



# PolicyBrief

## Community Supervision in Tennessee

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### Key Points

- The decreasing number of inmates released on parole means an increasing number of inmates who complete their sentence. This is a concern because those who complete their sentence are released into the community without any supervised reentry.
- Tennessee needs to reduce its probation terms.
- Community corrections may need to be placed within the authority and supervision of the Tennessee Department of Correction for additional oversight, structure, and accountability.

### A Snapshot of Supervision in Tennessee

In FY 2018, there were a total of 76,704 individuals on community supervision. Of this total, 57,832 were on probation, 7,709 were assigned to a community correction program, and 11,163 were on parole ([TDOC 2018b, 43](#)). The total population has grown from 67,918 in 2009 ([43](#)). In terms of demographics, 75.8 percent of those under supervision were men, and 24.2 percent were women ([45](#)). Further, 24,323 individuals were admitted to community supervision, while 23,792 individuals were released. Of those released, 62.1 percent were released upon completing their supervision, while 17.7 percent had their supervision revoked for a technical violation or failed drug test, and 17.3 percent were revoked due to a new conviction or new charge ([48](#)).

### Probation and Parole

The Tennessee Department of Correction's Office of Probation and Parole is charged with the supervision of individuals on probation and parole (T. C. A. § 40-28-602). In FY 2018, the Tennessee Department of Correction (TDOC) employed 732 sworn officers who were responsible for the supervision of 68,995 people assigned to probation and parole ([TDOC 2018b, 43](#)). The Tennessee General Assembly adopted graduated sanctions for technical violations of probation and parole, as part of a larger reform package set forth in the Public Safety Act (PSA) of 2016, in order to control the number of individuals being revoked on community supervision ([Tn. Pub. Ch. 906](#)). Pursuant to the PSA, TDOC developed a "single system of graduated sanctions for violations of the conditions of community supervision," which "set forth a menu of presumptive sanctions for the most common types of supervision violations." Graduated sanctions include a due process mechanism by which a supervised individual may challenge the imposed administrative sanction ([Tn. Pub. Ch. 906](#)).

TDOC reports "that prison admissions for a technical violation are down cumulatively by 21% since FY 2014, representing 1,200 fewer admissions to prison in FY 2018." Thus far, the cost reduction associated with this decline totals \$32 million. TDOC reinvested \$5.6 million for additional supervision staff, including counselors, which has reduced caseloads ([TDOC 2018a, 5](#)). However, a court of appeals in the Western District of Tennessee has struck down the PSA's graduated sanctions provision as violating due process rights afforded by the Tennessee Constitution ([Tennessee v. Price 2018](#)). The ruling is subject to appeal pending before the Tennessee Supreme Court ([Tennessee v. Price 2019](#)).

### Parole

The authority to determine parole release and conditions for supervision is allocated to the seven-member parole board, an independent state board with members appointed by the governor to six-year terms (T. C. A. § 40-28-103(a), (b); T. C. A. § 40-35-501(q)). Parole is granted upon the concurrence of three parole board members, unless the inmate is convicted of one of the severe violent crimes set forth in

the code, in which case a concurrence of four members is required (T. C. A. § 40-28-105(d)(3), (4)).

The law forbids parole to inmates who pose a “substantial risk” of violating the conditions of their parole, or if granting parole would “depreciate the seriousness of the crime” committed, “promote disrespect for the law,” or pose a “substantially adverse effect on institutional discipline” (T. C. A. § 40-35-503(b)). Parole must also be denied to inmates for whom continued incarceration is necessary for “correctional treatment, medical care or vocational or other training” in order to “substantially enhance” their “capacity to lead a law-abiding life when given release status at a later time” (T. C. A. § 40-35-503(b)(4)). The parole board must also consider “the extent to which the inmate has attempted to improve the inmate’s educational, vocational or employment skills through available department of correction programs while the inmate was incarcerated,” and it has the discretion to deny parole to any inmate who has failed to do so (T. C. A. § 40-35-503(g)).

Inmates can earn credit to expedite parole eligibility for achievements while incarcerated, such as the completion of substance abuse treatment (T. C. A. § 41-21-236)). Individuals with no prior felonies and mitigating factors associated with their conviction will generally become parole eligible after serving 20 percent of their sentence (T. C. A. § 40-35-501(b)). If the individual receives a Range I sentence, which is the lowest indeterminate sentence associated with each felony class, then parole eligibility is achieved at 30 percent (T. C. A. § 40-35-501(c)). Correspondingly, Range II offenses require service of 35 percent of the sentence before obtaining parole eligibility, and Range III offenses require 40 percent (T. C. A. § 40-35-501(d), (e)). Individuals designated as “career offenders” must first serve 60 percent before becoming parole eligible (T. C. A. § 40-35-501(f)).

Upon granting a parole petition, the parole board has the discretion to impose any conditions of supervision believed necessary. The paroled individual is required to make “periodic reports” to their designated parole officer for at least one year, at which time the parolee may be relieved of this requirement so long as the conditions of parole are satisfied (T. C. A. § 40-35-504(b)). However, the individual is under parole supervision for the remainder of the sentence imposed (T. C. A. § 40-35-504(c)). Violation of the imposed conditions could lead to revocation of the person’s parole (T. C. A. § 40-35-504(f)).

The number of inmates in Tennessee released on parole continues to decrease. In FY 2018, only 21 percent of inmates released received parole compared to 31 percent in FY 2012, while 38 percent of inmates were released upon

completing their sentence, up from 32 percent in FY 2012 ([TDOC 2019, 12-15](#)). The 2019 General Assembly passed legislation to disqualify convictions for violent Class A, Class B, and Class C felonies from applying sentencing credits toward parole eligibility until the minimum release eligibility date ([Tn. Pub. Ch. 488](#)). It further created a presumption in favor of parole for nonviolent Class D and Class E inmates who reached parole eligibility with the application of sentencing credits ([Tn. Pub. Ch. 488](#)).

In FY 2018, there were 11,163 individuals supervised on parole ([TDOC 2018b, 43](#)). Of the 3,967 individuals released from parole supervision in FY 2018, 40.9 percent were revoked. Roughly 12 percent of the revocations were for a technical violation. However, 56.1 percent of those released from parole completed their term on parole or were otherwise discharged ([48](#)).

### ***The Challenge***

The decreasing number of inmates released on parole means an increasing number of inmates who complete their sentence. This is a concern because those who complete their sentence are released into the community without any supervised reentry. One obvious way to reduce the number of inmates released on a completed sentence is for the governor to take this concern under advisement when appointing members to the parole board. While the presumption in favor of parole contained in TN. Pub. Ch. 488 may ensure more Class D and Class E inmates receive parole, it does not extend the presumption to Class A through Class C felons, most of whom will qualify for parole regardless of sentencing credits. Extending this presumption to more parole eligible inmates is reasonable given that safeguards already exist, such as a risk and needs assessment that TDOC performs annually on each individual. The parole board must already take those assessments into account when making their parole determinations. Those for whom the presumption is not rebutted should still be paroled six months to one year before completion of sentence in order to improve the chance of successful reentry.

### ***Probation***

In Tennessee, “an especially mitigated or standard offender convicted of a Class C, D, or E felony, should be considered as a favorable candidate” for probation (T.C.A. § 40-35-102(6)). The length of an individual’s probationary term must be “a period of time no less than the minimum sentence allowed under the classification and up to and including the statutory maximum time for the class of the conviction offense” (T. C. A. § 40-35-303(c)(1)). When multiple convictions are subject to consecutive sentences, then the probationary term for each conviction may also run consecutively ([State v. Connors](#)).

Probation may be revoked upon a finding, by a preponderance of the evidence, that one has violated the terms of their supervision (T. C. A. § 40-35-311(e)(1)). If the court revokes probation for a violation of supervision, it “may order that the term of imprisonment imposed by the original judgment be served consecutively to any sentence that was imposed upon the conviction” (T. C. A. § 40-35-310(a)). This means that the court does not have to apply the time already served on probation. If the violation is technical in nature, then the court may sentence a community-based alternative to incarceration (T. C. A. § 40-35-310(b)). The court may also extend an individual’s probationary period up to two years if the individual is found to have violated the conditions of their supervision (T. C. A. § 40-35-308(c)).

With the presumption in favor of probation, in FY 2018, a total of 37.1 percent of all felony cases were sentenced to probation, with an additional 20.3 percent serving a split sentence, meaning the sentenced was ordered split between incarceration and probation ([TAOC 2018, 5](#)). However, these probationers receive long probation terms. On average, a Class B felony resulted in a probationary term of 8.6 years, a Class C felony 4.6 years, a Class D felony 3.25 years, and a Class E felony 2 years ([31-32](#)). When an individual is charged or convicted on multiple counts, their probation terms are stacked. For example, an individual convicted on three Class E felonies might receive a 13.8-year term on probation. If that individual violates a condition 12 years into their probationary term, the judge has discretion to revoke their probation and reinstate the 13.8 year prison sentence. The judge might also require the probationary term to start over or otherwise lengthen the duration of the term. In FY 2018, TDOC supervised 57,832 individuals on probation ([TDOC 2018b, 43](#)). Of the 17,609 released from probation in FY 2018, 29.6 percent violated the terms of their supervision and had their probation revoked, including 12.7 percent for technical violations ([48](#)).

### ***The Challenge***

The length of probationary terms is a significant issue in Tennessee, given that judges have the discretion in many cases to stack consecutive sentences. The result is often an increased risk of violation of the conditions of supervision, especially for a technical violation, and the potential for revocation and the reinstatement of the original sentence. The graduated sanctions were designed to decrease the number of probationers incarcerated due to a technical violation. However, the future of this practice rests in the hands of the Tennessee Supreme Court.

In the meantime, Tennessee needs to examine the laws dictating the duration of a probationary term with an eye

toward shortening terms, or at least reducing the instances where the terms for separate charges are ordered to run consecutively. Moreover, Tennessee should consider requiring that, if a person is revoked, they receive some credit for time served in compliance while on probation.

### ***Community Corrections***

In Tennessee, community corrections is a community-based alternative to incarceration reserved for nonviolent individuals who may not otherwise be eligible for probation (T. C. A. § 40-36-106). Community corrections programs are administered locally and funded through the TDOC that also sets forth guidelines, but those participating are not technically within TDOC custody (T. C. A. § 40-36-105). State funds are granted to local governments and qualified private agencies to develop a range of front-end, community-based punishments and services for those eligible (T.C.A. § 40-36-103). Unlike a probation revocation, an individual serving a sentencing under community corrections who has their supervision revoked for a violation will receive credit for time served. However, this individual has no ability to earn the sentence credits that are reserved for inmates under TDOC custody (T. C. A. § 40-36-106 (4), T. C. A. § 41-21-236).

In FY 2018, there were 7,709 individuals supervised in a community corrections program ([TDOC 2018b, 43](#)). Of those released from community corrections, 68.3 percent were revoked due to a violation of conditions, with 33.8 percent revoked for a technical violation. Only 29 percent of those supervised in community corrections completed their terms, compared to the 68 percent and 56 percent completing probation and parole, respectively ([48](#)).

### ***The Challenge***

Community corrections is essentially a local function funded through the TDOC with little oversight or accountability, which is ultimately reflected in the outcomes. Last year, 68.3 percent of individuals sentenced to community corrections violated their conditions resulting in revocation of supervision.

Further, those who commit a technical violation of the terms of the community corrections program do not receive the benefit of graduated sanctions, since the implementation is limited to those supervised by the TDOC.

Tennessee should consider expanding TDOC’s control over the standards and oversight of community corrections to establish uniformity and accountability. At minimum, the reach of graduated sanctions should be expanded to include community corrections, with TDOC overseeing the implementation of each imposed sanction. ★

## References

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## ABOUT THE AUTHOR



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## About Right on Crime

Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Prison Fellowship, which supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. The movement was born in Texas in 2007, and in recent years, dozens of states such as Georgia, Ohio, Kentucky, Mississippi, Oklahoma, and Louisiana, have led the way in implementing conservative criminal justice reforms.

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