



# DELAWARE'S BROKEN PROBATION SYSTEM:

The Urgent Need to Reform  
Community Supervision in the First State



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The Urgent Need to Reform Community Supervision in the First State

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*A special thanks to those people currently and formerly on probation, reentry providers, Delaware state justice system personnel, and community members who were willing to share their stories, expertise, and perspectives for this report.*



My mission is to fight for a fair and equal justice system, and I believe in that mission at every stage of the process, from pre-trial to re-entry. Delaware has made real progress in the last year and a half, from comprehensive internal reform in the Department of Justice to the successful passage and enactment of some of the most forward-thinking criminal justice legislation in recent memory. We fight for progress because it is just and because it is incumbent on us to disrupt a vicious cycle of recidivism that strains our communities and does nothing to make us safer. All of us—from the justice system and reform advocates, down to the business community and families across the state—need to be invested in the success of our neighbors returning home after incarceration. One size fits all justice has not worked. We need to craft individualized sentences and probationary conditions that address the harm that done to victims and provide defendants with the treatment they need to re-enter society safely and successfully. I’m grateful for the ACLU’s ongoing advocacy to continue to progress we’ve made on criminal justice reform, from arrest and prosecution to probation and reentry.” —Attorney General Kathleen Jennings

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## The ACLU of Delaware

For nearly 100 years, the American Civil Liberties Union has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. Whether it's achieving full equality for lesbian, gay, bisexual and transgender people, establishing new privacy protections for our digital age of widespread government surveillance, ending mass incarceration, or preserving the right to vote or the right to have an abortion, the ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than 2 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC to safeguard everyone's rights.

ACLU of Delaware, the local affiliate of the national ACLU, was established in 1961. We are a first resort when the government threatens our rights in Delaware and a last hope when we are deprived of our liberties.

For more information, please visit our website: [www.aclu-de.org](http://www.aclu-de.org).

## The Delaware Campaign for Smart Justice

The Delaware Campaign for Smart Justice, a project of the ACLU of Delaware, aims to educate the public about the staggering number of Delaware residents who have been adversely affected by the criminal justice system and how that system disproportionately impacts people of color. Through public education, grassroots organizing and legislative advocacy, we challenge the system and create change for individuals, families and communities.

For more information, please visit our website:  
[www.aclu-de.org/en/campaign-smart-justice](http://www.aclu-de.org/en/campaign-smart-justice).



## COVID-19 UPDATE

Throughout late 2019 and early 2020, the ACLU of Delaware researched and drafted the report on the state of probation in Delaware. The report highlights the immediate need for change in order to create a probation system that promotes successful completion of probation, victim restoration, effective reentry, and reduced crime.

In March 2020, however, the Covid-19 pandemic upended life around the world and in Delaware. It impacted Delaware's probation system in many ways.

First, Covid-19 temporarily changed the way that the Department of Correction ("DOC") handles technical violations. The probation report details how Delaware's probation system sends thousands back to incarceration (at either a Level IV or V facility) each year—not for committing new crimes—but for violating a technical condition of their probation (like missing meetings with their probation officer, missing curfew, or failing a drug test). While DOC fought community advocates and families asking DOC and the Governor to release those currently incarcerated for technical violations, according to DOC Commissioner Claire DeMatteis, it did stop incarcerating people for technical violations during the COVID-19 outbreak. This means that as of June 2020, fewer people were being sent to prison for technical probation violations. (The ACLU of Delaware does not have data on how many people that would normally be incarcerated for violation of probation were able to stay home, and it does not know how DOC has otherwise handled these violations. The incarcerated population dropped by roughly 900 people between February 2020 and August 2020. Some of this reduction is likely attributable to DOC's new policy, but there are likely a number of other factors contributing as well.)

Second, the number of people on probation declined sharply between March 2020 and August 2020. In only five months, the probation population went from 12,694 people on February 11, 2020 down to 10,759 on August 7, 2020, a reduction of 1,935 people. The ACLU of Delaware does not know the cause of this decline and it is likely attributable to a combination of factors. It could be due to reduced crime, changed policing methods that caused fewer people to be charged with a crime and ultimately sentenced to probation, judges being cognizant of the impact on the defendant and the system of placing another person on probation amid the COVID-19 pandemic, or even the DOC making the determination that additional monitoring was no longer necessary.

Third, the conditions of probation and the manner of compliance changed. Most in-person check-ins with probation were changed to phone or video check-ins to prevent the spread of the virus.

What ultimately drove these changes and policy decisions? The ACLU of Delaware believes it was a revised way of thinking forced upon the justice system—a new COVID-calculus—that required system stakeholders to reconsider who should be in the criminal legal system and who should be out, now that this public health crisis was a matter of life and death. Certainly those who pose an imminent threat to the public must still be locked up. However, the COVID-19 outbreak in the prisons and correctional and probation staffs' positive tests for the virus resulted in a heightened awareness of the dire impact that system involvement would have on the lives of those caught up in it. It was an understanding that the risk to life presented by incarceration far outweighed the punishment that was in order for missing a curfew. It was the notion that the extra stress on a probation officer by placing another person on their caseload was simply not justified given already-stretched-thin resources. Ultimately, the system stakeholders decided that with lives on the line, they needed to bend the decades-old rules of the system.

As the threat of the virus hopefully wanes, and as Delaware reopens and the world returns back to normal, Delaware must remember—lives are always on the line. Why should the risk of contracting COVID-19 keep a probationer out of prison, but the risk of the probationer losing their job, housing, and contact with family not be enough to reach the same result?

These temporary changes that were made in response to the COVID-19 crisis, though minor, have improved the probation system for the better and did not create any negative consequences. They should become the new normal. Even in the most desperate of economic times when millions are out of work and fewer are being sent to prison, the crime rate has not increased. Further, as the following report discusses, Delaware could save \$37 million by 2025 if it cuts probation violations by 60% and reduces the average length of time served for violations from 4 to 2 months. As Delaware's economy recovers and leaders look for ways to tackle a possible budget deficit, the benefits of permanently adopting these temporary changes to the probation system become even more apparent.

These temporary changes are just a start. Delaware's probation system continues to disproportionately impact Black people and much work is needed to change the culture of probation and fund reentry services that will help those struggling as they exit prison. Even if these temporary changes

stay in place, so much more is needed to reinvent community supervision in the First State, as detailed in the following report.

The pandemic has taken the lives of many already and the future impacts of the virus remain unknown. As of this publication date, Delaware inmates, correctional officers, and contract staff remain at-risk of contracting the virus. However, once the threat dissipates there may be a call to return back to the status quo as it existed in the pre-COVID world. The ACLU of Delaware urges Delaware leaders to permanently adopt the changes to probation that are already working and to continue to advance probation reform from this new starting point. The rapid response to COVID-19 has shown that expedient change is possible. If the leaders in the system decide to, they can change the probation system and they can do it quickly.

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## SUMMARY

The United States incarcerates its citizens at a rate higher than any other country in the world. Delaware's incarceration rate, while dropping, is still higher than its neighboring states, including Maryland, Pennsylvania, and New Jersey.<sup>1</sup> While state leaders have recently started enacting law and policy to reduce the prison population, none of these reforms have tackled a major driver of the prison population in Delaware: the probation system. **As of June 30, 2019, 10% of the Level V prison population and 47% of the Level IV facility population were imprisoned for a probation violation.**<sup>2</sup> Delaware has the 8<sup>th</sup> highest rate among states for probation,<sup>3</sup> with 13,858 people on probation as of June 30, 2019.<sup>4</sup>

**Delaware's probation system is driving incarceration in the First State.** While probation is meant to punish people for breaking the law, it is intended to be less punitive than incarceration and is supposed to assist with rehabilitation. However, for many, a probation sentence is nothing more than a deferred, or extended, prison term. Thousands of people on probation end up incarcerated—not for committing a new crime, but for violating one or more conditions of their probation. Reasons could include a missed curfew, a missed meeting with a probation officer, or failing a drug screen.<sup>5</sup> A recent study published by the Statistical Analysis Center (“SAC”) analyzing a cohort of 1,203 people released from prison in 2013-2015 shows that **94% of those arrested for a probation violation were arrested for violating a condition of probation—not for committing a new crime.**<sup>6</sup> Each month, hundreds of people appear before judges across the state for violation of probation hearings. **In the month of October 2019 alone, at least 947 Delawareans were scheduled to appear before judges for violation of probation hearings.**<sup>7</sup>

For individuals returning home after incarceration, the hurdles to successful reentry are substantial. Returning citizens struggle to find housing, transportation, obtain the state identification cards needed to get medical benefits and a job, and struggle to find employment at a livable wage. On top of this, many face mental health and substance abuse challenges. The probation system and its myriad of reporting requirements, meetings, costs for treatment, curfews, and surveillance are insurmountable hurdles for too many.

It is time for Delaware to reimagine its probation system. **By reforming the probation system, Delaware could not only cut its incarcerated population, but also:**

- **reduce crime and recidivism,**

- **enable better victim restoration through payment of restitution,**
- **enhance public safety by focusing resources on those most likely to reoffend,**
- **aid in effective rehabilitation, and**
- **free up millions of dollars for reinvestment, beneficially changing innumerable lives.**

In 2017 a group of community corrections officials from across the United States signed a Statement on the Future of Community Corrections recommending that the number of people on probation in America be reduced. The Statement proposed that states:

- reserve probation for people who truly need supervision,
- impose only the conditions needed to achieve the objectives of supervision,
- eliminate supervision fees, incentivize program compliance by granting early discharge for those who exhibit progress, and
- invest in community-based services to assist those reentering society.

The Statement concluded “it is possible to both significantly reduce the footprint of probation and parole and improve outcomes and public safety.”<sup>8</sup> Some states and municipalities have already proved this. New York City, for example, used early discharge and minimally intrusive supervision for low-risk clients to decrease its probation population by 66% over the past two decades while reducing its crime rate by 57% in the same period.<sup>9</sup>

**If Delaware cut the number of violations of probation by 60% and reduced the average length of time a person must serve for a violation from 4 to 2 months, it would reduce its prison population by 1,092 people and save \$37 Million by 2025.**<sup>10</sup> Delaware can achieve these goals by implementing the following pragmatic policy reforms:

1. **Eliminate probation sentences for minor convictions.** By using out-of-court diversion, restorative justice programs, and alternative sentencing for minor crimes, judges can reduce probation officer caseloads to allow them to better monitor those who actually present a public safety risk.
2. **Stop incarcerating people for technical violations.** Prison or jail<sup>11</sup> should be used only as a last resort to protect public safety. Other alternatives—like community-based graduated sanctions—should be tried and documented, before any individual is incarcerated for anything other than committing a new criminal offense.<sup>12</sup>



3. **Customize probation terms to meet individual needs.** Assigning the same 13 conditions to each person doesn't make Delaware safer, but makes it needlessly difficult to successfully complete probation. Additionally, a person on probation with a successful track record should be allowed early discharge, incentivizing compliance and conserving probation resources.
4. **Measure the probation department's success by its ability to keep people on probation from incarceration.** The Department of Correction should create an incentive structure that encourages probation personnel to refer people on probation to case management, treatment programs, education, and other resources as needed to help people on probation stabilize their lives. This could enable more formerly incarcerated people to make restitution payments to victims.
5. **Collect and publish race data.** Like the prison system, the probation system disproportionately impacts Black people in Delaware. Lawmakers and the general public need data to better understand the drivers of the racial disparities that are evident in the system and how to find solutions.
6. **Invest in community-based reentry programs to provide formerly incarcerated people the help they need.** Delaware has many community-based reentry programs that boast low recidivism rates and help people succeed on probation. But these programs lack funding and space to meet the current demand. It is time for Delaware to invest more heavily in these services.
7. **Limit probation terms to one year.** Although the current Department of Justice policy is to generally request only 1 year of probation, people sentenced years ago are leaving prison today with multi-year probation terms. Delaware needs policy changes that will allow people to apply for release from probation after successfully completing one year, unless they are eligible for release earlier. Delaware should also stop holding people on probation just because they can't afford court fines and fees or mandatory, costly out-of-pocket probation programs.
8. **Shut down Operation Safe Streets and the Governor's Task Force.** The effect of this program is harassment and over-policing of communities of color. It creates a culture of probation focused on law enforcement, not rehabilitation, and it doesn't make anyone safer.

Delaware's broken probation system is a pipeline to prison, impacting individuals, families, and entire communities across the state every day. The need to fix it is urgent. The probation system is not making Delaware safer—but it is costing the state millions of dollars that could be spent on victim services and community-based treatment and rehabilitation programs. Now is the time to act. Delaware must join the scholars, policymakers, and correctional executives from around the country that are calling for and implementing significant reforms to their probation systems.<sup>[13](#)</sup>

**NOW IS THE TIME FOR DELAWARE TO  
REINVENT ITS BROKEN PROBATION SYSTEM.**



## TECHNICAL PROBATION VIOLATIONS ARE CROWDING DELAWARE'S PRISONS

Technical probation violations are fueling Delaware's mass incarceration epidemic. In 2011, there were 8,588 violation of probation charges filed against people on probation that required people to appear for violation hearings.<sup>14</sup> In 1987, by contrast, 195 people were incarcerated for probation violations.<sup>15</sup> In Delaware, most of the people released from prison will be re-arrested within 3 years, primarily for probation violations and not for committing new crimes. To be sure, while Delaware's crime rate is the same today as it was in the 1980s, the number of people incarcerated has increased due to probation violation incarceration. The probation system in Delaware is broken and needs to be reinvented.

### The Explosion of Probation in the United States and Delaware

In the United States, more than 6 million people are under correctional control. The majority of these people—more than 4.5 million—are not in prison but are under community supervision.<sup>16</sup> Nationally, the number of people on probation or parole has increased four-fold since the 1980s. At the same time, the number of conditions for those on supervision and the average workload for probation officers has also increased as probation has become more punitive in its design and impact.<sup>17</sup>

Delaware's story is the same. **At any given time, more than 3% of Delaware's general population is under correctional control.** Most of these people are not in prison, but are under some form of community supervision, including home confinement, parole, pretrial supervision, and probation. However, since Delaware abolished parole for anyone sentenced after 1989, the majority of people under community supervision are on probation.

The probation system is run by the Department of Correction Bureau of Community Corrections, which operates with a roughly \$56.2 million budget.<sup>18</sup> It is responsible for, among other things, monitoring those sentenced to home confinement, individuals subject to pretrial monitoring, and administering the probation system. The Probation and Parole Department ("Probation") employs just over 300 probation officers and a large number of support staff.<sup>19</sup>

**The probation system impacts thousands across the state. But it has not always been this way.** In the 1980s, Delaware had a two-tier sentencing system. People convicted of crimes could be sentenced either to incarceration or limited supervision probation. In 1984, however, the

## The Levels of Incarceration Sentences in Delaware:

Level V: Incarceration

Level IV: “Quasi-incarceration”

Level III: Intensive in-community supervision

Level II: Field supervision

Level I: Administrative probation

**Level I-Restitution Only:** The lowest level reserved for those on probation solely due to fines, fees, or restitution

**Most sentencing levels are probation-focused.**

Delaware legislature created the Sentencing Accountability Commission (“SENTAC”) to promulgate a set of sentencing guidelines (the “Benchbook”) for judges to follow no later than 1987. With a focus on “accountability,” SENTAC turned a two-level system into a five-level system,<sup>20</sup> ranging from Level V, incarceration, down to Level IV “quasi-incarceration,” Level III intensive in-community

supervision, Level II field supervision, Level I, administrative probation, or Level I-Restitution Only, the lowest level reserved for those on probation solely due to fines, fees, or restitution.<sup>21</sup> This five-level system created by the Sentencing Accountability Commission remains in place today.<sup>22</sup>

In January of 1987, there were 2,931 people in prison<sup>23</sup> and 7,985 people on probation in Delaware.<sup>24</sup> Twelve years later, SENTAC guidelines and other “tough on crime” policies had driven the doubling of the prison population (to 6,750)<sup>25</sup> and the more-than doubling of the probation population (to 20,976).<sup>26</sup> And by 2000, the number of people incarcerated for violating probation had increased **1,900 percent**, from 195<sup>27</sup> to 4,123.<sup>28</sup>

In a 2005 report, the SAC confirmed that this increase in probation violations was not caused by an increase in crime and instead concluded that “policy changes are the major reason” for increased numbers.<sup>29</sup> Indeed, increased incarceration from probation violations was an intentional outcome of SENTAC.<sup>30</sup>

Delaware lawmakers attempted to curb the ballooning probation and violation process in the early 2000s, but these efforts failed. In 2003, the legislature enacted a Probation Reform Law that capped probation sentences at 2 years for a violent felony, 18 months for any drug offense, and 1 year for any other offense.<sup>31</sup> The hope was that shorter probation sentences would mean fewer people on probation and fewer probation violations over time.

While the number of people on probation decreased slightly in 2005—down from 14,700 to 13,400,<sup>[32](#)</sup> the number of people on probation since then has stagnated, with 13,858 people on probation or parole as of June 30, 2019.<sup>[33](#)</sup>

This presents an important reflection point for future probation reform. **As Delaware learned 15 years ago, merely shortening probation sentences, without more, does little to reduce the probation population or curb the number of probation violations.**<sup>[34](#)</sup> It is the policies and practices being followed by Probation that must be re-examined.



# 1 in 3

In 2015, 1 out of every 3 people released from prison were re-arrested within three years for a technical probation violation.

Thousands of  
Delawareans are  
Incarcerated Each Year  
for Technical  
Violations—Not for  
Committing New Crimes

In 2019, 11,193 new individuals were placed on probation in Delaware.<sup>[35](#)</sup> For many, this sentence is nothing more than a deferred or extended incarceration term. A 2019 report from the SAC reported that 70% of the people released from prison in

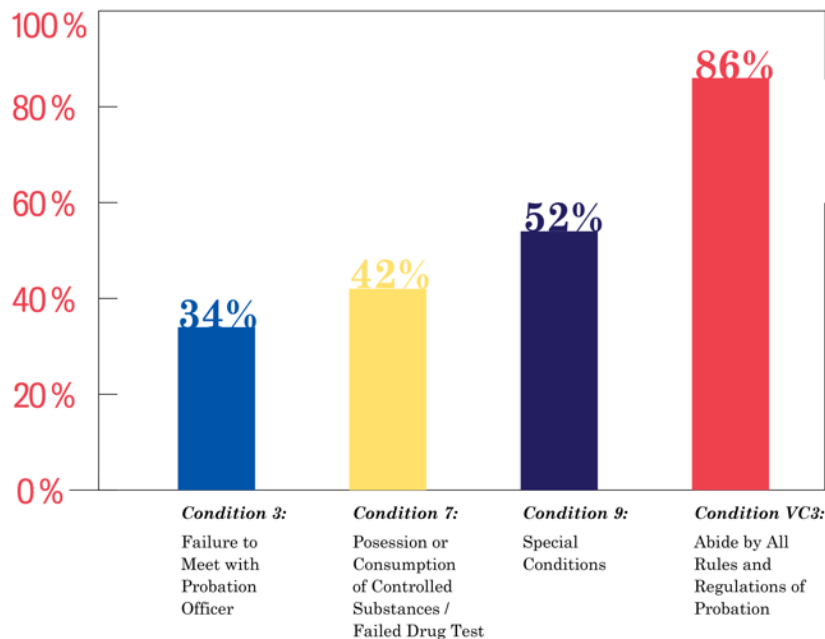
2015 were re-arrested within three years of their release. However, it turns out that over half of those re-arrested, 51% were arrested solely because they violated a condition of their probation.<sup>[36](#)</sup> And only 6% of these probation violations were for committing a new crime—**94% of the violations were for technical violations.**<sup>[37](#)</sup> These violation arrests were either classified as “program violations” (21%) or technical violations such as missed curfew, missed meetings with probation officers, or dirty urine screens (73%).<sup>[38](#)</sup> **This means, 1 out of every 3 people released from prison in 2015 were re-arrested within three years for a technical probation violation.**

Multiple probation violations can be cited in the same violation report, but the most common conditions claimed to be violated were special conditions, consumption of drugs or alcohol, and failure to report to a meeting with the probation officer. Specifically, Condition 9, “special conditions,” was



cited in 52% of violation reports. Condition 7, the possession or consumption of controlled substances and requirement to submit for random drug screenings, was cited in 42% of violation reports. And Condition 3, meeting with probation officer, was cited in 34% of violation reports.<sup>39</sup> And for program violations, Condition VC3, requiring that people on probation “abide

### MOST CITED TYPES OF PROBATION VIOLATIONS



by all the rules and regulations” of the program was by far the most commonly cited violation, reported as the reason for 86% of the program violations.<sup>40</sup>

Further, a 2017 report from SAC analyzing a cohort released from prison in 2013 showed that roughly 20% of the violations of

probation were for violation of a Zero Tolerance order—meaning one mistake will send them back to prison immediately.<sup>41</sup> While Delaware Attorney General Kathleen Jennings released a memorandum<sup>42</sup> in February 2019 asking prosecutors not to ask for zero tolerance probation in any of its current cases, many people on probation who were sentenced years ago still face this condition when completing their probation term today.

### So, What is Really Driving Technical Probation Violations?

For individuals on probation, compliance with probation requirements can be onerous and costly, tripping up even those who are making their best attempts to comply with their conditions. It is easy to judge people on probation as “choosing” to fail or not working hard enough. But the reality is that returning citizens already face tremendous hurdles upon reentering society. Some are unable to find stable housing, employment, or transportation, increasing their likelihood of a run-in with police.



## *The Homelessness Trap*

For returning citizens who have no income or family connections, homelessness becomes a probation trap. Returning citizens often face housing restrictions that prevent them from applying for public housing, subsidized housing, or even living with family members who reside in public housing.



When a person is classified by probation as high risk, they are required to check in daily with probation. However, for a person who has no home, finding transportation or a way to communicate daily with a probation officer can be daunting. According to an employee of First State Community Corporation, shelter bed space is limited and often at capacity. A person who is housing insecure and surviving on the streets may be incarcerated for

violating a condition of probation for *any* unreported contact with law enforcement (including panhandling, loitering, and trespassing); for them, the prospect of remaining out of a state correctional facility seems hopeless. According to the employee interviewed, many clients seeking help from the First State Community Corporation face housing issues that contribute to violating a condition of their probation.<sup>[43](#)</sup>

## *Mental Health and Addiction Impede Success*

Many people live with behavioral, mental health, or substance abuse issues that contributed in some capacity to their entrance into the criminal justice system in the first place. Governor Carney acknowledged that, in 2015, 24% of Delaware's incarcerated population was receiving some form of mental health treatment and **80% of the incarcerated population experienced issues with substance abuse.**<sup>[44](#)</sup> By DOC's 2019 analysis, **one out of every three people in its facilities had a mental illness.**<sup>[45](#)</sup>

Addiction challenges are a significant factor for many people who are incarcerated. Nationally, almost 50% of prisoners currently incarcerated have some form of drug dependence, but only 10% receive medically rehabilitative treatment while in prison.<sup>46</sup> Failure to address underlying substance use issues drives a large percentage of technical violations. At least 42% of the violation reports for those released in 2015 and 59% for those released in 2013 cited controlled substance issues as the reason for the probation violation.<sup>47</sup> While judges may view incarceration for substance use as the only way to help a person on probation in violation of the terms of his or her probation stay clean, experts have found that jail time rarely helps people recover from a substance use disorder. Few jail sentences include treatment, and the treatment that is offered is rarely evidence-based. For example, few prisons or jails offer Medication Assisted Treatment (MAT), the gold standard for opioid use disorder.<sup>48</sup> 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 and die upon release.<sup>49</sup>

Further, for some, especially for individuals who struggle with addiction and who may need treatment, intensive supervision may do more harm than good. At least one study has documented the effects of supervision on people recently released from prison's abilities to secure and maintain employment and reestablish familial connections and has found that, in some cases, supervision methods and conditions actually interfere with successful reentry.<sup>50</sup>

### ***Onerous and Uniform Probation Conditions***

Despite the research showing stringent conditions may impede reentry, every Level III probation sentence includes the same 13 standard conditions without regard to the individual. These conditions are so onerous that even on their own, without any hurdles, many would struggle to comply.<sup>51</sup> The 13 conditions of supervision are:

1. Do not commit a new crime or motor vehicle offense.
2. Report any arrest, conviction, or police contact within 72 hours.
3. Report to a probation officer at scheduled times and allow probation officer to enter your home and workplace.

## 13 UNIVERSAL PROBATION CONDITIONS IN DELAWARE:

***Every person on probation in Delaware is subject to the following 13 conditions, regardless of individual circumstances:***

1. Do not commit a new crime or motor vehicle offense.
2. Report any arrest, conviction, or police contact within 72 hours.
3. Report to a probation officer at scheduled times and allow probation officer to enter your home and workplace.
4. Do not leave the state without permission from a probation officer.
5. Report any address change or employment change within 72 hours.
6. Do not own or possess any firearm or deadly weapon without permission from a probation officer.
7. Do not possess or use illicit or controlled substances unless prescribed. You must submit to random urine drug screens by the probation officer.
8. Pay a supervision fee.
9. Abide by any additional conditions imposed by the probation officer, the Court, and/or the parole board.
10. Do not quit a job, training program or school without permission of the probation officer.
11. Attend work, job training, or school on a full-time basis.
12. Participate in community service as directed by the probation officer.
13. Abide by a curfew established by the probation officer.

4. Do not leave the state without permission from a probation officer.
5. Report any address change or employment change within 72 hours.
6. Do not own or possess any firearm or deadly weapon without permission from a probation officer.
7. Do not possess or use illicit or controlled substances unless prescribed. You must submit to random urine drug screens by the probation officer.
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9. Abide by any additional conditions imposed by the probation officer, the Court, and/or the parole board.
10. Do not quit a job, training program or school without permission of the probation officer.
11. Attend work, job training, or school on a full-time basis.
12. Participate in community service as directed by the probation officer.
13. Abide by a curfew established by the probation officer.

### The Power of the PO

Within these 13 conditions, the probation officer (“PO”) has great discretion to determine just how demanding the conditions will be. While the judge typically determines the length of a probation term, the probation officer has the power to decide how often the person must appear for meetings, the terms of any daily check-ins, the person’s curfew, and the ability to

suggest to the court the terms of any additional or “special” conditions imposed. The Level III “standard” is a 10 pm curfew and weekly check-in meetings with the probation officer, but this can differ from person to person.

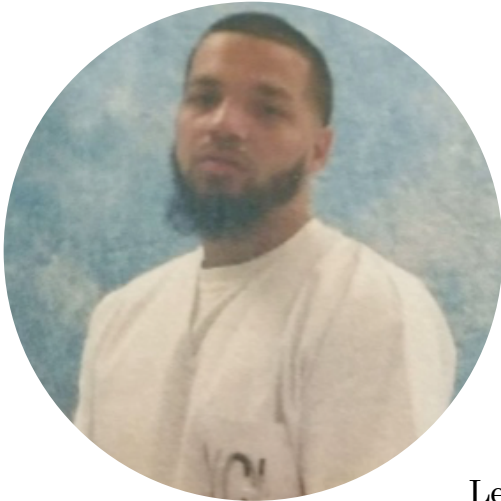
By law, Probation has the discretion to move an offender up or down through the levels of probation.<sup>52</sup> Probation relies on a risk assessment tool called the Level of Service Inventory-Revised (LSI-R) that is supposed to assess a person’s risk and needs to determine their level of supervision. However, the probation officer can ultimately override the tool, which was done at rates between 11 and 15% in prior years.<sup>53</sup> Further, the violation process is driven almost entirely by probation officers who have the discretion to decide when any infraction is serious enough to find that a person has “violated” a condition of their probation.<sup>54</sup> While Delaware law has enabled probation officers to use graduated sanctions since the early 2000s to address noncompliance with probation terms rather than use the revocation process, the practice has not been adopted uniformly.<sup>55</sup>

## The Violation Process

When an individual breaches any probation term, the probation officer may “violate” that person and revoke their probation—meaning send them back to incarceration for up to the entire remaining sentence.<sup>56</sup> When a probation officer chooses to violate someone, after seeking approval from his or her supervisor, the probation officer writes and submits an administrative warrant, along with a violation report, to the court.<sup>57</sup> The violation report lists the conditions that the probation officer believes were breached and makes a sentencing recommendation to the judge about how to deal with the violation. Unless the person on probation is able to post bail, they are then taken into custody and incarcerated at either a Level V or IV facility until the court schedules their violation hearing. According to one public defender interviewed, **individuals can be detained for weeks awaiting their hearing**.<sup>58</sup>

At a violation hearing, individuals under supervision are entitled to minimal due process protections. While a defense attorney will be assigned to any person detained for a VOP hearing in Superior or Family Court, people whose hearings are being held in the Court of Common Pleas or who are not otherwise incarcerated pending the hearing are not always provided counsel. Judges determine the outcome of a probation violation but often follow the recommendations provided by the probation officer. Judges can place the person on probation on a more restrictive level of probation, extend the probation term, add a new treatment or education program requirement, or incarcerate the individual for a period of time in a Level IV or V facility. For some, the violation process results in a never-ending probation term. Numerous attorneys reported that they had represented clients who violated

a condition of probation in the last month of their probation term, often for failing a drug test, only to receive another year on probation. The cycle repeats—resulting in years of correctional involvement often due to the disease of addiction.



## TREY MILLER'S STORY

In 2012, when he was 19 years old, Trey Miller was arrested and charged in two separate cases, one for burglary and the other for robbery. He was incarcerated until ultimately pleading guilty to Burglary in the Second Degree, Theft over \$1,500, Conspiracy in the Second Degree, and Robbery in the Second Degree. In October, 2014, Trey was released from prison, having served two and a half years, and reported for Level III probation.

For a while, Trey was doing well on probation, although he struggled to comply with its many conditions. After more than a year and a half with no issues, in April 2016, Trey had a bad week and missed a meeting with his probation officer and three meetings with his Treatment Access Center (TASC) worker. For a couple more months, he was back in compliance, but ultimately struggled to comply over the summer of 2016, missing roughly one meeting with his probation officer and TASC worker each month and even testing positive for opiates and marijuana on one occasion.

Unfortunately, things went downhill from here. That fall, Trey's young daughter passed away. The pain, combined with his existing addiction issues, caused Trey to go into a dark place. He ultimately missed about one meeting a month with both his probation officer and TASC worker in September and October, and at times was considered an absconder from probation. In March of 2017, he was arrested and his charges were dismissed by a *nolle prosequi*. However, Trey did not report this contact with law enforcement.

For the next year, Trey lived with his grandparents and got a job at a farm. He helped care for his grandparents, remained crime free, and was enrolled in the American Beauty Academy to get his career started. However, in March 2018, he was brought before the court for a violation of probation hearing. The violation report cited his failure to appear for meetings with the probation officer in April, June, July, and October 2016, and failure to appear for TASC meetings in April, June, July, September, and October, 2016. The

report also cited the dirty urine screens Trey had registered in November and July of 2015 and July 2016.

The probation officer asked the court to sentence Trey to one year of incarceration for these technical probation violations. Trey's attorney cited his employment, stable housing, the technical nature of the violations, Trey's history with drug addiction, and enrollment in school as a reason to limit his incarceration to only 6 months. Trey, for his part, admitted to the technical violations. He explained to the Court that he was ready to face the consequences of his actions but pled with the Court not to impose the full year of Level V time. He asked the Court to consider that he had been grieving the loss of his daughter when he missed many of the meetings cited in the violation report.

But the court wasn't hearing any of this. The judge accused Trey of crying "bitter tears" to "manipulate the court" and noted that Trey had also failed to appear four times for court in the past thus delaying the violation hearing. Rejecting even the State's recommendation, the court sentenced Trey to 8 years of Level V incarceration for his technical probation violations. The court further ordered that the Level V time be followed by an additional six months at Level IV and six more months of probation at Level III.

After the Court rendered the sentence, Trey was in shock. And, according to Trey's family, even the probation officer leaned over and told Trey he needed to appeal the order. Trey did appeal it—all the way to the Delaware Supreme Court—but to no avail. In 2019, the Delaware Supreme Court denied his appeal, meaning that Trey will likely serve 8 years for his technical probation violations.

All in all, Trey was out of prison from 2014 to 2018. He may not have been a model probationer, but he never committed any new crimes. Despite this, Trey has already served more than two years for technical probation violations. As things stand today, he will likely be in prison until 2026 for crimes he committed in 2012 that the judge originally felt only required 2.5 years of incarceration. And Trey's incarceration in Level V and IV facilities for his technical violations will cost the state \$336,000, not even including the cost to the probation system when he re-enters it years from now.

In the meantime, his family will be missing him in their lives and Trey will spend 8 years of his young life locked up. Trey's grandparents are not giving up though. They have been fighting for Trey during his appeal and are actively working to bring awareness to his case. They want to help Trey get a new sentence, if possible. But even if they can't they want to make sure this doesn't happen to other families in the future.



## THE CULTURE OF PROBATION BREEDS SYSTEM DISTRUST

Whether the role of a probation officer is helping a person comply with the 13 conditions, versus monitoring and penalizing them for failure to comply, depends on how the probation officer views their role. Ultimately, the probation officer has the discretion to decide whether to ask the judge to send a person to a correctional facility for violating a condition or the discretion to be more lenient. Many people on probation in Delaware, including those who successfully completed their terms, report that the culture of the Department of Community Corrections is focused on law enforcement, rather than a treatment-based approach aimed at helping people on probation successfully complete probation.

Probation started out in America as a method for in-community rehabilitation for those with substance abuse problems but became increasingly punitive during the tough-on-crime era of the 1990s. Probation in Delaware is no different. In the 1990s, policy-makers tightened restrictions on people under community supervision, shifting probation away from the casework model of the 60s and 70s and toward a strict crime control model.<sup>59</sup> As probation and parole shifted from a culture of case management to zero tolerance, the number of people that successfully completed probation dropped from 69% in 1990 to 59% in 2005.<sup>60</sup>

While individual probation officers can differ in how they see their role, one person on probation interviewed, who was also previously on probation in the 1980s, has felt a culture shift first hand: “The probation officer [in the 1980s] actually put you in the mind they were trying to help. They took you to places that would help you in the community.”<sup>61</sup> He no longer gets the same feeling from his probation officer. His mistrust for the probation officer went so far that he declined a referral to a reentry service because the case manager worked in the same building as the probation officer. Although the reentry worker stated that they would not coordinate with the probation officer, the person on probation simply didn’t feel safe working with a service provider in close proximity to his probation officer.<sup>62</sup>

Over-supervision has been proven to be harmful and lead to the commission of new crimes. A study from New Jersey demonstrated that a probation officer’s approach—whether law enforcement motivated or rehabilitative—matters. The study found that officers who were law-enforcement oriented were associated with a 43% increase in technical violations. Meanwhile, programs that provided treatment and employed officers with a balanced law enforcement/social casework orientation had a 10 to 30% lower recidivism rate than those supervised by law enforcement oriented officers.<sup>63</sup> Another study found that socially disadvantaged people,

defined as those with less than a high school education and a prior arrest record, when placed in programs with high surveillance, are more often found to be in violation of a condition of probation—even when the surveillance was in form of programs with rehabilitative purpose, like counseling or drug treatment.<sup>64</sup>



## SHANNON SHAPTER'S STORY

Shannon Shapter has lived in Milton, Delaware for most of her life. She is a mother, a small business owner, and deeply religious. She is close with her mother and sister, who both also live in Sussex County. Most noticeable about Shannon, though, is her constant optimism and ability to highlight the positive in any situation.

In conversations, even about a criminal justice system that she feels angry about and hopes will change, she mentions the good things—like the time away from the toxic relationship that led her back into drug use in 2017 and some DOC staff who are working hard to help people like her.

Shannon is in recovery and has been for years. Her journey has taken her in and out of halfway houses, treatment facilities, and the criminal justice system. Shannon was released from Baylor Women's Level V Prison in February, 2019, after serving 25 months arising out of a non-alcohol DUI-4th.

The day after her release, Shannon reported to probation in Georgetown, Delaware and to "TASC," Treatment Access Center that was part of her probation sentence. She went to TASC for mandatory urine screens and had a TASC worker to report to as well as a probation officer. Ultimately, Shannon has nothing but respect for the TASC worker and Level III probation officer assigned to her case. According to Shannon, "[My probation officer] was one of the few who actually spoke to you like you were a human. He was straightforward and direct and didn't take any crap...but he cared. He would ask you about your day, about who you are as a person, and what you are doing." Shannon's deep level of respect for her probation officer and his positive regard for Shannon helped motivate her to comply with her conditions. And her TASC worker encouraged her to be her own advocate throughout the entire process. However, even while Shannon liked working with her probation officer, her probation conditions made it difficult to do anything but comply with probation right after her release. Her Level III probation required her to:

- Meet once a week with her probation officer;
- Meet once a week with her TASC worker;
- Attend Intensive Outpatient Treatment three days a week, for 3 hours each day;
- Call daily for random urine screenings and actually drive in for a urine screening twice a week;
- Comply with a 10 pm curfew;
- Not leave the state;
- Wear a TAD monitor;
- Pay all court fines and fees;
- and comply with a Zero Tolerance order (meaning any slip up would mean a direct ticket back to prison).

All of these meetings and urine screens had to take place in Georgetown, about a 20 minute drive from her house. All in all, Shannon said she had to be in Georgetown basically every day Monday through Friday. However, Shannon was not able to drive while on probation. She would take the bus, ask her mom or sister to drive her, catch a ride with her sponsor, or reach out to anyone else that would take her when her immediate support network was unavailable. In this way, though, Shannon recognizes that even having this network gave her an advantage that many people on probation do not have.

One day, she was forced to drive herself to report to probation because she could not find another ride. She ended up getting pulled over for driving on a revoked license. Her probation officer chose not to violate her for this contact with law enforcement because she was otherwise doing so well. While all of this was going on, she was also trying to work part time and enrolled in college classes.

For Shannon, the difficulty of being on probation actually increased when she was stepped down to Level II because of the nature of her new probation officer. While Shannon had been on probation once before, she had never had a probation officer like this one. Right from the outset, this probation officer made her feel small. Shannon felt that “he looked down his nose at me like he was a better person than I was, more powerful than me and better than me.” She said, “I’m sure he has made mistakes before, but he made me feel so judged. Like I had chosen to have addiction issues. He didn’t treat me like a human. He never once said an encouraging thing to me EVER. He was focused on surveillance.” One time during the summer, she sought permission to extend her curfew so she could stay out with her 12 year old son. While her TASC worker encouraged her to advocate for herself and make the request, her probation officer refused, without citing any reason.

Another time, she had been driven to probation to report by a friend and this probation officer apparently knew that person did not have a license — and he threatened to violate her on the spot.

“I was scared every day walking out of my house under [this probation officer]. I felt like I couldn’t do anything, and I wasn’t doing anything wrong, that is the kicker! But because of the way he made me feel, I felt constantly fearful that he was going to be there to take me down. I never missed an appointment or gave a dirty urine. But I still felt so scared he was going to find some way to send me back to prison.”

One thing that makes Shannon angry about her time in the system is the amount of mistakes that “the system” makes, that go unnoticed and unvindicated. But a single mistake made by her could mean months of prison time. For example, Shannon’s probation order actually allowed her to be released from probation after meeting milestones in her recovery—completing her Intensive Outpatient program and enrolling in a DUI class to get her license back. Shannon worked hard to get off probation as quickly as possible. All in all, within 8 months, she paid \$5,650.55 in courts fines and fees for the DUI, and before leaving probation she had to enroll in a 12 week DUI class (which required paying \$175 for an evaluation, \$125 to enroll, and a 50% deposit on the class tuition which is \$820), on top of meeting all the other terms of her probation. But even after she did all this, probation didn’t complete the paperwork on time, so she was stuck on probation for an extra two months. According to Shannon, her treatment under Level II probation and the brokenness of the system as a whole drove her to the point where “I can’t keep my mouth shut.” Since her release from probation in October, Shannon has been working and her recovery is going well. Shannon seems to have a raw sense of self-understanding and acceptance that shines through in each conversation. She is real. And she is motivated to keep fighting—for criminal justice reform, for others who struggle with addiction, and also for herself. She is now in a strong and healthy relationship, renting a part of a house from a friend, and working on her own business. She hopes that her experiences can help create change in the system and give hope to others.



## Run by Delaware Probation Officers, Operation Safe Streets and The Governor's Task Force Alienate Entire Communities

Nothing better epitomizes the law enforcement culture of probation than Operation Safe Streets and the Governor's Task Force ("OSS/GTF"). In addition to compliance with probation conditions, people on probation are also subjected to invasive policing practices. While otherwise unconstitutional, probation officers may conduct warrantless searches of people on probation, their homes, and their cars, under an exception to the general constitutional prohibition against warrantless searches.



Everyone who grew up in my neighborhood knows the Safe Streets Task Force. They have harassed community members, some not even on probation, for years—showing up at family barbeques, banging on our doors, searching entire houses. **In reality, they act more like a military raid unit than a group formed to keep anyone safe.** The communities are intimidated, and this has formed an adverse relationship between the people and probation.

***Safe Streets needs to stop.***

— Dubard McGriff, Campaign for Smart Justice Team Member & Lifelong Wilmington Resident

In 1996, a SAC study titled "Wilmington Shootings--A Comparative Study of Victims and Offenders in Wilmington, Delaware" found that a significant amount of suspected perpetrators of gun violence had prior criminal charges.<sup>65</sup> With this information in mind, people on probation who had been convicted of violent crime became targets of policing. In

1997, under the direction of Governor Thomas Carper, Operation Safe Streets ("OSS") was born to operate in the city of Wilmington. Two years later, OSS expanded to include the City of Dover and the Governor's Task Force (OSS by another name) operated in the remainder of New Castle, Kent, and Sussex County.

OSS /GTF is a partnership that allows police officers and probation officers to jointly police those on probation and, by extension, their family and friends. These teams monitor curfew compliance by going to people's homes late at night and visiting public places to seek out people on probation.<sup>66</sup> One senior probation officer and OSS supervisor aptly described the program's breadth and law-enforcement orientation:



Each side brings valuable resources to the table. The DOC's administrative warrant and administrative search powers allow probation officers to enter a probationer's home at any time for any reason. While state and local police officers do not have these powers, they gain immediate access to a probationer's home as a result of the OSS partnership. Our administrative search and administrative warrant capabilities are invaluable if we want to be able to catch probationers in the act of possessing drugs or weapons, *or failing to comply with any of the terms of their probation.*<sup>67</sup>

**In 2018, OSS conducted 9,246 curfew checks and arrested 1,510 people. Of these arrests, 846, or 56%, were of people not even on probation.** A total of 323 people were actually found to be in violation of a condition of their probation and reincarcerated by OSS in 2018.<sup>68</sup>

Even though OSS/GTF is still active today, the last publicly available reports on OSS practices were published in 2004<sup>69</sup> and 2006.<sup>70</sup> These outdated reports demonstrate that OSS/GTF has always been used to monitor not only those on probation, but their communities and families as well. Between 1999 and 2006, OSS/GTF arrested a total of 11,670 people—45% of them were not the person OSS/GTF was actually monitoring at the time. And more than one in four of the individuals arrested were not even on probation.<sup>71</sup>

While there have been no official reports released publicly about OSS/GTF since 2005, the program continues in full force today. As of 2019, OSS/GTF appears to have also expanded to incorporate federal law enforcement including the Federal Bureau of Investigation.<sup>72</sup> According to Dubard McGriff, a Campaign for Smart Justice team member who grew up in Wilmington, “Everyone who grew up in my neighborhood knows the Safe Streets Task Force. They have harassed community members, some not even on probation, for years—showing up at family barbeques, banging on our doors, searching entire houses. In reality, they act more like a military raid unit than a group formed to keep anyone safe. The communities are intimidated, and this has formed an adverse relationship between the people and probation. Safe Streets needs to stop.”

OSS/GTF is a primary example of the conflict between probation being a rehabilitative system versus a system focused on law enforcement. Additionally, similar to the disparate outcomes for Black people at all points of the criminal justice system, the OSS/GTF leads to Black communities being overpoliced.



## Communities of Color are Especially Damaged by the Broken Probation System

Just as Black people are overrepresented in prisons, they are also overrepresented in community supervision and are heavily surveilled while on probation. Although Black people make up 23% of the general population in Delaware, they make up nearly half of the probation population. This disparity in community supervision is one of the drivers of the overrepresentation of Black people in prisons, where Black people constitute 60% of the Delaware prison population. A study of four jurisdictions, conducted by the Urban Institute, found that, even when controlling for other case characteristics, Black people on probation were sent back to incarceration for probation violations at higher rates than white and Hispanic people on probation.<sup>[73](#)</sup>

Black communities are subject to structural disadvantages and experience racism in all aspects of American society, including housing, education, employment, wealth accumulation, and political power. These disadvantages are compounded for people on probation attempting to comply with conditions of probation.





## DUBARD MCGRIFF'S STORY

On the night of August 16, 2018 at around 10:30 pm, Dubard was driving down N. Market St. on his way home from having dinner with friends on the Wilmington Riverfront. As he approached the stop sign at 7th and Market, just one block from his house, he noticed an unmarked police vehicle tailing him. He immediately went into a state of anxiety when the sirens flashed, ordering him to pull over. “I was 9 months into my professional job as the Community Organizer for the ACLU of Delaware Campaign for Smart Justice. Even though I had completely changed my life and was doing nothing wrong, the sounds of the sirens and blue and red flashing brought me back to the traumatic experiences I have had with the criminal justice system for years.” His anxiety only increased when he realized it was the Operation Safe Street team, not to mention his block was completely dark with no one else in sight.

The officer was in plain clothes. He walked up to the driver side window and told Dubard to roll it down. “I followed instructions, immediately giving over my driver’s license, registration, and insurance card.” Dubard also informed him that they were just a couple feet away from the entrance of his loft, thinking that the officer might just let Dubard go home. Because, this is the thing—Dubard was not even on probation, and hadn’t been for many years.

But it didn’t matter to Operation Safe Streets. Dubard asked the officer, “why was I pulled over?” But the officer paid Dubard no mind while suspiciously shining a flashlight into his face and all around his car. Deep down, Dubard knew why the officer had targeted him. He drove a 2011 Chevy Impala and these cars were very popular in the city for young black men.

The officer just kept flashing his light in the car and noticed an obituary of Dubard’s cousin, who was killed a few months prior. The officer asked, “Why do you have that obituary? Did you know the person on it? He was into bad things.” According to Dubard, “I tried to just stay calm despite the disrespect to the deceased and close family member. I told him he was my cousin and that we should have respect for a dead person. And then out of nowhere the Officer told me that I looked nervous and asked me why I was so nervous.” This seemed so obvious to Dubard, given the officer’s vest and gun.

So he told the officer, “I don’t feel safe.” But the officer just said Dubard must be hiding something and insisted that he step out of the car to be searched.

Dubard replied “no” and informed the officer that he knew his rights. But by that time, back-up had come to scene, and there were at least 3 police cars and 2 more unmarked cars surrounding him, along with about 12 police and probation officers all in plain clothes with a vest and a gun. He acknowledged the temperament of the officer and got out. “I knew if I didn’t step out of the car, there was a good chance that he would become physical and pull me out. I was very intimidated so I stepped out of my car.” Dubard informed the officer that he worked for the American Civil Liberties Union advocating for criminal justice reform. While the officer searching him didn’t know the organization, his superior officer who was standing very close observing the conversation interrupted, stating he knew the ACLU. Dubard immediately turned his attention to the sergeant and asked again, “Why am I being pulled over?” But the sergeant never answered his question either. And the sergeant never stopped the search. Dubard was told to sit on the curb and wait while they searched his car, and they even told him they were doing him a courtesy by not cuffing him.

While they continued to search his vehicle another car pulled up. To Dubard’s surprise, his old probation officer, who he also knew from the community, got out of the car and walked over. “The probation officer went on to explain how I changed my life and all of the things I had been doing in the community.” It was only then that the officer became less aggressive and began to treat Dubard as a human. “He called off the search and told me my insurance card was outdated but said he was giving me another favor by not giving out a citation.”

In the end, nothing was found on Dubard or in his car. But without that old probation officer showing up and Dubard’s relationship with him and in the community, there is no way to know how the night could have ended. The Operation Safe Street team had already gone out of its way to police and harass Dubard—and he was not even on probation. While Dubard wants to forget about this incident, every time he sees Operation Safe Streets out in Wilmington, it brings him back to that night. According to Dubard, “they ride around like cowboys because they have distorted the law to create a group of probation officers and police that functions more like a military operation than any type of public safety unit.” And he often wonders whether there is any real difference between Operation Safe Streets and the illegal stop and frisk policies that have faced criticism. But mostly, Dubard wonders what probation officers are even doing participating in this, since they are supposedly there to help people get their lives on track. Dubard wants to shut



down Operation Safe Streets to prevent other people in the community from being harassed like he was.



## PEOPLE ON PROBATION ENROLLED IN CASE-MANAGEMENT REENTRY SERVICES SHOW THAT SUCCESS IS POSSIBLE

Reentry is an umbrella term to describe any initiative or program that has a goal of rehabilitation or improving social, health and behavioral outcomes of those who were formerly incarcerated.<sup>74</sup> These programs, implemented in prisons or in the community, work to solve a myriad of obstacles including securing employment, housing and reliable transportation, addressing physical and mental health challenges, educational attainment, and substance addiction disorders.<sup>75</sup> Thus, these services help formerly incarcerated people navigate and acclimate back into the community.

While programs in prison can help lay the groundwork for reentry, the research is clear that community-based services focused on addressing the individual needs of returning citizens through a case management model is the best way to reduce recidivism and help a person successfully complete probation.<sup>76</sup>

**Delaware has community-based reentry programs that work, but they cannot meet the demand for such services.** From as early as 2017, Delaware officials have acknowledged that reentry services do not meet the needs of formerly-incarcerated individuals as they reintegrate into the community. In 2017, DOC concluded in a public report that it needed to “develop reentry focused community corrections programs...that provide treatment, education, and/or training programs to match offender needs.”<sup>77</sup> And in 2017, the National Criminal Justice Reform Project supported the state in planning evidence-based reform to improve reentry services. The Delaware Recidivism Reduction System Blueprint generated by this project identified an overall lack of community treatment services and the need for a statewide comprehensive reentry needs assessment.<sup>78</sup> Much of this culminated in 2018 when Governor John Carney signed Executive Order 27, which created the Delaware Correctional Reentry Commission to focus on reentry reform, as well as other policies and procedures that align with the blueprint.<sup>79</sup>

### Governor’s Reentry Task Force

Executive Order 27 (1) created a division within the DOC to coordinate reentry programs, (2) directed state agencies to craft a plan to collaborate and share data to ensure that returning citizens have a smoother transition back into the community, and (3) ordered the Delaware Correctional Reentry Commission (“DCRC”) to rely on evidence-based practices, which means practices shown to be successful through rigorous research.<sup>80</sup>



Today, the DCRC has representatives from the DOC, Department of Education, Department of Labor, State Housing Authority, Courts, and community stakeholders from the behavioral health, data analytics, case management, and community support fields.<sup>81</sup> DCRC is pursuing a variety of worthy projects, but so far none of the Commission's efforts address the role that probation plays in creating hurdles for returning citizens. And despite a renewed focus on reentry, there has been no increase in funding for community-based reentry providers. Most recently, according to one national study published by the PrisonEd Foundation in 2019, Delaware is the **second worst** state in the country for recently released people.<sup>82</sup>

Evidence suggests that the service model typically provided by probation and parole departments, including contact-driven supervision, surveillance, and enforcement of conditions of release, are not likely to change the behavior of formerly incarcerated people or reduce recidivism.<sup>83</sup> Reentry programs, on the other hand, are more effective because they focus on behavioral outcomes. The best reentry programs in Delaware target criminogenic factors, target high-risk offenders, use evidence-based risk assessments, begin treatment in prison and continue that treatment in the community.<sup>84</sup> These programs boast low recidivism rates, use evidence-based practices, include case management services to address individual problems for people on probation to stabilize their lives and help them comply with probation terms, and last at least six months. Two programs with successful results that demonstrate these best practices include The Achievement Center and Project New Start.

### Project New Start

Project New Start is a year-long intensive workforce development and case management program that begins with 10-weeks of classroom instruction for medium to high risk men and women who are on work release or recently released from prison. The program's curriculum includes cognitive behavioral therapy, technology training, financial literacy, employment certifications, and job readiness. After graduating from skills training, the program facilitates the participant's job search until they secure employment. The final phase of the program is continued case management for a minimum of one year. From enrollment forward, all participants are provided individualized direct benefits, transportation assistance, and lunch (during the 10 weeks of classroom instruction) to help facilitate successful reentry back to their families and community.<sup>85</sup>

From October 2013 through March 2020, Project New Start enrolled 133 people on probation or parole. The New Start program has graduated 93 participants – and 78% of the graduates had not been reconvicted of a new

offense since their completion of the program. Project New Start estimates that the graduates who are sustaining success are saving Delaware taxpayers over \$3 million per year.<sup>86</sup>

Project New Start's participants are rarely court mandated and are not paid or required to be there by probation. **The program has 2 cohorts per year. It often has over 50 applicants for only 12 to 14 positions per cohort.**



### The Achievement Center

The Achievement Center is a building that is a joint venture between the Wilmington HOPE Commission and Kappa Mainstream Leadership. The Wilmington HOPE Commission's evidence-based reentry program serves as a hub for adult males returning home from prison to the city of Wilmington. The program provides direct case management and rehabilitative services such as risk and needs assessments, behavioral health services, vocational readiness training, educational and peer support and family reunification programs. There is no cost to program participants.<sup>87</sup> In 2019, the program enrolled 54 members who were referred by the Delaware DOC. That year, the program had 28 graduates and 100% of the graduates succeeded in not committing new felonies and were employed at the time of their program completion. The Wilmington HOPE Commission estimated that their



program is a 79% cost savings to Delaware—while it costs the state almost \$40,000 to house an incarcerated individual annually, it costs The Wilmington HOPE Commission roughly \$8,000 annually per enrolled member.<sup>88</sup>

Jill Walters<sup>89</sup> leads the clinical services provided for individuals enrolled at The Achievement Center. Clinicians find that case managers and other treatment service providers are in a better position than probation officers to build trust with formerly incarcerated individuals. “Even if an officer is trauma informed and uses the right techniques to engage a client on probation, the inherent barrier between probation [officers] and someone who is formerly incarcerated is hard to overcome. Treatment providers are in a known helping profession with greater education in mental health and substance use disorders” said Walters.<sup>90</sup>

The Wilmington HOPE Commission works collaboratively with DOC and the courts to keep people enrolled in the program, rather than violated and returned to incarceration, as often as possible. The HOPE Commission team works with the clients and encourages them to build honest relationships with their probation officers. The team acts as an advocate for the clients by encouraging probation officers not to violate clients for certain conditions and making alternate recommendations that may further help clients to be successful during their probation term.

Delaware has a number of other supportive community-based reentry programs including The Way Home, 2Fish Home Construction, and Delaware Center for Justice’s Community Reintegration Services Program, to name a few. However, right now, these programs would benefit from additional funding to increase capacity and space to meet demand.

Photo Provided by: The Achievement Center



The community is best equipped to serve people in the community. Indeed, community-based reentry services are so important that Matt Horn, the New York City Probation Commissioner, has even proposed that the state abolish probation sentences following incarceration altogether for most people released from prison and to instead allocate those resources to robust reentry programs.<sup>91</sup>



## Timeeka Cropper's Story

Timeeka Cropper was raised in a poverty stricken neighborhood and, along with her aunt who was four years older, was responsible for looking after her younger siblings since her grandparents worked long hours as hotel housekeepers. Her family did not have a lot of money when she began middle school and she often felt left out and withdrawn because of her lack of clothing and teasing from other kids. One day, she watched her 16 year old aunt snatch a purse at the mall. Both girls were immediately detained.

At just 12 years old, Timeeka found herself charged with a robbery and held at New Castle County Youth Detention Center for 60 days, then sentenced to 3 months in the Girls School Grace Cottage. “At Grace Cottage I was the youngest girl in the building, most of them were 16 and 17. The girls inside exposed my 12 year old mind to more than I even realized. After ‘the Cottage’ I was on juvenile probation for the remainder of my youth.”

When she returned home from the cottage, the state enrolled her into an alternative school where she began, according to Timeeka, to “live a regular middle school life.” However, when she was 16 years old her grandfather passed away and she began using drugs to cope.

“I developed a bad habit. Before I knew it I was shoplifting and doing petty crime to support my habit until my lifestyle caught up with me. When I was 20 years old I was sentenced to 3 years at Baylor’s Correctional Institution for stealing from several local stores. I came home in 2011 with a new vision and ready to change. But I was in for a rude awakening when I realized my probation officer had a bias against me because my mother was once on her caseload. I received no support in finding job readiness services, housing, and simple things such as counseling and referrals to support my diagnosed mental illness developed from childhood trauma.”

Timeeka tried to do the right things on her own. But she became overwhelmed with life and probation compliance on top of everything else going on. “My grandmother was ill with cancer during my incarceration and passed within weeks of my release. I was depressed, overwhelmed, and frustrated because I did not have the skills to format a proper resume to apply for a job. My housing was not stable, I was not being treated by a clinician on a regular basis for my mental illness. And the only two people I relied on had passed away. I was the sole provider for my 16 year old sister and newborn brother. And had to provide for my mother who has herself battled with addiction for most of my life. I returned to using opioids to cope and before I knew it I was into my old ways committing petty crimes to support my habit and family.”

In February, 2018, her probation officer arrested her for a dirty urine screen and possession of 10 pills. She was violated and charged with aggravated possession. Timeeka knew if she didn’t advocate for herself now, she would not get the treatment she needed to become whole again. “I asked the court to look at my background and criminal history with drug use and explained to the judge—I am ready for and need help.” She was sentenced to 18 months Level V, 6 months of Level IV work release, followed by outpatient treatment run by TASC and 2 years of Level III probation. Before she was even sentenced, she voluntarily enrolled in the 6-for-1 drug treatment and a cognitive behavioral therapy program which helps individuals with substance abuse issues through cognitive behavioral treatment.

When Timeeka was released from Baylor in June of 2019 following her incarceration for the probation violation and aggravated possession, she was transferred to the Level IV Hazel D. Plant Work Release Center for Women in New Castle, Delaware. At Hazel D. Plant she was placed to work at the clothing bank of the Friendship House, a community center for the homeless. “At the Friendship House, the staff was supportive and inspiring. They actually treated me like an equal. They were genuine and wanted to see me do well. Ms. Cheryl was especially encouraging and gave me a sense of hope.”

When Timeeka was released from Hazel D. Plant, Ms. Cheryl, who knew her transition was unstable, suggested Timeeka stay on for a few weeks after her release. These few weeks became a few months. Timeeka became a stellar employee and the stability of having continued work helped keep her life on track even outside of incarceration. Eventually, Timeeka was invited to the Friendship House’s annual fundraising event. There, she was offered a full time salaried position at the clothing bank. Timeeka thinks about the difference that this support network has made for her recovery.



“I know for a fact if I did not have the support of the Friendship House, when released from Level IV work release, I would have had a difficult time obtaining employment. My transition would have been like the prior times I was released.” Timeeka is working hard and doing well. But she is still on probation. In fact, she has either been on probation or locked up every single day since she was originally sentenced at the age of 12. Timeeka knows that this time things will be different though. Treatment and her post-release support network are making an impact. According to Timeeka, “I can now live up to my full potential.”



## PROBATION TERMS LAST YEARS, KEEPING PEOPLE IN THE REVOLVING DOOR TO PRISON FOR EXTENSIVE PERIODS OF TIME

While the Department of Justice has capped its requested probation sentence at 1 year for most crimes sentenced since 2019, and Delaware law caps probation terms for most crimes at 2 years,<sup>92</sup> exceptions in the Delaware code<sup>93</sup> and the fact that many people were sentenced years ago means that many leaving prison today face multi-year probation sentences. The DOC has discretion to request that a court reduce the length of someone's probation term and does file such requests in certain cases. However, there is no uniform policy that requires this. In addition, the practice of holding someone on probation until all court fines and fees are paid<sup>94</sup> is also driving unnecessarily long probation terms.

**Many people are stuck on probation for years because they cannot afford to pay a court fine or fee or pay for an expensive treatment program, trapping the poor in a revolving door to incarceration.** While Delaware caps probation terms at one to two years for most people, this cap does not apply to people that still owe fines, fees, or restitution. These individuals can remain on Level I probation for years, facing disproportionate consequences for minor infractions like traffic offenses. These criminal penalties apply even though the civil legal system is

fully equipped to hold people accountable for judgments where they fail to make necessary payments. In one study of people released in 2015, the first arrest for 16 people on probation was for failure to pay a court fine or fee from their case.<sup>95</sup>

Finally, the cost of probation programs can be unaffordable, which disproportionately

Keeping a person on probation  
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ACLU Delaware SMART JUSTICE Delaware



impacts the poor. While a wealthy person may afford participation in a costly probation program immediately upon release from prison, almost half of Americans cannot afford a \$400 unexpected bill.<sup>96</sup> Probation programs imposed as “special conditions” or by statute often cost hundreds, if not thousands, of dollars but must be completed before a person can complete probation. **Keeping a person on probation because they can’t pay, while letting a wealthy person off because they can, is not justice—it is debtors’ probation.**



## Michael Bartley’s Story

When Michael Bartley first reported to his probation officer in 2016, **he was told he would be on probation for the next 24 years of his life.** He had been placed on zero tolerance probation, meaning that any mistake or violation would send him immediately back to prison. Any failure to fulfill any of the more than a dozen conditions connected to his probation term would guarantee his return to incarceration at a Level V detention facility. If he missed a group session at the Achievement Center; if he stayed out past his 10pm curfew; if he missed one regular meeting with his probation officer or couldn’t make a couple of payments on his fines and fees: any of these slips could have made him one of the 73% of re-entering Delawareans who will be re-arrested within 3 years of their release.

Mike fought to meet all his probation requirements for two years, knowing he needed perfect compliance to avoid being incarcerated again. While he was meeting all the requirements of his term, he was engaging in his community to help youth avoid the criminal justice system, as well as advocating to bring more education, vocational training, and parenting classes into the prisons. Mike also started his own community organization (H.E.A.D.S. Up in the 302) to help give a voice to those with incarcerated loved ones, and he began working with a nonprofit devoted to reducing violence in local communities.

By all counts, Michael Bartley was an exemplary probationer. And yet, despite Mike’s best efforts, when his probation officer encouraged him to petition the Superior Court for an early release from probation after two years of supervision, the Superior Court of Delaware denied his petition for early release.

The Court told Mike that much of his past two years could not be considered proof of his compliance with the probation conditions because much of that time only counted as “conditional release time,” i.e. he was just working off the “good time”<sup>97</sup> he earned during his stay at James T. Vaughn Correctional Facility. The Court held that his actions in that “good time” gap—between his release and the date he would have been released under his original sentence—did not count towards his time on probation.<sup>98</sup> Therefore, the court felt that he had not spent enough time on actual probation to be considered for early release.

Rejected on a technicality even though his desire and ability to lead a crime-free lifestyle were evident, Mike spent yet another year doing his best to meet restrictive probation conditions that could have gotten him sent back to prison if he messed up at any time. In time, his probation officer moved him down from Level III supervision to Level I supervision and he eventually petitioned the Court for early release a second time. At that point, Mike had spent three years in the community post-incarceration, complying with the conditions of probation every step of the way. Finally, in late 2019, the Superior Court granted Mike his freedom.

Even after three years of model behavior, the Court only granted Mike’s sentence modification request and released him from probation after the urging of community leaders who vouched for his character. Mike’s connections and his good relationship with his probation officer were tools that he had in his toolbox to help him on his path to freedom—but not everyone on probation has those same tools.

Facing the same bureaucratic obstacles, few probationers have Mike’s good fortune in the form of a positive probation officer relationship and a network of influential contacts that had grown over three hard post-release years. In the conditional release period that, in the Court’s eyes, disqualified Mike from release from probation despite two years of compliance, Mike could have slipped up on any one of his conditions. In that same span of time, many others have.





## CONCLUSION

By reimagining probation, Delaware can cut its prison population, give returning citizens a real chance at success, reduce recidivism, make Delaware safer, and save taxpayer dollars. If we change our probation system and the culture around community correction, we change lives.

In August 2017, every major association representing community corrections endorsed a Statement on the Future of Corrections, along with 35 prominent probation and parole administrators and 45 leading prosecutors. The statement asserted that, “community corrections has become a significant contributor to mass incarceration,” and mandated that “the number of people on probation and parole supervision in America be significantly reduced.”<sup>99</sup> The statement recommended that the number of people on probation and parole in America be reduced by, among other things, reserving community corrections for only those who require supervision, reducing term lengths, exercising restraint in the use of supervision conditions, incentivizing progress on probation and parole by granting early discharge for those who exhibit significant progress, eliminating supervision fees and reallocating resources to community-based services.<sup>100</sup>

Most of these recommendations served as the foundation for the recommendations made in this report. The policy proposals set forth in this report are not revolutionary or “soft on crime.” They are, for the most part, recommended by correctional officers themselves who currently run community corrections for their respective localities around the country. We need Delaware leaders to help make them a reality. There is a large movement gaining momentum for probation reform.

All of this is possible and would allow Delaware to reduce its incarceration rate at the same time. By cutting technical violations by 60% and reducing the average time served for a technical violation from 4 to 2 months, alone, Delaware can reduce its prison population by 1,092 people and save the state \$37M by 2025. ***Now is the time for Delaware to reinvent its probation system.***

## RECOMMENDED POLICY COMMITMENTS FROM PROBATION SYSTEM STAKEHOLDERS

Delaware Governor and Delaware Department of Correction Commissioner, we ask the Department of Correction to commit to the following:

- \_\_\_\_\_ A 60% reduction in probation violations by 2025.
- \_\_\_\_\_ No one will be violated on technical violations unless the probation officer has employed, and documented, at least three levels of community-based graduated sanctions first.
- \_\_\_\_\_ The goal of Probation will be to violate *no one* for technical violations. The Chief or Deputy Chief of the Bureau of Community Corrections will review, approve, and sign off on each administrative warrant and Violation Report before it is filed.
- \_\_\_\_\_ DOC will develop an incentive structure to reward probation departments and officers whose supervisees successfully complete probation. The culture of Probation will be focused on rehabilitation and keeping the community safe through reducing crime. Hiring practices and probation officer training, ideally utilizing community groups who serve returning citizens and victims' rights advocates, will reflect the new goal of building a culture based on rehabilitation. Law enforcement tactics will be used where necessary to protect victims and the public.
- \_\_\_\_\_ Stop automatically assigning the same 13 conditions. DOC will establish individualized probation terms for each person based on unique needs and specific public safety risks. Probation terms will set milestones that incentivize people on probation with early release from probation once each objective is met.
- \_\_\_\_\_ Stop participating in Operation Safe Streets and the Governor's Task Force. The effect of this program is harassment and over-policing of communities of color. It creates a culture of probation focused on law enforcement, not rehabilitation, and it doesn't make anyone safer.

Delaware Chief Justice, we ask the courts to commit to the following:

- \_\_\_\_\_ Reserve probation sentences for those who actually pose a threat to public safety.

- \_\_\_ Stop automatically assigning the same 13 probation conditions. Require specific, fact-based finding that each probation condition imposed has a nexus to a public safety need based on the prior conduct of the person. In sentencing orders, require that probation establish individualized probation terms for each person based on unique needs and specific public safety risks and set milestones that incentivize people with early release from probation once each objective is met.
- \_\_\_ Cap incarceration terms for technical violations at 30 days.

### Delaware legislators, we ask that you pass legislation to:

- \_\_\_ Pass a law banning incarceration for any technical probation violation unless a judge determines that no other community-based method would help the individual comply. Limit the period of incarceration for a technical violation to 30 days.
- \_\_\_ Pass a law requiring the collection and publication of data about the criminal justice system, including the probation system.
- \_\_\_ Pass a law requiring judges and probation officers to verify that someone will be able to pay for a program, fine, or fee before adding it as a condition to probation. Reform the law so that a person cannot be held on probation for failure to pay unless it is willful.
- \_\_\_ Use your budget powers to double the funding for reentry providers.

### SENTAC:

- \_\_\_ The 2021 Benchbook should be modified to limit the number of probation sentences recommended for low-level offenses and incorporate sentencing alternatives for low-level offenses.
- \_\_\_ The 2021 Benchbook should be modified to encourage judges to release an individual back to the community during their violation hearing unless the probation officer first applied three levels of graduated sanctions prior to seeking to violate the person.

### Delaware Governor, we ask that you:

- \_\_\_ Introduce a budget in the next budget cycle that doubles existing funding for community-based reentry service providers from 2019 levels.
- \_\_\_ Shut down Operation Safe Streets and the Governor's Task Force.

Delaware Attorney General, we ask the Delaware Department of Justice to:

- \_\_\_ Stop asking for probation sentences for low level crimes unless supervision is needed for public safety.
- \_\_\_ Expand diversion, community court, and restorative justice programs to keep low level offenders out of the system and off probation.
- \_\_\_ At contested violation hearings attended by your Office, stop asking for recommitment to state correctional facilities for technical violations.
- \_\_\_ Stop prosecuting cases that arose out of policing by, or involved, Operation Safe Streets and the Governor's Task Force.

## REFERENCES

- <sup>1</sup> The Sentencing Project, *State-by-State Data*, available at <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR> (last visited May 6, 2020).
- <sup>2</sup> Delaware Department of Correction, 2019 Annual Report, p. 21, available at [https://doc.delaware.gov/assets/documents/annual\\_report/DOC\\_2019AnnualReport.pdf](https://doc.delaware.gov/assets/documents/annual_report/DOC_2019AnnualReport.pdf). Delaware has a unified corrections system in which all people sentenced to incarceration are held under Delaware Department of Correction (“DOC”) jurisdiction. The DOC classifies its correctional population by Levels I-V, where Level V refers to people under 24-hour incarceration. In addition to four prisons that hold people under Level V supervision, the DOC operates five community corrections facilities, which include work release and residential drug treatment programs. These facilities typically house people on Level IV incarceration but can also house people under Level V supervision. At p. 8, this report uses the term “prison” to refer to the Level V facilities enforcing 24-hour incarceration while “state correctional facilities” refers to all Level V prisons and Level IV facilities.
- <sup>3</sup> See “Worst Offenders” List, Prison Policy Initiative, *Correctional Control 2018* (Dec. 2018), available at <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>.
- <sup>4</sup> According to the Delaware Department of Correction Annual Report, there were a total of 13,858 people on probation or parole as of June 30, 2019. Annual Report (2019), at p. 31, available at [https://doc.delaware.gov/assets/documents/annual\\_report/DOC\\_2019AnnualReport.pdf](https://doc.delaware.gov/assets/documents/annual_report/DOC_2019AnnualReport.pdf). Based on information provided by the Delaware Department of Correction, of these, 339 were on parole and the remaining 13,519 individuals were on probation.
- <sup>5</sup> These are referred to as “technical violations.” See SAC, *Recidivism in Delaware, Analysis of Offenders Released in 2013 through 2015* (Dec. 2019), p. 16, available at <https://sac.delaware.gov/wp-content/uploads/sites/64/2019/12/Recidivism2015Final.pdf>.
- <sup>6</sup> *Ibid.*, fig. 10b.
- <sup>7</sup> ACLU calculated the violation of probation (“VOP”) hearing numbers based on Judicial Information Center violation of probation docket calendars for all three courts (Superior Court, Court of Common Pleas, and Family Court) in all three counties (New Castle, Kent, and Sussex) where such JIC docket reports were available. In New Castle County, there were a total of 639 VOP hearings in October 2019 in all three courts. In Kent County, there were a total of 159 VOP hearings in the Court of Common Pleas in October 2019. In Sussex County, there were a total of 149 VOP hearings in the Court of Common Pleas in October 2019. Neither the Superior Court nor Family Court in either Kent or Sussex County use the state’s Judicial Information Center calendar system from which these statistics were derived. The total number of VOP hearings in the state in October 2019 is likely higher when accounting for these Kent and Sussex County courts’ unreported VOP hearings. No state agency in Delaware reports how many of these VOP hearings were for technical violations versus new offenses.
- <sup>8</sup> Statement on the Future of Community Corrections (Aug. 28, 2017), available at <https://justicelab.columbia.edu/statement-future-community-corrections>.
- <sup>9</sup> Vincent Schiraldi and Michael Jacobson, *When Less is More*, The Marshall Project (Aug. 28, 2017), available at <https://www.themarshallproject.org/2017/08/28/when-less-is-more>.
- <sup>10</sup> ACLU Smart Justice Delaware Blueprint, p. 15, available at <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-DE.pdf>.
- <sup>11</sup> This report uses the term “prison time” to refer to incarceration for more than a year and “jail time” to refer to incarceration for less than one year. Prison or jail time could be served in either a Level V prison facility, Level IV facility, or combination.
- <sup>12</sup> Protecting victims of crime is of paramount concern. In conducting research for this report, ACLU confirmed that violating a Do Not Contact Order constitutes a new crime. Accordingly, a person who violates a Do Not Contact Order could still be incarcerated where the case and public safety needs warrant.
- <sup>13</sup> See, e.g., Vincent Schiraldi, *Do We Really Need Probation and Parole?*, available at <https://thecrimereport.org/2019/01/24/do-we-really-need-probation-and-parole/>; David Muhammad, *How to End the Era of Mass Supervision* (Sept. 30, 2019), available at <https://chronicleofsocialchange.org/justice/how-to-end-the-era-of-mass-supervision/37846>.
- <sup>14</sup> Thomas MacLeish, SAC, CY2011 Superior Court Sentencing Report (Aug. 2012), p. 1, available at <https://sac.delaware.gov/wp-content/uploads/sites/64/2017/04/Superior-Court-Sentencing-Report-2011.pdf>. Note that this statistic accounts only for Superior Court sentences, and does not take into account violations of probation or charges resolved in Family Court or the Court of Common Pleas. This

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2011 data point is provided for reference because of the availability of the data due to the SAC report analyzing sentencing trends for 2011. This report on sentencing trends for the Superior Court does not appear to have been replicated in other years.

<sup>15</sup> Sentencing Accountability Commission, Statistical Analysis Center, *First Year Assessment of the 2003 Probation Reform Law's Impact on the Administration of Justice in Delaware* (January 15, 2005), p. v, available at <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/sb50-sb150-min.pdf>.

While data is available on the total number of people sent back to prison for probation violations that year (195 total), no data was available on the total number of people that appeared for a violation of probation hearing in 1987. Accordingly, this is not a true “apples to apples” comparison to the 8,588 figure but represents the best available data.

<sup>16</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2015 (Feb. 2017), available at <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.

<sup>17</sup> Cecelia Klingele, *Rethinking the Use of Community Supervision*, *Journal of Criminal Law and Criminology*, Vol. 103, Issue 4, p. 1024 (Fall 2013), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7463&context=jclc>. See also Sarah Mehta and Robin Gomila, *Set Up to Fail: Montana's Probation and Parole System*, at p. 10 (2018), available at

[https://www.aclumontana.org/sites/default/files/field\\_documents/setuptofailmontanasprobationparolesystem.pdf](https://www.aclumontana.org/sites/default/files/field_documents/setuptofailmontanasprobationparolesystem.pdf); Columbia Justice Lab, *Too Big to Succeed: The Impact of the Growth of Community Supervision*, at p. 5 (2018), available at [https://justicelab.columbia.edu/sites/default/files/content/Too\\_Big\\_to\\_Succeed\\_Report\\_FINAL.pdf](https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf).

<sup>18</sup> Delaware Department of Correction, 2019 Annual Report, at p. 42.

<sup>19</sup> Delaware Department of Correction, 2019 Annual Report, at p. 11.

<sup>20</sup> SENTAC, SAC, *First Year Assessment of the 2003 Probation Reform Law's Impact on the Administration of Justice in Delaware* (January 15, 2005), pp. v-1, available at <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/sb50-sb150-min.pdf>.

<sup>21</sup> Sentencing Accountability Commission of Delaware, *Sentencing Trends and Correctional Treatment in Delaware* (April 10, 2002), pp. 5-7, available at <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/sent-trends-min.pdf>. Level I-Restitution Only was actually created in 2003 but for clarity is referenced here.

<sup>22</sup> Further, in 1989, the Delaware General Assembly enacted a Truth in Sentencing law that abolished parole and mandated accountability in sentence lengths so that courts and the public could know the actual sentence that would be served by the defendant. See SB 50. See also Sentencing Accountability Commission of Delaware, *Sentencing Trends and Correctional Treatment in Delaware* (April 10, 2002), p. 8.

<sup>23</sup> Bureau of Justice Statistics, *Prisoners in 1987*, available at <https://www.bjs.gov/content/pub/pdf/p87.pdf>. A SENTAC report states that the prison population in 1987 was 2,979, a difference of 48 individuals. See SENTAC, *Sentencing Trends and Correctional Treatment in Delaware* (April 10, 2002), at 19.

<sup>24</sup> Bureau of Justice Statistics, *Probation and Parole 1987*, p. 2, available at <https://www.bjs.gov/content/pub/pdf/pp87.pdf>.

<sup>25</sup> SENTAC, *Sentencing Trends and Correctional Treatment in Delaware* (April 10, 2002), p. 19.

<sup>26</sup> Department of Justice, *National Correctional Population Reaches New High* (August 28, 2001), p. 4, available at <https://www.bjs.gov/content/pub/pdf/ppus00.pdf>.

<sup>27</sup> SENTAC, SAC, *First Year Assessment of the 2003 Probation Reform Law's Impact on the Administration of Justice in Delaware* (January 15, 2005), at p. 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, at p. 3

<sup>30</sup> “The growth of the violation of probation population has been extremely significant, though predictable. SENTAC anticipated growth in this population based on its focus on accountability.” SENTAC, *Sentencing Trends and Correctional Treatment in Delaware*, (April 10, 2002) at p. 22. Further, other “public safety” programs were designed to enhance punishment. In 1997, the implementation of Operation Safe Streets and the Governor’s Task Force caused a 33% increase in the number of probation violations—increasing the violation numbers from 2270 in 1997 to 3600 in 1999. SENTAC, SAC, *First Year Assessment of the Probation Reform Law's Impact on the Administration of Justice in Delaware* (Jan. 15, 2005), at p. 3., available at <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/sb50-sb150-min.pdf>.

<sup>31</sup> *Id.*, at p. vi.



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<sup>32</sup> *Id.*, at p. 15. This 13,400 number reflects individuals being actively supervised by Delaware probation officers under Level I, II, or III probation on August 4, 2004.

<sup>33</sup> Delaware Department of Correction. 2019 Annual Report (2019), at 31, *available at* [https://doc.delaware.gov/assets/documents/annual\\_report/DOC\\_2019AnnualReport.pdf](https://doc.delaware.gov/assets/documents/annual_report/DOC_2019AnnualReport.pdf). Of these, 339 were on parole. The remaining 13,519 individuals were on probation.

<sup>34</sup> Indeed, “the difference in the violation rates for [direct probation on] Levels I, II, and III pre and post SB50 [we]re not significant.” SENTAC, SAC, *First Year Assessment of the Probation Reform Law’s Impact on the Administration of Justice in Delaware* (Jan. 15, 2005), at 25. Further, for those sentenced even only to one year of probation following release from a Level IV or V facility, the Criminal Justice Council itself concluded that: “[I]t is clear that the reduced terms of probation will not reduce the numbers of probation violations to the extent hoped, thereby reducing Level IV and V admissions.” At p. 26.

<sup>35</sup> Delaware Department of Correction, Annual Report 2019, at p. 30.

<sup>36</sup> SAC, *Recidivism in Delaware: An Analysis of Prisoners Released 2013 through 2015*, at p. 16-19 (December 2019), *available at* <https://sac.delaware.gov/wp-content/uploads/sites/64/2019/12/Recidivism2015Final.pdf>.

<sup>37</sup> Using definitions from scholarly articles, ACLU defines a “technical violation of probation” as any arrest of, or administrative warrant issued for, a person on probation for any failure to comply with a condition of probation that does not independently constitute a new crime under Delaware law. *See, e.g.*, Michael Ostermann, Laura Salerno, and Jordan Hyatt, *How Different Operationalizations of Recidivism Impact Conclusions of Effectiveness of Parole Supervision*, *Journal of Research in Crime & Delinquency* 52 (6): 771, 774 (2015) (defining technical parole violations as “noncriminal rule infractions such as missing appointments, breaking curfews, or changing addresses without alerting one’s probation officer”); Christopher Campbell, *It’s Not Technically a Crime*, *Criminal Justice Policy Review* 27 (7) 643, 644 (2016) (defining technical violations as violations of “non-criminal conditions”). For example, while possession of a controlled substance is a crime under Title 16 of the Delaware Code, based on ACLU’s research there is no code provision defining a failed drug test as a unique crime. The SAC defines “technical violations” similarly, and explicitly defines action like a failed drug test, missed meeting with a probation officer, and missed curfew as “technical violations.” According to the SAC report, technical violations account for any violation of one of the 13 conditions of probation other than Condition 1 (which requires that the person on probation not commit a new criminal offense). The 13 conditions of probation are discussed later in the report. SAC, *Recidivism in Delaware: An Analysis of Prisoners Released 2013 through 2015*, at p. 16 (Dec. 2019). However, SAC has a separate method to code what it refers to as violations of “program conditions.” According to SAC, “program violations are typically the result of violating treatment program rules, fighting with other offenders or staff while in a treatment facility, bringing contraband into the facility, or absconding from a facility.” *Id.* Because none of these program violations were reported as a new offense, ACLU classified these program violations as technical violations based on its above-referenced definition.

<sup>38</sup> SAC, *Recidivism in Delaware: An Analysis of Prisoners Released 2013 through 2015*, at p. 16-19 (December 2019).

<sup>39</sup> *Id.*, at p. 17.

<sup>40</sup> *Id.*, *See also*, SAC, *Recidivism in Delaware: An Analysis of Prisoners Released in 2011 through 2013* (2017), at p. 20, *available at* <https://sac.delaware.gov/wp-content/uploads/sites/64/2018/01/Recidivism-2011-2013.pdf> (66% of the violation reports claimed the person on probation violated a special condition, 59% claimed the person on probation was possession or consumption of drugs and/or alcohol, and 49% were for failure to report to the supervising officer).

<sup>41</sup> SAC, *Recidivism in Delaware: An Analysis of Prisoners Released in 2011 through 2013*, p. 20 (2017).

<sup>42</sup> Kathleen Jennings, Memorandum to Deputy Attorneys General and Staff (Feb. 15, 2019), *available at* <https://news.delaware.gov/files/2019/02/Memo-Internal-Policy-Changes-2.15.pdf>.

<sup>43</sup> Interview with Employee of First State Community Action Agency (Dec. 11, 2019).

<sup>44</sup> Delaware News, *Delaware to Participate in National Criminal Justice Reform Project* (Mar. 27, 2017), *available at* <https://news.delaware.gov/2017/03/27/delaware-to-participate-in-national-criminal-justice-reform-project/>.

<sup>45</sup> Delaware Dep’t of Correction, Annual Report 2019, at 39 (2019).

<sup>46</sup> Gary Zarkin, *Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Justice Costs* (Jan. 9, 2013), *available at* <https://www.newswise.com/articles/study-replacing-prison-terms-with-drug-abuse-treatment-could-save-billions-in-criminal-justice-costs>.

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<sup>47</sup> Delaware Statistical Analysis Center, *Recidivism in Delaware: An Analysis of Prisoners Released 2013 through 2015*, at p. 17 (December 2019); SAC, *Recidivism in Delaware: An Analysis of Prisoners Released in 2011 through 2013*, at p. 20 (2017).

<sup>48</sup> Jon Berg, et al., Substance Abuse and Mental Health Services Administration, *Breaking the Cycle: Medication Assisted Treatment (MAT) in The Criminal Justice System* (Mar. 15, 2019), available at <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*, *Subst Abus.* 2012 ; 33(1): 9–18. doi:10.1080/08897077.2011.611460, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3295578/pdf/nihms359080.pdf>, P. 1.

<sup>49</sup> Scottie Andrew, *Prison Inmates 40 Times More Likely to Die from Opioid Overdose Two Weeks After Release*, *Newsweek*, (July 21, 2018), available at <https://www.newsweek.com/study-opioid-deaths-40-times-more-likely-prisoners-1035281>; Editorial, *If Addiction is a Disease, Why is Relapsing a Crime?*, *New York Times*, May 29, 2018, available at <https://www.nytimes.com/2018/05/29/opinion/addiction-relapse-prosecutions.html?searchResultPosition=2>.

<sup>50</sup> Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry*, 41 N.M. L. Rev. 421, 448 (2011).

<sup>51</sup> This sentiment is shared by many individuals who have attended a Reentry Simulation. See, e.g., Delaware Business Now, *New Start partners with Human Resources group to simulate reentry from corrections system* (Sept. 13, 2019), available at <https://delawarebusinessnow.com/2019/09/new-start-partners-with-human-resources-group-to-simulate-reentry-from-corrections/>.

<sup>52</sup> 11 Del. Code § 4333.

<sup>53</sup> According to one DOC official, the rate of LSI-R overrides, where a probation officer requested a different level of supervision other than what the assessment recommended, was 11-12% during the 2018 calendar year. Previously, probation officers superseded LSI-R recommendations 15% of the time. Interview with DOC official (April 11, 2019).

<sup>54</sup> The exception to this is zero tolerance probation orders, that require the probation officer, by judicial order, to violate the person on probation for any breach of a probation condition.

<sup>55</sup> See 11 Del. Code § 4334(d). According to one DOC official interviewed, graduated sanctions can be used instead of incarceration. This official noted that she would like to see graduated sanctions utilized more. DOC also reported that graduated sanctions are starting to be used more frequently. Since 2014, the Department's use of graduated sanctions has increased 102% (from 2,185 in 2014 to 4,411 in 2019). The nature of these graduated responses is unknown.

<sup>56</sup> For example, a sentencing order may say that for a particular charge, the person must serve 5 years at Level V, suspended after 3 years, followed by 1 year of probation. This means a person can leave prison after 3 years. However, if they violate probation, they can ultimately face up to 5 years for that particular charge, meaning that the judge can require them to serve up to 2 more additional years in prison for a probation violation.

<sup>57</sup> According to DOC, the decision on whether to use an administrative warrant, request a capias, or request a summons for a VOP is based on case specific factors as guided by Probation and Parole policy.

<sup>58</sup> Interview with Public Defender, Office of Defense Services (September, 2019).

<sup>59</sup> Cecelia Klingele, *Rethinking the Use of Community Supervision*, *Journal of Criminal Law and Criminology*, Vol. 103, Issue 4, pg. 1028-29 (Fall 2013), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7463&context=jclc>.

<sup>60</sup> Id., pg. 1031.

<sup>61</sup> Interview with Person on Probation (April 18, 2019).

<sup>62</sup> Interview with Person on Probation (April 18, 2019).

<sup>63</sup> Mario Paparozzi and Paul Gendreau, *An Intensive Supervision Program That Worked: Service Delivery, Professional Orientation, and Organizational Supportiveness*, *The Prison Journal* (Dec. 2005).

<sup>64</sup> Cecelia Klingele, *Rethinking the Use of Community Supervision*, *Journal of Criminal Law and Criminology*, Vol. 103, Issue 4, pg. 1038 (Fall 2013), citing Celesta Albonetti & John Hepburn, *Probation Revocation: A Proportional Hazards Model of the Conditioning Effects of Social Disadvantage*, 44 Soc. Probs. 124, 135 (1997).

<sup>65</sup> SAC, *Wilmington Shootings 1996, A Comprehensive Study of Victims and Offenders in Wilmington, DE*, p. 9 (Mar. 1997), available at [https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/crime\\_wilmington\\_shootings\\_1996-min.pdf](https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/crime_wilmington_shootings_1996-min.pdf).

<sup>66</sup> Beth Welch, *Operation Safe Streets: Delaware's Unique Law Enforcement Initiative*, at p. 3 (Feb. 1, 2003), available at <https://docs.google.com/document/d/1qAUVyxO-fH5JBdDUtCXe99FvcEgULeSP1ktqb3ZPbRw/edit?pli=1>.

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- <sup>67</sup> Beth Welch, *Operation Safe Streets: Delaware's Unique Law Enforcement Initiative*, at p. 4 (Feb. 1, 2003) (emphasis added).
- <sup>68</sup> Information obtained from the Delaware Department of Corrections on March 6, 2020, pursuant to a Freedom of Information Act Request filed by the American Civil Liberties Union of Delaware.
- <sup>69</sup> SAC *Operation Safe Streets/Governor's Task Force Review and Impact* (Dec. 2004), available at <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/oss-gtf-20041207-min.pdf>.
- <sup>70</sup> SAC, *Operation Safe Streets/Governor's Task Force 2005 Annual Report* (Sept. 2006), available at [https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/05\\_OSS\\_GTF\\_Annual\\_Report-min.pdf](https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/05_OSS_GTF_Annual_Report-min.pdf).
- <sup>71</sup> SAC, *Operation Safe Streets/Governor's Task Force 2005 Annual Report*, p. 14 (Sept. 2006), available at [https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/05\\_OSS\\_GTF\\_Annual\\_Report-min.pdf](https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/05_OSS_GTF_Annual_Report-min.pdf).
- <sup>72</sup> Department of Justice, U.S. Attorney's Office, Wilmington Drug Trafficker Brian Wilson Sentenced to 21 Years in Federal Prison (March 1, 2019), available at <https://www.justice.gov/usao-de/pr/wilmington-drug-trafficker-brian-wilson-sentenced-21-years-federal-prison> (stating that "The FBI Delaware Violent Crime Safe Streets Task Force is a part of the New Castle County HIDTA, comprised of the Delaware State Police, Delaware Department of Probation and Parole, New Castle County Police Department, University of Delaware Police Department, and Wilmington Police Department.").
- <sup>73</sup> Urban Institute, *Examining Racial and Ethnic Disparities in Probation Revocation: Summary Findings and Implications from a Multisite Study*, p. 3 (2014), available at <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>.
- <sup>74</sup> J. Mitchell Miller, Holly Ventura Miller, and J. C. Barnes, *Treating Co-Occurring Disorders in Jails: Outcome Findings From a Second Chance Act Offender Reentry Program*, *Crime & Delinquency* Vol. 65 (5), p. 583, 585 (Aug. 2018), available at <https://journals.sagepub.com/doi/10.1177/0011128718789860#>.
- <sup>75</sup> *Ibid.*, p. 583, 586 (Aug. 2018), available at <https://journals.sagepub.com/doi/10.1177/0011128718789860#>.
- <sup>76</sup> Sheldon X. Zhang, Robert E. L. Roberts, & Valerie J. Callanan, *Preventing Parolees from Returning to Prison through Community-Based Reintegration*, *Crime & Delinquency Journal*, Vol. 52 (4), p. 551 (2006), available at <https://journals.sagepub.com/doi/abs/10.1177/0011128705282594>; Anthony A. Braga, Anne M. Piehl, and David Hureau, *Controlling Violent Offenders Released to the Community: An Evaluation of the Boston Reentry Initiative*, *Journal of Research in Crime and Delinquency*, Vol. 46 (4), p. 411 (2009), available at <https://journals.sagepub.com/doi/abs/10.1177/0022427809341935>.
- <sup>77</sup> William L. Chapman, Jr. and Charles M. Oberly III. Final Report: Independent Review of Security Issues at the James T. Vaughn Correctional Center p. 74, fig. 4, available at <https://governor.delaware.gov/wp-content/uploads/sites/24/2017/08/JTVCC-Independent-Review-Team-FINAL-Report-1.pdf>.
- <sup>78</sup> *Id.*
- <sup>79</sup> Office of the Governor, John Carney, Executive Order No. Twenty-Seven, Creating the State of Delaware Correctional Reentry Commission (Dec. 4, 2018), available at <https://governor.delaware.gov/executive-orders/eo27/>.
- <sup>80</sup> Office of the Governor, John Carney, Executive Order No. Twenty-Seven, Creating the State of Delaware Correctional Reentry Commission (Dec. 4, 2018).
- <sup>81</sup> Delaware Department of Correction, Annual Report 2019, p. 16 (2019).
- <sup>82</sup> ACLU did not independently confirm any of the factors studied by PrisonEd Foundation. The Foundation looked at four different data points to determine what states make it easiest for formerly incarcerated people to return to society: the number of reentry programs, the number of current and ex-inmates, background restrictions, and re-incarceration percentages or recidivism rates. See PrisonEd Foundation, *The 10 Best and Worst States for Recently Released Inmates* (2019), available at <https://www.prisonedfoundation.org/post/the-10-best-and-worst-states-for-recently-released-inmates>.
- <sup>83</sup> Christy A. Visher & Jeremy Travis, *Life on the Outside: Returning Home after Incarceration*, *Prison Journal*, Vol. 91(3), p. 102S, 112S (Aug. 19, 2011), available at <https://journals.sagepub.com/doi/10.1177/0032885511415228>.
- <sup>84</sup> *Id.*
- <sup>85</sup> Project New Start, *Program Profile* (last visited May 10, 2020), available at <https://www.project-new-start.org/program-profile>.
- <sup>86</sup> See Project New Start, *Impact* (last visited Mar. 16, 2020), available at <https://www.project-new-start.org/impact>, more recent information provided by Project New Start (May 5, 2020).
- <sup>87</sup> Hope Commission, Achievement Center Website (last visited Mar. 17, 2020), available at <https://www.wilmhope.org/the-achievement-center/>.
- <sup>88</sup> Hope Commission, Snapshot of the Achievement Center from July 1, 2018-June 1, 2019.
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<sup>89</sup> Jill Walters is the Clinical Director and Behavioral Health Specialist at the HOPE Commission.

<sup>90</sup> Interview with J. Walters (October 19, 2019).

<sup>91</sup> Vincent Schiraldi, *Do We Really Need Probation and Parole?* (Jan. 24, 2019).

<sup>92</sup> 11 Del. Code § 4333(b).

<sup>93</sup> See 11 Del. Code § 4333(d), stating that probation caps of 2 years for violent felonies, 18 months for drug crimes, and 1 year for most other crimes, do not apply to sex offenses or violent crimes if the sentencing court finds that public safety will be enhanced or the person will be less likely to reoffend if a longer probation sentence is imposed. Further, these caps do not apply where a person committed a crime while already on probation. 11 Del. Code § 4333(c).

<sup>94</sup> 11 Del. Code § 4333(d)(3).

<sup>95</sup> SAC, *Recidivism in Delaware: An Analysis of Prisoners Released 2013 through 2015*, p. 16 (December 2019).

<sup>96</sup> The Federal Reserve, *Report on the Economic Well-being of U.S. Households in 2017*, p. 21 (May 2018), available at <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

<sup>97</sup> Good time” is earned by incarcerated people for good behavior and participation in educational or treatment programs. Accumulated good time is applied to shorten a prison sentence.

<sup>98</sup> A Delaware statute enacted in 2012, 11 Del. Code § 4383(c), requires that anyone released after August 2012 have their conditional release time run concurrently with their probationary period.

<sup>99</sup> Vincent Schiraldi, *Do We Really Need Probation and Parole?* (Jan. 24, 2019).

<sup>100</sup> Statement on the Future of Community Corrections (Aug. 28, 2017), available at <https://justicelab.columbia.edu/statement-future-community-corrections>.





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