

# Going Back To Jail Without Committing A Crime

## EARLY FINDINGS FROM A MULTI-STATE TRIAL

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## Overview of this Report

[Forty-four percent of individuals released from prisons across the nation are re-arrested within the first year; nearly 70% will be re-arrested within three years of their release.](#)

Although the general public often thinks about recidivism as individuals leaving incarceration and committing new crimes, technical violations contribute to the strikingly high rates of recidivism reported for individuals released from prisons and jails across the United States. Technical violations are violations of the conditions of probation or parole supervision after an individual is released from incarceration.

This report highlights 35 cases of non-criminal technical violations of 5-Key Model study participants.

The purpose of this report is to demonstrate the complexity of the recidivism construct and to examine the circumstances of re-arrest for those participants who had not engaged in a crime.

We describe the process by which we collected re-arrest data on study participants and highlight both the gaps in those data and the difficulty of systematically identifying why people become re-incarcerated. We then present the circumstances of the re-arrest for those re-arrested for non-criminal technical violations and pose questions about this approach for stakeholders to ponder.

It is important to note that we do not have the complete data on re-arrest for all study participants to date. This is because of the limitations in existing data tracking in our criminal justice system. Because the data are not yet complete, this report will not focus on overall recidivism rates or differences in recidivism between participants receiving the 5-Key Model and those in the comparison group, who receive whatever reentry services exist in their communities. We simply do not yet have the data to answer these questions.

This is the sixth quarterly report which describes the inner workings and early discoveries of participants and researchers in a national groundbreaking longitudinal study officially titled A Multisite Randomized Controlled Trial of the 5-Key Model for Reentry. Phase 1 of the study is underway in 12 urban and rural counties across four states – Florida, Kentucky, Pennsylvania, and Texas. Phase 2 of the study began in August 2019 in Indiana, Ohio, and South Carolina.

## About the Authors

The report was prepared by Dr. Carrie Pettus-Davis, Associate Professor and Founding Executive Director of IJRD, and Principal Researcher of the 5-Key Model trial; and Dr. Stephanie Kennedy, the Director of Research Dissemination at IJRD.

Institute for Justice Research and Development (IJRD) is a research center housed within the College of Social Work at the Florida State University. Our mission is to advance science, practice, and policy to improve the well-being of individuals, families, and communities impacted by criminal justice system involvement. IJRD specializes in conducting rigorous real-world research using randomized controlled trials and prioritizes rapid dissemination of research findings to advocates, professionals, and policymakers.

IJRD [team members](#) reside in communities across the nation and are currently implementing the 5-Key Model for Reentry research, as well as research on other pressing issues relevant to criminal justice and smart decarceration strategies. You can learn more the overall 5-Key Model study methodology [here](#), how the 5-Key Model was developed [here](#), and the broader work of IJRD at [ijrd.csw.fsu.edu](http://ijrd.csw.fsu.edu).

You can access our five previous reports – including one page summaries of each report – [here](#).

## Key Measures of Recidivism

There are many metrics used by researchers, departments of corrections, and correctional stakeholders to describe recidivism. Below we provide definitions of common terms used about recidivism to distinguish technical violations – the focus of this report – from other measures.

**RE-ARREST** is the broadest metric to assess recidivism. Individuals may be re-arrested for engaging in new criminal behavior, violating the terms of their release from incarceration, or for pre-existing warrants and detainers for events which occurred prior to their initial incarceration.

As not all who are re-arrested are found guilty or convicted of a crime, a focus on re-arrests can inaccurately imply that individuals are engaging in more criminal activity than is occurring. Re-arrests do, however, give a sense of just how many individuals interact with the criminal justice system and who is returning to courts and local jail settings after their release from incarceration.

**RECONVICTION** indicates that an individual has been arrested and found guilty of a new crime after release from incarceration. Reconviction may occur in the context of an individual violating the terms of their post-release supervision (probation or parole) by engaging in criminal behavior as well as accruing additional criminal charges. Reconviction can also occur with a person not under supervision who has engaged in a new crime.

Individuals may be **REINCARCERATED** for engaging in criminal behavior OR for violating the terms of their post-release supervision.

**REVOCATION** occurs when individuals who have been sentenced to probation (pre-incarceration) or who have been released from incarceration under probation or parole supervision (conditional release) are reincarcerated as a response to their behavior. Individuals may violate the terms and conditions of their release for many reasons including missing meetings, engaging in drug use, not finding employment, not attending treatment, or failing to register a new address with their supervising officer, among others. These are called **TECHNICAL VIOLATIONS**.

Because the revocation of probation and parole is an administrative decision, it does not require the higher standard of legal proof of a new crime. Further, what behavior warrants the revocation of probation or parole varies from state to state, county to county, and supervisory officer to supervisory officer.

Individuals may also be revoked, convicted, and reincarcerated for engaging in new criminal behavior.

# The Community Corrections Context

While we often talk about the 2.3 million adults behind bars in the United States, there are more than [4.5 million additional men and women under some form of community supervision](#) – more commonly known as probation or parole.

This means that [1 in 55 adults](#) in our country are currently under community supervision. The majority – 3.7 million – are on probation and the remaining 875,000 are on parole.

Probation and parole function differently in the lives of justice-involved individuals.

**Probation** is a court-ordered period of supervision in the community while under the control, supervision, or care of a correctional agency. One's probation conditions constitute a contract with the court – fulfilling the terms of those conditions allows individuals to remain in the community. While some individuals are sentenced to probation in lieu of incarceration in prisons or jails, others receive a combined sentence of incarceration followed by a period of community supervision.

**Parole** is the conditional release of incarcerated individuals who remain under the control, supervision, or care of a state or federal correctional agency. Violations of the conditions of parole typically result in a new sentence of confinement or the return to confinement to complete the original sentence.

Although the [use and terms of probation and parole varies greatly from state to state](#), estimates suggest that 80% of individuals release from incarceration under some form of community supervision nationally.

Probation and parole officers meet with the individuals on their caseloads and ensure they are meeting the terms of their supervision. Officers may require regular check-ins or meetings, conduct home visits, enforce a curfew, perform drug screenings (urinalysis), make referrals to – and ensure completion of – community-based substance use disorder or mental health treatment, and ensure compliance with other court-ordered stipulations of the individual's supervision.

Probation and parole officers have the power to recommend to the court that an individual's supervision be revoked and return them to incarceration for committing a new crime or for failing to meet any of the stated conditions of their supervision.

# The Complexity of Recidivism

Although recidivism is widely used as a measure of program effectiveness and individual success, recidivism is an inappropriate outcome for these purposes. Many assume that individuals return to incarceration because they engage in criminal behavior, but recidivism measures the interaction of an individual's behavior and the training, orientation, and skill set of corrections professionals all within the context of existing jurisdictional policy and practice.

Research suggests that [45% of the more than 600,000 annual state prison admissions across the nation are due to probation or parole revocations.](#)

While individuals can have their probation or parole status revoked for committing new crimes, [26% of new prison admissions are due solely to technical violations.](#) [Unpaid fines and fees](#) also contribute to technical violations and may lead individuals back to incarceration.

Further, there is [state-level variation on whether individuals return to incarceration for technical violations](#) that suggest variations in policy – not in individual behavior or public safety concerns – contribute to recidivism.

Even though recidivism has been used as the primary gauge of success for justice-involved individuals for decades, much of what we know about recidivism describes reincarceration in a state prison. It is unclear how many individuals across the nation are reincarcerated in local jails, as jail data are much harder to access and are not included in most publicly available analyses.

In order to access comprehensive data on re-arrests, someone must manually search the court records of each local jurisdiction (city and/or county). As not all records have been digitized, are otherwise not digitally available, or require payment for access, this means that realistically a person may need to physically arrive at each city and/or county courthouse, request access to records, and manually sift through those records.

Based on the problems with the recidivism construct and the gaps in existing data, our goal at IJRD is to identify alternative outcomes to recidivism. Our three proposed outcomes are community stability, psychological well-being, and engagement in criminal behavior. We are actively testing these outcomes in a range of [ongoing projects](#); as data are available, we will be able to assess their utility in describing long-term success for justice-involved individuals as well as impacts on public safety.

## Re-arrests Among Our Study Participants

Our plan for this report was to take a deep dive into technical violations to identify just how complex recidivism is for some individuals as they leave prison. What we discovered was that the data on re-arrests are so complex that we are unable to confidently claim just yet how many of our 1,543 study participants have been re-arrested.

Prior to collecting data, we identified several search strategies to assess whether a study participant had been re-arrested and if so, what the circumstances of that re-arrest were.

First, we examined administrative data received from the departments of correction in each of our four study states to assess whether an individual had been reincarcerated in a state prison and if so, for what charges. Because it takes time for people to be processed through the court system and reincarcerated in a state prison, this method yielded little usable information at this early stage of the study. It will yield more usable data as time goes on.

Second, we created a data collection sheet and had our team members search for evidence of re-arrest for every study participant using multiple data sources and search strategies. They began by identifying a 5-7 county radius around our urban and rural study counties. Then they searched county court records and online court dockets and checked the census at jails in the region. They accessed free online criminal record databases (some charge fees) and VINELink, an online portal designed to provide expedient notification to victims about changing custody status and updated criminal case information. They logged and noted when family members reported a reincarceration.

Third, when we conducted a research interview in a jail or prison, we asked the participant to describe what happened in their own words.

Thus far, our search strategies have identified 339 re-arrests. For some, the arrest occurred for something other than a crime or charges were dropped, and the case was ultimately dismissed. It was difficult to discern how many of these re-arrests had resulted in lengthy reincarcerations or what the charges were. In the case of technical violations, many official records simply said “VOP-Violation of Probation.”

Because we could not discern much of what had contributed to the reincarceration, we gained additional context when we examined the reasons for re-arrest provided by study participants. Currently, these data are the most complete, which is why we rely on them for this report. Participants described a range of technical violations for expected events – missing check-ins with supervising officers and violating curfew – and unexpected events – being arrested, having one’s charges dropped, and returning to jail for coming into contact with law enforcement. Though not the focus of this report, other common technical violations were related to substance use, carrying guns, and re-engagement in crime. We will have more complete data on these rates in the future.

In this report, we tell the stories of 35 men and women who were re-arrested for non-drug related, non-criminal technical violations. These individuals appear to pose little to no risk to public safety. They made paperwork errors, they missed curfew, they were at their parent’s funeral and missed a home visit. Some returned to prison to complete the time remaining on their original sentence – for two, this meant serving 5 or more additional years. Despite not describing new crime, these stories contribute to the recidivism statistic and obscure critical context on how and why people return to incarceration after release.

Although we will track re-arrest and reincarceration for several more years, this exercise has shown us that what we learn about their recidivism will likely be incomplete and murky by what the data do not show.

## Participant Descriptions of Their Re-Arrest



“ I had charges that were eventually dropped. But since I was on probation, I was violated for coming into contact with the police. ”

“ I was at a bar two days after I came home, and when I left these people I didn't know followed me out and jumped me. I got into my car to drive away and they shot at me and I was shot in my right hand. I left, the police pulled me over, took me to the hospital, and then arrested me saying I had drugs and had done 5 counts of battery and violated my probation. But there were cameras around that bar that proved me innocent, so the charges were dropped. But I still got violated by conditional release for coming into contact with the police. ”

“ I spent three months at county jail for coming into contact with police. No new charges. ”

“ I’ve been back in jail for 2.5 months because I don’t have an accepted home plan. My landlord and my PO just could not work it out. ”



“ The police came to my house and arrested me. They mistakenly thought I was breaking in. But when they were arresting me, I had a disagreement with an officer and they charged me with resisting arrest with violence. In my own house. ”

“ I violated my parole by being in a bar. ”

“ Two months after I was released I was reincarcerated for a violation of conditional release. But I took it to trial and won and was released again. ”

“ Arrested a couple months ago for sleeping in another person's car. It was cold. I was homeless. Said it was breaking and entering but it was unlocked. ”



“ I had back surgery and got pneumonia and my PO wrote up the pain medication and the cough medicine I was prescribed as drug use. My PO was just like that – just because he's a professional doesn't mean he's good. I also had a curfew violation. Got 6 months. ”

“ My dad had me arrested for stealing a family heirloom ... they found it three weeks later. Charges were dropped but I spent a night in county. ”

“ My PO didn't believe I was staying at the residence on file and so they sent me back to jail. ”

“ Apparently, my electronic monitor was faulty. ”



BROKE  
CURFEW

“ I got a job as a painter and sometimes we finished up late—after 10 pm. One day, I let my parole officer know I would be getting back late because my boss was drunk and I needed to drive him home. We got pulled over because I didn't realize I only had the running lights on in the van and when the officer ran my license, he saw I was on parole and arrested me for breaking curfew and coming into contact with the police. ”

“ Broke curfew and didn't tell them my new address. I was only out 5 days. ”

“ I took my sister to the hospital because she broke her ankle. I was out past curfew and the probation officer called me. I told her where I was and she still violated me. ”

“ I was sitting in a car with my girlfriend outside my own apartment. My probation officer showed up and said it was a curfew violation. ”

“ I missed curfew and didn't show to drug treatment. ”

*“ Didn't register my address with my PO. ”*

*“ I moved. Didn't tell my PO fast enough. ”*

*“ I didn't report my change of address or my new job. ”*

*“ I failed to report my change of address, didn't have a consistent job, and didn't take a required class. ”*

*“ I didn't report my change of address or job. ”*

*“ I moved and didn't tell my PO. Unknown whereabouts equals 'absconding.' ”*

*“ I failed to register my address. ”*

*“ I failed to register my new phone number. ”*

*“ I failed to register my vehicle change with the Sherriff's office. ”*

*“ I was arrested for not checking in every 30 days and not giving an address. ”*





“ I did not have enough to pay bills, take care of my kids, and pay my supervision fees. ”



“ Couldn't pay child support. ”

## Conclusion

Although we examined re-arrest from multiple official record sources, due to the significant gaps in data, we focused this report on how our participants described the circumstances of their re-arrest because this was the most complete data we had. We do not have the names of supervision officers by participant and thus were not able to interview supervising officers about each participant to understand their decision-making.

After engaging in data collection and analysis for this report, we wish to pose questions for all to ponder about the stated purpose and goals of conditional release and whether current policy and practices are meeting those goals.

For what reasons are stakeholders most comfortable reincarcerating individuals? Are the non-criminal behaviors described in this report reason enough to send someone to jail? Is it worth the financial costs and associated social costs?

Many of the behaviors described in this report – like being in a bar – are acceptable for those not under community supervision. What makes this behavior worthy of re-arrest if their original offense is unrelated to substance abuse and the individuals has no history of substance abuse?

Consider the participant who was unable to pay child support and subsequently spent 6 months in jail. How did incarceration help that participant be able to make child support payments? How does incarceration help individuals to be accountable when they are managing family emergencies like the death of a parent, or the serious injury of a loved one? When individuals come into contact with the police, but the charges are dropped or they are later determined to be the victim of a crime, how does incarceration help them to live positively as they move forward?

There are cascading consequences associated with individuals being re-arrested and reincarcerated. These consequences affect individuals who lose employment, housing, transportation, material goods, money, time, and momentum.

Additionally, more than [5 million children](#) have had a parent incarcerated in jail or prison. When a parent is re-arrested and reincarcerated for a non-criminal technical violation, their children must endure another cycle of loss and separation. How can we develop children's well-being and help families heal when they feel this cycle may take years to end?

Individuals are re-arrested and reincarcerated for many reasons, some of which include the commission of new crimes. Additionally, more than a third of the re-arrests we discovered involved having failed a urinalysis or being in possession of marijuana or other drugs in small quantities indicative of personal use. As substance use disorders contribute to interaction with the criminal justice system, we will explore the intersection of substance use disorders and criminal justice in a future report.

The social cost of incarceration for our country is estimated to [exceed \\$1 trillion annually](#). This means all community members are impacted by recidivism. Our data suggest that people may be returning to incarceration for reasons community members may not find acceptable. We present this report to spark dialogue about the contributors to exceedingly high rates of recidivism and discussion about what behaviors should warrant a re-arrest.

## Key Takeaways

- Research suggests that [45% of the more than 600,000 annual state prison admissions across the nation are due to probation or parole revocations](#).
- While probation or parole can be revoked for committing new crimes, [26% of new prison admissions are due solely to technical violations](#). [Unpaid fines and fees](#) also contribute to technical violations and may lead individuals back to incarceration.
- Our goal was to explore the circumstance of re-arrest among our study participants. At this early point in the study, data are incomplete or unavailable.
- This report examines the reasons for re-arrest provided by study participants as these data were the most complete. They describe a range of technical violations for expected events – missing check-ins with supervising officers and violating curfew – and unexpected events – being arrested, having one’s charges dropped, and returning to jail for coming into contact with law enforcement. Though not the focus of this report, other common technical violations were related to substance use, carrying guns, and re-engagement in crime. We will have more complete data on these rates in the future.
- The 35 individuals highlighted in this report were re-arrested for non-drug related, non-criminal technical violations.
- We ask stakeholders to consider whether current policy and practices are meeting the stated purpose and goals of conditional release. Are the non-criminal behaviors described in this report reason enough to send someone to jail? Is it worth the financial costs and associated social costs?



## Additional Resources and Policy Reports

- Alper, M., Durose, M. R., & Markman, J. (2018). [2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period \(2005-2014\)](#). NCJ 250975. Bureau of Justice Statistics.
- Cramer, L., Goff, M., Peterson, B., & Sandstrom, H. (2017). [Parent-Child Visiting Practices in Prisons and Jails](#). The Urban Institute.
- Haugen, M. (2019). [Getting Technical: Preventing and Responding to Technical Supervision Violations](#). Texas Public Policy Foundation.
- Koufos, J., Cali, S., & White, L. (2019). [Modernizing Parole Supervision to Enhance Workforce outcomes](#). Texas Public Policy Foundation.
- Levin, M. (2019). [Ten Tips for Policymakers for Improving Parole](#). Right on Crime, an Initiative of the Texas Public Policy Foundation.
- McLaughlin, M., Pettus-Davis, C., Brown, D., Veeh, C., & Renn, T. (2016). [The Economic Burden of Incarceration in the U.S.](#) Institute for Justice Research and Development.
- Menendez, M., Crowley, M. F., Eisen, L., & Atchison, N. (2019). [The Steep Costs of Criminal Justice Fees and Fines: Fiscal Analysis of Three States and Ten Counties](#). Brennan Center for Justice at New York University School of Law.
- Pew Charitable Trusts. (2018). [Probation and Parole Systems Marked by High Stakes, Missed Opportunities](#). Issue Brief.
- Pew Charitable Trusts. (2019). [To Safely Cut Incarceration, States Rethink Responses to Supervision Violations](#). Issue Brief.
- Listen to the Federalist Society interview with Mark Levin and Vincent Schiraldi, "[Rethinking Probation & Parole: How Much Supervision is Too Much?](#)"