

Agenda for Community Supervision Subgroup #3

November 8, 2017

Subgroup Goal:

Develop recommendations to bring to the full SROC that achieve the following:

- Reduce the supervision population
- Protect public safety
- Control corrections spending

Today's Policy Discussion:

1. Strengthening Collection of Restitution and Other Financial Obligations
2. Effective Compliance Violation Responses
3. Evidence-Based Risk and Needs Assessment
4. Removing Barriers to Reentry

Calendar:

1. Full SROC Report-Out Meeting: *Today at 2pm (Room 308)*
2. Workgroup meeting #4: *12/6, 10am (Mount Pleasant Town Hall)*
3. Full SROC Final Meeting: *12/13, 10am (Columbia)*

Strengthening Collection of Restitution and Other Financial Obligations

Research Principles for Restitution and Financial Obligations:

1. Restitution is a vital part of making a victim whole again, both financially and emotionally, and for holding people accountable for their actions.¹
 - Studies show that a clear understanding of the restitution process increases victim satisfaction.²
2. There is a greater likelihood that people will pay their criminal justice obligations when ability to pay is considered.
 - A survey of restitution directors found that people are more likely to pay their restitution in full both when their means are assessed to determine the amount of the award, and in considering the appropriate response when the offender is delinquent.³
 - Often a lack of information about income and assets results in fines and fees that are too high. This results in amounts that are either beyond what people can pay or are too low, such that the sentence does not achieve its intended retributive effect.⁴
3. When financial obligations become overwhelming, it can create barriers to successful reentry. More specifically, initial studies show that there's a tipping point, where the amount due is so great that it impedes a person's stability.⁵
 - People returning to the community from prison can owe as much as 60% of their income to criminal justice debts.⁶
 - Substantial debt compared to a person's earning power can result in housing, food, and medication instability; decreased ability to support children; and an increased likelihood of criminal justice involvement.⁷
 - One recent study showed that high financial penalties increased the likelihood of recidivism for juveniles.⁸

¹ National Crime Victim Law Institute (2013), "Ensuring Full Restitution for Crime Victims: Polyvictims as a Case Study in Overcoming Causation Challenges," <https://law.lclark.edu/live/files/15462-ensuring-full-restitution-for-crime>; Theodore R. Sangalis, "Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act," *Fordham Law Review*, (2011) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4658&context=flr>.

² R. Barry Ruback, Penn State University, Cares, Alison C., Central Connecticut State University, and Hoskins, Stacy. N., Penn State University, "Crime Victims' Perceptions of Restitution: The Importance of Payment and Understanding," (2008) <http://pacrimstats.info/PCCDReports/EvaluationResearch/Completed%20Research/Victims%20Services/Restitution/Crime%20Victim%27s%20Perceptions%20of%20Restitution.pdf>; Wemmers and Canuto (2002).

³ American Bar Association Criminal Justice Section Victim Witness Project (1989), "Improving Enforcement of Court-Ordered Restitution," <https://ncsc.contentdm.oclc.org/digital/collection/criminal/id/253>; R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice : Purposes, Effects, and Implications," (2006), *Criminal Justice and Behavior* 33: 242, <http://www.center-school.org/restitution/pdf/EconomicSanctionsInCriminalJusticePurposesEffectsAndImplications.pdf>.

⁴ R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications," (2006), *Criminal Justice and Behavior* 33: 242, <http://www.center-school.org/restitution/pdf/EconomicSanctionsInCriminalJusticePurposesEffectsAndImplications.pdf>.

⁵ Carl Formoso, 2003, "Determining the Composition and Collectibility of Child Support Arrearages", Washington State Department of Social and Health Services. Carl Reynolds, et al, 2009, "A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes", Council of State Governments Justice Center, <https://csgjusticecenter.org/wp-content/uploads/2013/07/2009-CSG-TXOCA-report.pdf>

⁶ Harris, Evans & Beckett (2010), "Drawing Blood from Stones," <https://csgjusticecenter.org/wp-content/uploads/2013/07/2010-Blood-from-Stones-AJSj.pdf>

⁷ Ibid.

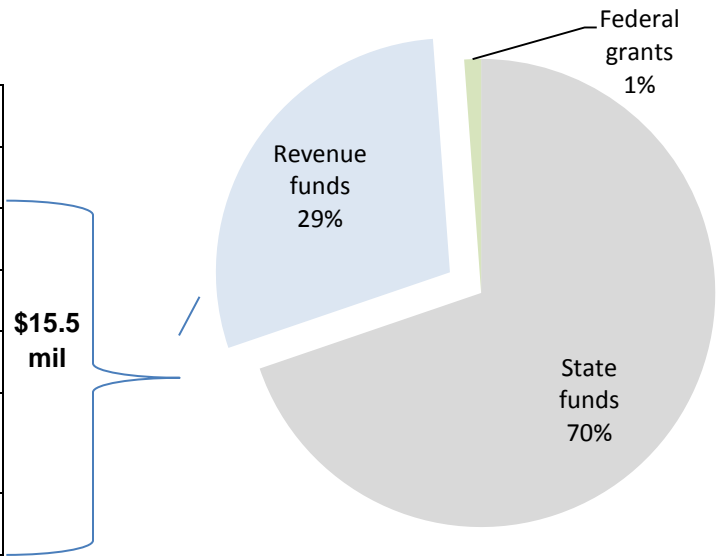
⁸ Alex R. Piquero, Ph.D. University of Texas at Dallas & Wesley G. Jennings, Ph.D. University of South Florida, Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders (June 2016) *available at* <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>

4. One court determined court fines based on ability to pay while also implementing individualized collection strategies like personal reminders, budget counseling, and home visits.⁹
- The average dollar amount of fines went up 25%;
 - For people who could not or did not pay in full, more people paid something rather than nothing;
 - Collection rates improved—85% of people eventually paid their fines in full, as opposed to 76% the prior year;
 - Individuals whose fines were based on income and had individualized collection plans had fewer post-sentence hearings due to payment success and fewer arrest warrants for failure to appear.

⁹ Winterfield, Laura A., and Sally T. Hillsman, National Institute of Justice (January 1993). “The Staten Island Day-Fine Project.” <https://www.ncjrs.gov/pdffiles1/Digitization/138538NCJRS.pdf>

How will changes to supervision impact PPP's budget?

PPP Budget – Projected 2018		
State funds		\$37.18mil
Revenue funds	Court fees	\$8.79mil
	Supervision fees	\$5.23mil
	20% restitution fee	\$942k
	Sex offender monitoring program	\$81k
	Ignition interlock	\$450.5k
Federal grants		\$618k



Potential Impacts to Revenue Funds

\$15.5 mil, 29% of total PPP budget

Greater Net Income	Lesser Net Income
1. Administrative release (Release Workgroup)	1. Shorter supervision sentences
2. Means-based payment	
3. Shorter supervision sentences	
4. Compliance credits	

Income-Based Payment Structures:

1. **Louisiana:** For those who are assessed as indigent, people on supervision owe one day's pay per month to cover all fees and fines, with restitution prioritized.¹⁰
 - *Milwaukee study:* This study showed low-income people with day fines were more likely to pay their fines and were more likely to pay in full than those with a conventional fine, a fixed fine not based on income.¹¹
2. **Discretionary income calculation (student loan context):** Discretionary income is defined as income in excess of 150% of the federal poverty line and reasonable and fair monthly payments are 10% of this discretionary income.¹²

Policy Discussion for Strengthening Restitution Payments:

- To ensure the victim and defendant receive accurate expectations, clear instructions, and an achievable result without an additional hearing, clerks of court can determine appropriate payments:
 - One day's pay or 10% of an individual's discretionary income
 - Establishing a fixed percentage of monthly payments to be allotted to restitution
- For non-restitution fees: PPP agents use the remaining amount subtracting restitution, and allot fees and fines amounts. Any change in income will lead to a new assessment.

Louisiana example:

Earnings:	\$2,000/month
Daily income:	\$66.67 ($\$2,000 \div 30$)
	\$33.34 for restitution / \$33.33 for other fees/fines

Student loan example:

Earnings:	\$2,010/month 200% of the federal poverty line
Discretionary income, anything over 150% of poverty line:	\$502.50 ($\$2,010 \div 4$)
Monthly payment amount, 10% of discretionary income:	\$50.25 ($\$502.50 * 10\%$)
	\$25.13 for restitution / \$25.12 for other fees/fines

¹⁰ La. C.Cr.P. Art. 875.1

¹¹ The study used a minimum payment amount and a maximum payment, with level of crime and income taken into account. McDonald, Douglas, C., Editor, Judith Greene & Charles Worzella, U.S. Department of Justice, "Day Fines in American Courts: The Staten Island and Milwaukee Experiments" (1992). <https://www.ncjrs.gov/pdffiles1/Digitization/136611NCJRS.pdf>

¹² Nat'l Consumer Law Ctr., Student Loan Law, 3.3.3.3 Calculating the IBR, PAY or REPAYE Repayment Amount (5th ed. 2015)

Policy Options to Incentivize Payments and Support Reentry:

- Further incentivize restitution and fee payment by evaluating payment success after a certain period of time and, if positive, reducing or stopping payments.
 - As an incentive in Louisiana, if people successfully make full payments for 12 months, the remaining financial obligation is forgiven.¹³
- Delay payments for the first months to support reentry stabilization.
 - In Oklahoma, people released from an institution to supervision have all payments deferred for six months to support reentry.¹⁴
- Institute reminder notices prior to payment due date and rapid notice if payment is not made.
 - Some courts use fine coordinators to help draw up individualized payment schedules, counsel offenders on their obligations, monitor payments, and contact offenders when payments are missed. Home visits and assistance in improving budgeting skills or resolving other problems that interfere with ability to make payments has been shown to increase the rate of full payment.¹⁵

¹³ La. C.Cr.P. Art. 875.1

¹⁴ 22 Okl. St. § 983a

¹⁵ Bureau of Justice Assistance, (1996). How To Use Structured Fines (Day Fines) as an Intermediate Sanction, available at ncjrs.gov/pdffiles/156242.pdf

Policy Discussion: Effective Technical Violation Responses

Research Principles about Additional Incarceration:

1. A growing body of research tells us that incarceration can be criminogenic, or increase recidivism.¹⁶
 - Specifically, technical violators of probation serving a period of confinement (jail or prison) had higher recidivism than offenders sanctioned in the community.¹⁷
2. Even short lengths of detention can be criminogenic, as shown in pre-trial populations, where being detained for just two days or more is related to increased recidivism after disposition. As the length of time detained increases, so does the likelihood of recidivism.¹⁸
3. For people deemed low risk of flight or being rearrested pre-trial, the recidivism rate increases as days detained increase¹⁹:

Days Incarcerated	Likelihood of Recidivism Pretrial
2-3 days	39% increase
4-7 days	50% increase
8-14 days	56% increase

South Carolina Practices & Data:

1. In South Carolina, probation agents can issue warrants for people on supervision, including non-public safety violations.²⁰ For many compliance violations, the agent or supervisor response could be a range of lower-level administrative responses, a citation, or a warrant.²¹
2. PPP policy states that citations should be used unless there is a compelling reason for a warrant.²²

¹⁶ Bales, William D. and Alex R. Piquero, (2011). "Assessing the impact of imprisonment on recidivism." *Journal of Experimental Criminology*, 8: 71–101. Retrieved from doi.org/10.1007/s11292-011-9139-3; Nagin, Daniel S., Francis T. Cullen, and Cheryl Lero Jonson, (2009). "Imprisonment and reoffending." In (Michael Tonry, ed.), *Crime and Justice: A Review of Research*, vol. 38. Chicago, IL: University of Chicago Press.

¹⁷ E. K. Drake & S. Aos (2012). *Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?* (Document No. 12-07-1201). Olympia: Washington State Institute for Public Policy.

¹⁸ Lowenkamp, Christopher T., VanNostrand, Marie, and Alexander Holsinger, (2013). "The Hidden Costs of Pretrial Detention." The Laura and John Arnold Foundation. Retrieved from arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf

¹⁹ Ibid.

²⁰ S.C. Code Ann. §24-21-450

²¹ South Carolina Department of Probation, Parole, and Pardon Services, "Report to the Sentencing Reform Oversight Committee" (November 2016).

²² South Carolina Department of Probation, Parole, and Pardon Services Policy & Procedure 702

3. In 2016, warrants and citations were used in similar amounts (those numbers have dropped from 2010).

Warrants Issued in 2016	Citations Issued in 2016	Total Warrants and Citations
8,473	8,982	17,455

Compliance Revocations in 2016	New Offense Revocations in 2016	Total Revocations
3,097	587	3,684

4. When warrants were issued in 2016, judges and other supervising authorities did not revoke supervision for compliance violations in 5,376 cases.
- This process is expensive: one Arkansas locality interviewed a police station and found that each arrest cost the municipality \$216.60 and an additional \$55/day (the cost of detaining someone for one day).²³

Policy Option:

Use only citations for technical violations (not including public safety technical violations). This would result in a scheduled court appearance without prior detention. If the supervisee fails to appear in court, the agent can issue a warrant.

²³ Blytheville Courier News, Sunday, May 20, 2012, available at blythevillecourier.com/story/1851176.html. To calculate the cost, the study included the cost of being detained, the staff time to answer and respond to the call, and fuel needed.

Policy Discussion: Evidence-Based Risk and Needs Tool Use

Research Principles about Risk and Need Tool Validation:

1. Validating a risk and needs tool is critical to the accuracy of the tool. When a tool is validated on the population it is assessing, it is more predictive in determining an appropriate risk level.²⁴

South Carolina Practices Regarding Risk Tool Use:

1. SB 1154 required that a “validated risk and needs tool” be used in South Carolina.²⁵ PPP contracted with Northpointe to use the COMPAS tool, and has implemented it.
2. PPP also has validated the tool on the parole population, but has not yet validated it on the South Carolina probation population.

Policy Option:

Provide funding for the probation validation process and establish a date by which the tool will be validated.

²⁴ The National Center for State Courts report found: “When one risk assessment tool originally developed in the Midwest was adopted without modification for use with probationers in New York City, researchers found that several items in the risk assessment were not related to recidivism in the New York sample.” available at ncsc.org/~media/microsites/files/csi/bja%20na%20final%20report_combined%20files%208-22-14.ashx. Also see: <https://fas.org/spp/crs/misc/R44087.pdf>. Finding: Another important reason to validate tools is to minimize potential racial disparities. Because some of the static factors that tools use can be disproportionately high among black and Latino populations, considering race while setting up cutoff points can make classification more accurate.

²⁵ S.C. Code Ann. § 24-21-10; S.C. Code Ann. § 24-21-32; S.C. Code Ann. § 24-21-280

Policy Discussion: Remove Barriers to Reentry

Stabilization Assistance Benefits

Research & Data about Stabilization Assistance Benefits:

1. During the tough-on-crime era of the 1990s, the federal government instituted a ban on stabilization assistance programs for people with felony drug convictions. The ban allowed states to opt out, which many states have done during the shift to being smart on crime.
 - South Carolina is one of just five remaining states to maintain the federal government's ban on people with drug felonies from receiving food stabilization benefits or the Supplemental Nutrition Assistance Program (SNAP) and one of 13 to maintain it with income stabilization benefits or Temporary Assistance for Needy Families (TANF).²⁶
 - Southern neighbors have recently lifted the federal bans, including Alabama in 2015²⁷ and Louisiana in 2017.²⁸
2. Food assistance benefits have been shown to vastly improve outcomes for children.
 - A recent study showed that adults who had access to food assistance as young children reported better health, and women who had access to food stamps as young children reported improved economic self-sufficiency (as measured by employment, income, poverty status, high school graduation, and program participation).²⁹
3. The federal government funds SNAP benefits and splits the administrative costs of the program with the state.³⁰

Policy Option for Stabilization Assistance Benefits:

Remove restrictions on stabilization assistance (food assistance and income assistance) for people with drug felonies.

²⁶ Mississippi, Georgia, Wyoming, and West Virginia are the only other states joining South Carolina in fully banning SNAP for people with drug felony convictions. Hager, Eli, The Marshall Project (2016). "Six States Where Felons Can't Get Food Stamps," available at themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps.

²⁷ 2015 Bill Text AL S.B. 67 (Section 12), available at

<http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/SB67-enr.pdf>

²⁸ La. R.S. § 46:233.3

²⁹ Dean, Stacy, Center on Budget and Policy Priorities (2016). "Balancing State Flexibility Without Weakening SNAP's Success," available at cbpp.org/food-assistance/balancing-state-flexibility-without-weakening-snaps-success.

³⁰ CBPP (2017) "Policy Basics: Introduction to SNAP," available at: cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap

Identification at Reentry

South Carolina Practices Regarding Identification at Reentry:

1. SB 1154 required all inmates to have a state-issued identification card.³¹ This change required the Department of Motor Vehicles, Department of Corrections, and the Department of Probation, Parole, and Pardon Services to work together to accomplish this goal.
2. This process is underway, however a number of barriers exist:
 - Two documents necessary for a state-issued identification card are a birth certificate and social security card. Vital records charges a \$12 fee for birth certificates, which most people do not have while in prison. Inmates must gather the required supporting information to apply for a birth certificate and Social Security card, but if they do not have the means to pay the fee, they're unable to complete the process.
 - For people convicted of violent crimes, state-issued IDs must have a code for "violent offender" on the card known to law enforcement. This implementation currently includes a label reading "violent offender." The DMV charges a \$50 fee for this specialized service.³²
 - Once someone has state-issued identification, the only barrier to earning a driver's license (presuming the individual previously had a valid driver's license) is also the \$10 fee for a replacement license.

Policy Options for Ensuring Identification Cards at Reentry:

1. For birth certificates:
 - Fund the Department of Vital Records to be able to waive the fee for birth certificates for people in prison.
2. For violent offender designation:
 - Fund the Department of Motor Vehicles to be able to waive the fee for affixing the code.
 - Align practice more closely with the statute, using a code rather than a "violent offender" label, ensuring easier job application and reentry process.
 - Eliminate the "violent offender" code requirement, thereby eliminating the fee.
3. For driver's licenses:
 - Fund the Department of Motor Vehicles to be able to waive or reduce the replacement license fee within six months of release.

³¹ S.C. Code Ann. § 24-13-2130

³² S.C. Code Ann. §56-1-148