

Bill Draft 217: Modification of Probation

Wyoming's Justice Reinvestment Approach

Bill Draft 217 is part of a package of bill drafts that the Joint Judiciary Committee has authorized. Together, the bill drafts are designed to avert growth in prison and supervision populations, reduce recidivism, and enable the state to reinvest in increasing access to timely, specialized community substance addiction or mental health treatment for people on probation or parole.

Bill Draft 217 enables courts to calibrate probation term lengths at sentencing and during supervision.

- Allow courts to sentence people to unsupervised probation,
- Allow courts to reduce terms of probation, and
- List eight criteria that courts may consider when determining the period of probation or a modification of a term.

Policy Detail

This bill draft enables courts to place a person on unsupervised probation at sentencing, which typically involves conditions that that person must meet even though he or she is not being actively supervised. If the person violates these conditions or the law, such as by being arrested, he or she would be subject to additional sanctioning in front of the court.

The bill draft lists eight criteria that the court may consider when determining the period of probation or modifying an existing supervision period. The eight criteria are:

- Stable employment
- Positive community support
- Positive familial support
- Reasonable attendance to spousal and parental responsibilities
- Affirmative progress in addressing alcohol or substance addiction issues
- Nature and seriousness of the underlying crime
- Risk posed by the defendant to the community
- Risk of reoffense as determined by a validated risk and need assessment

Bill Draft 221: Crime Victim Compensation Eligibility Clarification

Wyoming's Justice Reinvestment Approach

Bill Draft 221 is part of a package of bill drafts that the Joint Judiciary Committee has authorized for drafting. Together, the bill drafts are designed to avert growth in prison and supervision populations, reduce recidivism, and enable the state to reinvest in increasing access to timely, specialized community substance addiction or mental health treatment for people on probation or parole.

Bill Draft 221 helps victims receive coverage for expenses resulting from mental health services.

- Extend the period within which the Wyoming Crime Victim Compensation Program (WCVCP) may allow reimbursement for victims' mental health services from 24 to 36 months.

Policy Detail

Mental health services can be beneficial for a victim's recovery from crime and violence. Records from hundreds of adult and juvenile victims in Washington State suggests that when financial resources for mental health services are available, and when victims are aware of these resources, they have a high level of interest in receiving them.¹

In Wyoming, WCVCP enables eligible crime victims to receive reimbursement for their expenses resulting from mental health services. Extending the eligibility period for mental health benefits from 24 to 36 months from the date of injury or discovery of the crime will help increase the number of victims accessing mental health services.

By extending the eligibility period, the bill draft helps crime victims utilize the entire \$15,000-per-person, per-crime, financial award under WCVCP. The longer timeline helps Wyoming keep pace with policies in the neighboring states of Utah and Idaho, where all compensation benefits are extended to victims until the maximum benefit cap of \$25,000 is reached in each state.²

¹ Michelle New and Lucy Berliner, "Mental health service utilization by victims of crime," *Journal of Traumatic Stress* 13, no. 4 (2000): 693–707.

² Council of State Governments Justice Center staff analysis of state victim compensation program data, 2016.

Bill Draft 227: Limitation on the Length of Parole

Wyoming's Justice Reinvestment Approach

Bill Draft 227 is part of a package of bill drafts that the Joint Judiciary Committee has authorized. Together, the bill drafts are designed to avert growth in prison and supervision populations, reduce recidivism, and enable the state to reinvest in increasing access to timely, specialized community substance addiction or mental health treatment for people on probation or parole.

Bill Draft 227 focuses parole resources on people during the initial years of their parole term, when they are at the greatest risk of failing on supervision, by revising statutes concerning minimum and maximum sentences.

- For sentences in which the maximum term under law is less than 25 years, the maximum sentence may exceed the minimum sentence by no more than 30 months.
- For sentences in which the maximum term under law is 25 years or longer, the maximum sentence may exceed the minimum sentence by no more than 60 months.

Policy Detail

In states across the country, including Wyoming, parole revocations are more likely to occur in the first two years of a person's supervision period than they are beyond that time.³ In Wyoming, 62 percent of parole revocations occur in the first year of supervision, and 89 percent occur within the first two years.⁴

Setting maximum lengths of parole supervision would help focus supervision and program resources during the early part of the supervision period, when people on parole are most likely to recidivate. At the September 20–21 Joint Judiciary Committee meeting, discussion focused on policy options to establish a maximum length of parole supervision, similar to the discussion that led to Bill Drafts 231 and 217 regarding probation term lengths.

This bill draft's approach of restructuring minimum and maximum sentence lengths to accomplish the objective of the policy is likely to have adverse effects on sentencing policy in Wyoming that outweigh any benefits of achieving the policy objective.

In light of these likely adverse effects, alternative approaches of focusing supervision resources early in the parole period should be pursued within Department of Corrections administrative policy and parole supervision practices.

³ U.S. Department of Justice Bureau of Justice Assistance, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)*, May 2018.

⁴ Council of State Governments Justice Center's staff's presentation to the Joint Judiciary Interim Committee on September 20–21, 2018, available at <http://csgjusticecenter.org/jr/wy/>.

Bill Draft 230: Probation and Parole—Incentives and Sanctions

Wyoming's Justice Reinvestment Approach

Bill Draft 230 is part of a package of bill drafts that the Joint Judiciary Committee has authorized. Together, the bill drafts are designed to avert growth in prison and supervision populations, reduce recidivism, and enable the state to reinvest in increasing access to timely, specialized community substance addiction or mental health treatment for people on probation or parole.

Bill Draft 230 helps hold people on probation and parole accountable with swift, certain, and proportional sanctions.

- Require the DOC to revise its incentives and sanctions system, provide training to supervision staff and information to stakeholders, collect data on placements, and submit reports annually to the Joint Judiciary Committee.
- Allow jail sanctions of up to 15 consecutive days for more serious supervision violations warranting longer stays in jail.
- Allow an incarceration sanction of up to 90 days—which may be served in a consenting jail, an adult community correction (ACC) program, or prison—for supervision violations recommended for review by the sentencing court or the Board of Parole.
- Prioritize admission into the Intensive Supervision Program (ISP) for people beginning supervision terms who have been assessed as having a high risk of failing on supervision, thereby creating additional space in ISP to be used as a sanction following a supervision violation.
- Although this bill draft doesn't contain the language, this policy option intended to apply the policy immediately above to ACC program admissions, thereby creating additional program space to be used for the 90-day sanctions.

Policy Detail

The bill draft defines the process for considering custodial sanctions for a person after an alleged supervision violation. An informal hearing would take place before a designated hearing officer, who may not be the supervising officer who is making the allegation. The hearing officer, based on a preponderance of the evidence, would utilize the incentive and sanction system to determine the appropriate response. The person facing the alleged violation would be presented, in writing, with the alleged violation and the proposed sanction, and permitted to request a formal hearing. Exceptions to the policy include violations involving a new felony conviction or absconding, which would be subject to traditional revocation.

These sanctions are designed to be:

- **Swift** by allowing the alleged violation to be reviewed in an informal hearing in front of a hearing officer more quickly than in a formal revocation hearing;

- **Certain** by revising Wyoming’s incentives and sanctions system to help probation and parole agents respond to violations with greater consistency and predictability;
- **Proportional** by expanding the array of sanction options available so they can be delivered with greater proportionality to the seriousness of the negative behavior; and
- **Cost-effective** by reducing both the volume of admissions to prison due to supervision revocations and the amount of time people revoked spend incarcerated for violating their conditions, which would enable the state to reinvest in timely, specialized community substance addiction and mental health treatment.

In 2017, 54 percent of Wyoming prison admissions were due to probation or parole (“supervision”) revocations. Between 2013 and 2017, the number of admissions for supervision revocations increased 27 percent. People revoked from probation and sentenced to prison serve an average of 19 months in prison, and people revoked from parole and reincarcerated serve an average of 11 months.⁵

From 2013 to 2017, 84 percent of prison admissions due to supervision revocations did not include a new felony conviction. Available data and DOC audits show that reasons for supervision violations typically involve patterns of repeated violation behavior, often related to substance use.⁶ In interviews with criminal justice system stakeholders, CSG Justice Center staff heard a desire for swift and certain sanctions in response to supervision violations and for more sanctions to include some level of programming.

This bill draft extends the continuum of sanctions available before a revocation from supervision occurs in order to hold people accountable in the community while reducing supervision failures and avoiding cost. Legislation (HB 42) enacted earlier this year in Wyoming—which allows people with repeated substance use violations to be held in a consenting jail for up to 90 days while receiving state-funded community treatment—laid the groundwork for this approach. The bill draft enables the 90-day incarceration sanction concept to be applied to people with a wider array of condition violations than just repeated substance use violations; expands the locations where the sanction can take place from jail to an ACC program or prison; and reserves the sanction for supervision violations that have been recommended for review by the sentencing court or the Board of Parole.

The bill draft prioritizes admissions to ISP for people who will benefit most from intensive supervision and programming based on their risk of failing on supervision or who have violated their supervision conditions. The risk principle indicates that to reduce recidivism, intensive supervision and programs should focus on people who are at a high risk of

⁵ Data analysis used in this issue brief appears in The Council of State Governments Justice Center’s staff’s presentation to the Joint Judiciary Interim Committee on September 20–21, 2018, available at <http://csgjusticecenter.org/jr/wy/>.

⁶ Ibid.

recidivism and have high needs.⁷ Sixty percent of Wyoming's ISP population is low or moderate risk (29 and 31 percent, respectively), however.⁸

The policy option intended for the same policy to apply to ACC admissions, but it doesn't appear in the bill. Although people beginning supervision terms in ACC programs have worse recidivism outcomes than people with similar risk levels who start terms in the community (except for people on parole assessed as being at a high risk of failing on supervision), this population comprised half the ACC population in FY2018. Conversely, less than 5 percent of the ACC program population involved people referred to the program following a supervision violation. (The remaining ACC program population is composed of people who have not been paroled yet from prison.)⁹ Prioritizing a greater proportion of ACC program capacity for people who have violated their supervision conditions enables the program to be used for people eligible for the 90-day incarceration sanction concept instead of being recommended for revocation.

States pursuing similar outcomes as those sought in the bill draft have tailored the policy concepts to fit their statutes. For example, Kansas, Montana, Nebraska, and North Carolina expanded administrative response policies to enable longer periods of incarceration, albeit short of a full revocation, for violations of supervision. Also, Colorado and Utah established maximum limits on the length of incarceration that can be applied to violations of supervision.

⁷ James Andrews and D.A. Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence, NJ: Mathew and Bender & Company, Inc., 2010).

⁸ Ibid.

⁹ Ibid.

Bill Draft 231: Limitation on Length of Probation

Wyoming's Justice Reinvestment Approach

Bill Draft 231 is part of a package of bill drafts that the Joint Judiciary Committee has authorized. Together, the bill drafts are designed to avert growth in prison and supervision populations, reduce recidivism, and enable the state to reinvest in increasing access to timely, specialized community substance addiction or mental health treatment for people on probation or parole.

Bill Draft 231 focuses probation resources on people in the initial years of their probation term, when they are at the greatest risk of failing on supervision.

- Cap the maximum length of probation terms at 42 months (3.5 years).
- Apply the cap to probation imposed without a conviction.

Policy Detail

In states across the country, including Wyoming, probation revocations are more likely to occur in the first three years of a person's supervision term than they are beyond that time.¹⁰ In Wyoming, two-thirds of revocations occur in the first two years of supervision, and 85 percent of revocations occur within the first three years.¹¹ Fifty-nine percent of probation terms are longer than three years, however, which means that supervision resources and programming are spread more thinly over a longer period of time, rather than being focused on people during the early part of their supervision terms, when they are most likely to recidivate.¹²

States have addressed this issue in various ways. Thirty-one states have enacted statutes that define the maximum length of felony probation term lengths. In recent years, 19 states have enacted earned discharge policies, which take a variety of forms.¹³ For example, earned compliance credits enable people on supervision to be discharged prior to their sentence end date provided they comply with supervision conditions, have not committed major violations, and meet other eligibility criteria.

Twelve states have statutes both defining maximum felony probation term lengths and enabling earned discharge.¹⁴ Neither of these policies are found in Wyoming statutes. The Department of Corrections' administrative rules affirm that probation and parole agents should recommend people who have complied with their conditions of supervision and not committed major violations for early discharge from probation. There is no guidance on when in the supervision period such recommendations shall or may be made, however, nor is there a formalized process for courts to review the cases. This limits the predictability and

¹⁰ U.S. Department of Justice Bureau of Justice Assistance, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)*, May 2018.

¹¹ Council of State Governments Justice Center's staff's presentation to the Joint Judiciary Interim Committee on September 20–21, 2018, available at <http://csgjusticecenter.org/jr/wy/>.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

consistency of impact across the probation population. Further, CSG Justice Center staff were unable to locate any data concerning the use of early discharge.