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**Problem**

More than 5 million individuals are on probation, parole or some form of community supervision after release from prison. Community corrections agencies need better tools to supervise and better manage these individuals and motivate them to reintegrate into society. These agencies must allocate scarce supervision resources across large populations of offenders. If these resources are distributed evenly over a population of offenders that presents an uneven risk profile, some offenders will be “over-supervised,” resulting in a waste of taxpayer dollars, while others will be “under-supervised,” resulting in decreased public safety. Compliant probationers and parolees are often kept on active caseloads with the effect of diluting the intensity of supervision for higher-risk offenders and removing the incentive to behave.

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**Solution**

For corrections agencies to efficiently allocate supervision, they must have the authority to focus their staff, services and sanctions on higher-risk offenders. To do so without additional funding, agencies need to be able to move lower-risk probationers and parolees to less-intensive levels of supervision—or off of supervision altogether—if they are fulfilling their obligations and conditions, including paying restitution. Providing this flexibility allows agencies to devote time and effort to moderate- and high-risk offenders, those who present a greater threat to community safety and who research indicates are more likely to benefit from supervision and programs. It also promises to enhance motivation and promote behavior change by providing offenders with incentives to meet the goals and conditions of supervision.

This provision:

- Creates an “earned compliance credit” that would reduce the time that offenders are on active supervision by 15 days for each month that they are in full compliance with their conditions of supervision, including payment of restitution to crime victims. After an offender has paid all outstanding restitution, fines and fees, the court or releasing authority may reduce the period of supervision by the amount of credit earned.

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**Suggested Language****Section 101. Short Title.**

This title may be cited as the “Earned Compliance Credit Act.”

## **Section 102. Definitions.**

In this title, the following words have the meanings indicated.

(1) “Agency” means:

- (A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and
- (B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) “Case plan” means an individualized accountability and behavior change strategy for supervised individuals that:

- (A) Targets and prioritizes the specific criminal risk factors of the offender;
- (B) Matches programs to the offender’s individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;
- (C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and
- (D) Specifies positive and negative actions that will be taken in response to the supervised individual’s behaviors.

(3) “Compliance credit” means [15] days for every month that a supervised individual does all of the following:

- (A) Fulfills the terms of the supervised individual’s case plan;
- (B) Has no new arrests; and
- (C) Makes scheduled monthly payments for restitution, fines and fees.

(4) “Supervised individual” means an individual placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail.

## **Section 103. Earned Compliance Credits.**

(1) The Agency shall:

- (A) Award earned compliance credits to a supervised individual who satisfies the requirements specified in the individual’s case plan; and
- (B) Place a supervised individual in a non-active supervision status for the number of days earned as compliance credits.

(2) For supervised individuals in non-active supervision, the Agency shall submit a petition to the court or releasing authority to request that the period of supervision be reduced by the number of days of compliance credits earned by the individual, when the supervised individual has no outstanding restitution, fines or fees.

(3) The court or releasing authority may adjust the period of a supervised individual's supervision on the recommendation of the Agency for earned compliance credits.

(4) The Agency shall adopt rules and regulations for the forfeiture of earned compliance credits for supervised individuals who violate conditions of supervision. Such regulations shall provide that:

- (A) Forfeiture is part of the Agency's system of graduated sanctions;
- (B) The extent of earned compliance credits forfeited is related to the level of severity of the violation;
- (C) Forfeiture of earned compliance credits is limited to credits already earned, and may not prospectively deny future earned compliance credits; and
- (D) A procedure is established for the restoration of forfeited earned compliance credits based on the supervised individual's compliance with supervision conditions and progress in achieving the goals of the supervised individual's case plan.

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## Notes and Drafting Alternatives

*Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.*

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant correctional agency or agencies.
- Section 103 (non-active supervision): The suggested language uses the term “active supervision” and “non-active supervision” to reflect the difference between when a supervised individual must comply with significant conditions (reporting to the parole/probation officer, attending programs and submitting to drug tests), and when the conditions are more limited, such as providing monthly pay stubs and proof of residency. Many states use the term “administrative supervision” or “case-banking” for non-active supervision.
- Section 103 (petition of termination of supervision): If the agency supervising an individual under post-release supervision is also the releasing authority, subsection 103(b) can be modified to allow the agency to implement the earned compliance credit and reduce the period of supervision without a petition.
- Section 103 (victim notification): States may want to incorporate specific language regarding the procedural rights of victims in court proceedings that may result in adjustments to the period of supervision. States can provide victims an opportunity to tell

the agency if they wish to be notified of a change in the period of supervision. Although victim notification may be covered elsewhere in the state’s statutes or constitution, possible language for inclusion in this statute might read: “The court or supervision authority with jurisdiction to adjust the period of supervision shall establish within its policy and procedures a requirement that any victim be notified whenever a person’s sentence of probation or period of supervision may be terminated pursuant to this subsection. The court or supervision authority shall permit such victim to appear before them for the purpose of making a statement for the record concerning whether such person’s sentence of probation or supervision period should be terminated. In lieu of such appearance, the victim may submit a written statement to the court or supervision authority and they shall make such statement a part of the record. Prior to ordering that such person’s sentence of probation or supervision period be continued or terminated, the court or supervision authority shall consider the statement made or submitted by such victim.”

- Section 103 (other exemptions): A state may wish to include a provision allowing prosecutors to object to the eligibility of specific offenders for earned compliance credits. To do so, the language could require the prosecutor to file a motion at the time of sentencing requesting the court exempt the defendant from the earned credit. States may also wish to consider exempting certain classes of offenders—those convicted of certain sex crimes and other serious violent felonies or those on lifetime probation, for example—in addition to or in lieu of this case-by-case approach.

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## Rationale

Research has shown that moderate- to high-risk offenders benefit most from supervision and services and that lower-risk offenders often do worse under these conditions.<sup>1</sup> By moving lower-risk offenders who comply with their supervision conditions to an administrative supervision category (or shortening their supervision period) if they are fulfilling their obligations and conditions, agencies can manage their caseloads and devote time and effort to those who warrant it most. This flexibility enhances motivation and promotes behavioral change by providing incentives for meeting the goals and conditions of supervision.

Providing incentives for meeting case-specific goals of supervision is a powerful tool to enhance individual motivation and promote positive behavior change.<sup>2</sup> Research on human behavior indicates that offenders attempting to change behavior are better motivated by positive reinforcement than negative.<sup>3</sup> The application of this principle to the criminal justice system is illustrated by the use of positive reinforcement tools such as compliance credits.<sup>4</sup> Allowing lower risk offenders to earn their way off supervision by adhering to specific goals and strict guidelines is a particularly powerful incentive.<sup>5</sup> In this way, supervised individuals can be more motivated to participate in appropriate programs, stay sober, and retain a job.

Several experts suggest that after one year of complying with their supervision conditions and adhering to specific behavioral goals many supervised individuals could appropriately be moved

to an "administrative" caseload (non-active supervision), or that their supervision period be terminated.<sup>6</sup> This complements research that has shown that the first weeks and months after release from prison is when parolees are at the highest risk of recidivism, and that recidivism rates stabilize in the second and third year.<sup>7</sup> The possibility of reducing the supervision term through earned compliance credits not only enhances offender motivation to reform their behavior, but it also helps agencies better allocate scarce resources, by "frontloading" those resources in the first year when violations are more likely to occur and reducing supervision thereafter.<sup>8</sup>

Many states also have enacted legislation that enables certain prison inmates to earn "earned time credits" and be released earlier from prison, if they demonstrate good behavior and participate in treatment, education, work or other "risk reduction" programs while incarcerated. A recent evaluation of the earned release time statute in Washington State found that the law has been effective: taxpayer costs were lower and criminal recidivism did not increase. The study, by the Washington State Institute for Public Policy (WSIPP), found that recidivism actually decreased for inmates who had been imprisoned for non-violent crimes. Offenders who earned release time under the statute had fewer convictions, including fewer felony convictions, than offenders with comparable criminal histories and risk profiles who were released before the statute was enacted. For those convicted of violent felonies, there was no statistically significant difference between inmates who earned release time under the new law and a comparable group released before the statute was enacted. The WSIPP study estimated an average cost savings of \$10,743 per offender, from both the reduction in the length of stay in prison and the reduction in recidivism.<sup>9</sup>

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## State Examples

- **Arizona.** On June 28, 2008, Governor Janet Napolitano signed legislation (effective 12/31/08) authorizing the court to reduce the term of an offender's probation by up to 20 days per month, provided the offender has met certain specific measures of probation compliance ("earned time credit"). See Arizona Senate Bill 1476, at <http://www.azleg.gov/legtext/48leg/2r/bills/sb1476s.pdf>.
- **Nevada.** In 2007, Nevada adopted a sentencing reform act that enhances reduction-of-sentence credits for parolees and probationers, as well as state prison inmates who participate in programs shown to reduce recidivism. See Nevada Assembly Bill 510, effective July 1, 2007, at [http://www.leg.state.nv.us/74th/Bills/AB/AB510\\_EN.pdf](http://www.leg.state.nv.us/74th/Bills/AB/AB510_EN.pdf).
- **Delaware.** In a pilot program that led to a provision in SB 50, the Probation Reform Act, approximately 65 percent of probationers who entered the program were discharged early from their probation. By completing certain goals established by the court, these offenders completed probation sentences of many years in a year to 18 months.<sup>10</sup>

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<sup>1</sup> Gendreau, P., T. Little and C. Goggin, "A meta-analysis of the predictors of adult offender recidivism: What works!," *Criminology*, 34 (4), pp. 575-607 (1996); Bonta, James, "Offender Risk Assessment: Guidelines for Selection and Use," *Criminal Justice and Behavior*, 29 (4), pp. 355-379 (2002); Andrews, D.A., "Recidivism Is Predictable and Can Be Influenced: Using Risk Assessments to Reduce Recidivism," *Forum on Corrections Research*, Special Edition, pp. 5-11 (1999); Lowenkamp, C. and E.J. Latessa, "The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Corrections Programs?" *Crime and Delinquency*, No. 51 (2006).

<sup>2</sup> National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, D.C.: The National Academies Press, 2007); Andrews, Don, "Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy," *Criminology and Public Policy*, No. 5, pp. 595-602 (2006); Burke, Peggy, *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Offender Transition*, (Washington, D.C.: National Institute of Corrections, 2004); Petersilia, Joan, "What Works in Prisoner Reentry?: Reviewing and Questioning the Evidence," *Federal Probation*, 68 (2), pp. 3-9 (2004); Cullen, Francis and Paul Gendreau, "Assessing Correctional Rehabilitation: Policy, Practice, and Prospects," *Criminal Justice 2000*, Vol. 3, (2000); Taxman, Faye, David Soule and Adam Gelb, "Graduated Sanctions: Stepping Into Accountable Systems and Offenders," *Prison Journal*, 79 (2), pp. 182-205 (1999).; Andrews, Don and James Bonta, *The Psychology of Criminal Conduct* (Cincinnati: Anderson Publishing, 2004).

<sup>3</sup> Bandura, Albert, and Richard H. Walters, *Social Learning and Personality Development*, (New York: Holt, Rinehart and Winston, 1963); Latessa, Edward, Francis Cullen and Paul Gendreau, "Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment," *Federal Probation*, 66 (2), pp. 43-49 (2002); Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston: 2004).

<sup>4</sup> Burdon, William M., et al, "Drug Courts and Contingency Management," *Journal of Drug Issues*, 31 (1), pp. 73-90 (2001).

<sup>5</sup> Petersilia, Joan, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003); Petersilia, Joan, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology and Public Policy*, 6 (4), pp. 807-814 (2007); Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005); California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender Reentry and Recidivism Reduction Programs, *Report to the California State Legislature: A Roadmap for Effective Offender Programming in California* (Sacramento, CA: California Department of Corrections and Rehabilitation, 2007); Travis, Jeremy, "Reflections on the Reentry Movement," *Federal Sentencing Reporter*, 20 (2) (December 2007).

<sup>6</sup> See, for example, Pew Center on the States' Public Safety Performance Project, *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (Washington, D.C.: The Pew Charitable Trusts, December 2008); Austin, James, Todd Clear, Troy Duster, David F. Greenberg, John Irwin, Candace McCoy, Alan Mobley, Barbara Owen and Joshua Page, *Unlocking America: Why and How to Reduce America's Prison Population* (Washington, D.C.: The JFA Institute, 2007); Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005); and Petersilia, Joan, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press 2003).

<sup>7</sup> National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, D.C.: The National Academies Press 2007).

<sup>8</sup> Jacobson, Michael, *Downsizing Prisons* (New York: New York University Press, 2005).

<sup>9</sup> Drake, E.K. and R. Barnoski, *Increasing Earned Release from Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs* (Olympia, WA: Washington State Institute for Public Policy, 2008).

<sup>10</sup> Gebelein, Richard S., *Goal Oriented Probation: Let's Catch Them Doing Something Good*, presentation to American Probation and Parole Association conference in Las Vegas, NV (August 4, 2008).