

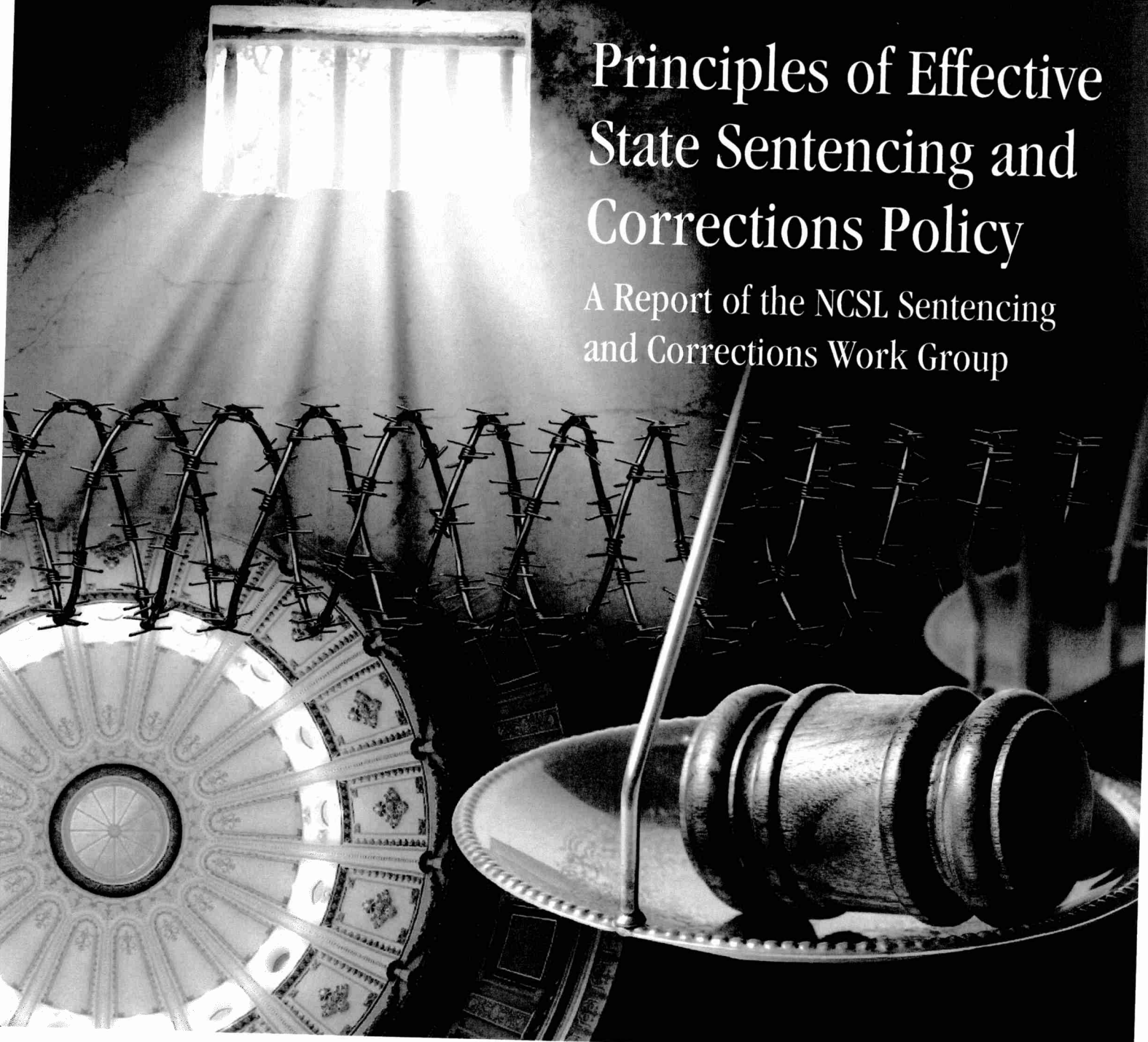


NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Principles of Effective State Sentencing and Corrections Policy

A Report of the NCSL Sentencing
and Corrections Work Group



PRINCIPLES OF EFFECTIVE STATE SENTENCING AND CORRECTIONS POLICY

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- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

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ABOUT THE PROJECT AND WORK GROUP

The NCSL Sentencing and Corrections Work Group project was developed under an NCSL partnership with the Public Safety Performance Project (PSPP) of the Pew Center on the States. The NCSL project responds to the challenges faced by states as they consider corrections and sentencing policies that both manage state spending and protect the public. The Pew PSPP was launched in 2006 to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections. Pew's work has included research, technical assistance, and funding and overseeing a variety of efforts both in states and nationally to support strategies that protect public safety, hold offenders accountable and control corrections costs.

The NCSL Criminal Justice Program assembled the Sentencing and Corrections Work Group in 2010. The bipartisan, 18-member group includes officers of NCSL's Law and Criminal Justice Committee and other legislators who are recognized as leaders on these issues. The group had a one-year work plan to discuss and identify overarching principles for effective state sentencing and corrections policy and to identify key issues and approaches that explain and illustrate the recommendations.

The issues addressed by the NCSL work group reflect the important role of state legislatures in enacting policies that manage prison populations and costs, address offender and community needs, and contribute to the safe and fair administration of criminal justice. The discussions took place during a difficult, recessionary budget climate. A major interest of the work group was how to have an immediate effect on state public safety dollars while also ensuring that the public safety is protected into the future. Many concepts addressed in the *Principles* reflect recent advances in resource-sensitive policies that actually reduce risk and recidivism. Mindful that sentencing and corrections policies reach into various levels and branches of government, the *Principles* also reflect the value that lawmakers place on stakeholders throughout criminal justice systems in policy development and discussions. Apparent throughout the *Principles* is the importance of interbranch and intergovernmental collaboration, information exchange and evaluation in working toward effective sentencing and corrections policies.

It is the intent of NCSL and this work group that the *Principles* and examples presented here will help guide and inform many aspects of state sentencing and corrections policy now and well into the future.

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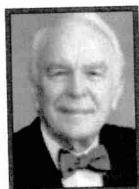
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Managing Offenders in the Community

Prisons are expensive. The Public Safety Performance Project of the Pew Center on the States reported that approximately \$9 of every \$10 spent by states on corrections in FY 2008 was devoted to state prisons, even though nearly 70 percent of offenders are supervised in the community. The 2009 Pew report shows that prison spending has increased in recent years at a faster rate than spending on community corrections. The analysis of corrections department data from eight states—Alabama, Georgia, Louisiana, Missouri, Montana, New York, Oregon and Wyoming—covered a 25-year period. During that time, Pew reported, 88 percent of new corrections dollars were allocated to prisons and only 12 percent went to community corrections supervision.

Non-prison options for suitable offenders not only helps states do more with their corrections money, but also ensures prison space is available for the most dangerous offenders. Intermediate supervision options such as electronic monitoring, residential programs and problem-solving courts are less costly than incarceration, and they provide a greater degree of monitoring and requirements than traditional probation or parole programs. Residential and community treatment can address substance abuse and mental health needs commonly related to criminal behavior (see also *Treating Drug Offenders*). Non-prison sanctions for probation and parole violations can also provide for offender accountability and reserve costly prison space for offenders who may present a public safety concern.

Of every \$10 spent by states on corrections in FY 2008, \$9 was devoted to state prisons, even though nearly 70 percent of offenders are supervised in the community, according to Pew's Public Safety Performance Project.

Adequate funding for community corrections is a perennial challenge, especially as states struggle with the recent recession. Some states are finding ways to use data and evidence to invest in successful, effective supervision strategies; they use savings gained to reinvest in identified policies that further manage costs and achieve better

Using community-based supervision options for suitable offenders not only helps states do more with their corrections money, but also ensures prison space is available for the most dangerous offenders.

result for both offenders and corrections systems. Policies such as risk-based supervision, administrative supervision and compliance credits allow agencies to focus community resources on the highest-risk offenders and at the same time, hold accountable all offenders who are in the community.

Tailored Supervision

Many states allow courts and agencies to tailor supervision based on an offender's risk of reoffending and treatment needs (see also *Using Data and Evidence*). Intermediate supervision options, which provide varying levels of surveillance and services, may include such

options as electronic monitoring and home confinement, residential placements, or required participation in problem-solving courts. As noted in *Principle 4*, the value of intermediate sanctions depends upon policies that target resources effectively and focus the highest-level supervision on the highest-risk offenders. Creating more intensive supervision for lower-risk offenders usually does not help meet corrections goals, affect cost control, or reduce reoffending.

Electronic Monitoring Electronic monitoring uses technology to track an offender's whereabouts and monitor compliance. For nonviolent offenders, it often is combined with house arrest or is used to enforce curfew and travel restrictions. Correctional agencies also use electronic monitoring as an alternative sanction to jail or prison for violations of supervision conditions or to monitor offenders who are making the transition into the community after prison.

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Savings Identified in Florida

Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) identified several intermediate sanctions for nonviolent offenders that, when used in lieu of prison, could significantly reduce criminal justice costs and reserve prison beds for the most dangerous criminals. Shown below are these sanctions, the suitable offenders and savings expected. The per diem savings are comparable to the state's \$55.54 per diem cost of incarceration.

| Intermediate Sanctions | Target Population | Per Diem Savings Per Offender |
|---------------------------------------|---|-------------------------------|
| GPS monitoring | Nonviolent felony offenders with minimum sentence of 12 to 24 months' incarceration. | \$41.51 |
| Non-treatment residential facilities | Probation technical violators, nonviolent offenders with restitution ordered, or nonviolent offenders in need of structured assistance to obtain employment and gain stability. | \$29.53 |
| Day reporting centers | Low-level felony or misdemeanor offenders. | \$44.06 |
| Residential substance abuse treatment | Offenders with substance abuse issues. | \$26.66 |

Source: Florida Office of Program Policy Analysis and Government Accountability, 2010.

The Vermont General Assembly increased use of electronic monitoring to provide community supervision for certain offenders who otherwise would be incarcerated. A 2008 law authorized use of electronic monitoring for probation violations and as part of supervision provided in a structured, community transition program. In 2010, the General Assembly created a house arrest sentence for offenders who otherwise would be sent to prison. This allows offenders to continue working, attend treatment, support their families, and remain in their residences except for travel approved by a supervising officer.

Electronic monitoring has been found to be a cost-effective supervision strategy when used in lieu of jail and in conjunction with appropriate services. A 2006 Washington State Institute for Public Policy (WSIPP) analysis of evidence-based policy options determined electronic monitoring to be an economically beneficial supervision tool that does not affect crime incidence. The WSIPP analysis determined that electronic monitoring, when used in lieu of jail, could save Washington State \$870 per offender.

Residential Facilities Residential facilities provide offenders with a structured environment and support services in a community-based setting. Colorado's 35 residential facilities serve both offenders diverted from prison and some who are making the transition from prison into the community. Most facilities require offenders to keep a job, and pay room and board, state and federal taxes, and any restitution and child support owed. Offenders participate in programs such as substance abuse treatment; counseling designed to address cognitive reasoning and criminal behavior; employment and vocational courses; and life skills, financial, and anger management training. A Department of Corrections analysis in FY 2008 found that employed offenders were three times more likely to finish the program than those who were unemployed, underscoring the importance of job readiness for community-based offenders.

Problem-Solving Courts Problem-solving courts were identified by state chief justices and court administrators in a 2006 National Center for State Courts survey as one of the two most effective supervision programs

available in their states; mental health and substance abuse programs are the other. These courts, which vary in size, target population and structure, are designed to address the special needs of the target population. In Nevada, 42 problem-solving courts throughout the state include adult, juvenile and family drug courts; mental health courts; reentry courts; driving under the influence courts; a prostitution prevention court; habitual offenders' courts; and veterans' courts.

At least six state legislatures—Colorado, Hawaii, Illinois, Indiana, Nevada and Texas—authorized establishment of veterans' treatment courts in 2009 and 2010.

Veterans' treatment courts are the most recent type of problem-solving court being established in states. At least six state legislatures—Colorado, Hawaii, Illinois, Indiana, Nevada and Texas—took action in 2009 and 2010 to authorize courts that address needs of veterans who become involved in the criminal justice system. Many of these offenders have substance abuse and mental health needs stemming from combat experience; services overseen by the courts partner with veterans' agencies and eligible benefits. California, Iowa, New Hampshire and Oregon have similar policies that authorize diversion of veterans convicted of nonviolent crimes into treatment programs in lieu of prison.

Drug courts are the oldest and most common type of problem-solving courts—in 2010 there were more than 2,500 such courts operating across all 50 states, according to the National Association of Drug Court Professionals. Missouri's first drug court was established in 1993; today that state has the most drug courts per capita of any state in the nation. A Drug Court Coordinating Commission was established by the General Assembly in 2001 to evaluate resources, oversee operation and recommend funding for the state's drug courts. An academic study conducted for the commission projected savings of \$7,800 per year for each offender who is supervised in drug court instead of being sent to prison.

The federal Bureau of Justice Assistance's Drug Court Clearinghouse tracks and summarizes cost-benefit evaluations of drug court programs dating back to 2000. Studies comparing drug court participants to similar offenders who are not enrolled have found criminal justice system savings as a result of reduced prison and jail time, lower re-arrest and re-conviction rates, and decreased victim and law enforcement costs. Other benefits—such as increased employment rates and wage earnings, reduced health care costs, and increased parental participation and payment of child support—also have been noted. Studies of statewide drug court programs reveal that, while some drug courts cost more than typical court dockets or probation caseloads, the specialty courts still are more cost-effective than jail or prison.

As policymakers explore the value of drug courts, they also can be aware of opportunities for improvement. A two-year examination of problem-solving courts by the National Association of Criminal Defense Lawyers resulted in a 2009 report that questioned the effectiveness of drug courts in addressing the societal problems of substance abuse. The report also cautioned about procedural matters and questioned whether drug court caseloads are adequately diverse and if clients are predominately those with the greatest need for intensive judicial supervision and treatment services (see also *Determining Criminal Sentences* and *Treating Drug Offenders*). As suggested in the *Principles*, policymakers can improve the effectiveness of intermediate and alternative sanctions both by ensuring that approaches are evidence-based and by requiring that community resources safely target offenders who can most benefit from community interventions in lieu of prison.

Probation and Parole Violations Offenders sent to prison for probation and parole violations contribute substantially to state prison populations and related costs. According to the Bureau of Justice Statistics, 35 percent of all state prison admissions in 2009 were offenders who returned to incarceration as a result of parole violations. Although some violators must be returned to prison to protect society, a growing number of states are developing non-prison sanctions for offenders who break the rules of their supervision, known as technical violations.

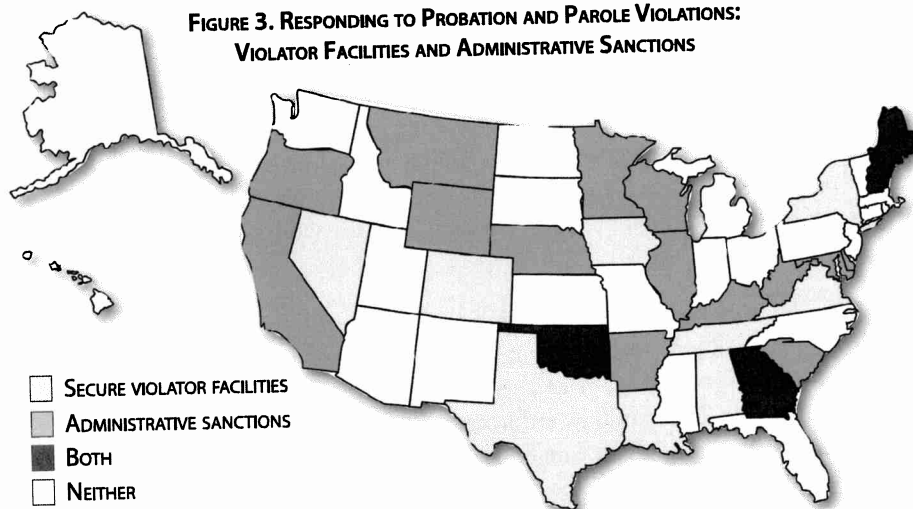
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Alternative sanctions for probation and parole violators are designed to hold offenders accountable for breaking the rules, address issues related to the violations, and minimize the cost of incarceration to the state. Intermediate options allow a violator to remain in the community, continue to work, and pay restitution and child support. Sanctions include residential and community-based treatment programs, specialty court supervision, house arrest, electronic monitoring, work release, community service, secure and residential facilities, increased monitoring and reporting, and possible short periods in jail.

Several states have statutorily authorized community supervision agencies to impose intermediate sanctions for technical violations of probation or parole in lieu of formal court revocation proceedings (see Figure 3). Administrative sanctions allow violations to be swiftly dealt with at the agency level. This not only reduces time and costs of court and parole board hearings, but also provides for offender accountability and reduces reliance on prison as a sanction. Under the Oregon Department of Corrections' structured sanctions program, officers can impose immediate sanctions for violations of probation or parole conditions. A grid is used to determine

appropriate sanctions—jail, residential work centers, house arrest and community service—based on the offender's risk level, crime of conviction, and seriousness of the violation. Officers also can order violators to participate in programs such as substance abuse and mental health treatment, employment assistance, and anger management classes. A 2002 evaluation by the Department of Corrections found that offenders who were ordered to community sanctions had lower rates of future re-conviction than those ordered to jail; those ordered to community service had the lowest rate of re-conviction among all community-based options. The overall evaluation conclusions noted that the most effective sanctions include a rehabilitative component.

**FIGURE 3. RESPONDING TO PROBATION AND PAROLE VIOLATIONS:
VIOLATOR FACILITIES AND ADMINISTRATIVE SANCTIONS**



dedered to community service had the lowest rate of re-conviction among all community-based options. The overall evaluation conclusions noted that the most effective sanctions include a rehabilitative component.

Several states have secure facilities that are designed to house and treat probation or parole violators instead of sending them to prison, as shown in Figure 3. In 2006, the Tennessee General Assembly authorized the Parole Technical Violators Diversion Program. Parolees who violate a condition of parole but have not committed a new felony may be sent to a secure facility for a six-month term to participate in a community service work crew or attend GED classes during the day and complete treatment programs in the evening. Tennessee offers probation violators the opportunity to complete programming in a Special Technical Violator Unit (STVU) in lieu of revocation to a state prison. In the STVU, the probationer will participate for at least four months in an intensive work and treatment program. As of 2010, New Hampshire requires that all programs and services provided at a parole violator facility be evidence-based and designed to re-engage parolees in their parole plan.

Funding Strategies

Prison populations are beginning to decline as a result of changes in front-end sentencing policies, availability of strategies to provide community-based sanctions for probation and parole violators, and specialized court and other treatment programs for drug offenders and those with mental health and other needs. Some states have created funding mechanisms to reinvest prison savings into programs that safely and successfully supervise offenders in the community.

In some states, state-local partnerships provide “incentive funding” to localities that successfully supervise offenders in the community instead of sending them to state prison for probation and parole violations. At least nine states—Arizona, Arkansas, California, Colorado, Illinois, Kansas, Kentucky, Ohio and Texas—have such arrangements, under which local correctional agencies usually receive state funding and other assistance to implement evidence-based supervision and programming. The goal is to reduce the rate at which probationers and parolees commit new crimes or violate their supervision conditions and are then sent or returned to prison.

In Kansas, a Risk Reduction Initiative adopted by the Legislature in 2007 was designed to increase offender success by reducing the number of revocations to state prison by at least 20 percent. To accomplish this, a grant program was established for local probation agencies that developed risk-reduction supervision and programming. Targeting medium- to high-risk offenders, the initiative uses specialized caseloads, employment training and placement, educational assistance, transportation and housing, and other services to help offenders remain crime- and drug-free. Careful assessment is used to assign offenders to the appropriate level and type of substance abuse, mental health, cognitive and other treatment.

At least nine states—Arizona, Arkansas, California, Colorado, Illinois, Kansas, Kentucky, Ohio and Texas—have “incentive funding” for localities that safely and successfully supervise offenders in the community.

The first round of funding in FY 2008 went to all 31 probation agencies in the state. By FY 2009, the Department of Corrections reported a 25 percent decrease in revocations to prison compared to the FY 2006 baseline; this exceeded the initial goal of 20 percent reduction.

In 2009, the California Legislature created a performance-based state-local funding partnership. Using one-time federal stimulus money, the Legislature allocated funding to local probation departments to implement evidence-based supervision practices designed to increase successful probation completion. Success is measured in terms of decreases in the number of probationers sent to prison for technical violations or new crimes. Continued funding under the act depends upon the rate at which the revocations decline. Each year, counties will be eligible to receive a portion of state savings achieved by reducing the number of prison admissions.

These funding strategies are examples of ones that, related to *Principle 4*, help states partner with local jurisdictions to create incentives for and hold accountable community programs and services.

Options for Low-Level Offenders

Other state community supervision strategies are risk- and resource-sensitive in terms of identifying offenders who are not serious criminals, pose little threat and can be safely sanctioned at lower levels of supervision. State policies provide for administrative supervision, which consists of minimal reporting and monitoring requirements so long as restitution is being paid and the offender remains crime- and drug-free. Other policies move offenders who comply with their supervision conditions to less active supervision or provide an opportunity for early termination of the community supervision term. Table 1 identifies additional information on policies for supervising low-risk offenders. Limiting and decreasing supervision and services for lower-risk offenders focuses resources more effectively on higher-risk offenders, and are among the strategies states can consider that, as suggested in the *Principles*, update and adapt criminal codes to reflect current standards and needs.

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| Table 1. Options for Supervising Low-Risk Offenders | | |
|---|---|--|
| Type | Supervision Components | Examples |
| Administrative Supervision | Minimal reporting requirements; monitoring to ensure court-ordered payments are being made and no new criminal activity occurs. | Kentucky created an administrative caseload supervision program in 2011 for low-risk offenders who are identified via risk assessment. |
| Risk-based Supervision Levels | Offender is assigned to a supervision level based on offense, compliance with supervision conditions and risk assessment scores. | In New Hampshire, risk assessments guide both the level of supervision and time spent at each level of supervision. For example, a low- or medium-risk offender will be placed on active supervision for the first 12 months and, if compliant, moved to administrative supervision for the remainder of the term. |
| Early Termination | Gives courts discretion to review and grant early termination of a probation or parole sentence. Often requires the offender to have paid restitution in full and completed all program and treatment requirements. | Texas has incorporated early termination into a "progressive sanctions and incentives program" administered by local supervision agencies. Includes use of structured, swift and incremental sanctions for violations of supervision, and incentives such as early termination for compliance. |
| Compliance Credits | Provides probationers or parolees with a monthly credit for compliance with supervision requirements. | Nevada law permits certain probationers to earn 10 days per month for complying with supervision requirements and staying on schedule with all court-ordered fee and restitution payments. An additional 10 days per month can be earned for maintaining employment and participating in education or rehabilitation programs. |
| Probation Term Limits | Caps the length of time a court can order for a probation sentence. | In 2003, Delaware limited probation sentences to two years for any violent felony, 18 months for drug offenses and one year for all other offenses. Previous law did not set an upper limit on probation terms, and lengthy probation sentences were common. |

Source: 2007 Tex. Gen. Laws, Chap. 1205; 2009 Nev. Stats., Chap. 44; 2010 N.H. Laws, Chap. 247; 2011 Ky. Acts, Chap. 2; and Vol. 74 Del. Laws, Chap. 27.

The variety of strategies described help states safely and cost-effectively manage many offenders in the community. Community corrections resources can be maximized with other risk- and resource-sensitive policies that focus the most supervision and services on offenders who need to be watched most closely and who have significant needs that can be addressed in the community.