Standardizing Parole Violation Sanctions

by David Fialkoff

States struggling with a large number of parolees share many concerns: a system that may not be responsive to identifying parolees' risks and needs, time-consuming and costly parole violation hearings, an overuse of expensive custody sanctions instead of treatment, and questions of fairness and proportionality.[1]

Ohio and California have recently tackled issues of fairness and proportionality by using tools to calculate sanctions for parole violations. In Ohio, officials have been using a matrix for about four years; in California, they began using a computer-based model in 2008.

Use of standardized tools for sentencing is not new, but research regarding the effectiveness of similar tools for parole and probation officers in Ohio and California could have implications for the country as a whole.

Ohio Adopts a Matrix

Does using a matrix make a difference? In Ohio, the answer is yes. Brian Martin and Steve Van Dine, researchers with the Ohio Department of Rehabilitation and Correction, looked at how effective the matrix had been in reaching the state's policy goals for reducing reliance on revocation hearings and increasing the use of community sanctions for early violations.[2]

Corrections officials in Ohio had mixed reactions to the matrix. Many parole officers responded positively to it, but some felt that their skills and opinions had not been considered in the matrix's design. Others perceived the matrix as undermining their authority and discretion.

The Ohio matrix allows multiple sanctions — called "unit-level sanctions" — before parole is revoked. Possible sanctions include more

restrictive conditions on parole, increased structured supervision, substance abuse testing and monitoring, reprimands and halfway house placement.

This graduated sanction system is less rigid than those used, for example, by many drug courts. On the other hand, the matrix is nondiscretionary in that it limits the number of unit sanctions. In addition, the number of sanctions decreases as risk level, violation severity and number of violations increase. This, in turn, increases the likelihood of a revocation hearing, opening up the possibility that a parolee will be returned to prison.

The Martin and Van Dine data show that the matrix yielded many of the results policymakers were looking for:

- Costly revocation hearings — and the even more costly option of reincarceration — were significantly reduced.
- Hearings that did occur were more efficient, and resources were concentrated on those releasees who presented a higher risk of reoffending.
- There was greater proportionality between the risk of reoffending and the sanctions imposed.
- Sanctions increased in severity for each reoffense or violation.

The study did not show that progressively punitive sanctions, by themselves, had an independent effect on diminishing future criminal behavior. Adding treatment services to the progressive sanction scheme, however, significantly reduced recidivism by high-risk offenders who were sentenced for parole violations after Ohio started using the grid. Researchers found that the progressive policy led to a better matching of services based on an individual offender's risks and needs — and, they noted, the looming certainty of more restrictive sanctions may also help focus an offender's attention on the benefit of actively participating in treatment.

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California Goes Digital

California began using a computer-based parole violation sentencing system in November 2008. Called the Parole Violation Decision Making Instrument, it might be considered the next generation of matrix, in that — unlike a two-dimensional grid, such as that used in Ohio — it is computer based.[3]

Corrections officials first determine the offender's risk score. This is calculated using the California Static Risk Assessment, an instrument that predicts the likelihood of reoffending based on criminal history and personal characteristics such as age and sex.

Then officials use PVDMI to determine where the parolee's violation falls on a severity scale. The degree of severity is then cross-referenced with the CSRA score to determine a response level or sanction.

Sanctions range from community-based programs that take offenders away from family and employment for a short time to the severest sanction of reimprisonment.

California's new PVDMI assessment tool was designed to focus on higher risk parolees while diverting less serious parole violators to treatment alternatives. However, parole agents and unit supervisors can recommend overriding the instrument based on factors that include the unavailability of an appropriate program alternative in the community.

Parole violation sanction tools are not immune to controversy. The Los Angeles Police Protective League recently filed a formal complaint objecting to further use of the PVDMI.

Use of the PVDMI began at four pilot sites — Chula Vista, the San Fernando Valley, Santa Maria and Stockton — with statewide rollout expected through the summer of 2009. According to Joan Petersilia, a professor of criminology, law and society at the University of California, Irvine, early word from parole agents is that sanctions that are directed by PVDMI appear to be appropriate in a majority of cases. Efficacy of PVDMI will be formally evaluated by the U.C.-Irvine Center for Evidence-Based Corrections.[4]

As the statewide rollout is set to begin, not everyone is confident. On May 5, 2009, the Police Protective League (the union that represents Los Angeles police officers) filed a formal complaint with Governor Arnold Schwarzenegger, objecting to further use of PVDMI. The officers expressed concern that the main purpose of PVDMI was to save money and argued that its use will result in a dangerous decrease in the monitoring of releasees.[5]

California's Unique Challenge

In 2005, the National Institute of Justice funded Petersilia and fellow researchers Ryken Grattet from the University of California, Davis, and Jeffrey Lin from the University of Denver to study parolee supervision in California. Their report, which considered 2003-2004 data and was published in 2008, offers a compelling description of the problems that California faces.[6]

In addition to having the largest prison population of any state, California has an enormous parolee population. The Bureau of Justice Statistics reports that on any given day in 2006, the state had about 120,000 parolees under its supervision.[7] That amounts to 15 percent of all parolees in the United States. Potentially increasing this figure: On February 9, 2009, a three-judge panel of the District Courts for the Eastern and Northern Districts of California issued a tentative ruling requiring California to relieve overcrowding by releasing tens of thousands of additional prisoners.[8]

The magnitude of the situation stems from California's unique compulsory parole system, in which almost all prisoners are placed into mandatory parole upon release. Effectively, this means that parole in California is an extended period of out-of-custody supervision — a reality that prompted Jeremy Travis, president of John Jay College of Criminal Justice, to call it "back-end sentencing."[9] In their final report, *Parole Violations and Revocations in California,* Grattet, Petersilia and Lin noted that offenders often call it "doing a life sentence on the installment plan" because they go in and out of prison for parole infractions and, therefore, are never fully discharged from the system.[10]

California's situation is also exacerbated by a phenomenon that some call "catch and release." Although the maximum prison term for a parole violation in California is 12 months, not everyone is given the maximum, and credit is given for time in custody awaiting a hearing. According to the study, the average time served was about four months; in 2004, 20 percent of violators served less than one month.[11]

"Parolees quickly learn that being revoked from parole does not carry serious consequences, and the state wastes resources in reprocessing the same individuals over and over again," the researchers said. The constant in-and-out also disrupts community treatment programs and leads to the spread of prison gang culture into communities. Most significantly, given California's overcrowding crisis and the high cost of keeping so many offenders in custody and under supervision, the researchers recommended

that policymakers consider whether it is cost-efficient to fill prisons with those who may pose little risk to the public.

Grattet, Petersilia and Lin spent three years creating a massive database that tracked every adult parolee in California in 2003-2004: more than a quarter million people. They also recorded details of each parolee's behavior weekly and merged this with data on personal characteristics and criminal histories, the ways in which the parolees were supervised, who supervised them, and the demographics of their communities. The database was then used to analyze how all of these factors led to variations in parole outcomes.

The comprehensive study reached some significant conclusions. For one thing, race appeared to be a factor in how parole violations were handled:

- African-American parole violators were more likely to be referred to the parole board, rather than getting a court trial, and the board was more likely to reincarcerate them compared to their white parolee counterparts.
- Hispanics were also more likely than white parolees to be returned to custody by the board.
- Although white parolees had the lowest likelihood of return by the parole board, they were among the most likely to be returned to prison for the technical violation of absconding.

In the report, Grattet, Petersilia and Lin state that community characteristics — not race or ethnicity per se — may be behind these findings. They hypothesize that black parolees may be penalized due to the high unemployment rates that plague the predominantly black neighborhoods to which they are returned. Parole boards may consider a community with high unemployment to be an unstable environment, where the potential for reoffending may be higher, and therefore may be less inclined to release the parolee at all.

On the other hand, the researchers noted that community characteristics can also give parolees an advantage. For example, parole boards handed down more lenient sentences to parolees who were being released in areas with more mental health and substance abuse services. This, the researchers theorize, may have been because the parole boards had more options than just sending them back to prison.

Practical constraints on the parole board also appeared to play a role in the sanctions that they imposed. For example, during times when prison intake centers were full, the parole board was more receptive to continuing parole.

In short, the research revealed that, at least before California implemented PVDMI, outside factors played a role in determining parole violation sanctions. It remains to be seen if some or all of these concerns are eliminated by the new, less discretionary structure.

The Problem Nationwide

The 2008 Ohio study and Grattet, Petersilia and Lin's ongoing work in California could have implications nationwide. As Travis told members of Congress in March 2009, "We have reached an important moment in our nation's history. With record high incarceration rates, unprecedented extension of state supervision over individuals leaving prison and a complex maze of legal barriers to reintegration, more people than ever before are returning home after serving time in prison and are facing daunting barriers to successful reintegration. In these circumstances, the leadership of our federal government in the re-entry arena is commendable, and the level of innovation in the world of practice is impressive. Yet our re-entry policies are still quite primitive; we are just now beginning to develop an approach to re-entry based on evidence of best practices."[12]

Revocations continue to occur in states using the risk assessment tools. However, these tools have the potential to lower revocation rates and overall corrections expenses. The Ohio and California parole violation sanction tools represent two approaches to meeting some of the nation's re-entry challenges.

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Notes

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