REVOKED
How Probation and Parole Feed Mass Incarceration in the United States
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Revoked
How Probation and Parole Feed Mass Incarceration in the United States

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Summary

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

–James Yancey, Georgia defense attorney

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

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

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

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

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

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

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

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

The root causes of these violations, the report documents, are often a lack of resources and services, unmet health needs, and racial bias. The report also draws attention to marked racial disparities in who is subjected to supervision and how authorities enforce it.
In practice, supervision in many parts of the US has become a system to control and warehouse people who are struggling with an array of economic and health-related challenges, without offering meaningful solutions to those underlying problems.

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

**Set Up to Fail**

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

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

Navigating supervision is difficult and in many cases not possible without money, reliable transportation, stable housing, and access to health services. Yet few people under supervision have these resources—and supervision departments are in many cases failing to provide them. “They just gave us a sentence and put us on the street with nothing and expect us to follow rules and make stuff happen,” a man incarcerated for violations in Wisconsin told us. A young mother in Pennsylvania, who had long struggled with substance use disorder, explained, “I asked for programs but . . . [probation] didn’t want to hear that I need help; they just gave me time.”
Many supervision officers interviewed for this report said that they regularly connect people with services, and that re-entry resources have increased in recent years. Yet even more officers we spoke to, and several judges, said that they wished they had more resources. Some people under supervision that we interviewed did report that certain programs were helpful, but the vast majority did not feel that way.

**Conduct Triggering Violations**

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

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

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

**Few Procedural Protections, Disproportionate Penalties**

Basic rights in criminal proceedings, such as the exclusion of illegally obtained evidence and burden of proof beyond a reasonable doubt, generally do not apply during “revocation hearings,” which determine whether someone violated their supervision conditions and
the appropriate punishment. Many jurisdictions also limit access to lawyers for revocation proceedings.

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

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

**Feeding Mass Incarceration**

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

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

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

In Wisconsin from 2017 to 2019, rule violations accounted for more than 61 percent of all supervision sanctions. In Pennsylvania, rule violations comprised 41 percent of prison
admissions for state parole violations and 78 percent of probation revocations from 2016 to 2019. We were only able to obtain limited data for Georgia.

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

**Rooted in Disadvantage**

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

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

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

High numbers of people are incarcerated for using drugs, including people who are struggling with substance use disorder. Many judges and supervision officers we spoke to argue that jailing people is necessary to stop them from harming themselves or others. But incarceration is, per se, a disproportionate response to personal drug use. It’s also ineffectual public health policy; health experts largely disagree that incarceration helps
people recover from substance use disorder. Rather, they assert, governments should invest in voluntary, community-based, harm-reduction services and evidence-based treatment, such as Medication-Assisted Treatment and programs that do not mandate abstinence, since relapse is a normal and expected part of recovery.

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

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

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

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

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

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

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

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

Additionally, court systems are increasingly diverting people charged with certain crimes away from criminal prosecutions. Meanwhile, for certain behavior that causes harm, some communities are developing restorative justice processes, which aim to hold people accountable for their actions and support those who have been harmed but encourage measures like service in and for communities, restitution, and acknowledging and apologizing for wrongdoing, over incarceration as a solution.
Supervision Amidst Covid-19

The research for this report was completed before the World Health Organization declared Covid-19 a global pandemic in March 2020.\(^1\) Since then, the danger posed to those on supervision and in jails and prisons has become abundantly clear, making the findings of this report even more urgent.

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

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Across the country, community-led organizations are helping to improve people's access to re-entry supports and services. Many people on supervision credit these organizations—often which, unlike most supervision-mandated programs, use harm-reduction models and infectious diseases like Covid-19, given conditions of confinement including cramped quarters and a general lack of adequate sanitation and hygiene.5

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

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

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

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

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

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

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

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

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

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

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

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

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

Federal Supervision

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

State vs. County Supervision

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

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


Some counties in at least eight states, including Georgia, contract with private probation companies to manage and carry out supervision monitoring and compliance. Human Rights Watch has previously documented distinct human rights concerns related to private probation.\(^3\)

**Supervision Officers**

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

**Violation**

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

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

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

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

**Detainer**

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

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

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

**Revocation Proceedings**

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

Proceedings begin with the filing of a “revocation petition” by the supervision officer, which outlines the alleged violations of supervision. Generally, the supervision officer also files a detainer.
Judges typically oversee probation revocation proceedings, while parole boards generally conduct these proceedings for parole violations. In some states, such as Wisconsin, Administrative Law Judges handle all revocation proceedings.

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

**Preliminary Hearing**

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

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

**Final Hearing**

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

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


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

most states, the revocation determination is based on the preponderance of the evidence standard.\footnote{19}

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

**Types of Violations**

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

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

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

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


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

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

Incarceration

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

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

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

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

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

Interviews and Observations

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

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

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

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23 This report uses the term expressed by the interviewee when referring to their identity, and uses the term Latinx when referring generally to people of Latin American origin or descent. Because some databases do not include “Latinx” or “Hispanic” as a race, and Human Rights Watch did not ask everyone their ethnic or racial identification, Latinx individuals may be undercounted among those we interviewed.
Supervision departments in Montgomery County, Delaware County, and Philadelphia County, Pennsylvania, did not respond to our March 6, 2020 request for interviews.

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

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

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

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

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

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

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

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

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

Data Requests and Quantitative Analysis
Human Rights Watch conducted original analysis of data available online through the Bureau of Justice Statistics.

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

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

Wisconsin

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

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

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

25 Human Rights Watch e-mail correspondence with Megan Jones, December 18, 2019 (on file with Human Rights Watch).
26 WI DOC refers to revocations for rule violations as “revocation only” prison admissions, and to revocations for new offense violations as “revocation new sentence” admissions. See Wisconsin Department of Corrections, Division of Adult Institutions, “Admissions to Prison Dashboard,” https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx (accessed June 28, 2020).
27 “Other” includes people incarcerated pending revocation proceedings or serving sanctions short of revocation, such as prison-based treatment programs, as well as people serving sentences from another state. Ibid.
sentence. Accordingly, people imprisoned for rule violations in the prison admissions dataset may or may not have been accused of conduct that allegedly constituted a crime.

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

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

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

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29 Wisconsin Department of Corrections response to Human Rights Watch public records request (on file with Human Rights Watch).
30 Data provided by Wisconsin Department of Corrections to Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).
Pennsylvania

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

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

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

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

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

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31 Human Rights Watch e-mail correspondence with David Butts, May 21, 2020 (on file with Human Rights Watch).
“rule” and “new offense” violations. Accordingly, some counties may have included alleged criminal conduct that did not result in a conviction as a “new offense” violation, while others may have only considered conduct that resulted in a conviction to be a “new offense” violation. Given broad categorizations, we could not meaningfully analyze the underlying conduct that led to revocation.

Georgia

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

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

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

Note on State Selection

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

32 Human Rights Watch e-mail correspondence with Matthew Kleinman and Mark Bergstrom, Pennsylvania Sentencing Commission, April 2020 (on file with Human Rights Watch).
33 Ibid.
34 For instance, the top three rule violation types were “multiple instances of violations” (42 percent); “any single instance of a violation,” (16 percent); and “other” (15 percent). Pennsylvania Sentencing Commission, “Revocation and Resentencing Data Analysis for Resentencing Guidelines,” 2019, http://pcs.la.psu.edu/guidelines/resentencing/resentencing-analysis-2019, Exhibit 8.
extensive desk research. We chose to highlight Pennsylvania, Wisconsin, and Georgia because these states had high numbers and proportions of people incarcerated for supervision violations and racial disparities in their data. Each state also presented advocacy opportunities.
Background: Supervision in the United States

History of Supervision

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

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

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

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39 Ibid.


42 Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1026.
member would monitor the individual, set rules, and help them reintegrate, typically for about six months. Those who followed all conditions were set free, while those who violated the rules faced re-incarceration.

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

Transformation of Supervision

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

44 Ibid.
46 Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1023.
47 John Ehrlichmann, President Nixon’s policy advisor, admitted, “The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.” Dan Baum, “Legalize It All,” Harper’s Magazine, April 2016, https://harpers.org/archive/2016/04/legalize-it-all/.
publicized study argued that “nothing works” to rehabilitate people. As a result, political consensus shifted away from rehabilitation towards punishment and incarceration as a solution to conduct considered criminal.

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

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

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


55 Ibid.
The use of supervision also skyrocketed. As incarceration in the United States grew nearly five-fold between 1980 and 2007, from about 500,000 to 2.3 million, the population under parole (220,400 to 826,100) and probation (1.1 million to 4.3 million) grew almost four-fold.\[59\]


One in 55 Adults in the US is on Probation or Parole
By State, 2016:

Source: PEW Charitable Trusts, Probation and Parole Systems Marked by High Stakes, Missed Opportunities, 2018,
Supervision Today

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

In Wisconsin, one in every 69 adults, or 66,400 people, were under supervision as of 2016. In Pennsylvania, the number was one in every 35 adults, or 296,200 people. And in Georgia it was one in every 18 adults, or 430,800 people.

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

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61 Danielle Kaeble and Mary Cowhing, “Correctional Populations in the United States, 2016,” Table 1. While, as discussed throughout this report, probation generally entails monitoring and reporting requirements, some of these individuals serving probation serve “non-reporting” probation, which does not involve reporting requirements. Ibid, p. 6; see, for example, Maricopa County, Arizona, “Unsupervised Probation,” updated November 12, 2019, https://superiorcourt.maricopa.gov/apd/unsupervised/.
62 Danielle Kaeble and Mary Cowhling, “Correctional Populations in the United States, 2016,” Table 1.
63 Michelle Phelps and Caitlin Curry, “Supervision in the Community,” p. 1; Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1016-17 (US incarceration rate is seven times that of western European nations).
65 Ibid.
66 Ibid.
Nationwide, most supervision sentences are imposed for low-level conduct. At the end of 2016, one quarter of probation and parole terms were imposed for property crimes, another quarter were imposed for drug crimes—which, nationwide, are overwhelmingly for personal possession—14 percent were imposed for public order offenses, and 22 percent were imposed for crimes considered violent. Some scholars argue that, rather than using probation instead of incarceration (“leveling down”), judges and prosecutors also use probation in cases that would otherwise have triggered less severe sanctions (known as “leveling up”), such as fines or community service. In Georgia for example, courts routinely sentence people to probation for traffic infractions if they cannot pay the required fines and fees on their court date.

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

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

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

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

By offense, 2016:

- **Property**: 25%
- **Drug**: 25%
- **Violent**: 22%
- **Public order**: 14%
- **Other**: 13%
- **Weapon**: 1%


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

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

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

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

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79 Ibid.
80 Under Georgia law, if a person commits a second felony offense, such as shoplifting over $500, and the prosecutor files a “recidivist” sentencing enhancement notice, then the judge must sentence the individual to the maximum available sentence—in the case of felony shoplifting, 10 years. However, the judge can order the individual to serve the sentence on probation or in prison. O.C.G.A. § 7-10-17; O.C.G.A. § 16-8-14.
81 Wis. Stat. § 961.41(1)(cm)(4) (classification); Wis. Stat. § 939.50 (penalties).
83 Ebony L. Ruhland, et al., “The Continuing Leverage of Releasing Authorities,” p. 38; Alexis Lee Watts, “Probation In-Depth,” p. 2; Wisconsin Department of Corrections, “Community Corrections – General Information,” https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx#supervision (early discharge possible for certain people under probation after serving 50 percent of their probation term if they satisfy all conditions, pay all court costs, including supervision fees, and have no outstanding warrants); 42 Pa.C.S. § 9771 (court has inherent power to terminate probation); O.C.G.A. § 17-10-1 (early termination of probation, and transfer to “unsupervised” status, in certain cases provided people pay all restitution).
84 Ibid.
Meanwhile, in at least 13 states, including Wisconsin and Pennsylvania, an individual's supervision term can be extended for failing to pay certain court debt.\[86\]

**Who is Under Supervision: Race and Class Disparities**

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

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

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\[88\] Ibid.


\[90\] Ibid.


\[93\] Samantha Melamed and Dylan Purcell, “The Probation Trap.”
People under supervision are also disproportionately low-income. \(^{94}\) Two-thirds of people on probation make less than $20,000 a year, and two in five people on probation make under $10,000 a year—far below the poverty line. \(^{95}\)

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

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\(^{95}\) Ibid.


\(^{97}\) Idrrees Kahloon, “Poor America,” Economist, September 28, 2019, p. 6.

\(^{98}\) Ibid.

African-Americans are overrepresented in probation and parole.
Supervision rates, 2016:

1 in 81 White People on Probation or Parole

1 in 23 Black People on Probation or Parole

I. Requirements of Supervision

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

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

Burdensome Conditions

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

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102 Cecelia Klingele, “Rethinking Community Supervision,” p. 1035-1036. Pennsylvania’s standard conditions are set by statute. See 37 Pa. Code § 63.4 (standard parole conditions); 42 Pa. C.S. § 9763 (standard probation conditions). Georgia sets probation conditions by statute, O.G.C.A. § 42-8-35(a), but only requires guidelines be followed for parole conditions. O.G.C.A. § 42-9-44. Georgia’s Department of Community Supervision has developed standard parole conditions in accordance with the statute. See Georgia Department of Community Supervision, “Standard Conditions of Supervision,” https://dcs.georgia.gov/standard-conditions-supervision. Wisconsin imposes standard conditions by regulation. Wisconsin Department of Corrections, “Standard Rules of Community Supervision,” https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx. In some jurisdictions, judges or the parole board set supervision conditions, while in other jurisdictions, such as Wisconsin, supervision officers can also set conditions. Cecelia Klingele, “Rethinking Community Supervision,” p. 1035-1036; Wisconsin Department of Corrections, “Community Corrections General Information,” https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx.
104 See, for example, Supervision Conditions, Wayne Murphy (on file with Human Rights Watch); Supervision Conditions, Earnest Burgess (on file with Human Rights Watch).
Conditions of supervision for Earnest Burgess following a 2011 conviction in Milwaukee, Wisconsin, for drug possession. Given all these conditions, Burgess said he wondered, “Are you trying to rehabilitate me, or are you trying to punish [me]?” (Document provided by Earnest Burgess.)
Children Under Supervision

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

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

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

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

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


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

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

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

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

\begin{flushright}
\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
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Vague and Unreasonable Conditions

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

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

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

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

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\(^{123}\) O.G.C.A. § 42-8-35(b).


\(^{125}\) Sarah Shannon et. al, “The Growth, Scope, and Spatial Distribution of People With Felony Records in the

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

**Program Requirements**

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

Programs can create their own barriers to rehabilitation. In many cases, for example, people must pay for these programs themselves. Anger management courses in Bucks County, Pennsylvania, near Philadelphia, cost $45 per class plus a $100 intake fee. A violence prevention program in Lehigh County, in southeastern Pennsylvania, costs $240. As Philadelphia Judge Karen Simmons acknowledged, unaffordable fees can lead people right back to court for “failure to pay” violations.


Ibid.


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

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

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

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

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

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

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

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

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

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

Supervision conditions generally require people to frequently report to an officer—monthly, biweekly, or even weekly. We spoke with many people who had to travel upwards of an hour from their home to the supervision office. For example, Romelo Booker explained that he had to take three...
buses, taking an hour and a half each way, to get to his weekly supervision appointments in Milwaukee, Wisconsin.\footnote{Human Rights Watch interview with Romelo Booker, November 20, 2019.}

Many judges and supervision officers interviewed for this report said the conditions placed on people during supervision ensure people get needed services, such as job training, education, and treatment, that they believe will stop them from committing crimes.\footnote{Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019; Human Rights Watch interview with Judge Timothy Hinkfuss, Green Bay, Wisconsin, November 22, 2019; Human Rights Watch interview with Judge John Edwards, December 10, 2019; Human Rights Watch telephone interview with Marc Altstatt, supervision officer, Chatham County, Georgia, March 9, 2020; Human Rights Watch telephone interview with Melanie Hasty, supervision officer, Lowndes County, Georgia, March 9, 2020; Human Rights Watch telephone interview with Danielle Paskins, supervision officer, Lowndes County, Georgia, March 10, 2020.} “I know defendants just want to get out [of jail without conditions] but that doesn’t address the root of the problem,” Lowndes County, Georgia, Judge John Edwards said, explaining why he imposes conditions such as substance use treatment.\footnote{Human Rights Watch interview with Judge John Edwards, December 10, 2019.}

Increasingly, supervision departments are reforming their policies and practices to better address peoples’ unique needs—for instance, asking people what services would be useful, or holding meetings in their communities rather than the supervision office, supervision officers said.\footnote{Human Rights Watch telephone interview with Niel Thoreson, regional chief, Milwaukee, Wisconsin Department of Corrections, Division of Community Corrections, December 5, 2019; Human Rights Watch telephone interview with Marc Altstatt, March 9, 2019; Human Rights Watch telephone interview with Danielle Paskins, March 10, 2020; Human Rights Watch telephone interview with Melanie Hasty, supervision officer, March 9, 2020.} However, these reforms take time to fully implement, they said.\footnote{Ibid.} Also, neither supervision officers nor courts usually have significant expertise in addressing people’s health, drug treatment, or other needs.\footnote{Nikhil Tomar, et al., “Statewide Mental Health Training for Probation Officers: Improving Knowledge and Decreasing Stigma,” \textit{Health and Justice Journal}, November 15, 2017, https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-017-0057-y; Jessica Reichert and Lily Gleicher, “Probation Clients’ Barriers to Access and Use of Opioid Use Disorder Medications,” \textit{Health & Justice Journal}, May 28, 2019, https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-019-0089-6; Physicians for Human Rights, “Neither Justice nor Treatment: Drug Courts in the United States,” 2017, https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf, p. 3, 13.} “I didn’t go to school to be a social worker or a teacher, so I don’t have a lot of the background” necessary to connect people with services, said Matthew Ours, a supervision officer in Rock County, Wisconsin, south of Madison.\footnote{Human Rights Watch telephone interview with Matthew Ours, supervision officer, Rock County, Wisconsin, June 18, 2020.} The vast majority of people on supervision interviewed for this report said they did not receive meaningful support from their supervision officers.
Some judges and supervision officers recognize that, given the vast and often irrelevant conditions imposed, supervision frequently sets people up to fail.⁵⁵⁰ “I don’t want to say it’s designed to set [people] up for failure . . . but it seems like it comes out that way, keeping them on that tightrope,” said a Supervision Officer in Dodge County, Wisconsin.⁵⁵¹ Philadelphia Judge Simmons reflected that, if she had to report to a judge every week for years on end, she would probably fail at some point. “[T]he odds are that I’m probably gonna do something [wrong], because I’m not perfect.”⁵⁵² Similarly, Georgia Department of Community Supervision (DCS) Commissioner Michael Nail admitted, “I’m not sure I’d make it under probation with all these conditions.”⁵⁵³

High Costs

Supervision is expensive. Criminal convictions already carry fines, fees, and restitution costs that can easily total thousands of dollars.⁵⁵⁴ On top of this, just being on supervision each month costs the person under supervision $20-60 in Wisconsin,⁵⁵⁵ $30-49 in Georgia,⁵⁵⁶ and $25-65 in Pennsylvania.⁵⁵⁷ Electronic monitoring in Wisconsin can cost up

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⁵⁵⁰ Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020; Human Rights Watch telephone interview with Michael Nail, commissioner, Georgia Department of Community Supervision, February 19, 2020.

⁵⁵¹ Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.

⁵⁵² Human Rights Watch interview with Judge Karen Yvette Simmons, October 29, 2019


to $700 per month. In Sullivan County, in rural northern Pennsylvania, probation can require routine drug testing and each test costs $30. In Dodge County, Wisconsin, north of Milwaukee, a drug and alcohol treatment assessment costs $250. In addition, 43 states, including Georgia and Wisconsin, charge poor people a fee to cover part of the costs of court-appointed lawyers, ranging from $10 in California to $500 in parts of Georgia.

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

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


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

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

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

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

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

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Few Resources

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

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

Yet across all three focus states, supervision officers, judges, and attorneys largely agree that there are not enough resources to meet peoples’ needs.\(^{174}\) While the number of people under supervision has soared over the last half century—leading to average caseloads nationwide of above 100 supervisees per officer\(^{175}\)—the resources for community programs

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

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


\textsuperscript{178} Wisconsin Department of Corrections, “About Community Corrections,” https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/Default.aspx (“The mission of the Division of Community Corrections is to enhance public safety through the management and reduction of offender risk by providing supervision and collaboration with community partners to assist offenders to change their behavior and repair the harm they have done.”); Philadelphia Adult Probation and Parole Department, mission document, https://courts.phila.gov/pdf/site/appd.pdf (“The mission of the Philadelphia Adult Probation and Parole Department is to protect the community by intervening in the lives of Offenders.”); Delaware County Court of Common Pleas, “Adult Probation and Parole,” https://www.delcopa.gov/courts/app/index.html (“The overall mission of Delaware County Adult Probation and Parole Services is to ensure that the community is protected and that all defendants are held accountable to comply with the terms of any sentence imposed by the Court of Common Pleas.”); Georgia Department of Community Supervision, “Our Mission,” https://dcs.georgia.gov/about-us/our-mission (“As an integral part of the criminal justice system, we protect and serve all Georgia citizens through effective and efficient offender supervision in our communities, while providing opportunities for successful outcomes.”); see also Matthew DeMichele, et al., “Probation and Parole Officers Speak Out—Caseload and Workload Allocation,” Federal Probation, 2007, https://www.uscourts.gov/sites/default/files/71_3.5_0.pdf, p. 5.

\textsuperscript{179} Human Rights Watch telephone interview with Niel Thoreson, , December 5, 2019.

\textsuperscript{179} Human Rights Watch telephone interview with Wisconsin State Representative Evan Goyke, March 16, 2020.
explained. Experts also trace this to high caseloads, and note that enforcement is less time consuming than finding the right set of services for a particular person’s needs. While a few people we interviewed reported receiving some helpful programming, the vast majority of people we spoke to—along with supervision experts—said that supervision provided little support. “They just gave us a sentence and put us on the street with nothing and expect us to follow rules and make stuff happen,” described Robert Sanders, a 29-year-old man who has been in jail or on probation in Wisconsin since age 17.

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

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185 Human Rights Watch Interview with Sarah Martin (pseudonym for last name), Norristown, Pennsylvania, October 31, 2019.
Some people are able to find help and support outside of supervision through community-based organizations, often led by people who have been involved in the criminal legal system. “Nothing the [criminal legal] system did helped me do what I did today,” said Josh Glenn, who spent years on probation and in jail in Philadelphia, Pennsylvania, for drug-related charges beginning at age 13 before co-founding an organization, the Youth Art and Self-Empowerment Project (YASP) dedicated to helping young people involved in the criminal legal system. “Connecting with community leaders, YASP cofounders, that’s what helped.”


Pleas to Probation

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

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

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

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


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

\textsuperscript{190} Docket, Georgia v. Willie White, No. 2012CR908 (Lowndes County, Georgia).

\textsuperscript{191} Ibid.

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

\textsuperscript{193} Docket, Georgia v. Willie White, Nos. 2017SC13996-98 (Lowndes County, Georgia).
Then in October 2019, as White was riding his bicycle, Lowndes County police arrested him for possessing marijuana and a pill capsule that White says contained a lawful substance. White’s probation officers pursued revocation for possessing drugs, along with failure to report, the positive marijuana test, and a failure to complete community service.194 The officers lodged a detainer, meaning that White had to remain in jail while contesting the revocation and the drug possession charges.

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

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

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

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

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

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

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

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

\textsuperscript{195} Human Rights Watch interview with Caliph Muab’El, Milwaukee, Wisconsin, November 18, 2019.
\textsuperscript{196} Human Rights Watch telephone interview with Aisha Edwards, December 16, 2019.
**Irregularities in Enforcement**

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

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

**Pennsylvania**

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

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\(^{198}\) Cecelia Klingele, “Rethinking the Use of Community Supervision,” p. 1038-40.

\(^{199}\) Human Rights Watch analysis of Pennsylvania Department of Probation and Parole data; Chart, “Common Pennsylvania Parole Conditions Violated.”

\(^{200}\) Ibid.
Common **Parole Conditions** Violated in Pennsylvania
Of hearings with data, January 2016 to July 2019:

- No change of residence without permission: 32.2%
- Comply with special conditions: 27.4%
- No prohibited controlled substances: 17%
- Report regularly and follow instructions: 15.2%
- Report and remain in district: 4.6%
- Obey all laws: 1.4%
- No assaultive behavior: 1.1%
- No weapons: 0.7%
- Notify staff of job/school change: 0.2%
- Notify staff of police contact: 0.1%
- Pay court-ordered costs: 0%

Includes hearings with violations of multiple conditions.
Source: Human Rights Watch analysis of Pennsylvania Board of Probation and Parole data.
Wisconsin

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

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

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

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


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

205 Human Rights Watch Analysis of Wisconsin Department of Corrections Data.
### Wisconsin State Violations

**March 2017 – September 2019**

<table>
<thead>
<tr>
<th>Violation</th>
<th>Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Use</td>
<td>11,400</td>
</tr>
<tr>
<td>Public Order</td>
<td>10,037</td>
</tr>
<tr>
<td>Alcohol Use/Entering Bars</td>
<td>8,032</td>
</tr>
<tr>
<td>Assaultive Conduct</td>
<td>7,214</td>
</tr>
<tr>
<td>Drug Possession</td>
<td>6,454</td>
</tr>
<tr>
<td>Program/Treatment Rule Breach</td>
<td>6,101</td>
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<tr>
<td>Theft/Property Conduct</td>
<td>5,936</td>
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<tr>
<td>Absconding (30 days–6 months)</td>
<td>5,065</td>
</tr>
<tr>
<td>No Contact Order Breach</td>
<td>4,947</td>
</tr>
<tr>
<td>Operating While Intoxicated</td>
<td>3,702</td>
</tr>
<tr>
<td>Misc Breach</td>
<td>3,702</td>
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<tr>
<td>Drug Sale</td>
<td>3,565</td>
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<tr>
<td>Sex Offense Rule Breach</td>
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<tr>
<td>Drug Testing Breach</td>
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<td>Harassing Breach</td>
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<tr>
<td>Failure to Report (under 30 days)</td>
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<tr>
<td>Traffic Breach</td>
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<td>Absconding (more than 6 months)</td>
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<td>Unclassified Breach</td>
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<tr>
<td>Weapons Possession/Use</td>
<td>2,018</td>
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<tr>
<td>Unclassified Conduct</td>
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<td>Drug Testing Conduct</td>
<td>1,205</td>
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<tr>
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<td>1,167</td>
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<tr>
<td>Failure to Report (pattern)</td>
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<tr>
<td>Harassing Conduct</td>
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<tr>
<td>Child Neglect Custody Conduct</td>
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<td>Refusal to Comply with Supervision</td>
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<td>730</td>
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<tr>
<td>Assaultive Breach</td>
<td>705</td>
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<td>Forcible Theft</td>
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<tr>
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<tr>
<td>Undefined Sexual Conduct</td>
<td>73</td>
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<tr>
<td>Weapons Possession Conduct</td>
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<tr>
<td>Animal Abuse</td>
<td>35</td>
</tr>
<tr>
<td>Arson</td>
<td>23</td>
</tr>
</tbody>
</table>

**Total Violations:** 27,327

**83,026 Rule violations**

**51,943 New offense violations**

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

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

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

9,855 Violations, March 2017 – September 2019:

<table>
<thead>
<tr>
<th>Response Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warning or reprimand</td>
<td>30%</td>
</tr>
<tr>
<td>Increased conditions or monitoring</td>
<td>14%</td>
</tr>
<tr>
<td>Electronic monitoring</td>
<td>4%</td>
</tr>
<tr>
<td>Jail hold, 1—4 days</td>
<td>40%</td>
</tr>
<tr>
<td>Jail hold pending investigation, 5—59 days</td>
<td>6%</td>
</tr>
<tr>
<td>Jail hold pending treatment, 5—59 days</td>
<td>1%</td>
</tr>
<tr>
<td>Jail sanction, 5—59 days</td>
<td>3%</td>
</tr>
<tr>
<td>Revocation</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations data.
Responses to **Drug-Related** Violations in Wisconsin
March 2017 – September 2019:

### Drug possession

**New offense**

(7,134 violations)

- **3%** Warning or reprimand
- **11%** Electronic monitoring
- **25%** Increased conditions or monitoring
- **16%** Jail hold, 1–4 days
- **12%** Jail hold pending treatment, 5–59 days
- **18%** Jail hold pending investigation, 5–59 days
- **6%** Jail sanction, 5–59 days
- **6%** Revocation
- **1%** Other

### Drug use

**Rule violation**

(27,021)

- **12%** Warning or reprimand
- **18%** Electronic monitoring
- **6%** Increased conditions or monitoring
- **10%** Jail hold, 1–4 days
- **7%** Jail hold pending treatment, 5–59 days
- **3%** Jail hold pending investigation, 5–59 days
- **3%** Jail sanction, 5–59 days
- **2%** Revocation
- **2%** Other

### Drug testing

**Rule violation**

(2,745)

- **16%** Warning or reprimand
- **21%** Electronic monitoring
- **4%** Increased conditions or monitoring
- **10%** Jail hold, 1–4 days
- **4%** Jail hold pending treatment, 5–59 days
- **4%** Jail hold pending investigation, 5–59 days
- **7%** Jail sanction, 5–59 days
- **2%** Revocation
- **2%** Other

Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence–Based Response to Violations data.
Responses to **Program** or **Treatment** Rule Violations in Wisconsin

6,312 violations, March 2017 – September 2019:

<table>
<thead>
<tr>
<th>Response Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warning or reprimand</td>
<td>13%</td>
</tr>
<tr>
<td>Electronic monitoring</td>
<td>1%</td>
</tr>
<tr>
<td>Increased conditions or monitoring</td>
<td>12%</td>
</tr>
<tr>
<td>Jail hold, 1–4 days</td>
<td>8%</td>
</tr>
<tr>
<td>Jail hold pending treatment, 5–59 days</td>
<td>8%</td>
</tr>
<tr>
<td>Jail hold pending investigation, 5–59 days</td>
<td>5%</td>
</tr>
<tr>
<td>Jails sanction, 5–59 days</td>
<td>5%</td>
</tr>
<tr>
<td>Jail hold pending treatment, 60+ days</td>
<td>6%</td>
</tr>
<tr>
<td>Jail sanction, 60+ days</td>
<td>4%</td>
</tr>
<tr>
<td>Revocation</td>
<td>35%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations data.
Responses to **Failure to Appear** Rule Violations in Wisconsin
March 2017 – September 2019:

<table>
<thead>
<tr>
<th></th>
<th>Warning or reprimand</th>
<th>Increased conditions or monitoring</th>
<th>Jail hold, 1–4 days</th>
<th>Jail hold pending investigation, 5–59 days</th>
<th>Jail sanction, 5–59 days</th>
<th>Revocation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Failure to report</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under 30 days (2,496 violations)</td>
<td>2%</td>
<td>7%</td>
<td>32%</td>
<td>15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>pattern (1,128)</td>
<td>5%</td>
<td></td>
<td>16%</td>
<td>17%</td>
<td>33%</td>
<td></td>
</tr>
<tr>
<td><strong>Absconding</strong></td>
<td>5%</td>
<td></td>
<td>9%</td>
<td>17%</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>30 days – 6 mo. (5,830)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td></td>
<td>17%</td>
<td>15%</td>
<td>14%</td>
<td></td>
</tr>
<tr>
<td>more than 6 mo. (5,830)</td>
<td>4%</td>
<td></td>
<td>9%</td>
<td>13%</td>
<td>16%</td>
<td>38%</td>
</tr>
</tbody>
</table>

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

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

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

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

Failure to Pay

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

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206 See “Methodology” section.
207 See “Methodology” section.
208 Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters. Other conduct or warrants accounted for the remainder. Ibid.
money. We documented multiple cases of incarceration for nonpayment. Some supervision officers explained that they generally do not pursue revocation solely for failure to pay—but once they file revocation proceedings for some other violation, they feel it is their obligation to include every violation, including failure to pay.

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

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

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

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214 See “Methodology.”


217 Human Rights Watch telephone interview with Falen Cox, defense attorney, Savannah, Georgia, December 9, 2019.
in Section III, “Pre-Revocation Confinement,” people typically have already sat in jail waiting for their revocation hearing for weeks or months, meaning much damage has already been done. 218

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

Valerie Todd’s Story

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

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

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

218 Ibid.
219 Human Rights Watch, Profiting from Probation, p. 49-53.
220 Human Rights Watch interview with Valerie Todd, October 29, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.
organization. She has since also worked with the ACLU and the Philadelphia Mayor’s office, among others, to press for criminal legal system reforms.

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

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

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

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

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

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

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

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

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


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

232 Human Rights Watch analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations (EBRV) Data.
In 2016, Nathanyal May, a then-18-year-old Native American man from Manitowac, Wisconsin (near Green Bay), was arrested for theft. The following year, he was arrested for battery. May pled guilty to both offenses, ultimately receiving a total of seven months in jail and three years of probation.

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

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

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

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

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


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

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

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

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

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

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


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

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

**Personal Drug Use**

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

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

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

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

246 Human Rights Watch analysis of Wisconsin Department of Corrections EBRV.
supervision violations and new charges, 15 percent of the charges were for drug possession.\(^\text{247}\)

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

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

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

\(^\text{247}\) Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters.  
\(^\text{249}\) Human Rights Watch interview with Ruffin Toney, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Wayne Murphy, Milwaukee, Wisconsin, November 18, 2019; Interview with Carter Hopson, Allouez, Wisconsin, November 21, 2019; Human Rights Watch interview with Persheen Williams, Savannah, Georgia, December 12, 2019. Human Rights Watch also observed scores of court hearings in Philadelphia County, Pennsylvania; Delaware County, Pennsylvania; Milwaukee County, Wisconsin; Chatham County, Georgia, and Lowndes County, Georgia, during which judges were presiding over the cases of many people in custody for violation of their supervision as a result of drug use or possession.  
\(^\text{251}\) Ibid.  
Black people are 2 times more likely than whites to be arrested for marijuana possession in Philadelphia, Pennsylvania; 4.1 times more likely in nearby Delaware County, and 6.5 times more likely in neighboring Montgomery County. Meanwhile, racial disparities are slightly lower than the national average in parts of Georgia: Black people are 3.1 times more likely to be arrested for marijuana possession than white people in Lowndes County, and 2.8 times more likely in Chatham County.

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

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

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

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

<table>
<thead>
<tr>
<th>Race</th>
<th>Wisconsin proportion</th>
<th>Drug possession (new offense) proportion</th>
<th>Drug use (violation) proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>6.3%</td>
<td>19%</td>
<td>15%</td>
</tr>
<tr>
<td>Asian</td>
<td>2.8%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Caucasian</td>
<td>81.0%</td>
<td>69%</td>
<td>73%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>6.9%</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>Native American</td>
<td>0.8%</td>
<td>7%</td>
<td>7%</td>
</tr>
<tr>
<td>Other</td>
<td>2.2%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>
Violations for Being Untruthful

Wayne Murphy, 60 years old, is still serving the 20-year probation sentence he was given in Wisconsin for a sexual assault committed in 1992. In December 2011—one year before his probation was set to expire—his probation officer gave him an extended curfew to spend Christmas with his sister. But, when it came time to go, Murphy said in a statement, “my sister [was] ill and [it was clear she was going] to be on oxygen for the rest of her life . . . I had no presents or money. Being there would have sent me into a deep depression.” So when Murphy's friend invited him over for football and dinner, he decided to go to his friend’s instead. “I just wanted to feel like a normal person just once before the year ended,” he wrote.

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

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

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260 Human Rights Watch interview with Wayne Murphy, November 18, 2019.
261 Ibid.; Memo from Supervision Officer Shaun O’Connell to Judge Maryann Sumi Re: Wayne D. Murphy, January 6, 2012 (on file with Human Rights Watch).
262 Statement to Department of Corrections, Wayne Murphy, February 29, 2011 (on file with Human Rights Watch); Human Rights Watch interview with Wayne Murphy, November 18, 2019.
263 Statement to Department of Corrections, Wayne Murphy, February 29, 2011.
264 Memo from Agent Shaun O’Connell to Judge Maryann Sumi Re: Wayne D. Murphy, January 6, 2012 (on file with Human Rights Watch).
265 Ibid.
266 Human Rights Watch interview with Wayne Murphy, November 18, 2019.
III. Lack of Due Process for Violations

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

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

Few Evidentiary Protections

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

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

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

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

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

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

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

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

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

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


277 Rethinking Justice and Incarceration Panel, Makda Fessahaye, Milwaukee, Wisconsin, November 19, 2019; see also Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019; Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020; Human Rights Watch telephone interview with
see the outcome of the revocation process, which—with its lower evidentiary standards—usually results in incarceration, before deciding whether to press charges.\textsuperscript{278} As a Wisconsin Department of Corrections official explained, “it’s easier to just revoke them.”\textsuperscript{279} Georgia DCS Commissioner Michael Nail said this frequently occurs, explaining that “a lot of times, it’s about judicial economy.”\textsuperscript{280} This practice allows the government to secure incarceration for alleged crimes without having to prove the charges beyond a reasonable doubt in criminal court.\textsuperscript{281}

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

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

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

\textsuperscript{278} Ibid.
\textsuperscript{279} Rethinking Justice and Incarceration Panel, Makda Fessahaye, Milwaukee, Wisconsin, November 19, 2019.
\textsuperscript{280} Human Rights Watch telephone interview with Michael Nail, February 19, 2020.
\textsuperscript{282} Human Rights Watch interview with Angel Ortiz, October 29, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.
\textsuperscript{284} Ibid. Angel was also arrested for aggravated assault and drug possession with intent to distribute in two separate cases, and in 2000 he pled guilty to both cases to a total of 11.5 to 23 months in prison followed by two years of probation. Docket, \textit{Commonwealth v. Angel Ortiz}, CR-51-CR-0910201-1999 (Philadelphia, Pennsylvania); Docket, \textit{Commonwealth v. Angel Ortiz}, CP-51-CR-0406971-2000, Philadelphia, Pennsylvania).
probation, and the judge sentenced Ortiz to another 11.5 to 23 months of incarceration followed by two more years of probation.\textsuperscript{286}

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

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

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


Remote Proceedings

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

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

Limited Access to Lawyers

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


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

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

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

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

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

291 The Supreme Court also instructed courts to consider whether the accused “appears to be capable of speaking effectively for himself.” Gagnon v. Scarpelli, 411 U.S. 778, 790-91 (1973).
295 The Georgia statewide public defender’s office is contracted to represent people in felony supervision revocation cases. However, in many counties, the public defender’s office is not contracted to represent people in misdemeanor supervision revocation cases. O.C.G.A. § 17-12-23 (explaining state public defender system represents people facing supervision revocation in superior court, where felony probation revocation hearings occurred); “Executive Summary Status of Indigent Defense in Georgia: A Study for the Chief Justice’s Commission on Indigent Defense, Part 1,” http://www.sado.org/fees/georgia_part_1.pdf (explaining which counties provide attorneys in revocation proceedings); Georgia Public Defender Council, “Frequently Asked Questions,” http://www.gapubdef.org/index.php/36-frequently-asked-questions; Human Rights Watch telephone interview with Kosha Tucker, staff attorney, ACLU of Georgia, November 15, 2019; Human Rights Watch interview with Todd Martin, December 12, 2019.
consult an attorney.298 If they wait, they will wait in jail. This inherent delay incentivizes people to proceed immediately without a lawyer. Indeed, an “overwhelming majority” of people waive their right to counsel, said Lowndes County Solicitor-General Justo Cabral.299 Many people we spoke with in Lowndes County told us they were not sure what the “Attorney Waiver” form meant—or even that people facing revocation could get a free lawyer.300

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

Pre-Revocation Confinement

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

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

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

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

303 See “Definitions and Terms.”
Alternative Processes

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

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

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

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

307 Ibid.


Widespread Detention

Detention pending revocation proceedings is widespread across the United States.312 While some states limit officials’ power to detain people who pose little risk of harm or flight,313 in many jurisdictions where Human Rights Watch conducted research, supervision officers file detainers in nearly every revocation case, including for rule violations.314 “Nobody walks in off the street for a probation violation hearing . . . no matter how minor, people get locked up,” Dean Beer, the former chief of the Montgomery County, Pennsylvania, Public Defender office explained.315 The main exception appears to be charges for simple failure to pay, for


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


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

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

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**Supervision Holds in Wisconsin**

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

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

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318 Wis. Admin. Code DOC 328.27(3).

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


321 Ibid.

322 Ibid.

323 Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.
In many cases, the conduct for which people are detained pending revocation proceedings, such as missing meetings or using drugs, does not raise inherent safety or flight concerns. Even people accused of serious criminal conduct do not necessarily pose a flight risk, and, where those concerns are present, courts will likely detain people pending criminal proceedings in any case, making supervision detainers unnecessary.

### Alternatives to Detention in Pennsylvania

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

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

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


Lengthy Confinement

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

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

328 People are typically detained pending revocation in local jails, but they may also be detained in state prisons or alternative facilities that are more akin to halfway houses. See, for example, 61 Pa.C.S. § 6138 (c)(1-3); (f); Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” May 2020, https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf, p. 32.

329 Human Rights Watch Analysis of Lehigh County, Pennsylvania Sheriff’s Department Data.
Median **Days in Jail during Pre-Sentence Detention**
Lehigh County, Pennsylvania, January 2016 – August 2019:

<table>
<thead>
<tr>
<th>New offense violation</th>
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<tbody>
<tr>
<td>Mixed supervision</td>
<td>64 days</td>
</tr>
<tr>
<td>County parole</td>
<td>59</td>
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<td>Probation</td>
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<th>Rule violation</th>
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<tbody>
<tr>
<td>Mixed supervision</td>
<td>27</td>
</tr>
<tr>
<td>County parole</td>
<td>26</td>
</tr>
<tr>
<td>Probation</td>
<td>23</td>
</tr>
</tbody>
</table>

Source: Human Rights Watch analysis of Lehigh County Sheriff’s Department data.
Lengths of detention pending an initial hearing in Pennsylvania vary across the state. According to a *Philadelphia Inquirer* analysis, while Philadelphia County generally holds preliminary revocation hearings (discussed below in this section) within ten days of detention, people in nearby Montgomery County, Pennsylvania, and Dauphin County, which contains Harrisburg, regularly wait up to 90 days for their first hearing.\(^{330}\)

According to data provided to Human Rights Watch by the Wisconsin Department of Corrections, Wisconsin detained people pending investigation into alleged supervision violations for between five and 59 days more than 14,500 times between 2017 and 2019.\(^{332}\) Public defenders and supervision officers told us that people often wait 30 to 45 days in

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\(^{330}\) Samantha Melamed and Dylan Purcell, “Everyone is Detained,” *The Philadelphia Inquirer.*

\(^{331}\) Ibid.

\(^{332}\) Human Rights Watch Analysis of Wisconsin Department of Corrections Evidence-Based Response to Violations (EBRV). The data did not break down detention into smaller increments of time.
jail before a hearing in Milwaukee; at least 70 days in parts of rural, northern Wisconsin; and 60 to 90 days in Dodge County, north of Milwaukee.333

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

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

333 Human Rights Watch telephone interview with Adam Plotkin and Randy Kraft, December 3, 2019; Human Rights Watch telephone interview with [name withheld], supervision officer, Milwaukee, Wisconsin, June 17, 2020; Human Rights Watch telephone interview with [name withheld], supervision officer, Dodge County, Wisconsin, June 18, 2020.
334 Human Rights Watch interview with Scott Robichaux, December 9, 2019 (estimating wait times of 60 to 90 days); Human Rights Watch telephone interview with Michael Nail, February 19, 2020 (estimating wait times of 45 to 60 days).
336 Ibid.
338 Samantha Melamed and Dylan Purcell, “Everyone is Detained,” The Philadelphia Inquirer.
Public defenders explained that these individuals are stuck in a catch-22. Because authorities generally do not release people pending resolution of their supervision violation (see below), they remain detained while their criminal case is pending. But admitting to the violation, and potentially getting out of jail, puts them in a poor position to challenge the criminal case. Resolving the criminal case first, however, generally takes longer, meaning more time in jail. The result is often months in detention as lawyers try to coordinate a joint resolution of the revocation and criminal proceedings.

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

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

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

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


343 Morrissey v. Brewer, 408 U.S. 471, 485 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973); Wisconsin DOC 331.05(5), (7) (detention based on consideration of whether the individual is believed to be “dangerous;” whether they are likely to flee, commit crimes, or violate their conditions of supervision; and whether they face a lengthy sentence upon revocation); O.C.G.A. § 42-9-50(h); Pennsylvania Department of Corrections & Pennsylvania Board of Probation and Parole, “Parole Handbook,” p. 24. However, some places, such as Georgia, do not provide preliminary hearings in probation revocation cases. McElroy v. State, 247 Ga. 355 (Ga. 1981).
weeks of detention, while others simply require them to be held in a “reasonable” time. Yet in many places, few of these hearings occur at all.

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

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

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

345 Cody Warner, “The Waiting Game.”

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


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

349 Wis. Stat. § 302.335(2)(a); Wis. Admin. Code 331.05; O.C.G.A. § 42-9-50(a); Georgia Board of Pardons and Paroles, “Parole Violations & Revocations,” https://pap.georgia.gov/parole-violations-revocations (as discussed in note 348, above, those on probation in Georgia have no right to a preliminary hearing in any case). For reasons discussed below, many people admit to some allegation. Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Niel Thoreson, December 5, 2019.
that conduct, a probable cause finding in the criminal case automatically negates the individual’s right to a preliminary hearing in the revocation proceeding. 350

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

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

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

350 Ibid.; Commonwealth v. Del Conte, 277 Pa. Super. 296, 298 n. 2 (Pennsylvania Sup. Ct. 1979). However, the Pennsylvania Supreme Court does not appear to have ruled on this issue. For an analysis of state laws limiting access to preliminary revocation hearings, see Cody Warner, “The Waiting Game.”
351 See “Definitions and Terms.”
352 Human Rights Watch interview with Todd Martin, December 12, 2019; Human Rights Watch interview with Brian Burke, November 18, 2019; Samantha Melamed and Dylan Purcell, “Everyone is Detained,” The Philadelphia Inquirer.
353 Human Rights Watch interview with Todd Martin, December 12, 2019; Samantha Melamed and Dylan Purcell, “Everyone is Detained,” The Philadelphia Inquirer.
354 Samantha Melamed and Dylan Purcell, “Everyone is Detained,” The Philadelphia Inquirer.
supervision officer.\textsuperscript{355} According to data provided to Human Rights Watch, of the 1,175 Pennsylvania state parole violation preliminary hearings that were held between 2016 and 2019, the PBPP found “no probable cause” for revocation in a mere 42 hearings—just .04 percent of the cases.\textsuperscript{356} A \textit{Philadelphia Inquirer} analysis of probation violation preliminary hearings in Philadelphia revealed that court officials lifted detainers, allowing people to remain out of custody pending their final hearing, in about 12 percent of cases.\textsuperscript{357} Further, of more than 100 such hearings observed by a reporter, the officials found probable cause in every single case.\textsuperscript{358}

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

\begin{center}
\textbf{Release Coordinators}
\end{center}

In 2017, the Lowndes County, Georgia, state court, which oversees misdemeanor probation, hired a release services coordinator to reduce pre-revocation detention. The coordinator visits the jail to determine who is locked up on a detainer, and expeditiously schedules their hearing.\textsuperscript{360} Lowndes County Judge John Edwards said this effort reduced jail time by a total of 36,815 days in 2019.\textsuperscript{361} Yet some local practitioners still report lengthy pre-revocation detention—on average, 45 days.\textsuperscript{362}

\begin{itemize}
\item \textsuperscript{355} Ibid.; Human Rights Watch interview with Brian Burke, November 18, 2019.
\item \textsuperscript{356} Human Rights Watch Analysis of Pennsylvania Board of Probation and Parole Data.
\item \textsuperscript{357} Samantha Melamed and Dylan Purcell, “Everyone is Detained,” \textit{Philadelphia Inquirer}. In Philadelphia, preliminary hearings are overseen by courthouse officials known as “trial commissioners,” who are not judges and are typically not lawyers. Ibid.
\item \textsuperscript{358} Ibid.
\item \textsuperscript{359} Human Rights Watch interview with Todd Martin, December 12, 2019; Human Rights Watch interview with Michael Edwards, December 12, 2019. State law also imposes some limits on probation bonds. O.C.G.A. § 17-10-1(a)(B).
\item \textsuperscript{360} Human Rights Watch interview with Judge John Edwards, December 10, 2019, Valdosta, Georgia; Human Rights Watch e-mail correspondence with Judge John Edwards, January 28, 2020.
\item \textsuperscript{361} Human Rights Watch e-mail correspondence with Judge John Edwards, January 28, 2020.
\item \textsuperscript{362} Human Rights Watch telephone interview with Beau Mullen, December 20, 2019.
\end{itemize}
**Harmful Conditions and Consequences**

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

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

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


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

“There’s no sunlight . . . There’s no fresh air. Your lips are dry, your mouth is dry,” said Aaron Alexander, who had been incarcerated at MSDF for ten months when we spoke to him there in November 2019.

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looks like outside,” said Romelo Booker, who had been detained at MSDF for seven months when we met him in November 2019.  

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

And MSDF is overcrowded. The facility routinely crowds three people into 11-by-13-foot cells built for one, with two people in beds and the third in what is commonly referred to by people held in the facility and prison staff as a “boat”—a thin mattress on the ground where people sleep with their head inches from the toilet.
“MSDF is a human rights disaster,” concluded Mark Rice, an advocate for supervision reform who spent six months at MSDF, including weeks in a “boat,” waiting for his revocation hearing for dismissed disorderly conduct charges that he attributes to his schizophrenia. Rice said he was given so much medication at MSDF that he was “sick and sleeping all day,” while he saw others being denied access to medication, he said. MSDF’s conditions have been blamed for some of the facility’s reported 17 in-custody deaths since it opened in 2001.

We also documented inhumane conditions at George W. Hill Correctional Facility (also called DelCo Prison) in Delaware County, Pennsylvania. George W. Hill is Pennsylvania’s only private jail, and many people held there are facing revocation. A correctional officer, who spoke with us under conditions of anonymity, said there was rampant overcrowding—including the use of “boats” on the floor to squeeze more people into cells—as well as unsanitary conditions and lack of training for staff. Further, media reports described racial discrimination by management against Black correctional officers, such as the use of racial slurs against non-white employees and targeting Black officers for extra work assignments. Others formerly detained at George W. Hill have made similar

The overcrowding is particularly severe in the jail's intake cell, where people are detained until their cellblock is assigned. At times more than 50 people are housed in the cell.\footnote{Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch]; Human Rights Watch interview with Robert Thurgood, October 31, 2019.} On the day we spoke with the officer, in November 2019, the officer said there were 59 people held in it.\footnote{Human Rights Watch interview with [name withheld], correctional officer, November 2019 [date on file with Human Rights Watch].} In the cell, people must sleep on the floor.\footnote{Ibid.} There are no toilets.\footnote{Ibid.} Correctional officers sometimes deny peoples’ requests to use a bathroom, leaving them to urinate on themselves or into milk cartons.\footnote{Ibid.} Because the jail is so overcrowded, people may remain in intake for a week.\footnote{Ibid.}

Robert Thurgood, who was incarcerated at the facility pending revocation for driving under the influence and drug charges, said, “I don’t know what hell is, but I know hell is a bad place and that's how I label DelCo Prison.”\footnote{Human Rights Watch interview with Robert Thurgood, October 31, 2019.}

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

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

\textbf{Coercive Pleas}

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

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

In the states where we conducted research, few people contest revocation. In Pennsylvania between 2016 and 2019, more than 12,200 final state parole revocation hearings were scheduled. Yet people waived those hearings in 78 percent of the cases.\textsuperscript{399} Another 11
percent of final hearings were re-scheduled. Less than 1 percent of those hearings were actually held. In Lowndes County, Georgia, the solicitor-general estimated that 95 percent of probation revocation proceedings end with the person admitting to the violation.

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

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

400 Ibid.
401 Ibid.
406 Ibid. For instance, a standard offer in Wisconsin is 60 to 90 days in jail or in an incarceration-based treatment program; in Lowndes County, Georgia, it is 14, 30, or 90 days in jail. Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Melanie Hasty, March 9, 2020.
Coercive pleas are not unique to the supervision violation process. Throughout the criminal legal system, prosecutors leverage pre-trial detention and the threat of severe sentences to induce pleas. But in criminal cases, the accused at least in theory are supposed to have more access to competent legal counsel, who can advise them on plea deals and other matters. “Many clients suffer from mental [health conditions], have substance abuse problems or are poorly educated. They simply are at a tremendous disadvantage making a decision that can send them back to prison—often for years,” said Milwaukee Chief Public Defender Tom Reed. People facing criminal charges are also more likely to remain at liberty while their charges are pending than those facing revocation. 

### Required Confessions in Wisconsin

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

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


413 State v. Evans, 77 Wis. 2d 225, 228 (Wis. 1977); State of Wisconsin, “Resource Handbook for Community Supervision Revocation Hearings,” p. 21.
The burden of proving the allegations. And admitting in the statement to any conduct that violates supervision means the individual automatically forfeits their right to a preliminary hearing. “It’s really on us to try to get them to admit to some type of violation, not mattering how low level it is,” to avoid holding a preliminary hearing, explained a Dodge County, Wisconsin, supervision officer.

Costs of Fighting Charges

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

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

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

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


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

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

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


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

\textsuperscript{422} Ibid.


\textsuperscript{424} Ibid.
IV. Excessive Punishments

They're putting us in here for technical violations. You lose your job, you lose your family, you lose your house, you lose everything.  
—Juan Richardson, currently incarcerated for violations related to his homeless status

Sentencing for Violations

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

Parole and Extended Supervision Violation Sentences

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

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

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425 Human Rights Watch interview with Juan Richardson, December 11, 2019.
427 O.C.G.A. § 42-9-51(a) (Parole Board must sentence anyone who has been sentenced to prison for a felony offense, or misdemeanor involving “physical injury,” to full back time); 61 Pa.C.S. § 6138(a)(2), 37 Pa. Code 75.1, 75.2 (Parole Board must sentence anyone convicted of a new misdemeanor or felony offense to full back time; however, they are eligible for re-parole).
reforms do not apply to people who engage in certain misconduct, or to those charged with new offense violations or county parole or probation violations.

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

Probation Violation Sentences

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

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In addition to parole violator centers, individuals may also be detained in “community corrections centers” (similar to a halfway house) or “community corrections facilities” (similar to a halfway house but run by a private contractor). 61 Pa.C.S. § 6138(f).

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


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

Wis. Admin. Code HA 2.05(f).

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

O.C.G.A. § 42-8-34.1(c) (for felony probation violations, requiring court to consider alternative sanctions, including community service and probation detention centers—similar to minimum-security prisons—for violations aside from the commission of a new felony offense); O.C.G.A. § 42-8-102(f)(4)(similar for misdemeanor probation violations). Courts consider whether an individual committed a new felony offense based on the preponderance of the evidence standard—not based on whether they were convicted of the new offense in court. See O.C.G.A. § 42-8-34.1(d).
maximum sentences based on the type of offense and the form of probation. These limits vary sharply: Sentences for violating “general” felony probation conditions are capped at two years, while violating a “special” condition—discretionary terms including curfews, obtaining a GED, and “no contact” orders—can trigger incarceration for the entire remainder of the probation term. Since Georgia courts impose lengthy probation sentences—for instance, 10 years for felony shoplifting (shoplifting more than $500 value of goods)—is common—this can be severe. If probation is revoked for rule violations or certain minor offenses, people serve their sentences in non-prison facilities, such as “probation detention centers,” similar to minimum-security prisons, or in local jails.

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

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

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435 O.G.C.A. § 42-8-102(f)(4) (sentencing scheme for misdemeanor probation violations); O.C.G.A. § 42-8-34.1 (sentencing scheme for felony probation violations).
436 Georgia Department of Community Supervision, “Special Conditions of Supervision,” https://dcs.georgia.gov/special-conditions-supervision-0.
437 O.C.G.A. § 42-8-34.1(e)
438 O.C.G.A. § 16-8-14.
In January 2020, the Pennsylvania Sentencing Commission for the first time released discretionary guidelines for lengths of sentences following probation revocation. The Commission contends the guidelines will increase uniformity in sentencing. However, advocates fear they will lead to longer prison terms. For instance, the guidelines call for heightened penalties for any violation involving a new criminal conviction—regardless of the type of offense or individual circumstances.

In most of Wisconsin, judges “withhold” sentence when they impose probation terms, meaning that, if someone’s supervision is revoked, they return to the sentencing judge, who may then impose any sentence authorized for the original offense. But in some jurisdictions, such as Milwaukee, judges generally “impose and stay” prison terms when they sentence people to probation. This means the judge sets the consequence for a violation at the initial sentencing—following revocation, the individual is automatically incarcerated for the stayed sentence, no matter the circumstances.

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448 Ibid. In Wisconsin, the sentencing judge determines the sentence, while an Administrative Law Judge handles revocation proceedings, and, in these cases, must impose the stayed sentence. See ibid; Kelly Lyn Mithell, Kevin R. Reitz, Alexis Watts, “Profiles in Probation Revocation: Examining the Legal Frameworks in 21 States,” University of Minnesota, Robina Institute, p. 91-92.
Consequences Beyond Incarceration

Supervision violations carry consequences beyond incarceration. Under federal law, supervision violations can render people ineligible for public assistance programs including food stamps, social security disability, and public housing.\(^{449}\) Sixteen states, including Pennsylvania, deprive people of the right to vote while they are incarcerated, and another 21 states, including Georgia and Wisconsin, bar people from voting until they complete supervision.\(^{450}\) Long-term supervision can deny people the right to vote for decades or even life.

“Supervision Time” Credits

Separate from supervision, when people are sentenced, they generally receive “time credit” toward their sentence for each day they serve in jail or prison. Many jurisdictions, including Georgia, also give people time credit for the days they successfully serve under supervision—which we refer to in this report as “supervision time” credit.\(^{451}\) Others, including Pennsylvania and Wisconsin, do not always confer supervision credits.\(^{452}\) This can have serious implications.


\(^{451}\) “Supervision time credits” are most common for parole. Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” University of Minnesota, Robina Institute, p. 44 (in three quarters of jurisdictions studied, people receive credit for time served on parole); Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” University of Minnesota, Robina Institute, p. 12 (Alabama) (“significant weight” given to time spent on probation); O.C.G.A. § 42-8-38 (credit for time served on probation in Georgia); O.C.G.A. § 42-9-51 (same for parole). “Supervision time” credits differ from “earned compliance credits,” which, as discussed in Section VIII, “The Path Forward,” give people time reductions on their total supervision sentence for compliance with the terms of their supervision.

\(^{452}\) Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “The Continuing Levers of Releasing Authorities,” University of Minnesota, Robina Institute, p. 44 (one quarter of jurisdictions studied do not give “supervision time” credit); University of
Consider a person sentenced to a 10-to-20-year prison term. After completing the minimum 10 years in custody, they are released to parole for good behavior. For the next nearly nine years, they meet all their parole requirements. However, in year nine, they violate a parole condition and their parole is revoked.

In a jurisdiction that gives “supervision time” credit, that person might have to serve the last year of parole in jail—because the 10 years in custody and nine years on supervision count as time served on their sentence. But in a jurisdiction without “supervision time” credit, they face incarceration for the entire 10 years they did not serve in custody.\textsuperscript{453}

Following 2012 reforms in Pennsylvania, people charged with state parole (but not county parole or probation) rule violations receive “supervision time” credit.\textsuperscript{454} Such credits are only optional, however, for new offense violations, and are prohibited for those charged with crimes considered violent\textsuperscript{455} or sex offenses.\textsuperscript{456}

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\textsuperscript{454} 61 Pa.C.S. § 6138(a)(2.1); Human Rights Watch e-mail communications with David Crowley, February 6, 2020.

\textsuperscript{455} See note 70, above, discussing problems with defining what constitutes a “violent” crime.

Sentences to Treatment Programs

Once you [plead to a program], you gotta complete it. That’s the racket.457

—Adrian Patterson, who was kicked out of a prison-based drug treatment program in Wisconsin

[T]he offender failed to realize that his failure in the program was that he did not go deep enough in addressing why he made the choices that he did].458

—Decision revoking probation following program termination in Wisconsin

People frequently plead to sentences involving mandated treatment, such as behavioral or substance use courses. Often, these programs are housed in correctional facilities.459 For instance, in Milwaukee, Wisconsin, many people admit to supervision violations in exchange for “Alternative to Revocation” (ATR) programs—without realizing that many of those programs are housed in MSDF, the same prison where they are often held pending revocation proceedings, and where they may serve a sentence following revocation.460 “I don’t understand how something is an alternative to revocation if it’s in a prison. Why isn’t it just a shorter revocation?,” Wisconsin State Representative Evan Goyke told us. “We shouldn’t call something in prison an ‘alternative to prison.’”461

In many places, limited resources have fed program overcrowding. As a result, people in custody sentenced to a treatment program often wait in detention until a spot opens up. This can sometimes take weeks or months, lengthening their period of incarceration.462 For

457 Human Rights Watch interview with Adrian Patterson, November 19, 2019.
458 ALJ Decision, Wisconsin v. Ruffin Toney.
instance, from 2017 to 2019, Wisconsin held people in prison for five to 59 days awaiting treatment program placement 6,214 times, and for more than 60 days nearly 2,700 times.\textsuperscript{463}

Once people enter the program, they must successfully complete it, following all program rules, which sometimes comes down to subjective judgments about a person’s commitment and attitude, as well as the correctional facility’s rules. As discussed above in Section II, “Conduct Triggering Revocation,” being accused of violating rules often leads to incarceration.

For example, Aaron Alexander, a 32-year-old Milwaukee resident, was arrested for child enticement—for having unlawful contact with a girl under 18 in 2015, when he was 28 years old.\textsuperscript{464} He was convicted and sentenced to 15 months in prison followed by four years of extended supervision.\textsuperscript{465}

Alexander was released from prison in 2016, and began serving his extended supervision term, which entailed several standard sex-offense specific conditions, including a ban on being around children, set by both the judge and his supervision officer.\textsuperscript{466} According to the court docket, the judge later amended the conditions to exempt Alexander’s three own children—now ages five through 13—from that standard rule.\textsuperscript{467} But Alexander’s probation officer did not apply the judge’s exemptions,\textsuperscript{468} and refused to let him see his kids, Alexander said.

Because of this prohibition, Alexander said, he stopped reporting. He told us that he remained living with and caring for his children. In September 2017, Alexander was

\textsuperscript{463} Human Rights Watch Analysis of Wisconsin Department of Corrections Data.  
\textsuperscript{464} Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Docket, \textit{Wisconsin v. Aaron Alexander}, 2015CF2007 (Milwaukee, Wisconsin). All information in this case study is from Human Rights Watch’s interview with Aaron Alexander unless otherwise noted.  
\textsuperscript{466} Ibid.  
\textsuperscript{467} Docket, \textit{Wisconsin v. Aaron Alexander}, 2015CF2007 (Milwaukee, Wisconsin) (judge ordered that "defendant Aaron Alexander, is prohibited from having unsupervised contact with children age 16 and under, except for his own minor children.")  
\textsuperscript{468} In Wisconsin, both probation officers and judges can set conditions of probation. This can lead to confusion where officials set different conditions. Wisconsin Department of Corrections, “Community Corrections – General Information,” https://doc.wi.gov/Pages/AboutDOC/Community Corrections/GeneralInformation.aspx.
arrested, charged with “absconding” (see Section II, “Failure to Report”), and detained at MSDF. After spending seven months incarcerated pending revocation, Alexander said, his supervision officer offered him an “Alternative to Revocation” deal: if Alexander completed a cognitive behavioral therapy program, his supervision would not be revoked. Alexander took the deal.

Alexander spent two more months in jail before a spot in the program opened up, he said, “only to find out the [program] was right here” in MSDF, the same facility where he had been confined. “How is that community-based?,” he asked.

Shortly after enrolling in the program, staff terminated Alexander’s placement based on prison disciplinary violations. These included using a typewriter—which was permitted only for education and work—to write a horror book, he said. For this, he was required to remain in his cell for five days. Alexander said that he left his cell after what he had understood to be five days, but apparently had miscalculated the time and left a day early. That led to another sanction, Alexander explained, and expulsion from the program.

Alexander was released from MSDF in November 2018, but he soon stopped reporting to supervision, as he describes, due to depression and feeling “messed up in the head” after jail—problems for which he said he did not receive treatment. After about two months, Alexander said, he turned himself in to “make things right” and he re-enrolled in the same behavioral therapy program as an alternative to revocation.469

Alexander spent more than three months in MSDF waiting for a spot to open in the program.470 He finally began the program in May 2019, but after one month, the program terminated Alexander again. According to his program discharge paperwork, Alexander’s treatment provider agreed that he “attended all groups” and “completed all required homework assignments.”471 The program did not accuse him of any illegal conduct.472 Rather, the program claimed that he behaved poorly as a student, for instance

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469 Wisconsin Department of Corrections Records, Aaron Alexander, “Movement.”
470 Ibid. (showing admission to MSDF on January 28, 2019); Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander (on file with Human Rights Watch) (showing program began May 6, 2019).
471 Wisconsin Department of Corrections, “Program Discharge Summary-General,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Conduct Reports,” Aaron Alexander (on file with Human Rights Watch); Wisconsin Department of Corrections, “Warning Card,” Aaron Alexander (on file with Human Rights Watch).
472 Ibid.
participating “in waves”—sometimes too actively and other times too passively—failing to accept accountability for his actions, and talking back to staff. The program also noted two prison misconduct reports, for disruptive conduct (for talking back to a guard) and disobeying orders (for passing food to someone), and two warnings—one for “tucking and tying” his shirt, which was not permitted, and another for only making required journal entries on weekdays, when, Alexander said, he had not realized his “daily” journal entry assignment included weekends.

Ironically, Alexander said, the treatment was working: “I actually used the grounding technique [they taught] on the day of my termination,” he said.

Once the program terminated Alexander, his supervision officer filed revocation papers. A judge revoked Alexander's supervision and sentenced him to 21 months in jail—80 percent of his “back time,” or the time remaining in his supervision sentence.

As discussed in Section VI, “Substance Use,” experts have raised concerns with locating treatment programs in the criminal legal system generally, and inside correctional facilities specifically. Many people we interviewed reported that grappling with the stress of prison life (see Section III, “Harmful Conditions”) on top of following program and prison rules made it hard to engage in treatment. “I think that the majority of MSDF programs could be taking place somewhere better and safer and more humane . . . There’s hundreds of men in MSDF tonight on these programs and there’s no reason why they need to be there,” said Representative Goyke, who told us he believes programming should occur in peoples’ communities or other, less restrictive, facilities.
Never-Ending Probation

After 19 years let’s be real, I should’ve been done with it. You keep giving me probation over and over.

—Angel Ortiz, who has been serving the same probation term for nearly two decades

Revocation can extend a person’s period of probation, keeping people under correctional control for years or decades.

This practice is particularly common in Pennsylvania, which does not cap probation terms. Philadelphia Judge Rayford Means has explained that he sentences people to additional probation following revocation so that he can continue setting conditions, such as obtaining a GED and getting a job, that he believes will help people get back on their feet.

Yet more probation often means more violations. Angel Ortiz, mentioned above, has been under Judge Means’ probation for the last 19 years—on what began as a four-year probation term in 1999, when he was 18 years old. Ortiz explained: “in jail you think you’re getting a deal with probation and you realize . . . this isn’t really helping me.”

Judge Means has revoked Ortiz’s probation five times, each time imposing more probation: two years in 2002, four years in 2006, four years in 2007, six years in 2009, and five years in 2018.

“I’ve been on probation damn near half my life,” said Ortiz, who still had nearly four years left on his probation term when we met him in October 2019. “[Y]ou can’t do this forever. Some places got life parole, I don’t have that, why are you dragging it out as if I do have

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479 Human Rights Watch interview with Angel Ortiz, October 29, 2019.
481 Ibid.
483 Human Rights Watch interview with Angel Ortiz, October 29, 2019.
life? . . . After 19 years let's be real, I should've been done with it. You keep giving me probation over and over.”

Ortiz is not alone. Several people we spoke to in all three states told us they had served more than a decade under probation, frequently for terms that started out at much less. People often felt that, no matter how hard they tried, at some point they would again violate one or another condition of their probation—whether forgetting a meeting, using drugs, or getting arrested. Darius Hill (pseudonym), whom Georgia courts keep sentencing to more probation even though he says he has mental health conditions—including paranoia and depression—that make it hard to hold down a job or get to supervision-mandated meetings, told us that probation is “like a ghost that’s sneaking up on me.”

For nearly two decades, Earnest Burgess, a 41-year-old Milwaukee resident, kept getting sentenced to more supervision following revocations for drug charges. Burgess told us he was floored when, in 2017, he finally completed it. When he received his supervision discharge paperwork in the mail, he said: “I didn’t know what to do. Nobody I knew got discharged, I’d never been discharged. Everyone was just on probation forever.”

Studies show, and our interviews reflect, that many people prefer short incarceration terms to lengthy probation sentences, given probation’s burdensome conditions and the looming threat of incarceration. Some judges let people choose between another shot at supervision or a set term of incarceration—after which they are free from supervision.

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485 Human Rights Watch interview with Angel Ortiz, October 29, 2019.
487 Ibid.
488 Human Rights Watch interview with Darius Hill (pseudonym), Savannah, Georgia, December 12, 2019.
Disproportionate Incarceration Terms

In many cases, judges impose lengthy incarceration terms following revocation—sometimes longer than the penalties typically imposed when people not on supervision engage in the same conduct.\(^{492}\)

In Pennsylvania, according to a state Sentencing Commission study of probation revocations from 2016 to 2019, while judges sentencing people to terms of probation for low-level offenses rarely imposed sentences higher than those recommended in Pennsylvania’s sentencing guidelines, they frequently imposed sentences above those guidelines when sentencing people following revocation.\(^{493}\)

The study also showed that Pennsylvania judges often sentence people to jail and prison time following revocation. Of the 12,241 probation revocations during those years, 50 percent were re-sentenced to county incarceration—which in Pennsylvania is up to two years of confinement—while 39 percent were resentenced to more probation, and seven percent were sentenced to state prison, meaning a term of two years or more.\(^{494}\)

Some attorneys who regularly handle supervision cases say that harsh sentences stem from the perception that people “screwed up” their chance on supervision.\(^{495}\) “I gave you a chance on probation, and you blew it . . . Now, it’s more punishment than anything,” said Green Bay, Wisconsin, Judge Timothy Hinkfuss when sentencing someone following


\(^{494}\) Ibid., Exhibit 9.

\(^{495}\) Human Rights Watch telephone interview with Jim Knight, Georgia defense attorney, December 3, 2019; Human Rights Watch telephone interview with Wade Kruger, November 26, 2019.
revocation of his supervision.⁴⁹⁶ (Notably, however, in the proceedings observed by Human Rights Watch, Judge Hinkfuss did not impose the heightened sentences requested by the prosecution.)

Some judges said that harsh sentences are sometimes needed to preserve the integrity of the supervision system. When someone disobeys a court order, they said, consequences must follow.⁴⁹⁷ In Pennsylvania, “vindicat[ing] the authority of the court” is a statutory basis for imposing prison sentences following revocation.⁴⁹⁸

Yet other officials recognize that incarceration can leave people worse off. “By sending them to prison [for violations] . . . are we being beneficial? I don’t know . . . I ain’t got an answer,” said Marc Alstatt, a senior supervision officer in Savannah, Georgia.⁴⁹⁹

In Georgia, a loophole exists that enables longer sentences. As described earlier in this section, Georgia’s sentencing caps do not apply to violations of “special” conditions. But “special” conditions can be nearly identical to “general” conditions.⁵⁰⁰ When supervision officers pursue revocation for these duplicative “special” conditions, then judges can impose lengthier prison terms.⁵⁰¹

Other times, when for example judges are ruling on revocation of supervision in cases involving “impose and stay” sentences, discussed earlier in this section, they may feel compelled to impose longer sentences than they think are appropriate.⁵⁰² For instance, in November 2019, Human Rights Watch observed a revocation hearing in Milwaukee, Wisconsin, for a man who had originally been sentenced to 10 years of probation with a

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⁴⁹⁶ Human Rights Watch Court Observations, Brown County Courthouse, Green Bay, Wisconsin, November 22, 2019.
⁴⁹⁸ 42 § Pa.C.S. 9771.
⁵⁰⁰ For instance, even though general probation conditions prohibit violating the law, judges often impose a “special” condition prohibiting people from violating the law. Human Rights Watch interview with Scott Robichaux, December 9, 2019; Human Rights Watch telephone interview with Marc Alstatt, March 9, 2020; Human Rights Watch interview with Charles Hill, Savannah, Georgia, December 12, 2019.
⁵⁰¹ Ibid.
⁵⁰² Human Rights Watch telephone interview with Tom Reed, October 25, 2019.
five-year “impose and stay” prison term. The judge believed revocation was warranted, but expressed concern that the five-year prison sentence was too high, and wished he had discretion to pick a specific term, he said. But torn between the mandated penalty or no penalty at all, the judge imposed the five-year prison sentence.

Hidden Sentences

When people charged with minor violations finally get their day in court, the judge may simply sentence them to time served. We saw this dynamic often in Georgia. But given lengthy pre-revocation detention, time served can easily be upwards of 60 or 90 days—far longer than what may be considered appropriate for missing meetings or failing to pay court costs.

For instance, Shaquisha McDaniel is a 27-year-old Black mother of three. According to court records, in August 2018 McDaniel was arrested in Lowndes County, Georgia, for stealing $145 of clothing from a Walmart and traffic infractions. A few months later, she pled guilty and was sentenced to a year of probation plus more than $3,800 in fines, restitution, and 40 hours of community service. Her sister, Marian Lundy, whom we met in court while McDaniel was being held for a court appearance, said McDaniel had no way to pay.

Fearful she would lose her children if she admitted she did not have money, McDaniel stopped reporting, Lundy said. About six months later, on July 18, 2019, police arrested and detained McDaniel for trespassing at a sporting goods store and giving a

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504 Revocation Decision, In the Matter of [docket number withheld], Milwaukee, Wisconsin, (on file with Human Rights Watch).
505 Human Rights Watch Court Observations, Chatham County Superior Court, Savannah, Georgia, December 9, 2019; Human Rights Watch Court Observations, Lowndes County State Court, Valdosta, Georgia, December 10, 2019.
507 Docket, Georgia v. Shaquisha McDaniel, 2018SC13998 (Lowndes County, Georgia); Arrest Warrant, Georgia v. Shaquisha McDaniel, 2018SC13998 (Lowndes County, Georgia).
508 Ibid.
false name to the officer. Her probation officer sought revocation for that conduct, as well as failing to report or to perform community service.

In August 2019, McDaniel pleaded guilty to the criminal charges and was sentenced to two more years of probation, 40 hours of community service, and a $1,600 fine. But she remained in jail pending revocation, without a lawyer. Lundy explained that McDaniel struggles to read and write, and she likely did not understand the form that she signed which waived her right to a lawyer (see Section III, “Limited Access to Attorneys”). Meanwhile, Lundy struggled to care for McDaniel’s children on top of her own three kids with just $75 a month in food stamps.

During McDaniel’s revocation hearing on December 10, 2019, the judge sentenced her to time served, converted her fines into community service hours, and released her to continue probation. Rather than paying the fines, she would now have to do community service hours. By the time of her sentence, she had spent 146 days in jail.

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513 Ibid.
517 Ibid.
518 Ibid.
Harmful Prison Conditions

In addition to the cruel and inhumane conditions in which many people awaiting their supervision violation hearings are detained, as described in Section III, some people sentenced to prison terms following revocation proceedings are also held in conditions that raise serious human rights concerns.\footnote{For more information on harms of prisons, see note 367, above, discussing cruel and inhumane conditions in US prisons and jails.}


People described health hazards including Black mold, rats, and overcrowding.\footnote{Human Rights Watch interview with Quentin Apkarian, Allouez, Wisconsin, November 21, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; Human Rights Watch interview with Robert Sanders, November 21, 2019.}

Individuals also said they have limited access to programming, such as job training or educational courses.\footnote{Ibid.}

We also interviewed many people who had been placed in solitary confinement following revocation, some of them for prolonged periods of time, in violation of international human rights standards.\footnote{Under international human rights law, solitary confinement is prolonged if it exceeds 15 consecutive days. \textit{UN Standard Minimum Rules for the Treatment of Prisoners} (\textit{Nelson Mandela Rules}), A/RES/70/175, Rule 44. See Human Rights Watch interview with Angel Ortiz, October 29, 2019; Human Rights Watch interview with Romelo Booker, November 20, 2019; Human Rights Watch interview with Michael Estevez, November 21, 2019; Human Rights Watch interview with Robert Sanders, November 21, 2019; Human Rights Watch interview with Nathanyal May, November 20, 2019; Human Rights Watch interview with Will Harrell, November 18, 2019; Human Rights Watch interview with Quentin Apkarian, November 21, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; Human Rights Watch telephone interview with Mark Davis (pseudonym), April 14, 2020.} Solitary confinement should only be used in exceptional cases, as a last resort, and for as short a time as possible.\footnote{UN \textit{Nelson Mandela Rules}, Rule 45.} While there may be instances in which people need to be temporarily separated from the general
population in order to protect prison safety and security, our research has shown that in the United States, lengthy periods of isolation are often imposed for minor misconduct.\(^{525}\) It also suggests that alternatives to solitary are equally effective at furthering prison safety, and that the conditions of solitary confinement are needlessly harsh, counterproductive, harmful to people’s mental health, and inconsistent with recognition of each person’s basic humanity and dignity.\(^{526}\) Prolonged solitary confinement, or confinement of children or people with mental or psychosocial disabilities, violates the international prohibition against cruel, inhuman, and degrading treatment and may amount to torture.\(^{527}\)

Angel Ortiz, whose case is described above, was held in solitary at various times while imprisoned for supervision violations. At one point, when he was 21 years old, he said, he spent 22 months of a 30-month sentence following revocation for drug possession, which he says was for marijuana, in solitary. He says six of those months of solitary—which he and others held in solitary call “the hole”—happened in a single stretch. “The hole eats away at your brain a little bit . . . You’re sitting there drilling


\(^{526}\) Ibid.

yourself, beating yourself down for certain things. You have nothing to do but think,” he said.

Human Rights Watch interview with Angel Ortiz, October 29, 2019. Green Bay Correctional Facility, a maximum-security prison in Allouez, Wisconsin, November 2019. People who have been detained in the facility following revocation described health hazards including black mold, rats, and overcrowding. © 2019 Allison Frankel/Human Rights Watch

528 Human Rights Watch interview with Angel Ortiz, October 29, 2019.
V. Supervision is Feeding Mass Incarceration—The Numbers

[Probation is] like a prison sentence outside of jail. You walk around with a rope tied around your leg to the prison door. Anything can lead to revocation.\(^{529}\)

—James Yancey, Georgia defense attorney

National Trends

After a nearly 500 percent increase in the US jail and prison population from 1980 to 2007,\(^ {530}\) and nearly 400 percent rise in probation and parole populations,\(^ {531}\) incarceration and supervision growth is finally slowing.\(^ {532}\) States across the country are gradually reforming laws and policies to reduce their reliance on incarceration.\(^ {533}\)

Yet many reforms have failed to tackle the role of probation and parole in perpetuating mass incarceration.\(^ {534}\) Human Rights Watch examined four decades of Bureau of Justice Statistics (BJS) reports showing state and federal prison admissions for certain types of supervision violations, figures that do not include admissions to local or county jails, for which there is little nationwide data (see below). The data show that, between 1978 and

\(^{529}\) Human Rights Watch telephone interview with James Yancey, December 5, 2019.

\(^{530}\) Columbia University Justice Lab, “Too Big to Succeed,” p. 2; “Background” section, above.

\(^{531}\) Ibid.


\(^{534}\) Michelle Phelps, “The Paradox of Probation,” Law Policy, p. 4 (explaining advocacy by myriad nonprofit organizations to reduce reliance on incarceration by diverting people to supervision).
2008, the proportion of US state and federal prison admissions that resulted from violations of parole, extended supervision, or “split sentence” probation doubled. In the late seventies, 16 percent of state and federal prison admissions stemmed from such violations; by 2008, that number was 36 percent. This proportion declined sharply in 2011, likely due in large part to California’s “realignment” policy, which, among other things, limited imprisonment for supervision violations—leading to a sizeable reduction in prison admissions for these violations.

Since 2011, the proportion has increased (see Table below). In 2018, the last year for which such data is available, 28 percent of all state and federal prison admissions resulted from parole, extended supervision, and “split sentence” probation violations. This data may be an underestimate as some states did not provide admission type data. It also does not account for prison admissions resulting from probation violations when the person was not first incarcerated.

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541 As discussed above in note 535, the data only accounts for violations of “split sentence” probation terms, meaning probation terms that were served following incarceration terms.
However different data from the Council of State Governments (CSG) from one year earlier does include all probation violations—though it is limited to state prisons. It shows that, in 2017, 45 percent of state prison admissions nationwide—or nearly 265,000—resulted from probation and parole violations.⁵⁴⁴ In 20 states, including Wisconsin and Pennsylvania, more than half of all state prison admissions in 2017 resulted from supervision.

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violations. In six states—Utah, Montana, Wisconsin, Idaho, Kansas, and South Dakota—supervision violations accounted for more than two thirds of such admissions.

This data also shows that high numbers of people are imprisoned for supervision violations on any given day. In 2018, 280,000 people in state prisons, or nearly 1 in 4, were confined for a supervision violation. In 13 states, including Wisconsin, it was more than 1 in every 3 people.

This CSG data does not include the 226,000 people held in federal jails or prisons, and neither the CSG nor BJS data include most of the 631,000 people confined in county or local jails—such as anyone jailed pending violation proceedings—or those held in “partial confinement” detention facilities, such as probation detention centers, similar to minimum-security prisons.

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543 Council of State Governments Justice Center, “Confined and Costly.” While Georgia, one of the focus states for our report, is not included among states with the highest proportions of its state prison population resulting from supervision violations, the absolute numbers of people admitted to prison for supervision violations are still high—more than 6,000 people were admitted to state prisons for supervision violations in 2017.

544 Ibid.

545 Council of State Governments Justice Center, “Confined and Costly.”


548 The BJS data cited in this section does not include any admissions to county or local jails. E. Ann Carson, “Prisoners in 2018,” Bureau of Justice Statistics, p. 32. The CSG data cited in this section only includes admissions to county or local jails if the incarceration is funded or reimbursed by the state, which only occurs in some states. Regardless, the CSG data does not include people jailed pending violation proceedings. Council of State Governments Justice Center, “Confined and Costly Methodology,” https://csgjusticecenter.org/publications/confined-and-costly-methodology/; Human Rights Watch e-mail correspondence with Megan Quattlebaum, director, Council of State Governments Justice Center, April 17, 2020 (on file with Human Rights Watch).

Proportion of **State Prison Admissions** that are Due to **Supervision Violations** 2017:

Human Rights Watch also examined data regarding people whose supervision terms ended, extracted from 10 years of BJS reports. This data includes people whose supervision term ended because they completed their supervision sentence; their supervision was revoked (see “Definitions and Terms”) and they were sentenced to jail or prison; or their term ended for some other reason, such as that they “absconded” or died.

With respect to parole, from 2007 through 2016, more than 4.83 million people’s parole terms ended. The annual rate of parole completion improved over the last decade from a low of 46 percent in 2007 to 61 percent in 2016.

But high numbers of people do not complete their parole terms each year—leading many of them right back to jail or prison. Over this 10-year period, about one third of people whose parole terms ended—or nearly 1.5 million people—had their parole revoked and were sent back to state or federal jails or prisons. As discussed below in “Violation Types,” about two-thirds of them were locked up due to rule violations, not new convictions.

Numbers for probation revocations are also high. The BJS did not publish probation data in a consistent way over the same 10-year period. We therefore had to examine two recent periods separately, 2007 – 2010 and 2015 – 2016. In the four-year period between 2007 and 2010, nearly 8.7 million people’s probation terms ended—as discussed above, due to factors including completing probation, revocation of their probation and incarceration, or death. About 16 percent of these individuals had their probation revoked and were sent to state or federal jail or prison. In 2015 and 2016, of the 3.8 million people whose probation terms ended, about 14 percent of them had their probation revoked and were

550 The BJS refers to these as supervision “exits.”
551 The reason supervision ended was known to the BJS in over 4.7 million of these cases. The percentages shown here are computed using only cases where reason for the ending of supervision was known. Rates of incarceration do not include cases where the cause of incarceration is unknown.
552 Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.
553 Ibid.
554 Ibid. As explained in “Definitions and Terms,” when a person’s supervision is revoked, they may face lengthy periods of incarceration.
555 Ibid.
556 Ibid.
557 Ibid.
sent to state or federal jails or prisons. This equals hundreds of thousands of people who annually wind up in jail or prison following revocation. In 2016, it was about 270,000 people. As with parole revocations, the majority of these individuals are incarcerated for rule violations, not new convictions.

Even these figures undercount the extent to which people are being incarcerated for supervision violations because they only account for people who were incarcerated following revocation. The numbers do not include, for instance, people jailed pending violation proceedings—which, as discussed in Section III, “Lengthy Confinement,” can take months—or those serving days, weeks, or months in jail as a sanction short of revocation.

Pennsylvania

In the states where we conducted field research for this report, we saw even sharper trends. For instance, Pennsylvania’s prison population has fallen by six percent since its peak in 2011. But admissions for parole violations are rising. While prison admissions following convictions (called “court commitments,” which include probation violations) decreased by 21 percent from 2008 to 2018—from 10,783 to 8,563—admissions due to parole violations increased by 40 percent during that period, from 6,101 to 8,559.

Pennsylvania does not systematically track jail and prison admissions for probation violations, so we were unable to ascertain the number of “court commitment” admissions that resulted from probation violations. However, in 2014, the only year for which we could find such data, the Pennsylvania Department of Corrections reported that 23 percent of the

558 Ibid.
559 About 15 percent of peoples’ probation terms ended for “unknown” reasons, so the number may be higher. Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.
560 See Section III, “Coercive Pleas;” “Definitions and Terms.”
10,313 admissions following court proceedings were on probation at the time of prison admission, suggesting they were incarcerated following probation violations.\textsuperscript{564}

Indeed, between 2013 and 2018, over 54,000 people entered Pennsylvania’s prisons for state parole violations alone—not including county parole or probation violations—accounting for nearly half of the state’s prison population.\textsuperscript{565} In 13 Pennsylvania counties, the majority of prison admissions from 2013 to 2018 resulted from state parole violations.\textsuperscript{566} Philadelphia has 12 percent of Pennsylvania’s population, but nearly 20 percent of all prison admissions for state parole violations—nearly 11,000 people over those years.\textsuperscript{567}

Nearly half of prison admissions in Pennsylvania include parole violations.

Source: Human Rights Watch analysis of Pennsylvania Department of Corrections data.

\textsuperscript{565} Human Rights Watch analysis of Pennsylvania Department of Corrections Data.  
\textsuperscript{566} Human Rights Watch analysis of Pennsylvania Department of Corrections Data. These figures do not include people incarcerated for violating county parole or probation.  
\textsuperscript{567} Ibid.
### Percentage of Prison Admissions that included Parole Violations in Pennsylvania

By County, 2013 – 2018:

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Source: Human Rights Watch analysis of Pennsylvania Department of Corrections data.
Supervision violations are also significant contributors to jail populations in Philadelphia, where reforms in some areas have reduced jail populations, but have failed to meaningfully address the role of supervision violations in contributing to incarceration. According to the First Judicial District of Pennsylvania, between July 2015 and May 2020, Philadelphia cut its jail population by more than half, from 8,082 to 3,935. Yet the proportion of people locked up on detainers has increased, from 46 percent in 2015 to 58 percent in 2020. People confined on Philadelphia detainers with pending charges grew from the third-largest confinement group in 2015 (then accounting for 14 percent of the jail population) to the single largest group of people in jail by 2020, comprising 25 percent of the jail population.

Further, as of 2019, 34 percent of people jailed in Dauphin County, Pennsylvania, which contains Harrisburg, were detained on supervision-related charges. In Montgomery County, near Philadelphia, on one day in October 2019 more than 40 percent of those in jail were in on detainers—42 percent of them for alleged rule violations.

**Wisconsin**

We saw similar trends in Wisconsin. Bucking national trends, after a period of decline, Wisconsin’s jail and prison populations have recently been growing. Much of this growth stems from supervision violations. From 2000 to 2019, Wisconsin consistently admitted about twice as many people to prison for supervision violations as for new convictions (for those not on supervision).

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569 Ibid., p. 11-12. Figures exclude people who have been sentenced and have detainers.
570 Ibid., p. 6.
572 Human Rights Watch e-mail correspondence with Dean Beer, Pennsylvania, July 14, 2020 (on file with Human Rights Watch) (Beer said he obtained this data from the Montgomery County probation department).
In addition, many people in Wisconsin’s jails and prisons are incarcerated while awaiting violation proceedings. According to the JFA Institute, in April 2019, nearly 45 percent of the jail population of Dane County, Wisconsin, was confined for reasons related to supervision violations: 17 percent were locked up solely on detainers; 12 percent were incarcerated on detainers and new charges; 10 percent were serving portions of their probation term in jail; and 5 percent were incarcerated following extended supervision sanctions.

In Milwaukee, Wisconsin, people accused of violating their supervision are generally confined in the Milwaukee Secure Detention Facility (MSDF)—a state prison opened in 2001 for the primary purpose of detaining people under supervision, pre- or post-revocation—the first such facility in the US. The opening of MSDF dramatically increased pre-revocation detention in the Wisconsin state prison system: in the five years since the facility opened, Wisconsin prison admissions grew by 62 percent, and 65 percent of that increase was due to increased detainers. From 2002 through 2019, people detained pending revocation proceedings accounted for more than a quarter of all state prison admissions.

**Georgia**

According to the Georgia Department of Corrections, while prison admissions for new convictions in Georgia dropped from 14,001 in 2014 to 12,617 in 2019, admissions for the remaining ten percent of admissions were “other,” which includes people serving “Alternative to Revocation” (ATR) programs following supervision violations; incarceration pending revocation proceedings; admissions for short-term sanctions; and admissions after completions of sentences from other states. Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” p. 9. In 2017, more than 97 percent of those admitted for “other” reasons were locked up to complete ATR programs. Data provided by Wisconsin Department of Corrections in response to records request from Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).


Ibid.

The remaining 1 percent were incarcerated on other holds. Ibid. For an explanation of extended supervision, see “Definitions and Terms.”


The vast majority of people detained in state prisons pending revocation are held at MSDF, but some are held at other Wisconsin Department of Corrections facilities. Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” Table 13.
supervision violations rose from 5,001 to 6,298 over that same period.\textsuperscript{581} In 2019, supervision revocations accounted for one third of all Georgia prison admissions.\textsuperscript{582} These figures do not include people in county jails or “partial confinement” facilities such as probation detention centers.

With respect to jail populations, Human Rights Watch examined data scraped from jail rosters in nine Georgia counties from June 1 to October 31, 2019. The data indicated that, depending on the county, between 23 and 43 percent of all jail bookings during that period involved a parole or probation violation.\textsuperscript{583} As discussed below in “Violation Types,” many such bookings involved only parole or probation violations, without any other criminal charges.

The prevalence of bookings for supervision violations in each county varied, from 34 violation bookings per every 10,000 residents in Gilmer County, Georgia, near the Tennessee border, to 210 such bookings for every 10,000 residents in Jeff Davis County, in southeastern Georgia.\textsuperscript{584}


\textsuperscript{582} Georgia Department of Corrections, “Inmate Statistical Profile: Inmates Admitted During CY2019,” p. 21.

\textsuperscript{583} Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters. See “Methodology.”

About 23 percent of all charges resulted from probation violations, while another 1.3 percent stemmed from parole violations. Ibid.

\textsuperscript{584} Ibid.
**Jail Bookings in Select Georgia Counties 6/1/2019 - 10/31/2019**

<table>
<thead>
<tr>
<th>County</th>
<th>Total bookings</th>
<th>Percentage of bookings including a parole or probation violation</th>
<th>Percentage of bookings with only a parole or probation violation</th>
<th>Rate of Probation or Parole Violation Bookings per 10,000 County Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catoosa</td>
<td>736</td>
<td>40%</td>
<td>17%</td>
<td>43</td>
</tr>
<tr>
<td>Decatur</td>
<td>591</td>
<td>31%</td>
<td>13%</td>
<td>68</td>
</tr>
<tr>
<td>Gilmer</td>
<td>434</td>
<td>23%</td>
<td>9%</td>
<td>34</td>
</tr>
<tr>
<td>Gordon</td>
<td>921</td>
<td>39%</td>
<td>13%</td>
<td>64</td>
</tr>
<tr>
<td>Haralson</td>
<td>614</td>
<td>26%</td>
<td>11%</td>
<td>56</td>
</tr>
<tr>
<td>Jeff Davis</td>
<td>877</td>
<td>36%</td>
<td>14%</td>
<td>210</td>
</tr>
<tr>
<td>Newton</td>
<td>1,273</td>
<td>43%</td>
<td>18%</td>
<td>50</td>
</tr>
<tr>
<td>Tift</td>
<td>679</td>
<td>30%</td>
<td>11%</td>
<td>50</td>
</tr>
<tr>
<td>Ware</td>
<td>714</td>
<td>36%</td>
<td>12%</td>
<td>72</td>
</tr>
</tbody>
</table>

**Violation Types**

Nationwide, most people incarcerated for violating their supervision were in custody for rule violations, not for new offenses.\(^{585}\) Human Rights Watch examined data extracted from BJS reports from 2007 to 2016, which considers conduct to be a “new offense” violation only if it resulted in a criminal conviction.\(^{586}\) We removed all cases where the reason for incarceration was unknown.

The data showed that, of people who had their parole revoked and were sent back to state and federal jails and prisons, about two-thirds of them were locked up for rule violations, not new offenses.\(^{587}\) In 2016, the most recent year for which such data is available, 67

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\(^{585}\) Danielle Kaeble, “Probation and Parole in the United States, 2016,” Tables 3, 7. For a discussion of how jurisdictions define “rule” and “new offense” violations, see “Definitions and Terms” and “Methodology.”

\(^{586}\) Human Rights Watch e-mail correspondence with Bureau of Justice Statistics, April 17, 2020 (on file with Human Rights Watch).

\(^{587}\) Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.
percent of people incarcerated following revocation were there for rule violations, while 30 percent were confined for new offense violations, and 3 percent were incarcerated to receive treatment or for other reasons.\(^{588}\) Similarly, about 58 percent of those who had their probation terms revoked and were sent to state and federal jails and prisons in 2015 and 2016 were incarcerated for rule violations.\(^{589}\) In 2016, 59 percent of people incarcerated following revocation were locked up for rule violations, 38 percent were incarcerated for new offense violations, and 3 percent were locked up to receive treatment or for other reasons.\(^{590}\) None of these figures include people who were jailed pending violation proceedings or serving incarceration terms short of revocation, or those held in “partial confinement” facilities such as probation detention centers.\(^{591}\)

People imprisoned for rule violations—both up to and including revocation—comprise a sizeable proportion of all state prison admissions. According to CSG data, in 2017, 25 percent of all state prison admissions nationwide resulted from rule violations, while 20 percent of all such admissions stemmed from new offense violations.\(^{592}\) As discussed above, CSG’s figures do not even include people confined in county-funded jails or federal jails and prisons or those in “partial confinement” facilities.\(^{593}\) Since many people charged with rule violations are sentenced to jails or partial confinement facilities instead of prison, they likely constitute a sizeable share of the population in those facilities.\(^{594}\) Accordingly, the actual number of those incarcerated for rule violations is likely much higher.

\textit{Pennsylvania}

In Pennsylvania, our analysis of data provided by the Pennsylvania Board of Probation and Parole (PBPP), and data made public by the Pennsylvania Sentencing Commission, show

\(^{588}\) Danielle Kaeble, “Probation and Parole in the United States, 2016,” Table 7.
\(^{589}\) Human Rights Watch analysis of Bureau of Justice Statistics data from annual Probation and Parole in the United States reports.
\(^{590}\) Danielle Kaeble, “Probation and Parole in the United States, 2016,” Table 3.
\(^{591}\) Ibid., p. 5; “Definitions and Terms.”
\(^{592}\) Council of State Governments Justice Center, “Confined and Costly,” p. 1. In this dataset, each state categorized violations as “rule” or “new offense” violations according to their own definition. Ibid., p. 1 n.1.
\(^{593}\) Council of State Governments Justice Center, “Methodology: Confined and Costly.”
that the types of violations that lead to incarceration differ sharply between people serving state parole and county probation.

Human Rights Watch analysis of PBPP data reveals that, out of more than 32,000 state parole violation proceedings in Pennsylvania between 2016 and 2019, 56 percent resulted from new offense violations, while 42 percent resulted from rule violations.595 This dataset considers conduct to be a rule violation if the conduct did not result in a criminal conviction.596

Meanwhile, according to the Pennsylvania Sentencing Commission, the vast majority—78 percent—of county probation revocations during those years were for rule violations, while only 22 percent of revocations resulted from new offenses.597 As each county reported data differently, there was no standard definition of rule or new offense violations in this dataset.598

**Wisconsin**

In Wisconsin, the majority of supervision violations do not involve new criminal convictions. Human Rights Watch analyzed data provided by the Wisconsin Department of Corrections (WI DOC) for all supervision violations that resulted in any sanction—from warnings, to months in jail, to revocation599—between 2017 and 2019 (“sanctions dataset”).600 In that dataset, the WI DOC coded violations based on the underlying conduct: if the supervision officer alleged that the conduct constituted only a rule violation, they coded it as a rule violation, and if the supervision officer alleged that the conduct constituted a new offense—whether or not charges were filed—they coded it as a new offense violation.601

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595 The remaining two percent of hearings resulted from both rule and new offense violations. Human Rights Watch Data analysis of data provided by Pennsylvania Department of Probation and Parole.
596 Human Rights Watch e-mail correspondence with David Butts, May 21, 2020; see “Definitions and Terms;” “Methodology.”
598 Human Rights Watch e-mail correspondence with Mark Bergstrom and Matthew Kleiman, Pennsylvania Sentencing Commission, April 29, 2020 (on file with Human Rights Watch); see “Methodology.”
599 See “Definitions and Terms.”
600 See “Methodology.”
601 Human Rights Watch e-mail correspondence with Megan Jones, December 18, 2019 (on file with Human Rights Watch); see “Definitions and Terms;” “Methodology.”
The sanctions dataset revealed that more than 61 percent of supervision violations that resulted in any sanction, and 50 percent of violations that resulted in incarceration sanctions, were for rule violations—meaning people had not allegedly engaged in behavior that constituted a criminal offense.\textsuperscript{602}

Human Rights Watch also analyzed a public WI DOC dataset comprised of people who were subjected to the harshest sanction available for a supervision violation: revocation of supervision and confinement in state prison (“prison admissions dataset”).\textsuperscript{603} In this dataset, the WI DOC coded conduct as a rule violation as long as it did not result in a new conviction and sentence for a crime.\textsuperscript{604} Unlike in the sanctions dataset, people admitted to prison for rule violations in this dataset may or may not have been accused of conduct that constituted a crime.

The prison admissions dataset shows that Wisconsin has consistently imprisoned high numbers of people who fall into this category—those who had their supervision revoked for rule violations, meaning they were not convicted and sentenced for a new offense—over the last two decades. From 2000 through 2019, this category constituted the single largest category of state prison admissions, accounting for 34 percent of them—above admissions for new convictions of people not under supervision (30 percent), revocations for new offenses (26 percent), and a category of “other” (10 percent).\textsuperscript{605} In 2019, rule violations accounted for nearly 40 percent of all prison admissions in Wisconsin.\textsuperscript{606} Further, at the end of 2017, more than six times as many people were incarcerated at MSDF (the primary prison for supervision violations) following revocation for rule violations as for new offense violations.\textsuperscript{607}

\textsuperscript{602}Human Rights Watch Analysis of WIDOC Data. As discussed in Section II, “Conduct Triggering Violations,” the most common rule violations in Wisconsin were drug use; consuming alcohol or entering bars; and violating rules of supervision-mandated programs.

\textsuperscript{603}People who were sentenced to sanctions short of revocation, like a few months in jail, or a prison-based treatment program, are not included in this dataset.

\textsuperscript{604}Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” p. 9; see “Definitions and Terms” and “Methodology.” WI DOC refers to revocations for rule violations as “revocation only” prison admissions, and to revocations for new offense violations as “revocation new sentence” admissions. See Wisconsin Department of Corrections, “Prison Admissions Dashboard,” https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx (accessed June 28, 2020).

\textsuperscript{605}Wisconsin Department of Corrections, “Prison Admissions Dashboard,” https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx (accessed June 2, 2020). “Other” includes people incarcerated pending revocation or serving sanctions short of revocation, as well as people serving sentences from another state. Ibid.

\textsuperscript{606}Wisconsin Department of Corrections, “Prison Admissions: 2000-2019,” Table 6.

\textsuperscript{607}Columbia University Justice Lab, “Wisconsin Community Corrections Story,” p. 15.
Human Rights Watch also obtained a preliminary processed WI DOC dataset (“merged dataset”), which contains a subset of people who were admitted to prison following revocation for rule violations from January 2017 to June 2018, drawn from the prison admissions dataset, along with the alleged underlying conduct triggering revocation, based on the sanctions dataset. WIDOC officials warned that the data “should be interpreted with caution as there are still a number of data entry errors that need to be corrected.” According to this dataset, 73 percent of the nearly 4,000 prison admissions for rule violations in those years allegedly involved conduct that constituted a crime. This 4,000 figure constitutes just a small subset of the 135,121 supervision violations analyzed in the sanctions dataset. The most common alleged offenses in the merged dataset were, in order, drug offenses, unlawful firearm possession, misdemeanor battery, failure to comply with sex offense registration rules, and operating a vehicle under the influence.

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608 Data provided by Wisconsin Department of Corrections to Wisconsin State Representative Evan Goyke (on file with Human Rights Watch).
609 Ibid.
610 Ibid. As discussed in Section II, “Conduct Triggering Violations,” the most common new offense violations in the sanctions dataset were, in order, public order conduct; assaultive conduct, which was largely for misdemeanor offenses; drug possession; and theft or property conduct.
Georgia

Human Rights Watch was not able to obtain as much data on the types of violations driving jail and prison admissions in Georgia as in other states.611 However, our analysis of data scraped from jail bookings in nine Georgia counties revealed that, from June 1 to October 31, 2019, between 9 and 18 percent of all jail bookings were solely for probation or parole violations—without any other criminal charges.612

Entrenching Racial Disparities

There are marked racial disparities in incarceration for supervision violations. As discussed above in “Background,” nationwide, Black people are disproportionately subjected to supervision.613 Further, while there are no nationwide figures, studies in multiple jurisdictions show significant racial disparities in rates of incarceration for violations.614

For instance, a study of people exiting parole in Kentucky, Michigan, New York, and Utah in 2000 revealed that Black people were 19 percent more likely than whites to have their parole revoked for a new offense, and 50 percent more likely than whites to have their parole revoked for a rule violation.615 Another study examining parole revocation data across 24 states between 1990 and 2009 found that parole revocation is significantly more likely for Black people, contributing to racial disparities in prison admissions.616

611 See “Methodology.”
612 Human Rights Watch analysis of publicly available data obtained from Georgia jail rosters.
613 PEW Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” Figure 4.
616 Caitlin Curry, “Do Parole Revocations Contribute to Racial Disproportionality in Imprisonment?”
Human Rights Watch analysis of data in Pennsylvania and Wisconsin reveals stark racial disparities. For instance, while Black people make up 11 percent of Pennsylvania’s population, they comprise 43 percent of the population under state parole supervision, 46 percent of people in Pennsylvania state prisons, and 43 percent of people incarcerated for state parole violations.

Disparities are particularly glaring in Wisconsin, which, as of 2014, had the highest racial disparities in its incarcerated population in the United States, with 11.5 Black individuals locked up for every one white person. In 2017, while Black people made up just 6 percent of Wisconsin’s population, they comprised 25 percent of the state’s supervision population and 42 percent of those incarcerated following revocation. According to Human Rights Watch analysis of WI DOC data, the proportion of Black people sanctioned for violations is four times greater than their representation in Wisconsin’s population. The proportion of Native Americans sanctioned for violations is seven times higher than their proportion of the state population.

In some counties, disparities are even higher. As of 2018, Black people made up 26 percent of Milwaukee County’s population, but 64 percent of people under supervision there, and 78 percent of those admitted to prison from the county following revocation. In 2017, Black people comprised 76 percent of the population incarcerated following revocation at MSDF (a Milwaukee prison for people charged with violating their...
supervision)—and of those, 88 percent did not have new convictions. In nearby Racine County, Black people comprised 12 percent of the population in 2018, but more than 60 percent of the county’s prison admissions for revocation.

These disparities result from decades of systemic racial discrimination—meaning discrimination that is built into societal institutions. Across the country, Black and brown people are less likely to have advantages, such as housing, wealth, reliable transportation, and jobs, that make completing supervision feasible. They are also disproportionately likely to be surveilled, stopped, and searched by law enforcement—making it more likely that any violations will be uncovered.

While these disparities exist across the country, they are particularly harsh in some jurisdictions covered for this report. For instance, for the last three years Milwaukee and nearby Racine—cities with entrenched segregation, massive income inequality, and huge

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629 Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 15; Figure 12.
630 U.S. Census Bureau, Race American Community Survey 1-year estimates.
631 Wisconsin Department of Corrections, “Prison Admissions Interactive Dashboards.”
racial disparities in incarceration—have been ranked among the worst cities in the country to live for African Americans.\textsuperscript{635}

VI. Factors Driving Violations

Our research shows that many violations result from social and economic disadvantages, including poverty, housing insecurity, problematic drug use, mental health conditions, and racial bias. In most cases, these factors are present in combination. For example, Black and brown people are more likely to be poor and homeless than their white counterparts, and many people with mental health conditions use drugs to cope with their symptoms. Meanwhile, poverty and homelessness can exacerbate mental health conditions.

Poverty

You come out under the gun already, you got all these fines and costs, and then they wanna' violate you for that.\(^{636}\)

—Sarah Martin (pseudonym for last name), navigating probation in Pennsylvania

At root, many violations stem from poverty. People on supervision, who are disproportionately poor,\(^ {637}\) must choose between paying their court debt or program fees and putting food on the table.\(^ {638}\) Financial insecurity can also lead people to commit offenses like shoplifting for basic necessities.\(^ {639}\) People with childcare obligations face even higher financial and logistical barriers to meeting their supervision obligations.\(^ {640}\)

\(^{636}\) Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.

\(^{637}\) Mack Finkel, “New Data: Low Incomes-But High Fees-For People on Probation;” Elizabeth Kneebone and Richard Reeves, “The Intersection of Race, Place, and Multidimensional Poverty, Brookings Institute.”


Unsurprisingly, research shows that people with more access to resources have an easier
time completing supervision.\footnote{Michelle Phelps, “Mass Probation and Inequality,” p. 44, 49.}

Take Dewayne Thompson (pseudonym). In September 2015, Thompson, a 27-year-old
Black resident of Valdosta, Georgia, was arrested for several traffic offenses, including
driving under the influence, driving without insurance, and failure to maintain his lane.\footnote{Dockets, \textit{Georgia v. Dewayne Thompson} (pseudonym) (Lowndes County, Georgia); Human Rights Watch interview with Erika Lewis (pseudonym), December 10, 2019. All information in this case study is from Human Rights Watch’s interview with Erika Lewis (pseudonym) unless otherwise noted.} A few months later, he pled guilty and was sentenced to four years of probation in Lowndes County, Georgia.\footnote{Ibid.} He owed more than $2,000 in fines and $35 in monthly supervision fees.\footnote{Ibid.} While Thompson was locked up pending revocation proceedings, his aunt, Erika Lewis, relayed his story, which we summarize below:

Thompson had been working at Sunset Farms, a sausage company, to support himself and
pay his court debt. But in the fall of 2018, his grandmother—who had Alzheimer’s—fell ill
with pneumonia. The only family member strong enough to lift her, Thompson quit his job
to take care of her.

Without a job, Thompson could no longer make his probation payments. His probation
officer told him that, if he did not bring her the money, she would tell the court and he
could face jail. Scared, Thompson stopped reporting.

In February 2019, the court revoked Thompson's probation for failing to report and
sentenced him to time served, which had been 20 days, and returned him to his
probation sentence.\footnote{Order on Petition to Revoke Probation, \textit{Georgia v. Dewayne Thompson} (pseudonym), February 15, 2019; Petition for Revocation of Probation, \textit{Georgia v. Dewayne Thompson} (pseudonym), February 1, 2019.}

When Thompson was released, his family's struggles had not gone away. Over the next
year, his grandmother's health worsened. Thompson remained at home to care for her,
missing more probation appointments as a result.
In August 2019, Thompson was arrested again for failing to report. That month, while Thompson was incarcerated, his grandmother passed away. Thompson spent three months in jail just waiting for a hearing, only to be sentenced to another month in jail.

Poverty can also keep people under supervision longer. As discussed in Section I, “Requirements of Supervision,” courts can extend or reduce peoples’ supervision terms based on whether they have paid their court debt. “That hits the poor really hard,” explained Beau Mullen, who regularly represents people facing probation revocation in Lowndes County, Georgia. “It can take people months or years to save up the money to terminate probation.”

More time on probation means more monthly supervision fees and more time to mess up—which can trigger additional fines and incarceration. For example, after years under supervision for drugs and driving while intoxicated charges in Pennsylvania, around 2016 Robert Thurgood thought he was finally free. He told us, “I was happy because I was like ‘I did it, I finally walked probation off.’” But then he learned he would remain on probation until he finished paying the $300 he owed in restitution. Thurgood thought, “dang, why would they keep me on [probation] for [that]?” In June 2018, Robert said, he missed an appointment and was locked up for two weeks. A person who could pay the $300 right away would have already been off probation.

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646 Ibid.
647 Ibid.
650 Interview with Robert Thurgood, October 31, 2019.
651 Ibid.
652 Ibid.
Housing Instability

Things would be better on probation if I had a steady place where I can lay my head.653

—Darius Hill (pseudonym), navigating probation while homeless in Chatham County, Georgia

Criminal records make finding housing tough, with criminal background checks often preventing people with records from obtaining private housing and bans on public housing for certain convictions.654 On top of this, Black and brown people are less likely to be approved for mortgages and rentals.655 Nationwide, an estimated 15 to 27 percent of people in prisons expect to live in a homeless shelter upon release.656

The lack of stable housing often leads to heightened physical and mental health issues.657 People, and particularly women, who are experiencing homelessness are also subjected to high levels of violence, including sexual violence.658 These factors make it hard to follow

653 Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.
656 Alicia Bannon, et al., “Criminal Justice Debt,” Brennan Center for Justice, p. 4; American Civil Liberties Union, Set Up to Fail, p. 36-37 (35 percent of respondents in Montana were homeless upon release).
supervision conditions like holding down a job and attending mandatory meetings. A 2002 study found that people navigating parole from New York homeless shelters were seven times more likely to stop reporting than New Yorkers who had housing. According to a Georgia study, people on parole who experienced periods of homelessness had three times the rate of revocations compared to those on parole who had stable housing.

Living in public also leaves people vulnerable to arrest under laws that criminalize homelessness, such as panhandling and loitering bans, as well as drug, trespass, and disorderly conduct laws.

Darius Hill (pseudonym), who has been homeless in Savannah, Georgia, for the last five years, explained: “You come home [from prison] with $25. You gotta report [to probation]. I tell them, ‘I’m homeless, I need somewhere to stay. I’m in a shelter which is full of drugs.’ But they don’t help me.” As discussed in Section VI, “Mental Health Conditions,” Hill—who says he has a substance use disorder and mental health conditions including paranoia, and has not received supportive services—keeps getting locked up for probation violations, largely for shoplifting. Hill said he wished probation would “give me a place to live, vouchers for clothes, something to help me get on my feet so I can do right.”

Most often, housing instability leads to violations for failing to report address changes. As Lancaster County, Pennsylvania, public defender Chris Tallarico explained, when people are constantly on the move, “they’re left to scramble and so the last thing on their mind is ‘I have to forward my mail or contact my PO to give them the good address.’” Lowndes County Chief Public Defender Wade Kruger called this “de facto criminalization

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662 Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.
663 Ibid.
664 As discussed in Section II, “Conduct Triggering Violations,” moving without permission is the most common state parole violation leading to incarceration in Pennsylvania.
of homelessness.”  

In 2017, Juan Richardson, a 31-year-old Valdosta, Georgia, resident, was arrested and pled guilty to criminal interference with government property. The court sentenced him to five years of probation, along with a $1,500 fine, $600 in court fees, a $32 monthly supervision fee, and 80 hours of community service. At the time, he was also serving nine years of probation for a 2009 aggravated assault conviction. Richardson relates these convictions to his longstanding alcohol dependence. As discussed in Section VI, “Substance Use,” few people receive evidence-based treatment for substance use disorder while incarcerated, or other forms of support that are important to recovery once released, making them likely to continue violating supervision for reasons related to their substance use when they are released.

A few months later, Richardson was arrested for driving with a suspended license and battery, and the court revoked his probation. He spent about half a year in jail as a result, and still had more probation to serve when he got out, he said. In the interim, Richardson explained, his wife—stressed by Richardson’s incarceration and unable to pay the bills without him—had moved with their infant son from their Valdosta, Georgia, home to New Jersey.

“So I came out homeless,” Richardson said. Probation required him to report his address—but, Richardson described, that was difficult when he bounced daily from couches to benches to shelters.

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667 Docket, Georgia v. Juan Richardson, 2017cr296 (Lowndes County, Georgia).
668 ibid.
669 Docket, Georgia v. Juan Richardson, 2008CR604 (Lowndes County, Georgia).
670 Human Rights Watch interview with Juan Richardson, December 11, 2019. All of the details that follow in this case description come from this interview except where otherwise noted.
672 Order Revoking Revocation, Georgia v. Juan Richardson, 2008CR604 (Lowndes County, Georgia).
Additionally, he said, the only people he knew on the streets—and most of the people who could shelter him—used methamphetamine. Richardson told us that he often feared admitting where he was living to his probation officer, since being around drugs would violate his conditions. “It’s hard when you have nothing,” Richardson said. “I basically had a choice between going back to the streets or to the meth house where at least it’ll be warm.” Meanwhile, Richardson began using methamphetamine.

In August 2018, Richardson’s supervision was revoked for failing to report a change of address and the court sentenced him to 30 days in jail. 673 Two months later, his probation officer again pursued revocation for failing to report his address change, as well as for possessing methamphetamine—for which Richardson separately faced criminal charges. 674 After Richardson spent 80 days in jail, in January 2019, the court sentenced him to two more years of probation for methamphetamine possession and time served for the violations. 675

Later that year, Richardson said, he tried to get drug treatment from Behavioral Health Services, a local health services agency that provides such treatment. However, he says they turned him away because he did not have an ID. He described, “I was like, ‘I’m homeless, I need help, isn’t that what you’re here for?’ I didn’t have a social security card. I didn’t have ID. I was homeless.”

In October 2019, Richardson’s probation officer again could not find him. The officer had left messages at his last reported address. But already on the move, Juan explained, he never got them. “I have no phone, no job, no income, it’s hard to get in touch,” he explained. 676 The officer again filed for revocation and Juan was detained. 677

673 Petition for Revocation of Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia August 10, 2018); Motion to Amend Probated Sentence, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia September 14, 2018).

674 Petition for Revocation of Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia October 15, 2018); Order Revoking Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia January 9, 2019); Docket, Georgia v. Juan Richardson, 2019CR0006 (Lowndes County, Georgia).

675 Docket, Georgia v. Juan Richardson, 2019CR0006 (Lowndes County, Georgia); Petition for Revocation of Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia October 15, 2018); Order Revoking Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia January 9, 2019).

676 Richardson clarified that he possesses a phone but cannot afford a data plan, so he can only use it when he has a Wi-Fi connection.

677 Petition for Revocation of Probation, Georgia v. Juan Richardson, 2017CR296 (Lowndes County, Georgia October 19, 2019).
When we met Richardson in December 2019, he was still in the Lowndes County Jail pending revocation proceedings. He told us he needed to get out of Lowndes County and start over. He wants to move to South Carolina, where his mom lives and can help him find housing and a job. Plus, her boyfriend is a parole officer—"so there’s no worries about me messing up," he quipped.

But Richardson’s probation officer was making him pay the $100 fee to process the interstate compact—the form required to transfer probation to another state. He doesn’t have it. Richardson sighed, “You gotta have money to help yourself and $100 is costing me my life.”

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**Legislated into Homelessness—or Revocation**

Laws in at least 30 states, including Pennsylvania, Georgia, and Wisconsin, restrict people convicted of certain sex crimes from living near schools or other areas where children congregate. These restrictions can put entire neighborhoods or even towns off limits. While governments must take sex crimes seriously, contrary to widely held belief, experts have concluded that there is no evidence that restricting where people live reduces the likelihood they will commit another sex offense against a child. And, too often, these restrictions push people into homelessness, unemployment, and isolation.

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Alonzo Flucas understands these harms well. In 2018, a Lowndes County, Georgia, court sentenced Flucas to 10 years of probation for statutory rape committed in 2015, when he was 24 years old. Because of his conviction, Georgia law forbid Flucas from living within 1,000 feet of a school, church, or park.

Flucas wanted to live with his girlfriend, Ashlee Andrews, age 25, but she has two young children, and Flucas’s supervision conditions forbid him from living with anyone under 18 years old. Flucas explained that the only affordable room he could find that met Georgia’s residency restriction was a dingy Traveler’s Inn for $250 a week. Andrews told us the place had “rust coming out of the water.” Unable to handle the filth, Flucas explained, he eventually began leaving the motel at night and sleeping in nearby Tifton, Georgia.

Although Flucas says he gave probation the Tifton address, in March 2018 a Lowndes County court revoked his probation for failing to report his address. In October 2018, the court sentenced him to 160 days in a probation detention center, akin to a minimum-security prison. Flucas also pleaded guilty to criminal charges for failing to register—for living at the unapproved address—and was sentenced to another five years of probation.

When Flucas was released in July 2019, he said, his church helped him find a decent house. Flucas told us that the police agreed the address complied with his residency restrictions, and he moved right in. But soon after, Flucas continued, his probation officer told him the house was too close to a church. The church “doesn’t show up on

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683 Human Rights Watch interview with Alonzo Flucas, Valdosta, Georgia, December 10, 2019; Human Rights Watch telephone interview with Ashlee Andrews, December 13, 2019; Docket, Georgia v. Alonzo Flucas, No. 16CR514 (Lowndes County, Georgia). All of the details that follow in this case description come from these interviews except where otherwise noted.


685 Human Rights Watch e-mail correspondence with Beau Mullen, January 2020 (describing reports of poor conditions in the Travelers’ Inn where Flucas stayed) (on file with Human Rights Watch).

686 Order Revoking Probation, Georgia v. Alonzo Flucas, 16CR514 (Lowndes County, Georgia October 4, 2018); Georgia Department of Corrections, “Probation Detention Center,” http://www.dcor.state.ga.us/Divisions/Facilities/ProbationDetentionCenters.

687 Docket, Georgia v. Alonzo Flucas, 2018CR663 (Lowndes County, Georgia).
the map,” Flucas explained. More importantly, “The church isn’t even running. It doesn’t operate. There’s no minister.”

Flucas says he tried to scrape together enough money to go back to a hotel and avoid revocation, but he could not get it together in time. So, he stayed in the house.

In October 2019, Flucas’s supervision officer initiated revocation proceedings for failing to register—by living at the unapproved address—as well as failing to report as directed on Halloween and failing to complete community service. Though the revocation papers suggest that he “absconded,” Flucas told us, “They came right to my address to pick me up. . . They knew exactly where I was.”

Flucas spent about two months in jail waiting for his revocation hearing. Once he finally got his day in court in January 2020, the judge revoked Flucas’s supervision and sentenced him to serve another two months in jail before returning to probation.

Mental Health Conditions

I don’t report [to probation], I can’t do it. You all know I’m not gonna do it . . . I’ve had a problem all my life. Jail ain’t gonna solve the problem.

—Darius Hill (pseudonym), describing his trouble following basic supervision rules, which he attributes to undiagnosed mental health issues

Many people incarcerated for supervision violations have underlying mental health conditions. Nationwide, rates of mental health conditions among people on probation or

688 Delinquent Report, Georgia v. Alonzo Flucas, 16CR514 (Lowndes County, Georgia, November 1, 2019); Delinquent Report, Georgia v. Alonzo Flucas, 18CR663 (Lowndes County, Georgia, November 1, 2019).
689 Ibid.
690 Order Revoking Probation, Georgia v. Alonzo Flucas, 16CR514 (Lowndes County, Georgia, January 8, 2020); Order Revoking Probation, Georgia v. Alonzo Flucas, 18CR663 (Lowndes County, Georgia, January 8, 2020).
parole are two to four times higher than in the general population. Further, as of 2012, the last year for which data is available, the US Department of Justice reported that 37 percent of people in prison and 44 percent of those in jail had previously been told by a mental health professional that they had a mental health condition. These numbers are particularly stark for incarcerated women in the US—more than two-thirds of whom report a history of mental health conditions—and Black people, who are both disproportionately incarcerated and disproportionately likely to experience mental health issues, though they are less likely to be diagnosed or have access to support services and treatment.

Twenty-six percent of people in Pennsylvania’s prisons in 2016 were receiving mental health services, more than half of those admitted to Georgia’s prisons in 2019 were receiving such treatment, and 41 percent of people in Wisconsin’s prisons in 2018 were considered to have a mental health condition. Further, in Wisconsin, nearly half of the people admitted to prison for supervision violations from 2016 through 2019, and 62 percent of people detained at MSDF in 2017 had a diagnosed mental health condition.

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699 Data provided by Wisconsin Department of Corrections.

700 Jarred Williams, et al., “Wisconsin Community Corrections Story,” p. 17. MSDF is a Milwaukee prison that was designed to incarcerate people accused of supervision violations. See Section V, “Supervision is Feeding Mass Incarceration—The Numbers.”
Meanwhile, much of the United States lacks community-based mental health services.\textsuperscript{701} Instead, many people with mental health conditions end up in hospital emergency rooms and in US correctional facilities where they cannot get the care they want and need.\textsuperscript{702}

Having a mental health condition can make revocation more likely. Many people rely on drugs and alcohol to try to cope with anxiety, depression, post-traumatic stress, and other mental health conditions, leaving them at risk of revocation for substance use.\textsuperscript{703} Mental health conditions can also make it harder for people to hold down jobs and get to supervision-related appointments, leading to rule violations.\textsuperscript{704} Some people with mental health conditions at times behave publicly in ways that lead to arrest, particularly when they lack access to mental health services.\textsuperscript{705} Further, people showing signs of mental health conditions are more likely to be arrested than people who engage in the same behavior without exhibiting those signs.\textsuperscript{706}


\textsuperscript{705} Ibid., p. 8; Human Rights Watch interview with Mark Rice, November 18, 2019; Human Rights Watch Court Observations, Milwaukee Secure Detention Facility, November 20, 2019.

**Legal Requirements**

The Americans with Disabilities Act (ADA) requires supervision departments to provide “reasonable accommodations,” or modifications in policies and procedures to ensure accessibility for people with mental health conditions and other disabilities, to give them an equal opportunity to successfully complete supervision. Supervision departments also must notify people of their right to these accommodations. 707 However, according to leading disability experts, supervision departments often fail to follow the ADA’s requirements. 708

Darius Hill (pseudonym), mentioned above, is a 53-year-old Black man in Chatham County, Georgia. Hill has been in jail or on probation for nearly four decades, primarily for drug and property offenses, and is currently sentenced to five years of probation for a 2015 escape. 709 When we met Hill in December 2019, he was incarcerated in the Chatham County jail awaiting both revocation and criminal proceedings for shoplifting from dollar stores and a grocery store, and obstructing an officer. 710

Hill told us that he has never been able to handle probation. “I don’t report. I can’t do it,” he said. Hill believes he has an undiagnosed mental health condition. Drugs and alcohol ease his paranoia and other symptoms, he explained. “I could be working,” he described. “But all of the sudden something feels wrong inside me. I get jittery, uneasy. It makes me want to go drink or get high.” Hill told us he has lost jobs and a home, and he steals to get drugs. “I know I have a problem,” he said. “I keep doing the same thing.”

Rather than help, probation has only caused him to experience more anxiety. “You know when you get out you gonna fail because the probation is gonna put so much pressure on

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709 Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Docket, Georgia v. Darius Hill (pseudonym) (Chatham County, Georgia). All information is from Human Rights Watch’s interview with Hill unless otherwise noted.

710 Ibid.; Georgia v. Darius Hill (pseudonym) (Chatham County, Georgia).
you . . . If you put pressure on me, I'm going to burst,” he told us. “They don't care you're homeless, and that pressure is gonna make you drink more and stop reporting and there we go again! It's like a cycle.”

In 2018, Hill said, his probation officer put him in Grace House, an emergency men’s shelter that offers re-entry services—but, still dependent on cocaine, jobless, and without any support system, he left. “I couldn’t do it . . . The demons sneaked up on me.” Courts continue imposing probation and jail—without assessing or adequately addressing his mental health needs, he said. In December 2019, when we last spoke to Hill, he had been incarcerated pending revocation for more than ten months.711

Trauma

In urban, low-income communities—where most people we interviewed grew up—nearly one in four adults experience post-traumatic stress disorder.712 Enduring traumatic events significantly increases a person's odds of having contact with the criminal legal system.713 Studies also show that many people who perpetrate harm have previously themselves experienced trauma as a victim.714

These numbers are particularly stark for women. Studies suggest that as many as 90 percent of women in prison experienced traumatic events prior to their incarceration—most often interpersonal or sexual violence.715

Many people we interviewed connected their incarceration to traumatic experiences. Valerie Todd (see Section II, “Failure to Pay”) described that at age 12, she began sleeping in abandoned houses along Philadelphia’s railroad tracks, because it felt safer than the violence, drugs, and sexual abuse she experienced at home.716 By age 21, Todd was on

711 Georgia v. Darius Hill (pseudonym) (Chatham County, Georgia).
713 Ibid., p. 2-3, 11.
716 Human Rights Watch interview with Valerie Todd, October 29, 2019.
probation for robbery, kidnapping, and conspiracy convictions.\(^717\) Todd said it took years of counseling, both in prison and once she was released, to recognize the impact of her childhood trauma—and even that she had been a victim.\(^718\)

Angel Ortiz, now 39 years old (see Section III, “Few Evidentiary Protections”), has been on probation or parole since he was 18 years old. One of the first places he was detained was Glen Mills juvenile detention center in Pennsylvania, where a 2019 media investigation reported that correctional officers routinely abuse the children in their care, and where Ortiz witnessed physical abuse by officers.\(^719\) Upon returning home after spending two years there, “I would [over-]react without a thought to certain things,” he said.\(^720\) Probation exacerbates his anxiety, Ortiz said.

I feel apprehensive all the time. It's a heavy burden . . . I get dreams constantly feeling like I'm being chased . . . not chas[ed] to get hurt but chased to be [detained] . . . It’s constantly always in your head. I’m always thinking like, ‘I hope I’m not getting in trouble today because I’m on probation and I can’t afford it.’ Not that I’m doing anything to get in trouble but it’s the thought that's in your head.\(^721\)

Quentin Apkarian spent two years in the likewise infamous Lincoln Hills juvenile facility in Wisconsin.\(^722\) Apkarian—who won a lawsuit against the institution for abuse—described a culture of blatant racism and rampant violence.\(^723\) According to court files, one time in 2014, after Apkarian and his roommate got into a fight, officers assaulted Apkarian. They punched and choked him “to the point that he thought he was going to pass out” and sexually assaulted him.\(^724\)


\(^ {718} \) Human Rights Watch interview with Valerie Todd, October 29, 2019.


\(^ {720} \) Human Rights Watch interview with Angel Ortiz, October 29, 2019.

\(^ {721} \) Ibid.


\(^ {723} \) Human Rights Watch interview with Quentin Apkarian, November 21, 2019.

Apkarian was released from Lincoln Hills to a group home in 2015, when he was 18 years old, but—without social supports or treatment for his longstanding substance use disorder, he said—he ran away. Apkarian was soon caught—within an hour of leaving the home, he said—and arrested for resisting arrest.\textsuperscript{725} He was convicted and sentenced to one year of adult probation and a stayed 175-day jail term. Within a month of his release to probation in 2015, Apkarian was arrested again for carjacking.\textsuperscript{726} He was convicted and sentenced to eight years in prison followed by six years of extended supervision.\textsuperscript{727} When we met Apkarian in November 2019, he was still incarcerated at the Green Bay Correctional Institution, a maximum-security prison.

Inadequate Mental Health Services Behind Bars

According to experts, many people do not receive adequate mental health services in jail or prison. This stems from numerous factors, including insufficient mental health screening; limited and/or poor quality mental health services, particularly in jails where people frequently cycle in and out; stigma against seeking mental health services; and the fact that incarceration itself is traumatizing for many people and can create or exacerbate mental health issues.\textsuperscript{728}

Many people we spoke to reported difficulty obtaining mental health services. For instance, Nathanyal May (see Section II, “Failure to Report”), now 21 years old, spent months in MSDF in Wisconsin in 2019 awaiting revocation proceedings for allegedly

\textsuperscript{725} Human Rights Watch interview with Quentin Apkarian, November 21, 2019; Docket, Wisconsin v. Quentin Apkarian, 2015CF692 (Waukesha, Wisconsin June 2, 2015).

\textsuperscript{726} Docket, Wisconsin v. Quentin Apkarian, 2016CF86 (Milwaukee, Wisconsin).

\textsuperscript{727} Ibid.

“absconding.” May described how, one day in August 2019, he learned he would likely lose his revocation hearing. May felt anxious and asked to speak with a psychiatrist, but a correctional officer told him he would need to wait, he said. In reaction, May said, “I punched the wall a few times. Then I punched the door so hard I dislocated my hand.” A psychiatrist eventually came, he said, “But only because I did such a big action by dislocating my hand. I had to dislocate my hand for them to see me.” A few days later, May went to the hospital for his injury, he said.

When we met May in MSDF in November 2019, he told us that MSDF had not scheduled another counseling appointment.

Contrary to international human rights standards, US jails and prisons often charge for needed medical care. MSDF charges $7.50 for a medical appointment. May wanted pain medication for his hand, but, he said, “I only have $30 in my account from my birthday and that’s all I get the rest of my time here.”

Many people we interviewed want access to free and voluntary supportive mental health and substance use services in their communities, where they can receive ongoing care and talk openly about their experiences without fear of criminal sanctions. Jasmine Jackson (see Section II, “Failure to Report”) who is on probation in Philadelphia, told us: “I swear, instead of send[ing] people to probation, send them to counseling. This shit comes from

729 Human Rights Watch Interview with Nathanyal May, November 20, 2019; Wisconsin Department of Corrections Inmate Locator, “Nathanyal May: Movement” (accessed February 13, 2020). All information in this case study is from Human Rights Watch’s interview with Nathanyal May unless otherwise noted.

730 UN Nelson Mandela Rules, Rule 24.


733 Human Rights Watch interview with Jasmine Jackson, October 29, 2019; Human Rights Watch interview with Wayne Murphy, November 28, 2019; Human Rights Watch court observations, Delaware County Court, October 30, 2019; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019.
the homes.” Jackson said she has never been offered mental health services. “I need [counseling], I want it, I’ve got a lot of shit I’m going through.”

Substance Use

They didn’t want to hear that I need help; they just gave me time.

—Monique Taylor (pseudonym), on supervision in Pennsylvania for conduct she attributes to her substance use disorder

It’s so easy to find a bag of heroin and so hard to find treatment.

—Dr. Erin Zerbo, Addiction Psychiatry Specialist

As of 2011, the federal government reported that 60 to 80 percent of people under correctional control used illicit drugs or were convicted of drug offenses or of crimes to support their drug use. Additionally, nearly 68 percent of people in jail, and more than 50 percent of those in state prisons, have diagnosable substance use disorders. Rates of substance use disorder are two to three times higher among people under supervision than in the general population. For those who are struggling with substance use disorder—a chronic, relapsing condition—relapse is common in the recovery process.

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735 Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 2019 [actual date withheld but on file with Human Rights Watch].

736 Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.


738 Vera Institute of Justice, “The Burden of Mental Illness Behind Bars.”

739 Freucht and Gfoerer, “Mental and Substance Use Disorders Among Adult Men on Probation or Parole,” Substance Abuse and Mental Health Services Administration, p. 4.

Most of the people we interviewed reported regularly using illicit drugs, prescription drugs, and/or alcohol for a variety of reasons, in some cases problematically. Sometimes, the anxiety of navigating supervision drove them to use drugs, they said.\footnote{Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019; Human Rights Watch interview with Juan Richardson, December 11, 2019.}

Drug use often leads to violations.\footnote{See Section II, “Conduct Triggering Violations.”} Many people are violated after testing positive for illicit drugs.\footnote{Human Rights Watch interview with Valerie Todd, October 29, 2019; Human Rights Watch interview with Persheen Williams, December 12, 2019; Human Rights Watch interview with Brother Ricebey, November 19, 2019; Human Rights Watch interview with Carter Hopson, November 21, 2019; see also Cecelia Klingele, “Understanding Revocation from Community Supervision,” p. 7, 11-12.}\footnote{Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.} Substance use disorder can also make it hard to maintain a job or steady schedule, leading to violations for failure to report.\footnote{Ibid.; Human Rights Watch interview with Darius Hill (pseudonym), December 12, 2019; Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.} As discussed in Section IV, relapses during court-mandated treatment can trigger program termination and revocation.

People are also incarcerated for low-level crimes, such as retail theft and small drug sales, they commit to support their drug use.\footnote{Human Rights Watch interview with Sarah Martin (pseudonym for last name), October 31, 2019.} Sarah Martin (pseudonym for last name), who has been on probation for decades, said: “When I use drugs, I commit crimes . . . shoplifting, bad checks, petty thefts . . . all to pay for my drug habits . . . It’s a revolving door.”\footnote{Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 2019 [actual date withheld but on file with Human Rights Watch]; Human Rights Watch Court Observations, Delaware County, October 2019 [actual date withheld but on file with Human Rights Watch]. All information in this case study is from Human Rights Watch’s interview with Taylor and court observations unless otherwise noted.}

\section*{Monique Taylor’s Story}

In 2010, Monique Taylor (pseudonym), a Black mother from Philadelphia, Pennsylvania, then age 21, was arrested for shoplifting and marijuana possession in nearby Delaware County.\footnote{Human Rights Watch interview with Monique Taylor (pseudonym), Thornton, Pennsylvania, November 2019 [actual date withheld but on file with Human Rights Watch]; Human Rights Watch Court Observations, Delaware County, October 2019 [actual date withheld but on file with Human Rights Watch]. All information in this case study is from Human Rights Watch’s interview with Taylor and court observations unless otherwise noted.} She pled guilty and was sentenced to four years of
Taylor had been arrested and sentenced to probation before, she said, always for drug possession or petty crimes to support her drug use. “I asked for programs but . . . they didn’t want to hear that I need help; they just gave me time,” she said.

In 2015, while Taylor was still on probation, Philadelphia police arrested her for retail theft—for what she said was stealing two cans of milk from a Walgreens to feed her newborn daughter. Taylor was released from jail, but she knew her probation officer would pursue revocation for the arrest. Fearful she would be ripped away from her daughter, Taylor said, she stopped reporting.

The next year, Taylor was arrested in New Hampshire for forgery-related charges. “Every way I tried to go I just fell,” she told us.

Taylor pled guilty and served seven months in jail, she said. While incarcerated, Taylor turned to religion, obtained her GED, completed a drug treatment program, and “walked away a different woman.” She returned to Philadelphia, got a steady factory job, and had another child. “Everything came together for me,” she said.

In July 2019, Taylor, then six months pregnant with her third child, decided to turn herself in to probation, hoping for leniency since she had turned her life around. Her father, who has prostate cancer, agreed to care for her then one- and four-year-old children. Taylor said her employer promised her job would be waiting if she got released.

Instead, Taylor was incarcerated on a probation detainer and stayed in jail for nearly three months waiting for her revocation hearing. On October 30, 2019, just days before her due date, Taylor appeared for her hearing via videoconference from the George W. Hill Correctional Facility, where, as described in Section III, we documented

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748 Docket, Commonwealth of Pennsylvania v. Monique Taylor (pseudonym) (Delaware County, Pennsylvania).
750 In the interim, Taylor also appeared for sentencing in Philadelphia for the 2015 retail theft charge and was sentenced to three years of probation. Docket, Commonwealth of Pennsylvania v. Monique Taylor (pseudonym) (Philadelphia, Pennsylvania).
inhumane conditions. Her probation officer recommended nine to 23 months of incarceration. Her court-appointed lawyer made no argument on her behalf. Taylor read the following from a carefully pressed letter kept in a notebook:

I made this decision to come in on my own because I have been turning my life around for the better . . . Your honor, the last thing I want to happen is for my new baby girl to wind up in the hands of the system . . . My father . . . is unable to care for another child. He's barely managing with the two he already has. He now needs my support . . . I have never felt so empowered to put the past behind me and live a normal life with my family . . . I pray for the opportunity to start fresh with all that I now know and the truth that I have embraced for a healthy life. Thank you for your time and consideration.

Unflinchingly, the judge adopted the probation officer’s recommendation and sentenced Taylor to nine to 23 months in jail, with credit for the time she had served since July.  

A few days after the hearing, Human Rights Watch researchers spoke with Taylor at the jail. Describing her case, she said: “I cried so hard the day I was sentenced. My dad promised he wouldn’t let my baby go into the foster care system, but he can’t do it alone.” Her father later told us, “She violated the law but she needs to come home to her babies.”

Taylor gave birth while incarcerated and described a terrifying labor where her newborn turned blue, stopped breathing, and had seizures. Thankfully, after a few weeks in the ICU, Taylor said, her daughter is healthy.

After Taylor gave birth, she was returned to jail, and her father struggled to care for all three young children while managing his own health issues. Finally, in February 2020, Taylor, now age 31, was released to continue her supervision sentence. She told us

751 Commonwealth of Pennsylvania v. Monique Taylor (pseudonym) (Delaware County, Pennsylvania).
752 Human Rights Watch telephone interview with [name withheld], Monique Taylor’s (pseudonym) father, October 31, 2019.
she is grateful to be home with her children, and is focusing on putting her life back together.

Government officials increasingly recognize that incarceration will not end problematic substance use. Judge Timothy Hinkfuss of Brown County, Wisconsin, which contains Green Bay, said: “We’re not going to build our way [through prisons] or prosecute our way out of this problem.” If treatment’s the goal then the [incarceration] system we’re putting someone into is not capable of the outcome that’s being desired, so why would we start down that path?” said Wisconsin State Representative Evan Goyke of Milwaukee. Lowndes County, Georgia, Solicitor-General Justo Cabral told us, “Jail can only do so much. Most of the time, they don’t come out better than they came in.”

Yet these jurisdictions still rely on incarceration. Some officials believe incarceration gives people space to recover. A Wisconsin judge said that “correctional treatment includes the notion of a time out. . . You’re gonna have to have a sit down away from your family, away from your recreation,” and become “re-motivated to rehabilitate yourself.”

Others feel they lack alternatives to prevent harmful drug use. Every judge, prosecutor, and supervision officer interviewed by Human Rights Watch said they wanted more treatment options. For now, many seem to rely on detention. “I would rather people go through withdrawal in prison than die on the street,” Philadelphia Judge Robert Coleman told us. Milwaukee supervision chief Neil Thoreson echoed this sentiment: “[It’s] tough for agents,

754 Human Rights Watch interview with Judge Timothy Hinkfuss, November 22, 2019.
757 Human Rights Watch telephone interview with [name withheld], Wisconsin administrative law judge, January 8, 2020.
knowing jail is the only thing that will keep [people] alive but wanting to give them chances in the community.”

But health experts largely disagree that jail helps people recover from substance use disorder. As Dr. Erin Zerbo, an addiction psychiatry specialist, explained, jail is “so anti-therapeutic” that even a day or two behind bars “makes it more likely [people are] going to get upset and want to use again.” Only 11 to 17 percent of people with substance use disorder actually receive treatment while incarcerated. What treatment is available, is often not evidence-based: for example, hardly any prisons or jails offer Medication-Assisted Treatment (MAT), the gold standard for opioid use disorder. Meanwhile, incarceration does not necessarily keep people away from drugs, which are readily-accessible in many jails and prisons. Given the lack of evidence-based treatment in jails and prisons, many more people use drugs again when they leave, and because of their reduced tolerance to drugs after spending time behind bars, they are much more likely to overdose.

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

761 Brief on Behalf of Massachusetts Medical Society, et al. as Amicus Curiae, Commonwealth v. Eldred, p. 41 (people are more likely to relapse following incarceration).


and die upon release. By contrast, providing MAT behind bars has been shown to significantly reduce overdose fatalities after incarceration.

Human Rights Watch and the ACLU, along with a host of governmental and non-governmental organizations around the world, have accordingly called on states to decriminalize the possession of drugs for personal use. While governments have a legitimate interest in preventing problematic drug use, criminalization is a disproportionate response that is utterly ineffective at achieving its supposed aims. As we have documented, locking up people who use drugs has caused devastating harm to people and their families and discriminates against Black and brown people, while failing to meaningfully reduce or respond to problematic drug use.

Perils of Court-Mandated Treatment

Courts are increasingly turning to drug courts and mandated treatment as responses to drug use. While governments should make voluntary, evidence-based treatment

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770 Human Rights Watch and American Civil Liberties Union, Every 25 Seconds, p. 22-27.


widely available and accessible to people struggling with substance use disorder, involuntary treatment within the criminal legal system raises health and human rights concerns.\textsuperscript{772}

Addiction psychiatry specialist Dr. Erin Zerbo cautioned that when “judges start acting like clinicians from the bench,” it can raise problems. “Treatment is treatment,” she said, “that's for the healthcare sector to take care of.”\textsuperscript{773}

Most court-mandated programs include requirements, such as abstinence, that are not evidence-based.\textsuperscript{774} Relapse is a normal part of recovery from substance use disorder, so insisting on abstinence guarantees that many people in “treatment” will fail. Setting unrealistic expectations can also create anxiety that increases the likelihood of relapse.\textsuperscript{775}

Mandated programs also report slip-ups back to the court, so they can sow distrust.\textsuperscript{776} Wayne Murphy, who continued using drugs after completing drug treatment in a


\textsuperscript{773}Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.


\textsuperscript{775}Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019.

\textsuperscript{776}Human Rights Watch telephone interview with Dr. Erin Zerbo, November 25, 2019; Human Rights Watch interview with Aaron Alexander, Milwaukee, Wisconsin, November 20, 2019.
Wisconsin prison, told us: “You can’t truly heal when you’re doing what other people tell you in order to get out.” Angel Ortiz, who underwent similar treatment in Philadelphia, explained: “When someone’s making you do [treatment], it’s the moment you don’t want to do it. You’re not receptive and become disruptive. . . That don’t help people.”

Finally, court-ordered programs often do not allow for Medication-Assisted Treatment (MAT)—which uses medications like methadone and buprenorphine, typically in combination with counseling, to treat substance use disorder. Health experts consider MAT to be the gold-standard of opioid treatment. Yet court-ordered programs and correctional facilities often forbid MAT, given their emphasis on abstinence. Notably, however, since 2016, correctional systems in at least six states—including Pennsylvania—have established MAT programs, partly in response to the dramatic escalation in overdose deaths in recent years, to which people recently released from incarceration are especially vulnerable.

777 Human Rights Watch interview with Wayne Murphy, November 18, 2019.
778 Human Rights Watch interview with Angel Ortiz, October 29, 2019.
780 Ibid. Jail and prison officials are also often concerned that medication will get diverted to people who are not drug dependent, which could permit them to develop a high. However, as experts explain, these concerns can be managed. Alison Shames and Ram Subramanian, “A Path to Recovery: Treating Opioid Use in West Virginia’s Criminal Justice System,” Vera Institute of Justice, October 2017, https://www.vera.org/downloads/publications/a-path-to-recovery-treating-opioid-use-west-virginia-criminal-justice-system.pdf; Dionna King, “Medication assisted Treatment is a Proven Method of Recovery,” Drug Policy Alliance, September 1, 2017, https://www.drugpolicy.org/blog/medication-assisted-treatment-mat-proven-method-recovery;
Since she was 15 years old, Sarah Martin (pseudonym for last name), a now 60-year-old white woman, has been arrested multiple times in Montgomery County, Pennsylvania, for drug and property crimes that she said were associated with her dependence on opioids. These offenses led to years of supervision, jail, and prison time. The court-mandated counseling she attended never helped, nor did her probation officer, she said. “[My PO] was no support, she made me feel worse than I already felt, and I already felt like shit,” Martin told us. Despite Martin’s longstanding opioid use disorder, she says her probation officer never mentioned MAT.

One day, in 2007, a friend told Martin about methadone substitution therapy, a form of MAT, and she was able to access it. It worked, she said. Since then, Martin earned a Master’s degree and has had steady employment. Aside from a relapse in 2016—prompted, she said, by prescription opiates after she fractured her wrist—Martin finally felt like she was on the right track.

After her relapse, Martin asked her new probation officer if she could use Suboxone, a brand name for buprenorphine, another standard medication used for opioid use disorder. She said that the officer, who had no medical training, discouraged her. Martin was shocked: “It’s like telling a diabetic you can’t take insulin.” With Suboxone, “the propensity for me to use will not be there and I won’t commit crimes and won’t go to jail,” she said. “I was like ‘If I don’t do this I’m going to be in jail. I’m 60 years old, I’m not doing this anymore.’”

Ultimately, Martin started taking Suboxone. For the last three years, she has been caring for her grandchildren and working steadily for the Pennsylvania Department of Health and Human Services, and as a facilitator for people with substance use disorder.

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[Human Rights Watch interview with Sarah Martin (pseudonym for last name), Norristown, Pennsylvania, October 31, 2019. All information in this case study is from Human Rights Watch’s interview with Martin unless otherwise noted.]
Racial Bias

It’s really difficult being on probation. You always feel like, just the slightest mess up and you can lose your life . . . I don’t feel like I can drive. I could easily get stopped for just a traffic violation and then I would be back in jail. It makes you nervous to just live your daily life.783

—Robert Collins, a Black Philadelphia man who has been on probation since age 15

As discussed throughout this report, the requirements of supervision exacerbate systemic racial inequalities in the United States. Black and brown people are less likely to have resources such as jobs, adequate transportation, and stable housing, making it much more difficult for them to comply with supervision rules, and increasing the likelihood that they will engage in behavior that violates them.784 Black men also disproportionately have criminal records, making it harder for people in predominantly Black communities to comply with requirements to stay away from those with criminal convictions.785

Black people are also simply more likely to get arrested in the United States; often, this is due to racially biased policing.

Biased Policing

Black and brown people are more likely to get arrested for offenses that trigger supervision and caught for supervision violations than their white counterparts. As Human Rights Watch, the ACLU, and other organizations have documented, police disproportionately stop, search, and arrest Black and brown people—particularly young men.786 According to a 2017 study of nearly 100,000 traffic stops across the US, Black drivers are, on average,
20 percent more likely to be stopped by police than white drivers.\textsuperscript{787} Black people are also more likely to be searched following vehicle stops, though they are less likely to be found with contraband.\textsuperscript{788}

These disparities are particularly pernicious in many counties studied by Human Rights Watch. According to a 2018 study, the traffic stop rate for Black drivers in Milwaukee, Wisconsin, is more than 500 percent higher than the traffic stop rate for whites.\textsuperscript{789} Once stopped, Black people are 50 percent more likely to be searched than whites—even though searches of Black drivers are 20 percent less likely to yield drugs than searches of white drivers.\textsuperscript{790} Black people are also 500 percent more likely than white people to be targets of stops on the street.\textsuperscript{791}

According to a 2015 study, between 2008 and 2013, 44 percent of people jailed in Milwaukee following citations for behavior such as disorderly conduct, loitering, and traffic offenses were from five of city’s poorest zip codes—which are heavily populated by Black and brown people.\textsuperscript{792} Another 26 percent of people were from the neighboring four zip codes, which also largely consist of low-income people and Black and brown people.\textsuperscript{793} Further, 42 percent of all people jailed for these citations were also locked up on supervision detainers.\textsuperscript{794}


\textsuperscript{788} Ibid.


\textsuperscript{790} Abrams Report, p. 5.

\textsuperscript{791} Ibid.


\textsuperscript{793} Ibid. The zip codes are 53212, 53209, 53216, and 53218.

\textsuperscript{794} Ibid.
In Philadelphia, a study revealed that, in 2017, Black people constituted 48 percent of the population but 69 percent of police stops. In Philadelphia’s 14th District, which contains largely Black and poor neighborhoods, as well as some wealthy enclaves, data shows that Black drivers are more than three times more likely to be searched than white drivers. Data further reveals that, in the city’s 9th District—where in 2018, during an incident that received widespread media attention, police arrested two Black men waiting for their friend at a Starbucks—Black people made up 67 percent of pedestrian stops in 2017, but just 3 percent of the population.

Similar disparities exist throughout Georgia. Data from 2011 to 2015 shows that, in both Fayette County, near Atlanta, and Houston County, by Macon, Black people comprised about one quarter of the population, but about 65 percent of all traffic arrests during those years. In Roswell, near Atlanta, Latinx people made up 13 percent of the population but 63 percent of all traffic arrests.

Many people interviewed by Human Rights Watch described arrests leading to supervision violation proceedings that appear racially biased.

Lowndes County, Georgia, police officers spotted Willie White (described in Section I), who is Black, as he rode his bicycle in October 2019. At the time, White was on probation for marijuana possession with intent to distribute and traffic infractions.

During his revocation hearing in December 2019, officers testified that they became suspicious when White looked at them and then quickly looked the other way. The officers

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799 Ibid.
800 Human Rights Watch interview with Willie White, December 11, 2019; Human Rights Watch Court Observations, Lowndes County Superior Court, Valdosta, Georgia, December 11, 2019. All information is from Human Rights Watch’s interview with Willie White or court observations unless otherwise noted.
made a U-Turn to approach him. White—as he describes, scared—biked in the other
direction, dropping a Tupperware container he had been holding as he fled. After White
later ran a stop sign on his bike, the officers stopped him for littering.

The officers discovered that White had a warrant for misdemeanor probation rule
violations—for failure to report, a positive marijuana test, and failure to complete
community service. They also contended that his Tupperware contained a pill with the
synthetic drug “Flakka,” though White asserts it is not Flakka but a lawful pill.\footnote{For more information on the drug charges against White, see Section III, “Coercive Pleas.”} As of
March 2020, when we last spoke with his attorney, White had already been incarcerated
for more than five months fighting revocation proceedings stemming from this arrest.\footnote{Human Rights Watch telephone conversation with Jim Jarvis, attorney for Willie White, March 23, 2020.}

In May 2019, police stopped Ruffin Toney, a Black man, for sitting in a parked car outside
of a Milwaukee County, Wisconsin, Kwik Trip convenience store. According to the police
report, after seeing a female driver in a parked car with a male passenger, the officer ran
the car’s plates.\footnote{Revocation Packet, Wisconsin v. Ruffin Toney, 17CF1231 (Milwaukee, Wisconsin, November 6, 2019), p. 16 (on file with
Human Rights Watch).} The officer learned that the woman, who is white, had previously been
stopped for a traffic violation while driving with a man. The officer then pulled that man’s
file and found open warrants.\footnote{Ibid.}

The officer had no idea whether the man he saw that day was the same man with the
warrants. As the officer reported, “I took out my binoculars” but “I could only tell that the
subject was a male.”\footnote{Ibid.}

After watching the two individuals sit in the car for 15 minutes, the officer approached
them. He “immediately observed” that the passenger was not the same man he was
looking for.\footnote{Ibid.}

Nevertheless, the officer asked for this man’s identification. A search revealed that the
man—Toney—was on probation for driving under the influence. The officer asked if he had
anything illegal, and Toney admitted to having cocaine. When the officer tried to arrest

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\footnote{For more information on the drug charges against White, see Section III, “Coercive Pleas.”}
\footnote{Human Rights Watch telephone conversation with Jim Jarvis, attorney for Willie White, March 23, 2020.}
\footnote{Revocation Packet, Wisconsin v. Ruffin Toney, 17CF1231 (Milwaukee, Wisconsin, November 6, 2019), p. 16 (on file with
Human Rights Watch).}
\footnote{Ibid.}
\footnote{Ibid.}
\footnote{Ibid.}
him, Toney ran but soon tripped, fell, and was arrested for drug possession, loitering, and resisting arrest. 807

Police dropped the charges, but Toney’s probation officer pursued revocation. Toney admitted the violations and enrolled in a drug treatment program in MSDF, the Milwaukee prison created for people accused of supervision violations, as an “alternative to revocation” (see Section IV)—only to be kicked out of the program for allegedly failing to sufficiently accept responsibility for his drinking problem. A judge re-sentenced him to two years in prison. 808

Milwaukee police tried to stop Lavelle Jackson, a 38-year-old Black man, as he pulled his bicycle onto his mom’s front porch in March 2018. Jackson was under supervision for gun possession (which was illegal because of a 2001 conviction for robbery, committed at age 18). 809 He had completed two years of supervision and had one year to go. Police claimed that Jackson did not have proper bike lights, and, Jackson told us, argued that his block was known for gangs and prostitution. 810 “You can’t walk in your own neighborhood without getting pulled over,” Jackson told us.

Believing he had a right to enter his own home, Jackson explained, he refused the police’s order to stop. Jackson said that he, along with his sister and his mom, who were inside, all told the police they could not enter without a warrant. 811 But the police followed him inside anyway. 812 Ultimately, the police found a gun inside a bedroom and arrested Jackson for unlawful gun possession. 813 Though Jackson insisted the gun belonged to a relative, his supervision officer pursued revocation for his alleged possession of the gun, as well as for failing to follow police commands to stop and identify himself. 814

807 Ibid., p. 16-21.
809 Human Rights Watch interview with Lavelle Jackson, Milwaukee, Wisconsin, November 20, 2019; Wisconsin v. Lavelle Jackson, No. 2000CF005852 (Milwaukee, Wisconsin); Wisconsin v. Lavelle Jackson, No. 2002CF005742 (Milwaukee, Wisconsin). All information in this case study is from Human Rights Watch’s interview with Lavelle Jackson unless otherwise noted.
811 Ibid.
812 Ibid.
813 Ibid.
814 Ibid.
The prosecutor dropped the criminal charges, and, a few months later, a judge found insufficient grounds for revocation based on the shakiness of the evidence that the gun belonged to Jackson.815 But in 2019, prosecutors renewed criminal charges and, in August 2019, a judge revoked Jackson’s supervision and sentenced him to two years and two days in prison.816

In October 2019, Lowndes County, Georgia, police stopped Bruce Lee Hallman, who is Black, as he drove home from work.817 Hallman believes the officers racially profiled him.818 At the time, Hallman was serving five years of probation for possession of cocaine with intent to distribute and attempting to flee from an officer.819 During the stop, the officers found 1.48 grams of marijuana in Hallman’s car.820 They also learned that there was an outstanding warrant against him, for failing to pay over $2,600 in supervision fees and failing to report to one probation meeting in July 2019—a meeting Hallman says he missed because he took his mom, who had recently been diagnosed with cancer, to a medical appointment.821 Officers arrested Hallman for marijuana possession, traffic infractions, and the probation violations.822

After spending 51 days in jail awaiting revocation proceedings and fighting the criminal charges, in November 2019 Hallman pleaded guilty to possessing marijuana, obstructing an officer, failure to yield, and driving with a suspended license in exchange for another three years of probation, $3,600 in fines, and 40 hours of community service.823 When we met Hallman in December 2019, he was still in jail awaiting his probation revocation hearing.

815 Ibid., p. 2.
816 Ibid., p. 2-8. The Administrative Law Judge dismissed the violation for refusing to identify himself because “refusal to provide one’s name to police officers is not a basis for a charge of obstructing an officer,” but found that Jackson refused the officer’s commands and unlawfully possessed a firearm. Ibid., p. 5.
818 Ibid.
821 Petition for Revocation, Georgia v. Bruce Lee Hallman, No. 2014cr223 (Lowndes County, Georgia).
822 Ibid.
Angel Ortiz, described above, explained that, in his largely Black and Latino, poor, North Philadelphia neighborhood, “you see a cop every three minutes.” 824 Ortiz said that police often stopped and searched him without cause.

One time, in 2005, Ortiz said police ordered him up against a wall as he was leaving a barber shop, claiming that an object in his mouth was a marijuana joint. Then in 2009, as Ortiz was standing at a North Philadelphia bus stop, he said that police ordered him up against a car—and arrested him for “resisting” when he asked why they had stopped him.

As discussed in Section III, Ortiz said that Philadelphia courts dismissed both charges, but the court still revoked his probation and resentedenced him to even more supervision. 825

Today, Ortiz—who is still on probation for a crime committed in 1999—lives in constant fear of arrest just for being in his neighborhood: “Walking from down my block to the bar, every corner there are drug spots. What am I supposed to do, float over them? I’m gonna get in trouble just going to the store.”

Persheen Williams’s Story

One evening in November 2015, a police officer watched a “Black male” and a “White female” enter a Motel 6 in Richmond Hill, Georgia, near Savannah. 826 For no discernible reason, the officer checked the guest list, identified the Black man as Persheen Williams, and ran a background check—revealing that Williams was on felony probation for marijuana possession and obstructing an officer. 827 At the time,  

824 Human Rights Watch interview with Angel Ortiz, October 29, 2019. All information in this case study is from Human Rights Watch’s interview with Angel Ortiz unless otherwise noted.
825 As explained in Section III, “Few Evidentiary Protections,” given minimal procedural protections in revocation proceedings, courts often revoke supervision based on evidence that would be inadmissible in criminal courts.
826 Human Rights Watch interview with Persheen Williams, Savannah, Georgia, December 12, 2019; Police Report Narrative, Persheen Williams (on file with Human Rights Watch). All information in this case study is from Human Rights Watch’s interview with Persheen Williams unless otherwise noted.
827 Ibid.
Williams was also on misdemeanor probation, supervised by a private probation company, for driving with a suspended license.\textsuperscript{828}

The officer knocked on Williams’s hotel door, and, claiming he smelled marijuana,\textsuperscript{829} asked to search the room.\textsuperscript{830} Williams said that he and his then-fiancé, who were eating dinner, gave permission. When the officer found nothing illegal, he asked to search their car, which, Williams explained, was parked on the other side of the hotel.\textsuperscript{831} After searching the car for about 30 minutes, Williams said, the officer found a small amount of marijuana and arrested both Williams and his fiancé.\textsuperscript{832} Upon jailing them, Williams said officers called his fiancé “a nigger lover.”

A local defense lawyer, outraged by what happened, took the case pro bono and convinced the prosecutor and felony probation officer to drop the charges, given the racist arrest.\textsuperscript{833} However, Williams’s misdemeanor probation officer still pursued revocation for the new charges as well as failing to pay $285 in fines and fees and failing to complete some community service hours and a “substance abuse evaluation.”\textsuperscript{834} Williams spent three days in jail for the violations, he said.

Then, while he was driving with another white woman in November 2019, Chatham County, Georgia, police stopped Williams for driving with a broken taillight.\textsuperscript{835} Claiming to smell marijuana, the officers asked to search his car.\textsuperscript{836} At the time,

\begin{itemize}
\item \textsuperscript{828} Human Rights Watch has previously documented distinct concerns with private probation companies in Georgia. See above note 13; Human Rights Watch, Profiting from Probation.
\item \textsuperscript{830} Police Report Narrative, Persheen Williams (on file with Human Rights Watch).
\item \textsuperscript{831} Ibid.
\item \textsuperscript{832} Ibid.
\item \textsuperscript{833} E-mail communications between David Utter, attorney for Persheen Williams, and Chatham County prosecutor, December 4, 2015 (on file with Human Rights Watch).
\item \textsuperscript{834} Violation of Probation Hearing, Persheen Williams, February 2, 2016 (on file with Human Rights Watch).
\item \textsuperscript{835} Arrest Report, Persheen Williams, November 11, 2019 (on file with Human Rights Watch).
\item \textsuperscript{836} Ibid.
\end{itemize}
Williams was serving four years of felony probation and participating in drug court following convictions for drug possession.  

Knowing his rights from his last police encounter, Williams said, he asked why they thought he had marijuana. The officers then ordered Williams to put up his hands and handcuffed his left wrist—claiming, in the police report, that they needed to detain Williams to search his car. When Williams demanded to know what he was being arrested for, he said, the officers brutally assaulted him. The arresting officers claim Williams began resisting arrest.

The officers then tased Williams—as Williams described, dozens of times—ultimately bringing him to the ground, where they continued to tase him and began striking him, with what Williams described as punches to the face. Ultimately, seven officers were holding Williams down, claiming he continued to resist arrest. Police then arrested Williams for possessing drugs they found in the car after tasing him. Williams said they did not belong to him.

Being tased, Williams described, is “the worst thing ever. Your body locks up. It’s like being shocked by electricity but like ten times worse.” Williams told us the assault left him with lasting spine, leg, and eye damage. The police report filed by his arresting officers says that they took Williams to the hospital, which conducted tests and found no injuries.

When Human Rights Watch researchers met Williams in the Chatham County jail more than a month later, he still walked with a cane and reported trouble seeing. We saw white marks on Williams’s forearms where he said the handcuffs had dug into his skin.

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837 Georgia v. Persheen Williams, No. SPCR18-00379-J7 (Chatham County, Georgia).
838 Arrest Report, Persheen Williams, November 11, 2019 (on file with Human Rights Watch).
839 Ibid.
840 Ibid.
841 Ibid.
842 Ibid.
843 Ibid.
When we last spoke to Williams’s attorney in May 2020—about six months after the arrest—Williams was still in jail awaiting probation revocation proceedings.  

**Biased Supervision Enforcement**

The ways in which supervision rules are imposed and enforced can also exacerbate racial inequalities. For example, many jurisdictions, including Georgia, Pennsylvania, and Wisconsin, use algorithmic risk assessment tools (RATs) to determine the level of supervision required and which sanctions to impose. As Human Rights Watch and others have documented, these tools rely on data, such as criminal history, residential stability, and employment history, that contain race and class biases. The results replicate and reinforce these biases, which can disproportionately label poor people and Black and brown people as “high risk”—subjecting them to harsher supervision conditions and tougher sanctions.

Further, some studies, as well as anecdotal evidence, show that supervision officers sometimes treat people differently based on their race and class, or fail to adequately take into account the barriers that low-income people face in complying with supervision conditions. Tom Reed, Milwaukee’s chief public defender, said that Black and brown people face “even more of a burden” from parole officers.

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844 Docket, *Georgia v. Persheen Williams*, No. SPCR18-00379-I7 (Chatham County, Georgia); Human Rights Watch e-mail correspondence with David Utter, April 22, 2020 (on file with Human Rights Watch); Human Rights Watch e-mail correspondence with Scott Robichaux, May 4, 2020 (on file with Human Rights Watch).


people living in disadvantaged neighborhoods face added barriers to complying with supervision. “When they fail to comply that too often results in their not receiving the benefit of the doubt. This is much less common with clients who come from more privileged backgrounds,” he explained.  

The experience of a white, well-educated, steadily employed man in a Philadelphia suburb illustrates these disparities. Matthew Carrier, a mortgage analyst for a bank, spent years on probation for four driving while under the influence convictions related to his problematic alcohol use.  

Carrier told us that he often violated his probation—getting drunk, disobeying instructions, skipping classes, even moving to another state. While his probation officer threatened to lock him up, he explained, she never resorted to jail sanctions.

Carrier connected his positive treatment to his background: “She knew I lived in a nice area,” he explained. “I had a good job,” “she knew I made good money,” and “I didn’t get any other charges besides these DUIs.”

Ultimately, Carrier said, his girlfriend kicked him out and he checked himself into a rehab facility, which he could afford, and went into recovery. Carrier told us, “My PO has a lot to do with saving my life. She could have thrown me back in jail and I probably would never have been sober today. She saw the good in me, I would say.”

None of the other people Human Rights Watch interviewed—most of whom were poor and people of color—reported receiving such support.

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and Inequality,” p. 49-50. As discussed above in “Background,” race in the United States intersects strongly with socioeconomic status.

849 Human Rights Watch telephone interview with Tom Reed, October 25, 2019; Human Rights Watch telephone interview with Toriano Goldman, January 24, 2020 (Goldman, a Black man on probation in Philadelphia, described overhearing his white probation officer act more friendly, and more lenient, to white people under supervision).

850 Human Rights Watch interview with Matthew Carrier, Philadelphia, Pennsylvania, October 29, 2019. All information in this case study is from Human Rights Watch’s interview with Matthew Carrier.

851 Ibid.
VII. International Human Rights Law and US Law

This report describes a range of abuses that violate rights guaranteed under international human rights law and US law.

Proportionality and Necessity

Under international human rights standards, sentences should be proportionate to the crime and the culpability of the individual, and should be no greater than necessary to meet the purposes of punishment—retribution, deterrence, incapacitation, and rehabilitation. These principles reflect three basic human rights precepts: the inherent dignity of the individual; the right to be free of cruel, inhuman or degrading punishment; and the right to liberty. These rights are crystalized in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which the United States has ratified.\(^{852}\)

Draconian prison terms may constitute arbitrary deprivations of liberty “if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained.”\(^{853}\) Disproportionately long prison terms may also violate the prohibition on cruel and inhuman punishment. In either case, they are inconsistent with respect for human dignity.\(^{854}\)

In the United States, mandatory minimum sentencing, habitual offender statutes, and unduly harsh sentencing schemes routinely lead to disproportionately long sentences, as

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Human Rights Watch and the ACLU have documented repeatedly. As a result, often the original sentence that has been imposed on someone who is on parole or probation is itself inconsistent with international human rights standards. That initial injustice is compounded by overly punitive responses to violations of supervision.

The United Nations Human Rights Committee, the international expert body that interprets the ICCPR, has specifically stated that revocation of probation or parole due to violation of conditions “must also be carried out in accordance with law and must not be arbitrary and, in particular, not disproportionate to the seriousness of the breach.” In other words, proportionality principles apply directly to the decision to revoke supervision.

This report documents many cases for which revocation and incarceration was grossly disproportionate to the conduct that violated the conditions, or to the culpability of the person under supervision. These include cases in which people were sentenced to jail or prison time for failing to report, using or possessing drugs, or moving without telling their supervision officer. These sanctions were also not necessary given that providing people with the means to obtain jobs, housing, evidence-based voluntary treatment, and educational opportunities have proven more effective than incarceration at addressing the underlying conduct.

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856 UN Human Rights Committee, General Comment No. 35, para 20.
Equal Protection

The ICCPR, along with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States has ratified, and the Fourteenth Amendment of the US Constitution, guarantee the right to equal treatment and protection under law, without discrimination along racial and other lines. 857

US constitutional law requires a finding of discriminatory intent before courts will rule unconstitutional discriminatory practices that disproportionately burden a racial group. 858 But ICERD goes further, prohibiting policies and practices that have either the purpose or effect of restricting rights on the basis of race. 859 It proscribes apparently race-neutral practices that affect fundamental rights—for example, the right to liberty—regardless of racist intent, if those practices create unwarranted racial disparities. The Committee on the Elimination of Racial Discrimination, which interprets the ICERD, has specifically stated that “indirect—or de facto—discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.” 860


859 Under ICERD, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” ICERD, Part I, Article 1(d).

Under the ICERD, governments may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather must act affirmatively to prevent or end policies with unjustified discriminatory impacts.\(^{861}\) Governments are obligated to “prohibit and eliminate racial discrimination ... notably in the enjoyment of ... the right to equal treatment before the tribunals and all other organs administering justice.”\(^{862}\) The Committee on the Elimination of Racial Discrimination has raised concerns over the disproportionate arrest, incarceration, and sentencing of Black people in the US.\(^{863}\)

There are multiple examples of ways in which the US criminal legal system and policing target or disproportionately burden Black and brown people. For instance, while Black and white people in the US use drugs at similar rates, nationwide Black people are much more likely to be arrested for drug possession.\(^{864}\) Likewise, Black people across the US are disproportionately stopped and searched by police while driving or walking—though they are less likely to be found with “contraband.”\(^{865}\) Studies of various jurisdictions in the US also suggest that Black people are more likely to have their supervision revoked than their white counterparts.\(^{866}\)

Additionally, the US Constitution forbids wealth-based discrimination and international human rights law requires governments to ensure that a person’s economic status does not have the consequence of “nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”\(^{867}\) Incarcerating

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\(^{861}\) ICERD, Part I, Article 2(1)(a).

\(^{862}\) Ibid., Article 5(a).


\(^{864}\) See Section II, “Conduct Triggering Violations.”

\(^{865}\) See Sections V, “Entrenching Racial Disparities;” VI, “Racial Bias.”

\(^{866}\) Ibid.

\(^{867}\) *Bearden v. Georgia*, 461 U.S. 660 (1983); UN Human Rights Committee, General Comment No. 18, Nondiscrimination (Thirty-seventh session, 1989), https://www.refworld.org/docid/453883fa8.html, para. 7; International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 2; UN Committee on the Elimination of Racial Discrimination, General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, 2005, para. 26 (b) (calling on states to ensure “That the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner appropriate to the situation of persons belonging to such groups, who are often in straitened economic circumstances, so as to prevent this requirement from leading to discrimination against such persons”).
people solely because they cannot pay supervision-mandated costs discriminates against them based on their financial means: People with adequate financial resources are able to pay their required costs and avoid incarceration, while those who cannot pay those costs wind up in jail or prison.

International and US law also prohibit governments from discriminating against people on the basis of disability. This includes an affirmative obligation under US law to provide “reasonable accommodations,” or modifications in policies and procedures to ensure accessibility for people with disabilities, to give them an equal opportunity to participate in services and programs; international human rights law also requires reasonable accommodations to ensure that persons with disabilities can enjoy or exercise “on an equal basis with others all human rights and fundamental freedoms.” This means that supervision departments and courts need to make reasonable accommodations for people with mental health conditions and other disabilities so that they can successfully complete supervision.

**Right to Liberty**

The ICCPR, which protects the right to liberty, imposes limits on pre-trial detention. States may only detain people prior to conviction as a “means of last resort,” and only then for the shortest duration possible. Further, if imprisonment is “not to be expected” as punishment, every effort should be made to avoid pre-trial detention.

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870 ICCPR, art. 9.


This means that people should not be reflexively incarcerated pending violation proceedings; rather, detention pending such proceedings “must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”\textsuperscript{873} The factors to consider in determining whether detention is permissible need to be set out in law, and should not include “vague and expansive standards, such as ‘public security.’”\textsuperscript{874} If detention is appropriate, it should only last as long as is necessary to achieve a legitimate aim.

The right to liberty also requires that anyone detained on a charge be brought promptly before a person exercising judicial authority who is “independent, objective and impartial in relation to the issues dealt with.”\textsuperscript{875} The Human Rights Committee recommends that any delay should last no longer than 48 hours.\textsuperscript{876} This requirement “applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it.”\textsuperscript{877} Also, “the person detained is entitled to trial within a reasonable time or to release.”\textsuperscript{878} Prolonged detention pending charges can jeopardize the presumption of innocence, another right.\textsuperscript{879} What is reasonable depends on the circumstances, but budgetary constraints or understaffing do not justify delays.\textsuperscript{880} Delays can amount to arbitrary detention.

In the jurisdictions examined for this report, people are routinely incarcerated pending violation proceedings, even for rule violations.\textsuperscript{881} None of these jurisdictions provide people with an opportunity to challenge this detention within 48 hours.\textsuperscript{882} Further, in many

\textsuperscript{873} UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, December 16, 2014, para 38.
\textsuperscript{874} Ibid.
\textsuperscript{875} Ibid. UN Human Rights Committee, General Comment No. 35, para 32.
\textsuperscript{876} Ibid., para 33. Human Rights Watch believes that no one should be detained for any reason without being brought before a judicial authority within 48 hours.
\textsuperscript{877} Ibid., para 32.
\textsuperscript{878} Ibid., para 37.
\textsuperscript{879} Ibid.
\textsuperscript{880} Ibid.
\textsuperscript{881} Ibid. See Section III, “Pre-Revocation Confinement.”
\textsuperscript{882} Delaware requires everyone arrested to be brought before an official—who is generally not an attorney—within 24 hours of arrest. However, according to public defenders, these proceedings lack sufficient procedural protections, and often result in people being detained. 11 Del. C. 1909; Human Rights Watch telephone interview with Misty Seemans, Delaware Public Defender, June 9, 2020. Mississippi requires such proceedings within 72 hours. See Miss. Code Ann. 47-7-37(3).
jurisdictions, people wait weeks or months before proceedings—or even before an initial hearing. 883 These delays amount to arbitrary detention.

The ICCPR and the US Constitution’s Fourteenth Amendment also protect against vague laws, which fail to give people adequate notice of what conduct is prohibited. 884 The Human Rights Committee has said that grounds for any detention—whether pre-trial or post-conviction—“should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application” by those empowered to enforce the rules. 885 Supervision conditions requiring people to, for instance, avoid “disreputable people” and “vicious habits,” do not provide people with specific notice of prohibited conduct, and give wide latitude to supervision officers.

**Fair Trial Rights**

The ICCPR and the Fifth, Sixth, and Fourteenth Amendments to the US Constitution require fair trials. 886 These rights include the rights to access to counsel and to the presumption of innocence, prompt proceedings, and the right against self-incrimination. 887

The US Supreme Court has held that, while revocation proceedings need not provide the same fair trial protections as criminal proceedings, revocation involves a “serious deprivation” of liberty and accordingly minimum due process protections apply. 888 The UN Human Rights Committee has not commented on the extent to which fair trial rights apply in this context. 889

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883 See Section III, “Pre-Revocation Confinement.”


885 UN Human Rights Committee, General Comment No. 35, para 22.

886 ICCPR Art. 14; US Const. Arts. V, VI, XIV.

887 Ibid.


889 As previously noted, the Human Rights Committee has stated that the principle of proportionality, associated with the right to liberty, does apply independently to punishments imposed for provisional release violations, but it has not commented on the extent to which fair trial rights are applicable as well. Because the right to a fair trial is critical to securing the right to liberty, there is a basis for applying fair trial rights in this context, where liberty is at stake. However, there is little jurisprudence on this matter, and the practice of states has not been to apply the full panoply of fair trial rights in revocation proceedings.
Nonetheless, a number of the practices documented in this report raise serious concerns over fairness. These concerns are especially acute in the United States supervision context because US supervision violation proceedings can lead to deprivation of liberty for extended periods.

Concerning practices we documented include revocation proceedings that limit access to attorneys, do not proceed promptly, lack sufficient evidentiary protections, and require people to admit their guilt.

The use of a “preponderance of the evidence” standard of proof in revocation proceedings is particularly concerning. The right to the presumption of innocence under international human rights law “imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”

With the right to liberty at stake in revocation proceedings, the standard of proof should be “beyond a reasonable doubt.”

In addition, due process under US law bars real or perceived conflicts of interest, particularly by officers of the court. Appellate courts in the US have found that probation officers serve as “arms of the court,” and therefore should be governed by the same rules regarding impartiality and neutrality that apply to judicial officials. Where a court’s probation service is a private company whose profits depend on their ability to collect money from people under their supervision, asking that probation company to determine whether a person under supervision can pay the company’s own fees, to recommend consequences for non-compliance that generate profits for the company, or to use the threat of arrest or incarceration to induce payment present the perception of and potential for conflicts of interest. Such potential real or perceived conflicts also exist for government-run probation and parole agencies where those agencies, or the court system

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890 UN Human Rights Committee, General Comment No. 32, Article 14 (Right to equality before courts and tribunals and to fair trial), CCPR/C/GC/32, August 23, 2007, para 30.
892 Human Rights Watch, Set Up to Fail, p. 30, 83.
for which they work, depend in part on fines and fees owed by people under supervision to raise revenue for their operations. 893

Right to an Adequate Standard of Living

Under international human rights standards, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), governments are obligated to respect individuals’ rights to adequate standards of living, including housing, food, and living conditions.894 They are also prohibited from interfering with people’s ability to access and enjoy these rights.895

The practical import of these rights in this context is that government authorities should not incarcerate people solely because they cannot pay fines, court costs, and supervision fees when doing so would impair their ability to feed, clothe, house, or provide health care for themselves and their dependents. Authorities also should not extend peoples’ supervision terms—putting them at risk of further incarceration for violations—for failure to pay because they cannot afford their costs.

While many US states require courts to waive court costs for people who are “indigent,” this term is often left ambiguous and some court officials appear to interpret it as including only cases of absolute material deprivation. Further, rather than waiving costs, some jurisdictions impose civil judgment. While this may eliminate the threat of incarceration, it negatively affects the credit scores of those against whom civil judgment gets entered, preventing them from obtaining loans or lines of credit for housing, cars, or


895 A state is also required to work towards the progressive realization of these economic, social and cultural rights over time “to the maximum of its available resources.” ICESCR, art. 2(1).
education, for example. This in turn impacts their ability to move forward and advance in society.

**Right to Health**

The ICCPR places a heightened duty of care on governments towards people in their custody. The Human Rights Committee has stated that “the duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health.”

The ICESCR also provides that everyone has the right to “the highest attainable standard of physical and mental health.” The UN Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that: “The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, [and] work[.]” The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), also provide that incarcerated people “should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”

The failure to provide evidence-based and adequate treatment for substance use disorder to people in custody, including Medication-Assisted Treatment where appropriate, and the imposition of punishment for relapse (given that substance use disorder is chronic and relapsing) is inconsistent with these standards.

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896 UN Human Rights Committee, General Comment No. 36, Article 6 (Right to life), CCPR/C/GC/35, September 3, 2019, para 25.
897 Ibid.; Convention Against Torture, Art. 1.
898 ICECR, art. 12.
899 UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, Article 12 (The right to the highest attainable standard of health), E/C. 12/2000/4, August 11, 2000, para 3.
900 UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rules 24-34.
Further, people on supervision should not be punished for violations relating to personal drug use and possession when the authorities failed to provide appropriate treatment for the individuals while they were incarcerated.

In addition, Human Rights Watch and the ACLU have taken the position that criminalizing drug use and possession for personal use violates international human rights standards on privacy and basic principles of autonomy that underlie all rights, and is per se a disproportionate response. Accordingly, personal drug use and possession for personal use should not trigger prosecution or supervision violations.

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903 Ibid.
VIII. The Path Forward

There is an emerging consensus that, as this report documents, supervision is in large part failing to achieve its aims of diverting people from incarceration and helping them get back on their feet. Rather than steering people away from incarceration, supervision is leading them back to jails and prisons in high numbers. Far from promoting rehabilitation, supervision’s high costs and onerous requirements often destabilize peoples’ lives, while in many cases failing to connect them with services.

Incarcerating people for supervision violations is also very expensive for governments. According to the Council of State Governments, locking people up for supervision violations costs states collectively more than $9.3 billion annually. Such incarceration costs $194 million a year in Georgia, $334 million in Pennsylvania, and $451 million in Wisconsin. These figures do not even include the costs to incarcerate people in county-run jails or other local detention facilities.

Finally, supervision as it works in the United States is not necessary to prevent crime. Numerous experts agree that supervision terms of more than a few months or a couple of

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905 See Section V, “Supervision is Feeding Mass Incarceration—The Numbers.”
906 See Sections I, “Requirements of Supervision”, VI, “Factors Driving Violations.”
907 Council of State Governments Justice Center, “Confined and Costly.”
911 Council of State Governments Justice Center, “Confined and Costly.”
years have little safety or rehabilitative value. Further, in our focus states, most violations stem from rule violations or public order, drug, and property crimes. There is little or no evidence that locking people up for such violations enhances public safety or reduces recidivism. Conversely, studies show that incarcerating people, particularly for a long time, makes it harder for them to re-enter their communities and can increase recidivism.

Where people on supervision are suspected of engaging in serious crime, there are already mechanisms in place to address it, from arrest through to prosecution. In our focus jurisdictions, pursuing violation proceedings on top of criminal charges typically leads to longer pre-adjudication incarceration (as people typically remain incarcerated pending resolution of both proceedings); subjects people to an additional set of sanctions; and provides fewer procedural protections against unfair process and arbitrary detention, given lesser due process protections in revocation proceedings. (See Section III, “Few Evidentiary Protections.”)

912 Executives Transforming Probation and Parole, “Statement on the Future of Probation & Parole in the United States,” 2019, https://www.exitprobationparole.org/statement (supervision terms should not exceed 18 months); PEW Charitable Trusts, Policy Reforms Can Strengthen Community Supervision, p. 29 (supervision terms should be limited to two years); Jarred Williams, et al., “The Wisconsin Community Corrections Story,” p. 23 (supervision terms should be limited to one to three years); Vincent Schiraldi, “The Pennsylvania Community Corrections Story,” p. 5 (supervision should not exceed two years); Philadelphia District Attorney’s Office (DAO), “Philadelphia DAO’s Policies to End Mass Supervision,” March 21, 2019, https://medium.com/philadelphia-justice/philadelphia-daos-policies-to-end-mass-supervision-fd5998cfe1f1 (noting studies showing supervision beyond 13 months is problematic); Cecelia Klingele, “Rethinking the Use of Community Protection,” p. 1062-63 (supervision most effective in the initial months and years).


Such programs can also improve public health, especially when paired with affordable and accessible health care in the community, including for people with substance use disorder and mental health issues.\footnote{For instance, in 2001, Portugal decriminalized the possession of illicit drugs for personal use and invested substantial resources in treatment and other services. Since then, overdose deaths and rates of infection with HIV and Hep C have plummeted, and the number of people receiving drug treatment has increased, with no significant increase in problematic drug use. Human Rights Watch and American Civil Liberties Union, Every 25 Seconds, p. 182-83.} In August 2019, a group of more than 60 current and former supervision officers issued a statement calling on all jurisdictions to enact reforms including: limit the imposition of probation, shorten supervision sentences, allow people to earn time off of supervision through achieving certain milestones, reduce conditions and costs, and limit incarceration for violations—while increasing investment in community-based services.\footnote{Executives Transforming Probation & Parole (EXIT), “Statement on the Future of Probation & Parole in the United States,” https://www.exitprobationparole.org/statement.} Former New York State Parole Director and New York City Probation Commissioner Martin Horn has
proposed abolishing parole altogether and reinvesting savings from reduced revocations into vouchers to give directly to people on supervision to buy their own services.  

**Recent Reforms**

In recent years, at least 35 states have made reforms to reduce the burdens of supervision. For instance, from 1996 to 2014, New York City reduced its probation population by 69 percent, following reforms that included shifting two-thirds of its probation population from in-person reporting to monthly check-ins at electronic kiosks; shortening lengths of probation terms; and increasingly granting early discharges from probation. Meanwhile, the city opened probation offices in communities with high numbers of people under supervision, and contracted with community-based organizations to offer accessible, voluntary services for both people under supervision and others in the community. The city also reduced its probation department budget and staff, while increasing expenditures per person on probation and expanding contracts with community-based organizations. During this period, crime, incarceration, and re-arrest for people on probation all dropped. However, these reforms are limited to New York City’s probation system; they do not impact people serving parole, which is operated by

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New York State, and through which people are still re-incarcerated for violations at high rates, with a disproportionate impact on Black and brown people.\textsuperscript{926}

In 2017, Georgia enacted reforms that can substantially shorten the lengths of supervision terms. After two years under supervision, except in limited circumstances people are presumptively placed on “inactive probation”—which has far fewer requirements.\textsuperscript{927} In addition, some people qualify for complete termination of probation after three years.\textsuperscript{928} However, conduct such as failing to pay restitution makes people ineligible for these reforms.\textsuperscript{929} Georgia also created the role of “community coordinator,” to work within supervision departments to help connect certain people under probation with existing community-based resources, such as supportive housing, though some coordinators reportedly lack sufficient funding.\textsuperscript{930}

In 2019, Philadelphia District Attorney Larry Krasner instructed prosecutors, absent special circumstances, not to request supervision terms beyond one year for misdemeanors or three years for felonies; to ask that terms run concurrently, meaning at the same time, rather than consecutively; and to generally recommend no incarceration for rule violations and no more than one to two years in custody for new offense violations.\textsuperscript{931}

Colorado represents another innovative example. In 2014, through a program called Work and Gain Education and Employment Skills (WAGEES), Colorado’s Department of Corrections shifted money from corrections directly into voluntary, community-led re-entry services for people returning home from prison, in areas including education, employment, and housing.\textsuperscript{932} Many of the organizations providing these services are led by people who

\textsuperscript{927} O.C.G.A. § 17-10-1(a)(2)(A).
\textsuperscript{928} O.C.G.A. § 17-10-1(a)(1)(B).
\textsuperscript{929} O.C.G.A. § 17-10-1(a)(2)(A) (rendering ineligible people who fail to pay restitution or who have certain gang-related or sex offense-related convictions), (1)(B) (rendering ineligible people who have been arrested for conduct other than a “nonserious traffic offense,” have not paid restitution, or who have not complied with their probation conditions).
\textsuperscript{930} Human Rights Watch telephone interview with Kelley Saxon, Lowndes County, Georgia Community Coordinator, March 11, 2019.
have been incarcerated, and who have deep ties to the neighborhoods they serve. Further, participation is strictly voluntary—while parole officers refer people to these programs and encourage participation, there are no penalties for not following through with programming. While WAGEES has faced barriers including funding stream delays and insufficient housing for people returning from prison, it has largely been considered successful in helping people stay out of prison and gain stability in their lives.

Indeed, many communities are providing vital support to their residents in areas from health and mental health services, to education, to employment. For instance, many states are expanding access to community-based services for substance use disorder, such as Medication-Assisted Treatment. In states where Human Rights Watch conducted research, a range of organizations led by people who have been incarcerated are connecting people returning from jail and prison with job training, education, art programs, and other services. Unlike court-mandated programs, which often require that people, for instance, abstain from drugs, many of these organizations provide services without preconditions. However, these programs operate with little funding, and they do not exist in many places, particularly rural areas.

To divert people from prosecution on the front end, states have increasingly been implementing Law Enforcement Assisted Diversion (LEAD), a pre-booking diversion program piloted in Seattle, Washington. LEAD allows people charged with drug and prostitution offenses to engage with housing, job, and drug treatment services instead of facing charges. Importantly, LEAD operates under a “harm reduction” model, a public

933 Ibid., p. 9-10.
935 Ibid., p. 8.
937 A few examples of the many community-led organizations in our focus jurisdictions include the Youth Art & Self Empowerment Project, http://www.yasproject.com/ (Pennsylvania); Restoring Our Communities Wisconsin, https://www.rocwisconsin.org/; and Deep Center, http://www.deepcenter.org/ (Georgia).
health approach based upon reducing harms associated with drug use rather than implementing sanctions for drug use. Studies show that, compared to people who do not participate in LEAD, people are substantially more likely to access housing, employment, and income supports, while they are less likely to get arrested and charged with felony offenses. However, those charged with other offenses, such as theft, are not eligible for LEAD.

A promising development is the growing use of community-based restorative justice processes. These programs, which require the agreement of the person who was harmed and the person who committed the harm to participate, are designed to hold people accountable for their actions while at the same time support those who have been harmed. They acknowledge that prisons can result in further harm and that other mechanisms might better hold people accountable for their actions. They therefore encourage things like service in and for communities, restitution, acknowledgement of harm, and apology over incarceration as a solution. While they are still in relatively early stages of


940 Ibid.
development, well-implemented restorative justice processes have in some settings
demonstrably decreased incarceration and reduced recidivism, and have been reported to
better help survivors heal.\textsuperscript{944} However, there are few restorative justice programs operating
in the United States and expanding their use will require more investment, as well as
careful monitoring and evaluation.\textsuperscript{945} Officials need to ensure that restorative justice
processes and other alternatives to incarceration adequately ensure accountability for
serious offenses and protect the rights of both victims and the accused, including by not
ultimately expanding the net of correctional control or unduly pressuring people into
admitting guilt.\textsuperscript{946}

\begin{center}
\textbf{Pending Reforms in Focus States}
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In 2019, Pennsylvania’s House and Senate introduced bills to eliminate burdensome
probation conditions, shorten probation terms, and lessen sentences for violations.\textsuperscript{947}
However, amendments to both bills have eliminated significant reforms and added
provisions that would make probation substantially worse.\textsuperscript{948}

randomized controlled trial,” \textit{Journal of Experimental Criminology} 10 (2014),
https://www.researchgate.net/publication/271659858\_Short-term\_effects\_of\_restorative\_justice\_conferences\_on\_post-
traumatic\_stress\_symptoms\_among\_robbery\_and\_burglary\_victims\_a\_randomized\_controlled\_trial, p. 291-307; Human
Rights Watch telephone interview with Sharon Lerman, restorative justice practitioner in Wisconsin, December 2, 2019.
\textsuperscript{944} Ibid.

\textsuperscript{945} Tyler Kingkade, “Sexual Assault Survivors Who Want Restorative Justice Have Limited Options,” \textit{The Appeal}; Katherine


\textsuperscript{947} Ian Pajer-Rogers, “The State of Probation Reform in Pennsylvania,” American Civil Liberties Union of Pennsylvania,
Bill Passes Pa. House Committee, but Undergoes Major Changes First,” \textit{WHYY}, December 10, 2019,

\textsuperscript{948} For instance, amendments would prohibit courts from terminating probation if someone owes restitution, increase
incarceration for violations, and allow courts to bar defendants from using prescription drugs, including medication-assisted
treatment and medical marijuana. Elizabeth Hardison, “Changes to landmark Senate bill overhauling Pa.’s probation system
costs it support among criminal justice reformers,” \textit{The Philadelphia Tribune}, June 25, 2020,
https://www.phillytrib.com/news/state\_and\_region/changes-to-landmark-senate-bill-overhauling-pa-s-probation-system-
costs-it-support-among-criminal/article_6e54e484-5408-5864-b866-e80b4f556223.html; American Civil Liberties Union of
reform; Pennsylvania General Assembly, Regular Session 2019-2020, House Bill 1555,
https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=0&body=H&type=B&bn=1555; Pennsylvania
Meanwhile, Wisconsin’s Assembly introduced legislation, A.B. 831 and A.B. 832, to reduce prison sentences following revocation for rule violations and to shorten supervision terms. These reforms would be limited—largely excluding people on supervision who are charged with new offenses or with absconding, as well as people on the sex-offense registry. Nevertheless, if enacted they would make significant improvements to existing law and policy and would constitute an important step forward. However, in April 2020, the bills failed to pass.


950 Ibid.
Recommendations

The central recommendation of this report is that jurisdictions in the United States should divest resources from supervision and incarceration and invest in jobs, housing, education, evidence-based treatment for substance use disorder, and access to mental health services. Human Rights Watch and the ACLU offer the following recommendations to limit supervision, reduce incarceration for violations, and increase support for voluntary, community-based services.

These recommendations are informed by the experiences and perspectives of people who have been incarcerated for violations and their loved ones, current and former supervision officers, lawmakers, lawyers, judges, and local and national advocates.

To State and Local Supervision Departments:

- Do not impose or seek incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized at all, including possession of drugs for personal use or consensual sex work.\(^{951}\)
  - In the case of non-compliance with rules, impose sanctions that are proportionate to the underlying conduct—such as proportionate, flexible community service requirements or deprivation of “good time” credits for a proportionate period of time (see recommendations to state lawmakers below) and make sure all efforts have been exhausted to grant rewards for compliance rather than sanctions for non-compliance, as well as to connect people with needed services and resources. Consider sanctions that restrict liberty in some form only as a last resort.

\(^{951}\) Although Human Rights Watch did not interview anyone whose supervision was violated for reasons related to consensual sex work, such conduct should also be decriminalized for similar reasons. Human Rights Watch, “Why Sex Work Should be Decriminalized,” August 7, 2019, https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#.
- Do not impose or seek any sanctions, up to and including incarceration, for conduct that is beyond an individual’s control or directly related to a person’s economic, housing, or other status, such as failure to pay court costs when someone is incapable of doing so, failure to report an address when homeless, or failure to attend required meetings when the person has no means of transportation.

- Do not impose or seek any sanctions, up to and including incarceration, for the use of drugs or alcohol. If, as a result of or in the context of that substance use, people engage in actions that cause harm to others, defer to the criminal legal system. For those who are struggling with substance use disorder, refer people to voluntary harm reduction and evidence-based treatment programs and services in the community.

- Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
  - In cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work, incarceration is never appropriate.
  - In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.

- If criminal proceedings result in an acquittal or dismissal, do not pursue violation proceedings for the same underlying conduct.

- Significantly scale back the number and nature of supervision conditions imposed, including by:
  - Narrowly tailoring conditions to peoples’ needs, capabilities, and goals.
  - Ensuring conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
  - Not imposing conditions that ban personal drug use or alcohol use or that test for such substances. Where people have committed a serious offense in connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to
Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.

- Not imposing vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”

- Develop guidelines that require supervision officers to inquire into why people failed to abide by conditions before imposing sanctions, including by affirmatively attempting to contact people who fail to report before deeming them to have violated their conditions of supervision for failure to report or “absconding.”

- Officers should not impose sanctions if the conduct can be addressed through connections to needed resources and services.

- Develop guidelines to reward positive behavior by people under supervision, including completing programming, graduating from high school or college, demonstrably seeking or keeping a job, or caregiving for family members or others.

- Tie supervision officers’ positive performance reviews to the extent to which they encouraged such conduct by those under their supervision.

- Wherever possible, locate supervision offices in communities where people are commonly under supervision so that people can more easily attend mandatory appointments.

- Develop guidelines that allow people to report remotely, rather than in person, wherever possible, and limit the frequency of required reporting as much as possible.

To State and Local Judges, Court Systems, and Parole Boards:

- Significantly limit or end the use of probation sentences, especially for cases that do not involve any intentional injury or threat of harm or other egregious conduct, and instead utilize true alternatives to incarceration, such as unconditional discharges, proportionate and flexible community service requirements, or proportionate fines.

- Where supervision is used, impose short terms. Where people are facing sentencing for multiple offenses, supervision sentences should run concurrently rather than consecutively.

- Eliminate split sentences for probation. Supervision should always be imposed in lieu of incarceration, not in addition to incarceration.
• Where supervision is used, sharply limit the number and nature of supervision conditions (for more concrete suggestions, see above recommendation to Supervision Departments).
• Eliminate or seriously limit detention of people pending their violation proceedings, including by eliminating the use of “detainers.”
  o In cases involving rule violations—aside from absconding willfully for the purpose of subverting supervision—or conduct that should not be criminalized at all, incarceration is never appropriate (see above recommendation to Supervision Departments).
  o In all other cases, only permit detention for a potential supervision violation following an individualized determination pursuant to a hearing by a neutral arbiter, within 48 hours of detention, that detention is reasonable and necessary for a legitimate purpose, for example because a person presents a known risk to deliberately flee the jurisdiction to avoid the charges. Ensure the right to counsel during such proceedings.
• Appoint counsel within 24 hours of arrest for a supervision violation or before the first appearance relating to the alleged violation, whichever is earlier, and ensure access to counsel before the first appearance relating to the alleged violation.
• Develop a system to ensure that detention, preliminary, and final revocation hearings are conducted expeditiously, and with due process and evidentiary protections in place, particularly where people are detained pending violation proceedings (see recommendation to State Lawmakers below).
• Allow people facing violation proceedings to attend all proceedings in person, as opposed to requiring videoconferencing.
• Enact the following reforms to eliminate or reduce court debt: 952
  o Refrain from imposing fees, including fees for any requirements of supervision, such as treatment programs, drug testing, and monthly fees for being on supervision. Instead, government entities should pay all costs related to court and/or parole board proceedings and supervision.
  o Where costs are imposed, develop a system to conduct thorough ability-to-pay hearings to determine whether fines and fees should be waived or reduced prior to sentencing, applying a standard that takes into account

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each individual's economic needs and obligations, and their right to an adequate standard of living. Whenever capacity to pay is an issue, waive or reduce costs.

- Where costs are imposed, do not make payment of costs a condition of supervision. Such conditions disproportionately harm people with limited financial means and put them at risk of incarceration or lengthier supervision terms for nonpayment.
- Do not incarcerate people, extend their supervision terms, or suspend their driver's licenses for failure to pay costs. Further, do not rely on civil debt collection enforcement mechanisms, which can lead to an abrupt loss of wages or benefits that are necessary for someone’s daily needs, and can result in harmful credit ratings which may impede access to housing, automobiles, or other needed loans either immediately or in the future. Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; waiving, reducing, or suspending costs based on inability to pay; and sending notifications reminding people of their obligations in a non-threatening manner that comports with due process.
- Where restitution is imposed, consider an individual’s ability to pay when setting the restitution amount and offer flexible payment plans. Consider implementing restorative alternatives to monetary restitution, such as proportionate and flexible community service, or finding other ways for individuals to compensate people for their losses.
  - Prioritize collection of restitution over fines or fees.
  - Do not incarcerate people, extend their supervision terms, or suspend their driver's licenses for failure to pay restitution. Further, do not rely on civil debt collection (see above). Rather, develop and implement proportionate responses to nonpayment, including through open communication with individuals about barriers to making payments; implementing flexible payment plans; deferring payments; and considering alternatives to monetary restitution (see above).
- Limit the use of mandated treatment or drug courts to cases involving serious offenses, based on a diagnosis of substance use disorder. Mandatory treatment should not apply to people based on mere possession of drugs for personal use,
which should not be criminalized, or to people who may use drugs but are not struggling with substance use disorder. To the extent such mechanisms are used, ensure treatment programs are free, evidence-based, and include access to Medication-Assisted Treatment where appropriate, that officials ground their decisions on expert opinions on matters related to treatment, and that participants are not sanctioned with jail time or terminated solely due to behavior that is related to substance use.

- Create “safe surrender” days where people can voluntarily turn themselves in to the criminal legal system after they stop reporting or “abscend” in exchange for lighter sentences, where there is a presumption of a non-incarceration response to the self-surrender.

To State Lawmakers:

- Enact legislation that eliminates incarceration for any conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized, such as personal drug possession or use or consensual sex work (see above recommendation to Supervision Departments).

- Enact legislation that eliminates the imposition of sanctions for conduct that is beyond an individual’s control or is directly related to a person’s economic, housing, or other status, or for the use of drugs or alcohol (see above recommendations to Supervision Departments).

- Enact legislation that significantly limits the maximum lengths of supervision terms.

- Limit the number and nature of supervision conditions, including by enacting legislation that:
  - Eliminates conditions mandated by law or policy, instead requiring officials to narrowly tailor them to the needs, capabilities, and goals of each individual.
  - Ensures conditions do not interfere with peoples’ employment, education, housing, vocational training, care-giving, or other responsibilities or opportunities.
  - Eliminates conditions that ban personal drug or alcohol use or that test for such substances. Where people have committed a serious offense in
connection with diagnosed substance use disorder, participation in evidence-based drug treatment programs (that include access to Medication-Assisted Treatment where appropriate) may be ordered, so long as abstinence is not a condition of release.

- Eliminates vague conditions that fail to give people adequate notice of what conduct is prohibited, such as requirements to “avoid injurious and vicious habits.”
- Prohibits the use of algorithmic risk assessment tools to determine conditions, the level of supervision required, or sanctions.

- Decriminalize the possession of all drugs for personal use.
- Decriminalize consensual sex work.
- Improve due process and evidentiary protections in violation proceedings, including by enacting legislation that:
  - Establishes time limits for conducting expeditious detention, preliminary, and final revocation hearings.
  - Permits all people to have an individualized detention hearing by a neutral arbiter within 48 hours of detention, during which they have a right to counsel (see above recommendation to Judges, Court Systems, and Parole Boards).
  - Given statutory schemes in many states that forfeit peoples’ preliminary hearing rights solely based on a probable cause finding, and the fact that people may spend months in detention waiting for their final revocation hearings, permits all people facing supervision revocation to have a prompt preliminary hearing where:
    - If probable cause has not been admitted or otherwise found in a criminal court of record, they can contest probable cause for the alleged violation, and;
    - Regardless of whether probable cause has been admitted or found, they can contest their detention (if they have not previously had a detention hearing) pending a final revocation hearing.
  - Establishes the right to counsel in all violation proceedings within 24 hours of arrest or before the first appearance relating to the violation proceedings, and ensures access to counsel before the first appearance relating to the violation proceedings. This includes providing sufficient funding for court-appointed counsel.
Prohibits the introduction of illegally obtained evidence in revocation proceedings.

- Raises the burden of proof to “beyond a reasonable doubt.”

- Repeal statutes that require people to serve “extended supervision” or other forms of mandatory supervision following their prison terms, while still allowing for supervision to substitute for reduced jail or prison sentences without adding to the length of their overall sentence.

- Enact legislation that provides incentives, such as “good time” credit for each day served on supervision, to end supervision early, and do so regardless of whether people have paid their court costs or completed restitution. In addition to credits for each day served on supervision, provide additional “good time” credit for achievement of certain goals, such as obtaining a high school diploma, demonstrably seeking or keeping a job, or completing a program.

- Provide “supervision time” credits for each day people serve under supervision, so that if they are incarcerated for a violation, each day served under supervision counts toward their total sentence.\(^{953}\)

- Given research that supervision terms beyond a couple years have little safety or rehabilitative value, enact legislation that presumptively terminates peoples’ supervision within the first couple years, regardless of whether they have paid their court costs or completed restitution.

- Repeal statutes that permit the extension of supervision terms for failure to abide by supervision conditions, including failure to pay court costs or restitution. Instead, develop proportionate responses to nonpayment of court costs or restitution (see above recommendations to Judges, Court Systems, and Parole Boards).

- Enact legislation to eliminate court-imposed fees, including fees related to supervision requirements (see above recommendation Judges, Court Systems, and Parole Boards).

- Enact legislation that prohibits the suspension of driver’s licenses for non-safety-related reasons (see above recommendation to Judges, Court Systems, and Parole Boards).

- Require prosecutors, courts, and supervision and corrections departments to track, retain, and make public data on supervision, including conditions violated;

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\(^{953}\) For a discussion of “supervision time” credits, see Section IV, “Sentencing for Violations.”
whether the violation was considered a “rule” or “new offense” violation, and—for rule violations—whether someone had pending criminal charges or uncharged criminal conduct; sanctions imposed up to and including revocation; length of detention pending violation hearings; and whether hearings were waived; as well as race, ethnicity, age, sex, county of conviction, and other demographic data.

- Eliminate statutes, rules, or regulations that automatically bar those convicted of crimes and people serving terms of supervision from voting.

- Eliminate statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.

- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs that help to address the underlying causes of supervision violations. Additionally, appropriate sufficient funds to support restorative justice initiatives and other alternatives to incarceration. This includes redirecting saved funding from reducing supervision, jail, and prison populations.

- Enact measures to ensure that courts and parole boards have sufficient funding to operate without imposing fees, including by redirecting saved funding from reducing supervision, jail, and prison populations.

**To Wisconsin Lawmakers:**

- Enact strengthened versions of Assembly Bills 831 and 832, which shorten supervision terms and limit incarceration for violations, as a first step toward reform.

- Consider closing the Milwaukee Secure Detention Facility (MSDF), as running a correctional facility solely for the purpose of incarcerating people for supervision violations risks creating perverse incentives to incarcerate people under supervision. Instead, Wisconsin should eliminate or severely limit its use of detention pending violation proceedings, as well as incarceration for supervision violations.

- Enact legislation to appoint counsel within 24 hours of an individual’s arrest on a hold, regardless of whether a revocation petition has been filed.

- Prohibit supervision officers from questioning people accused of supervision violations, or from seeking a waiver of their right to a preliminary hearing, without
an attorney present, and from mandating that they provide statements about the alleged violations.

To Pennsylvania Lawmakers:

- Enact legislation, along the lines of Senate Bill 14 as originally introduced—before amendments in 2020 eliminated significant reforms and added language that would make probation worse—to reduce the lengths of probation terms and limit incarceration for violations, as a first step toward reform.

To Georgia Lawmakers:

- Prohibit enhanced penalties for violations of “special” conditions of felony probation where those conditions are duplicative of “general” conditions.
- Decriminalize nonserious traffic offenses, which often lead to probation terms for traffic violation convictions only because of the individual’s inability to pay the required fines and fees on their court date.
- Eliminate pay-only probation, which allows judges to place people on probation solely because they cannot pay their court-ordered fines and surcharges. Given monthly supervision fees, people already facing financial challenges are required to pay even more than people convicted of the same crime who could afford the fine.

To State and Local Prosecutors:

- Refrain from prosecuting those accused of simple drug possession or consensual sex work.
- Significantly limit requests for probation sentences and instead utilize true alternatives to incarceration, including through cooperation with restorative justice programs.
- Where supervision is sought, significantly limit the lengths of sentences requested (see above recommendation to Judges, Court Systems, and Parole Boards).
- Do not request a sentence of incarceration for conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).

954 Under Georgia law, “serious traffic offenses” are found in Title 40, Chapter 6, Article 15 of the Georgia Code.
Do not seek any sanctions, up to and including incarceration, for conduct that is beyond an individual's control or for the use of drugs or alcohol (see above recommendation to Supervision Departments).

Do not seek detention pending violation proceedings in cases involving rule violations (with the exception of absconding for the purpose of subverting supervision) as well as in cases involving conduct that should not be criminalized at all, such as possession of drugs for personal use or consensual sex work. In all other cases, seek detention only as a last resort and based on an individualized determination that it is reasonable and necessary to achieve a legitimate aim, such as in situations where there is a known risk the person will deliberately flee the jurisdiction to avoid the charges, similar to standards used for pre-trial detention hearings.

To State and Local Governments:

- Provide sufficient re-entry services for all people coming out of jails and prisons, and ensure that re-entry assessment and support begins sufficiently prior to release.
- If programs and services are supervision-mandated, locate such programs in the community, not within jails or prisons. Further, provide sufficient resources for them, as well as transportation costs to and from those services and any other required meetings.
- Fund, promote, and encourage initiatives and enterprises that engage people in impoverished communities and formerly incarcerated people in areas including employment, housing, education, and health.
- Develop and preserve low-income housing for people who are homeless or at risk of homelessness, including housing with supportive services for those who need them.
- Develop and fund accessible community-based mental health services, which include professionals to conduct outreach and to provide support for people with mental health conditions, as well as to respond comprehensively to emergencies that may be related to these conditions.
- Develop and provide sufficient voluntary, community-based drug treatment facilities to meet the needs of all who seek treatment. Ensure access to evidence-based treatment, such as Medication-Assisted Treatment.
• Fund, promote, and encourage community-based restorative justice processes grounded in human rights principles for cases that would otherwise typically trigger incarceration.

To State Governors:
• Presumptively commute sentences of people who are incarcerated for violating their supervision by engaging in conduct that would not trigger incarceration for someone not under supervision, such as rule violations, or for conduct that should not be criminalized (see above recommendation to Supervision Departments).
• Given research that supervision terms beyond a couple years have little safety or rehabilitative value, presumptively commute supervision sentences of people after no more than two years under supervision.

To Local Police Departments:
• Given that many of the underlying offenses that trigger supervision, as well as the stops and arrests that can lead to violation proceedings, stem from over-policing, particularly in poor and minority communities, develop and implement a plan, with specific metrics, to reduce disparate treatment of people based on race, poverty, and geography.
• Since many of the arrests that trigger violation proceedings are for minor offenses such as for crimes related to homelessness, poverty, or simple drug possession, that should not be criminalized to begin with, create a policy that ends or vastly reduces arrests for these offenses.

Federal Government

To the United States Congress:
• Decriminalize the possession of all drugs for personal use.
• Eliminate federal statutes, rules, or regulations that bar people on supervision, or whose supervision has been revoked, from social services, such as public assistance and subsidized housing.
• Condition any federal funding to law enforcement agencies on their enforcing a ban on racial profiling and on their documenting, collecting, and publicly sharing data
on pedestrian and traffic stops, arrests, and searches by race, ethnicity, gender, and location, designating funds for such data collection if needed.

- Appropriate sufficient funds to support community-based programs in areas including job training, affordable housing, economic development for low-income communities, mental health services, income support, and evidence-based drug treatment programs, including Medication-Assisted Treatment, that will help to address the underlying causes of supervision violations, as well as in restorative justice and other alternatives to incarceration.

To the United States Department of Health and Human Services

- Fund and encourage programs, including pilot programs, emphasizing public health approaches to substance use disorder that focus on harm reduction and evidence-based treatment rather than punitive measures within the criminal legal system.
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Probation and parole in the United States are promoted as alternatives to incarceration that help people get back on their feet. But in reality, arbitrary and overly harsh supervision regimes are driving high numbers of people into jail and prison—feeding mass incarceration. Given generations of structural racism, Black and brown people are disproportionately subjected to supervision and incarcerated for violations.

Based on 164 interviews and new data analysis, this joint report by Human Rights Watch and the American Civil Liberties Union (ACLU) documents the tripwires that lead people from supervision to incarceration in three US states where the problem is particularly acute: Pennsylvania, Wisconsin, and Georgia.

Revoked: How Probation and Parole Feed Mass Incarceration in the United States finds that supervision systems in the three states impose wide-ranging and unnecessarily onerous conditions, and in large part fail to connect people with the resources they need to comply. As a result, many people wind up incarcerated for violations involving drug use, failing to report address changes, and public order offenses like disorderly conduct. At root, these violations often stem from poverty and a lack of support to address underlying health, housing, or other problems. Incarceration is a grossly disproportionate response, and further upends their lives.

Human Rights Watch and the ACLU urge governments to divest from supervision and incarceration and invest in jobs, housing, and health care. The report also provides detailed recommendations authorities should follow to substantially reduce the use of supervision and limit incarceration for violations.