

EMPLOY BEHAVIORAL CONTRACTING FOR “EARNED DISCHARGE” PAROLE

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Roughly 600,000 people are released each year from state and federal prisons in the United States, about 1,600 a day. About 80% of all releases will be required to report to local parole authorities and to begin the process of supervised parole, which lasts an average of just over 2 years in the U.S. (Hughes et al., 2001; Petersilia, 2003).¹

During parole supervision, the parolee must comply with a standard set of release conditions, such as living at an approved address, meeting with a parole officer, staying drug-free, not committing new crimes, and not leaving the jurisdiction. Some parolees have additional conditions, such as random drug testing or participation in a treatment program. No prisoner has a legal right to obtaining parole. Rather, it is a privilege the state may grant, through a contractual arrangement with a prisoner, who signs a parole release contract in exchange for the promise to abide by these specified conditions. Parole officers—sometimes called parole agents—are responsible for ensuring that parolees fulfill the terms of their contracts. If the parole officer discovers that these conditions have not been met, then the parole officer typically has the discretion to consider the parole “violated,” and can change the conditions of release or can recommend that the parolee be returned to prison after a parole revocation hearing.

The failure rate is very high among released prisoners. A Bureau of Justice Statistics study found that just over one half (52%) of all released prisoners in a national sample were returned to prison within 3 years, and 26% were returned to prison solely for a technical violation (Langan and Levin, 2002). These high parole revocation rates are one major factor linked to the growing U.S. population. Blumstein and Beck (1999) estimated that 42% of the total growth in state prison admissions during 1980 through 1999 resulted from parolees violating parole conditions.

Ex-prisoners contribute to more than just prison crowding; they also commit crimes disproportionately. Rosenfeld et al. (2005) estimated that between 1994 and 1997, ex-prisoners accounted for 10% to 15% of all U.S. arrests, and arrest frequencies for returning prisoners were 30 to 45 times higher than for the general population. Most released prisoners who are

1. Parole supervision can last much longer in some states. For example, Texas parole supervision is often for 10 to 20 years, and several recently enacted laws require lifetime supervision and registration of sex offenders. The 2-year time period reflects the average time served on parole prior to discharge or return to custody. No national data are available on the length of parole term imposed.

arrested for new crimes will be returned to prison—and most of them will be released again (Blumstein and Beck, 2005).

How can we alter this release-and-return-to-prison scenario? The answer is right in front of us if only we look. We must revise the current “contract” between the parole officer and the offender so that it reflects research evidence on how to increase motivation and promote behavioral change in resistant clients. At the center of the revised contract must be a system of “earned discharge” or accelerated release, whereby parolees have the ability to reduce the total length of their parole term by demonstrating arrest-free behavior and self-sufficiency.

SCIENTIFIC PRINCIPLES TO INITIATE AND SUSTAIN BEHAVIORAL CHANGE IN HARD-TO-TREAT CLIENTS

One core mission of parole is behavioral change. But over time, with the demise of the medical model and the increasing “get tough on criminals” public attitude, parole supervision changed from a casework/rehabilitation model to a surveillance/deterrence model (Petersilia, 2003; Travis, 2005). Today’s parole contract spells out clearly the negative consequences that will be applied if a parolee fails to comply with specified conditions. It is a model almost entirely based on disincentives rather than on incentives, and as such, it fails to reflect scientific principles of how “contracts” can be structured to foster long-term behavioral change. A balance of rewards and sanctions is necessary to foster prosocial behavior and treatment participation (Andrews and Bonta, 2006; Bandura, 1977).

Current parole contracts also fail to include sufficient motivational incentives and positive rewards to encourage parolees to stay involved in treatment programs. Research has shown that offenders should be involved in programs for a minimum of 3 to 6 months to achieve measurable positive outcomes (Aos et al., 2006; Hser et al., 2004; National Institute on Drug Abuse, 2006; National Research Council, 2007). For most parolees, to be discharged from parole is a major motivation. To combine both of these elements—behavioral contracting and accelerated parole discharge—produces tangible benefits for public safety, recidivism reduction, and resource allocation.

Behavioral contracting has been shown to be a core component to achieve change in a variety of challenging behaviors, including the modification of eating behaviors, the prevention of repeat attempts in suicidal patients, the treatment of personality disorders, the increase of the attention span of students with attention deficit and self-control issues, and the decrease of alcohol-dependency and illicit drug use and other criminal and

CRIMINOLOGY & PUBLIC POLICY

809

HIV risk behavior (for a review, see Clark et al., 1999). Moreover, contracting has been used successfully in a variety of criminal justice settings, including drug courts, mental health courts, juvenile justice programs, and probation and parole (Bralley and Prevost, 2001; Clark et al., 1999; Gottfredson et al., 2003; Peters and Murrin, 2000; Prendergast et al., 2006; Wilson et al., 2007; Wolff and Pogorzelski, 2005). Criminologists have endorsed its applicability to parole (Petersilia, 2003; Taxman et al., 2004), and several state agencies are now using it with success (Burke, 1997; McGarrell et al., 2004; Meredith, 2001; Taxman et al., 2004).

A behavioral contract for parolees would be simply a written contract that specifies the parolees' behavioral obligations in meeting the terms of the contract and the parole agents' obligations once the parolee has met these obligations. Although it sounds straightforward, it is very different from the parole contract used in most agencies today. Currently, parole contracts impose a unilateral application of conditions on parolees by the State, are enforced with a high degree of officer discretion, and focus almost exclusively on the sanction and the punishment of offenders who fail to comply with legal conditions (Feeley and Simon, 1992; Lynch, 2000; McCleary, 1992; Petersilia, 1999). It is a system focused almost entirely on *disincentives* and negative sanctions, whereas *incentives* and positive reinforcements are required for lasting change. Research shows that punishment-only systems tend to cause people to change their behavior briefly or only long enough to avoid additional punishment, but such changes seldom continue once the threat of sanction is lifted (Bandura, 1977).

To increase parole and treatment effectiveness, the target of the intervention should have significant input into the conditions that are established (assuring that the person understands what they are being asked to do), positive reinforcements should outweigh negative sanctions by at least four to one, and both positive and negative sanctions must be delivered frequently and consistently (Andrews and Bonta, 2006; Gendreau et al., 1996; Hanlon et al., 1999). Inconsistent application of negative interventions may actually *increase* the risk of offending. On the other hand, the procedural justice literature suggests that if the offender believes that he or she is being treated fairly, they are more likely to comply with the law or program requirements (Tyler, 2003). Sherman (1993) suggests that punishment perceived as unjust or excessive will lead to defiant pride that increases future crime. Behavioral contracting can instill a sense of procedural justice because both the necessary steps toward progress and the sanctions for violating the contract are specified and understood in advance.

But what is sufficiently motivating to get parolees engaged in the process of their own supervision? The author has conducted dozens of interviews with parolees over the last several years and has asked them what

might motivate them to enroll in rehabilitation programs and continue to attend. They have told her consistently that one of the strongest motivators would be the prospect of being *released* from parole supervision. Today, parolees are discharged successfully from parole if they adhere to their parole conditions (mostly, remain crime-free) for the length of that preassigned time period. They have little opportunity to reduce the length of their imposed parole term once it has been imposed. In California, where nearly 120,000 prisoners are released each year, virtually all of them are assigned to 1 to 3 years of parole supervision, regardless of risk or need classifications (Petersilia, 2006).

FROM SCIENCE TO PRACTICE: IMPLEMENTING EARNED DISCHARGE PAROLE TERMS

First, we should begin by reducing the total length of time required on parole if the offender is non-violent and represents little risk of returning to crime. For example, parole supervision could last 6 months for low-risk inmates incarcerated for 1 to 2.5 years; 6 to 12 months for moderate-risk inmates serving 2.5 to 5 years; and 12 to 36 months for high-risk inmates who serve more than 5 years. Research suggests the impact of parole supervision diminishes after 15 months (Bhati, 2004). Such a proposal would take into account the seriousness of the original crime and the offender's risk, shorten parole terms overall, and front-load scarce parole resources on those parolees who need more services and supervision.

Second, parole terms should not depend on solely "sustaining no new arrests" but also on completing prescribed prosocial activities. Offenders who complete activities (e.g., drug treatment or education) should be rewarded with a reduction in the length of the total time they are required to be on parole. Here is how Earned Discharge might work. Let's assume that the parole supervision term (imposed at release) is a maximum of 3 years. At release, the parolee is told:

- Remain arrest-free for the first year, and we will subtract 1 month off your total parole supervision period for each arrest-free month you have in the second year. So, if you remain arrest-free for 2 years, we reduce your entire parole supervision period by 1 year. You have 2 years to be under supervision instead of 3.
- You can reduce your supervision from 2 years to 1 1/2 years if you engage in community service and complete all payments of victim restitution.
- You can reduce your supervision from 2 years to 1 year if you participate in prosocial or self-improvement programs (drug, education) or remain fully employed.

CRIMINOLOGY & PUBLIC POLICY

811

- You can reduce that 3-year parole term to 6 months if you can show us that at the end of 6 months, you have achieved stability in housing, employment, and substance abuse/mental health for a period of 6 months.

The public has little to lose in this arrangement. Every parolee must be on parole for at least 6 months. Recidivism studies consistently show that inmates who will return to crime will do so quickly (Langan et al., 2002; National Research Council, 2007). So, parolees who wish to remain criminally active are under parole supervision when they need to be. If prisoners can remain completely arrest-free for the first year after release, they have low probabilities of recidivism thereafter. Recidivism rates are even reduced more if a parolee participates in work, education, and substance abuse programs (Lipsey and Cullen, 2007; National Research Council, 2007). Parolees are self-selecting into low risk-of-recidivism groups so the public safety risks of an “earned discharge” parole system are minimal, and the cost efficiencies are increased because parolees who do not need supervision are removed from crowded caseloads.

We have much to gain from restructuring parole supervision in this manner. A greater number of parolees might participate usefully in rehabilitation programs if they were convinced that the duration of their parole might be reduced appreciably. Program participation not only addresses the individual’s personal circumstances, but also it helps the convict to establish connections with law-abiding citizens, which, in turn, increase their social networks and legitimate opportunities. Over time, many will develop “stakes in conformity” and gradually will reorient their assessment of the costs and benefits of crime.

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CRIMINOLOGY & PUBLIC POLICY

813

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