offenders." Georgia Center for Opportunity. December 2013.

<https://georgiaopportunity.org/assets/2014/05/GCO-Increasing-Employment-Opportunities-for-Ex-Offenders.pdf>.

¹⁵ Lucius Couloute and Daniel Kopf. "Out of Prison & Out of Work: Unemployment among formerly incarcerated people." Prison Policy Initiative. July 2018.

<https://www.prisonpolicy.org/reports/outofwork.html>.

¹⁶ "Report of the Georgia Council on Criminal Justice Reform." Georgia Council on Criminal Justice Reform. February 2018.

https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/2017-2018%20Report%20of%20the%20GA%20Council%20on%20Criminal%20Justice%20Reform.pdf (hereinafter, "GCCJR 2018 Report").

probation rate because supervisees fail to move off probation. Despite falling crime rates, the felony probation population in Georgia increased 23 percent from 2005 to 2015.¹⁷ Until recently, there was no limit to the number of years of supervision a judge in Georgia could impose on a felony defendant.¹⁸ The result was predictable: probation sentences in Georgia are far longer than those imposed in comparable states, averaging 6.3 years and ranging from about five to seven-and-a-half years.¹⁹ Thirty-two states cap terms of probation to five years, but in Georgia, nearly three-quarters of all felony probationers have supervision terms that are longer than five years—and an astonishing 37 percent have terms that exceed *ten* years.²⁰

But despite this impediment to reducing the supervision rate, Georgia has shown a willingness to address supervision failures, including through evidence-based supervision practices. In 2015, the legislature passed SB 367, which limited the use of jail time for misdemeanor probationers who can't pay fines and fees.²¹ In 2017, it enacted SB 174, which requires judges to set a “behavioral compliance date” for certain first-time probationers, and then shift those probationers to unsupervised probation if reach that date (usually three years) without new arrests or supervision violations.²² This strategy produced an immediate impact on caseloads: 17,570 active cases were moved to unsupervised status over a two-month period beginning July 3, 2017.²³ And the 2013 Prisoner Reentry Initiative has now expanded to 20 sites

statewide, seeking to reduce recidivism by persons exiting Georgia prisons.²⁴

More can be done to drive down the supervision rate, by revising the Georgia Code to limit probation terms and incentivizing probation and parole offices to adopt evidence-based practices that have been proven to reduce recidivism and revocations. In 2020, Georgia legislators should prioritize policy reforms that target recidivism, rehabilitation, and community supervision in order to reduce the justice-involved population.

OUR PROPOSAL: PROBATION CAPS AND PERFORMANCE INCENTIVE FUNDING

We have two principal recommendations.²⁵ First, we believe that the Georgia Code should be revised to cap all probation sentences—even those given in lieu of a period of incarceration—at no more than five years. Permitting compliant first-time probationers to move to unsupervised probation after three years, as Georgia has done, is an important first step in reducing the supervision population. But there is no evidence at all that lengthy probation terms increase public safety. Most supervision failures occur in the first year or two, and there is no evidence that extending supervision terms beyond that period reduces recidivism.²⁶ The Minnesota Sentencing Guidelines Commission recently relied on this research and its own analysis of Minnesota probationers in moving to cap most

¹⁷ “Annual Report FY 2017.” Georgia Department of Community Supervision 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 (“GDCS 2017 Annual Report”).

¹⁸ Teresa Wiltz. “Doing Less Time: Some States Cut Back on Probation.” The Pew Charitable Trusts. July 5, 2019. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/26/doing-less-time-some-states-cut-back-on-probation>.

¹⁹ GDCS 2017 Annual Report, *supra*.

²⁰ *Id.*

²¹ “Know Your Rights, Misdemeanor Probation in Georgia.” Southern Center for Human Rights. 2016. <https://www.schr.org/files/post/MISD%20PROBATION%20IN%20GEORGIA%204%2019%2016.pdf>.

²² GCCJR 2018 Report.

²³ *Id.*

²⁴ *Id.*

²⁵ Though the expansive list of misdemeanor offenses that are probation-eligible is one of the drivers of Georgia’s supervision rate, the bill we propose does not address that issue. That is not because we do not support such reforms. In fact, we join with the state-chartered Georgia Council on Criminal Justice Reform in calling for a broad re-codification of the Georgia Code to reclassify more than 40 low-level misdemeanor traffic offenses as civil infractions instead of misdemeanors. See Georgia Council on Criminal Justice Reform. First Probation Subcommittee Meeting. July 6, 2016. https://csjjusticecenter.org/wp-content/uploads/2016/07/JR-in-GA_First-Presentation.pdf. Such a recodification is simply beyond the scope of the current bill, which deals more directly with the provisions of the Georgia Code governing probation terms and practices.

²⁶ James Austin. “Reducing America’s Correctional Populations: A Strategic Plan.” *Justice Research Policy*, vol. 12, p. 9. 2010. <https://journals.sagepub.com/doi/abs/10.3818/JRP.12.1.2010.9>

probation sentences at five years, like more than 30 other states that have done so.²⁷ Georgia should join them.

We also recommend rewarding probation and parole departments for successfully rehabilitating people on community supervision. Under our proposal, probation and parole offices would be entitled to additional funding if they reduce the percentage of probationers and parolees that return to incarceration for technical violations or reoffending compared to the historical rate for that field office or district. The additional funding would come from a percentage of the projected savings on each individual not returned, based on the estimated marginal cost of the time that person would have spent in incarceration. Those savings would then be reinvested into rehabilitation programs and reducing caseloads, promoting a virtuous cycle in which the best methods scale and win. By realigning incentives so that probation and parole offices are rewarded for reducing re-incarceration rates, Georgia can help thousands stay out of prison and start new lives.

EVIDENCE FROM OTHER STATES

Several states have demonstrated that performance incentive programs can shift the behavior of community supervision departments and achieve measurable outcomes. Since 2007, nine states have implemented Performance Incentive Funding programs (PIF) in their criminal justice systems. Notable examples include Illinois, Texas, and California.

Illinois has implemented more than one incentive program, but the first one was focused on juvenile corrections. In the first three years, four pilot sites reduced the number of juveniles admitted to youth corrections facilities by 51 percent.²⁸ The adult version of the program offered incentives to counties that reduced recidivism by 25 percent and assessed penalties to counties if they were unsuccessful. The program has expanded to 45 counties across Illinois, offering \$7 million in additional funding in 2018 alone.²⁹

In 2005, **Texas** pledged \$55 million in incentive-based funding to probation departments that used graduated sanctions to try to reduce technical revocations by 10 percent. Departments that participated reduced technical violations revocations by 13.4 percent; revocations increased in non-participating counties by 5.9 percent.³⁰ A recent meta-study found that 17 out of 17 performance-based funding programs reduced prison populations or slowed prison population growth.³¹

In 2009, **California** passed Senate Bill 678, which created a shared-savings incentive reward of up to 45 percent for county probation departments that reduced re-incarceration rates for felony probationers. The incentive encouraged probation departments to innovate their rehabilitation and supervision strategies. Counties experimented with hiring social workers, partnered with universities, and became more selective about the providers they used for substance abuse treatment, cognitive behavioral therapy, and transitional housing. The results of SB 678 were impressive: in 2010, 23 percent fewer probationers had their supervision revoked, 53 out of 58 counties reduced their

²⁷ Peter Callaghan. "Sentencing guidelines commission votes to impose five-year limit on probation in Minnesota." *Minnesota Post*. January 10, 2020. <https://www.minnpost.com/state-government/2020/01/sentencing-guidelines-commission-votes-to-impose-five-year-limit-on-probation-in-minnesota/>. See also Minnesota Sentencing Guidelines. "Probation Revocations," p. 2. Nov. 2016 (finding that most probation revocations occur within the first two years).

²⁸ Redeploy Illinois. <http://www.redeployillinois.org/>.

²⁹ "Annual Report to the Governor and General Assembly on the Implementation and Projected Impact of Adult Redeploy Illinois." Adult Redeploy Illinois. November 2019. <https://ari.icjia-api.cloud/uploads/ARISFY2018AnnualReport%20-20191204T14021996.pdf>

³⁰ Greg Glod. "Incentivizing Results: Lessons From Other States' Probation Funding Formula Reforms and Recommendations to Texas Lawmaker." January 2017. <https://files.texaspolicy.com/uploads/2018/08/16103231/2016-11-PP27-IncentivizingResults-CEJ-GregGlod.pdf>.

³¹ Nancy LaVigne. "Justice Reinvestment Initiative State Assessment Report." Urban Institute. 2014. <https://www.urban.org/sites/default/files/publication/22211/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.PDF>.

revocation rates, and statewide violent crime dropped more quickly than in any year in the previous decade. These reductions kept 27,000 people out of prison between 2010 and 2013. Additionally, in 2011 alone, county probation departments were awarded almost \$90 million for their performance enhancements, and the state saved twice that amount.³² Between 2009 and 2017, SB 678 achieved over \$1 billion in estimated savings to California taxpayers. Surprisingly, the risk levels of supervision caseloads increased during this same period, but reincarceration rates still declined, suggesting that rehabilitation efforts were working despite a change in the risk pool.³³

THE REBOUND ACT: A PROPOSAL FOR REFORM

In Georgia, adult felony community supervision is administered by the Georgia Department of Community Supervision. There are two probation and parole regions, East and West, and 10 districts, containing a total of 82 field offices that cover one or more counties. We propose a model that offers localized incentives to the district and field offices working directly with parolees and probationers. Our funding model looks like this:

- Calculate the baseline return-to-incarceration rate for each of the 82 parole and probation field offices in Georgia. If that is impossible because of data limitations, calculate the same for each of the broader 10 districts.
- If an office or district reduces the re-incarceration rate below the baseline in a subsequent year, that office or district is entitled to 50 percent of the annual savings

based on the projected marginal cost of incarceration.

- Of the savings allocated to successful offices, 50 percent will go towards evidence-based rehabilitation, and the remainder to hiring new personnel, retaining existing personnel through performance bonuses, and reducing caseloads.

We estimate that adopting this model would save the state \$38 million and reduce prison admissions by 2,300 annually.³⁴ This, of course, does not include the savings from the reduction in crime we expect from this bill with robust rehabilitation programing.

Effective incentive structures like those in Illinois, Texas, and California could help Georgia reduce its burgeoning community supervision rolls. Incentive funding can foster the natural adoption of more effective strategies, encouraging better performance through locally tailored practices. A performance-based funding program in Georgia could have a massive impact on the lives of thousands of people in the criminal justice system while improving the safety of communities across the state and saving hundreds of millions for the Department of Community Supervision.

CONCLUSION

Probation and parole failures are substantial contributors to Georgia's prison population, and they have made it even more challenging for Georgia to reduce its incarcerated population. The impacts of other policy reforms attempted by the

³² Susan K. Urahn. "The Power of Incentives for Performance." *Governing*. August 22, 2012. <https://www.governing.com/columns/mgmt-insights/col-performance-incentive-funding-corrections-probationers.html>.

³³ "2019 Report on the California Community Corrections Performance Incentives Act of 2009: Findings from the SB 678 Program." *Judicial Council of California*. October 28, 2019. <http://www.courts.ca.gov/documents/lr-2019-ca-community-corrections-performance-incentives-act-2019-pc-1232.pdf>.

³⁴ This estimate is based on a 20 percent reduction in the number of prison admissions for supervision violations and revocations of all kinds.

state have undoubtedly been stifled by the cycle of release and re-incarceration created by current probation and parole practices. Capping probation terms and adopting incentive funding for probation and parole will foster system-wide change and bring much needed results: an estimated 2,300 people averted annually, and \$38.8 million in savings for Georgia's taxpayers. At the same time, reinvesting a portion of the savings that result from reduced incarceration and recidivism doubles down on effective ideas. Expanded funding for community supervision programs with proven results can do more than just avert the overcrowding crisis in Georgia's corrections system. By incentivizing smart, evidence-based reforms, the legislature can help citizens in the criminal justice system peacefully return to their homes and families, making our communities safer.