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# Research summary: Prison population management

## Responses to COVID-19 in Minnesota prisons

Prepared for the Minnesota Office of the Ombuds for Corrections  
Draft November 25, 2020  
Revised December 21, 2020

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# Introduction

While COVID-19's impacts have been wide-ranging, the pandemic has had particularly significant effects on correctional facilities, which are “exceptionally susceptible”<sup>1</sup> to viral outbreaks.<sup>2</sup> In a recent consensus study report, the National Academies of Sciences, Engineering, and Medicine described the multiple ways in which characteristics of correctional facilities—including overcrowding, rapid population turnover, and concentrated patterns of intake and release—accelerate the spread of infectious diseases including the novel coronavirus responsible for COVID-19.

*“A growing body of research on the transmission of the novel coronavirus and epidemiological models of the spread of infectious diseases help explain why prisons and jails have become hotspots for COVID-19; the research also points to strategies for mitigating the spread of the disease. Decarceration<sup>3</sup> from correctional facilities is one such strategy. By creating smaller populations within correctional institutions, other mitigation strategies are easier to implement. Physical distancing, diagnostic testing, and the ability to quarantine and medically isolate the incarcerated population that remains are all assisted by low prison and jail populations and slack capacity.”<sup>4</sup>*

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The National Academies concluded that reducing the incarcerated population is an “appropriate and necessary mitigation strategy to include in the COVID-19 response in correctional facilities.”<sup>5</sup>

In response to the novel coronavirus pandemic, the Minnesota Department of Corrections (DOC) has revised current policies and implemented new policies to reduce the number of people in state prisons as part of its pandemic mitigation effort. From March to July 2020, Minnesota's prison population declined by eleven percent. Since July, the number of people in DOC facilities has continued to decline slightly, resulting in a cumulative population reduction of fifteen percent.<sup>6</sup> This reduction reflects policy changes by DOC, which have been focused on three primary population management approaches—work release, medical release,<sup>7</sup> and a

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<sup>1</sup> Franco-Paredes, Carlos, and Nazgol Ghandnoosh. “Decarceration and Community Re-Entry in the COVID-19 Era.” *The Lancet Infectious Diseases*, September 29, 2020. [https://doi.org/10.1016/S1473-3099\(20\)30730-1](https://doi.org/10.1016/S1473-3099(20)30730-1).

<sup>2</sup> Laura, Hawks, Woolhandler Steffie, and McCormick Danny. “COVID-19 in Prisons and Jails in the United States.” *JAMA Internal Medicine*, 180, no. 12 (2020). <http://doi.org/10.1001/jamainternmed.2020.1856>.

<sup>3</sup> The National Academies used the term “decarceration” to broadly “include efforts both to accelerate release from prisons and jails and to divert people from entering incarceration in the first place” (cited below).

<sup>4</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020. <https://doi.org/10.17226/25945>.

<sup>5</sup> National Academies of Sciences, Engineering, and Medicine.

<sup>6</sup> “COVID-19 Updates.” Minnesota Department of Corrections, November 18, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

<sup>7</sup> While DOC's COVID-19 response dashboard includes data on COVID-19 medical release under the “C19 Population Management Strategies” section, many employee interviewees did not consider medical release to be a population management strategy.

reduction in release revocation—as well as parallel efforts by other actors across the criminal justice system to reduce prisoner intake.

Minnesota’s prison population reduction has been slightly above the median population reduction rate for states with reported data (see Table 1 below), reflecting a meaningful reduction in prison population levels during the pandemic so far. Minnesota’s reduction rate is notable in the context of its relatively low incarceration rate, a factor which interviewees said makes it harder to quickly reduce prison population levels because there are already fewer inmates serving time for lower-level offenses. Indeed, Minnesota has an incarceration rate lower than all but one state with a higher reported prison population reduction. Minnesota’s prison population levels were also declining prior to COVID-19, reaching 8,857 in March 2020.<sup>8</sup>

**Table 1. States with the greatest prison population reductions<sup>9</sup>**

State	Incarceration rate per 100,000 <sup>10</sup>	Pre-pandemic prison population <sup>11</sup>	July 2020 prison population	November 2020 prison population
Connecticut	252	12,284	9,945 (-19%)	9,350 (-24%)
North Dakota	221	1,794	1,380 (-23%)	1,394 (-22%)
Maine	135	2,205	1,798 (-18%)	1,722 (-22%)
Iowa	297	9,282	7,555 (-19%)	7,415 (-20%)
California	321	125,365	115,201 (-8%)	101,658 (-19%)
Kentucky	523	23,141	20,313 (-12%)	18,917 (-18%)
Utah	208	6,731	5,859 (-13%)	5,700 <sup>12</sup> (-15%)
South Carolina	366	18,608	16,836 (-10%)	15,804 (-15%)
<i>Minnesota</i>	<i>179</i>	<i>8,857</i>	<i>7,904 (-11%)</i>	<i>7,543 (-15%)</i>
Vermont	187	1,608	1,414 (-12%)	1,373 (-15%)
Pennsylvania	366	45,875	41,572 (-9%)	39,430 (-14%)
Kansas	342	10,011	9,191 (-8%)	8,608 (-14%)
Georgia	501	53,924	49,959 (-7%)	46,649 (-13%)

<sup>8</sup> Includes only the population housed in DOC run facilities. From “COVID-19 Updates.” Minnesota Department of Corrections, November 18, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

<sup>9</sup> Only states with population reduction data collected by Prison Policy Initiative are included. Prison population data in Minnesota includes only the population housed in DOC run facilities; data comes from “COVID-19 Updates,” Minnesota Department of Corrections. Other state data comes from Widra, Emily. “As COVID-19 continues to spread rapidly, state prisons and local jails have failed to mitigate the risk of infection behind bars” Prison Policy Initiative, December 2, 2020. <https://www.prisonpolicy.org/blog/2020/12/02/jail-and-prison-covid-populations/>.

<sup>10</sup> Data on prison incarceration rates as of 2018 from “State-by-State Data.” The Sentencing Project, July 28, 2020. <https://www.sentencingproject.org/the-facts/>.

<sup>11</sup> Minnesota pre-pandemic numbers are from March 2020. For other states, numbers are from January 2020.

<sup>12</sup> Latest numbers available from Utah are from 8/24/2020.

Oklahoma	693	24,749	22,425 (-9%)	21,689 (-12%)
Wisconsin	391	23,672	21,388 (-10%)	20,867 (-12%)
Mississippi	626	19,469	17,448 (-10%)	17,224 (-12%)
North Carolina	324	34,510	31,929 (-7%)	30,742 (-11%)
Montana	440	2,759	2,542 (-8%)	2,473 (-10%)
Arizona	559	42,441	40,102 (-6%)	38,562 (-10%)
Nevada	413	12,911	12,266 (-5%)	11,731 (-9%)
Indiana	399	26,562	25,385 (-4%)	24,203 <sup>13</sup> (-9%)
Median state <sup>14</sup>	364	18,608	16,836 (-10%)	15,804 (-14%)

However, this level of population reduction may still arguably be insufficient given the increasing number of outbreaks in Minnesota’s state prisons and the “highly transmissible” nature of respiratory diseases in correctional settings.<sup>15</sup>

While COVID-19 cases in Minnesota state prisons were relatively stable in the spring and summer,<sup>16</sup> numbers have recently increased significantly. In early November, Minnesota had “the sixth highest infection rate among prison inmates in the country and the third highest among corrections staff,” and during one week in November had the “highest rate of new inmate cases in the nation,” according to one analysis.<sup>17</sup> As of December 2020,<sup>18</sup> there have been more than 3,300 COVID-19 cases in Minnesota state prisons,<sup>19</sup> and nearly 250,000 in state and federal prisons nationally.<sup>20</sup>

<sup>13</sup> Latest numbers available from Indiana are from 10/1/2020.

<sup>14</sup> MAD analysis of state-level data for all states with data available for each measure. For incarceration rate, the median includes states with incarceration rate data which are not listed in the table (the table only includes states with reduction rate data available).

<sup>15</sup> Akiyama, Matthew J., Anne C. Spaulding, and Josiah D. Rich. “Flattening the Curve for Incarcerated Populations — COVID-19 in Jails and Prisons.” *New England Journal of Medicine* 382, no. 22 (2020): 2075–77. <https://doi.org/10.1056/nejmp2005687>.

<sup>16</sup> Gunter, Angela. “COVID-19 in Prisons: The Latest Numbers in 3 Graphs.” CSG Justice Center, September 10, 2020. <https://csgjusticecenter.org/2020/07/29/covid-19-in-prisons-the-latest-numbers-in-3-graphs/>.

<sup>17</sup> Stahl, Brandon. “Minnesota’s Prison System Overwhelmed with COVID-19.” KARE 11, November 13, 2020. <https://www.kare11.com/article/news/investigations/minnesota-covid-prison-rates/89-2e5fa8e7-f5c4-4443-b7a4-47cebfd308a2>.

<sup>18</sup> “COVID-19 Updates.” Minnesota Department of Corrections, December 11, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

<sup>19</sup> In addition to state prison cases, as of November 2020, data provided to OBFC by DOC and the Minnesota Department of Health reported 410 COVID-19 cases in local Minnesota jail inmates along with an additional 377 cases among local jail staff and visitors.

<sup>20</sup> “A State-by-State Look at Coronavirus in Prisons.” The Marshall Project, December 11, 2020. <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

This document explores the approaches DOC has taken to reduce prison population and discusses how these approaches compare nationally. Specifically, this document summarizes research on three research questions:

- What practices has DOC used to manage prison population size in response to COVID-19, and how does this compare to the historical use of these practices? How have these practices impacted population levels?
- How does DOC's population size management response to COVID-19 compare to that of other states, both in the practices used and in their impact on population levels?
- What barriers have prevented greater reduction in prison population levels?

After a discussion of research methodology, this document is organized around DOC's three primary population management approaches—work release, medical release, and a reduction in release revocation.

Each section contains detailed information from employee interviews about the successes and challenges DOC and Community Corrections Act (CCA) county employees see facing each program, improvements employees would recommend, and concerns employees have about using the program as a population management tool or to otherwise expanding the program. Each section also contains a brief summary of national context on the topic drawing on external interviews with other states and stakeholders.

# Methodology

## About OBFC and MAD

In 2019, the Minnesota Legislature reinstated the Ombuds for Corrections (OBFC), an independent agency in the executive branch with the authority to “investigate decisions, acts, and other matters” by the Department of Corrections (DOC) in order to “promote the highest attainable standards of competence, efficiency, and justice in the administration of corrections.”<sup>21</sup>

OBFC is investigating DOC’s efforts to reduce state prison population size as part of the department’s pandemic mitigation strategy and the challenges presented in implementing these prison population reductions. In addition, the office is studying what lessons can be learned that would support a more competent, efficient, and just administration of corrections outside of the infectious disease context.

OBFC entered into an interagency agreement with Management Analysis and Development (MAD) to provide research and consultation services. MAD is a management consulting practice housed in Minnesota Management and Budget that provides consultation to public sector organizations, including research and analysis, program evaluation, organizational effectiveness, planning, and interagency collaboration.

## Research approach

MAD conducted a variety of research activities for this project, including collecting and analyzing administrative data, examining existing research on prison population levels and related policies and practices, and conducting more than two dozen structured interviews. This document was written by MAD to summarize its research.

## Employee interviews

The principal focus of this research was gathering information from employees about how DOC has implemented policies to reduce population levels in state prisons and the barriers employees perceive to using these policies as a population management tool.

In September through October 2020, MAD conducted 16 interviews with Minnesota correctional employees from the Minnesota Department of Corrections and Community Corrections Act counties, which are referred to as “employee interviewees” in this document. While not counted as interviews, MAD also met with staff from DOC’s Policy, Research, and Performance unit as part of its work to analyze administrative data.

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<sup>21</sup> Minnesota Statutes 241.90: <https://www.revisor.mn.gov/statutes/cite/241.90>.

## External interviews

MAD conducted 11 interviews with external stakeholders, including academics, community advocates, county attorneys, and correctional officials from other states in September through November 2020, which collectively are referred to as “external interviewees” in this document.

In identifying other states to interview, MAD considered geographic region, state population, prison population, incarceration rate, and prison population decline during COVID-19 in order to identify states with at least one shared characteristic with Minnesota. MAD was able to schedule and complete interviews with correctional officials in four states: Iowa, Michigan, Oregon, and Pennsylvania. The table below describes these characteristics of states interviewed and how these levels compare nationally.

**Table 2. Comparison of states interviewed**

State	State population <sup>22</sup>	Prison population <sup>23</sup>	Incarceration rate per 100,000 <sup>24</sup>	Prison population decline (July 2020) <sup>25</sup>
Iowa	3,155,070	9,282	297	19%
Michigan	9,986,857	38,761	387	Data unavailable
Oregon	4,217,737	15,250	362	Data unavailable
Pennsylvania	12,801,989	45,875	366	9%
<i>Minnesota</i> <sup>26</sup>	5,639,632	8,857	179	11%
Median state <sup>27</sup>	4,467,673	18,202	364	10%

OBFC and MAD identified a range of policy experts, county attorneys, and community advocates to interview to represent a range of perspectives. MAD conducted interviews with organizations including:

- Council of State Governments Justice Center
- Minnesota Department of Corrections (retired)
- Prison Policy Initiative

<sup>22</sup> As of 2019. Data from US Census Bureau.

<sup>23</sup> As of 2018 (2020 for Minnesota). Data from Widra, Emily, and Peter Wagner. “Jails and Prisons Have Reduced Their Populations in the Face of the Pandemic, but Not Enough to Save Lives.” Prison Policy Initiative, August 5, 2020. <https://www.prisonpolicy.org/blog/2020/08/05/jails-vs-prisons-update-2/>. Minnesota data from DOC.

<sup>24</sup> As of 2018. Data from “State-by-State Data.” The Sentencing Project, July 28, 2020. <https://www.sentencingproject.org/the-facts/>.

<sup>25</sup> Through July 2020. Data from Widra, Emily, and Peter Wagner. “Jails and Prisons Have Reduced Their Populations in the Face of the Pandemic, but Not Enough to Save Lives.” Prison Policy Initiative, August 5, 2020. <https://www.prisonpolicy.org/blog/2020/08/05/jails-vs-prisons-update-2/>.

<sup>26</sup> Minnesota data from “COVID-19 Updates.” Minnesota Department of Corrections, November 18, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

<sup>27</sup> MAD analysis of state-level data for all states with data available for each measure. For incarceration rate, the median includes states with incarceration rate data which are not listed in the table (the table only includes states with reduction rate data available).



- UCLA School of Law Prison Law & Policy Program—also served as a member of the National Academies of Sciences, Engineering, and Medicine committee that authored the consensus study report *Decarcerating Correctional Facilities during COVID-19*

## Research timing

OBFC initiated its investigation of DOC’s policies used to reduce the number of people in state prisons in August 2020 in order to determine if recommendations should be made to DOC leaders or the legislature for the ongoing response to COVID-19 or for future policy decisions on population management.

While the timing of this research enables a contemporaneous record of DOC’s pandemic response effort, the course of the pandemic—particularly the number of COVID-19 cases in DOC facilities—has shifted during the research. MAD conducted research from September through November 2020, with interviews with employees concentrated in September and October. These interviews occurred before multiple DOC facilities saw substantial increases in COVID-19 cases in November and December 2020.

# Cross-cutting themes

MAD analyzed the information from all interviewees and identified several recurring themes across different states, types of release, and interviewee characteristics:

- A reduction in **prisoner intake** has had a greater impact on state prison population levels during the pandemic than has any policy or program to release prisoners. This reduction in intake has been caused by multiple actors at different stages of the criminal justice system, including declines in arrests, charging decisions, and sentences, and—notably for this research—reduced revocation of supervised release.
- Defining and **assessing public safety risk** is a challenge across medical release, work release, and release revocation, with widely divergent perspectives among stakeholders.
- The lack of **available housing** and beds in the community is a challenge to increasing use of medical release, work release, and supervised release. Several interviewees talked about the availability of housing as a barrier regardless of the method of release.
- The lack of **adequate programming** in both prison and community settings limits and delays reentry into society. Even when interviewees had different perspectives on topics such as assessing public safety risk, they generally agreed that current funding models may not adequately enable or incentivize successful supervision within the community.

The following sections contain detailed information from employee interviews about the successes and challenges employees see facing work release, medical release, and release revocation in Minnesota, as well as barriers employees perceive to expanding the use of the programs as population management tools. Each section then contains a brief summary of national context on the topic drawing on external interviews with other states and stakeholders. Later sections of this document discuss other approaches to population management used by states in response to the COVID-19 pandemic.

# Work release

Work release programs provide a structured full- or partial-day release period to inmates, preparing them for success upon release through employment and supervision.

In interviews with correctional system employees as well as external interviews with other states and stakeholders, several common themes emerged:

- Different visions exist for the **purpose** of work release: as a diversion strategy, a population management strategy, or a reentry strategy to promote economic integration after release.
- Different visions exist for determining **eligibility** for work release and how these criteria connect to the purpose of the program.
- Different visions exist for what conditions should be imposed **during the program** and how these conditions connect to the purpose of the program.
- Public and **political support** for work release, while often strong, can vary based on employment levels and economic conditions in the broader community. Logistically, fewer jobs being available also increases the difficulty of placement.

## Work release in Minnesota

Four employees were interviewed about the work release program. Employee interviewees were asked about program successes and challenges, suggestions for improvement, concerns about using the program to manage prison population levels, and risks to expanding the program. Employee interviewees were asked to reflect on both the work release (sometimes referred to as traditional work release in this section) and COVID-19 expanded work release programs (sometimes referred to as just expanded work release in this section).

Themes specific to employee interviews included:

- While work release in Minnesota has historically been a transition or reentry strategy, in response to COVID-19 work release has also become a population management strategy.
- COVID-19 expanded work release has not had a particularly large impact on prison population levels in Minnesota. DOC data lists 152 releases under COVID-19 Work Release; while this is a larger impact than some other COVID-19 response strategies, it is still relatively small overall.<sup>28</sup>
- Historically, work release has not been contentious in Minnesota and has faced no significant logistical or political challenges.
- The COVID-19 expanded work release program designed in response to the pandemic has faced some workload, logistical, and supervision challenges as a result of being put together quickly, including reliance on agents or caseworkers with high workloads, lack of timely program orientation, staff layoffs,

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<sup>28</sup> "COVID-19 Updates." Minnesota Department of Corrections, November 18, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

disagreement on eligibility for expanded work release, and inherent challenges of supervision from a distance (mirroring supervision challenges in the broader supervision system during the pandemic).

## Background on work release in Minnesota

The intent of the work release program<sup>29</sup> is to provide a structured release period to inmates returning to the community setting, preparing them for success through employment and supervision.<sup>30</sup> During this time, individuals may engage in seeking employment, vocational training, or educational programming.<sup>31</sup> According to employee interviewees, the goals of expanded work release mirror those of work release, with the added goal of identifying additional individuals not previously considered for work release, in order to create more space in prison facilities to accommodate COVID-19 safety precautions. The expanded work release program operates under a temporary DOC policy.<sup>32</sup>

Under work release, individuals transition from the prison setting to living in a halfway house or jail nearest their home county, under supervised release. They must have served at least half of their sentence, maintain employment, and meet the conditions of their release plan, and they are provided with community resources, such as chemical dependency treatment or cognitive skills, as needed.<sup>33</sup> Employee interviewees noted that work release also allows individuals the opportunity to reconnect with family and friends, as well as their community. Under expanded work release, employee interviewees reported that individuals are allowed to be released to a private residence and are monitored under a level of supervision that is greater than supervised release (i.e., involves more frequent contact).

Consideration for entry into the work release program includes current and prior criminal behavior, institutional adjustment, alcohol and chemical dependency history, being at low or medium risk of reoffending according to the Minnesota Screening Tool Assessing Recidivism Risk (MnSTARR) assessment, serving at least half of the term of imprisonment, and being at or within eight months of the supervised release date.<sup>34</sup> Employee interviewees noted that individuals are eligible for work release if their prior criminal behavior was nonviolent and that violent offenses, or weapons or person offenses, are exclusionary under work release. Also excluded are crimes committed for the benefit of a gang and multiple person crimes against the same victim. Furthermore, employee interviewees said individuals are not eligible for work release if they have received discipline in a facility in the past six months, if they do not engage in treatment programming, if they are convicted of a predatory offense, or if they are at the end of their confinement period and are unable to serve the minimum 60 days in the work release program (individuals may now serve up to 12 months on work release). Employee interviewees said individuals must not have any pending charges or warrants and must have no escapes in the

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<sup>29</sup> For the purposes of this document, the term “work release” refers to the program prior to COVID-19, and “expanded work release” or “early work release” refers to the program during the COVID-19 pandemic.

<sup>30</sup> Work Release: <https://mn.gov/doc/community-supervision/offender-programs/work-release/>

<sup>31</sup> Minnesota Statute 241.26: <https://www.revisor.mn.gov/statutes/cite/241.26>

<sup>32</sup> DOC Policy 205.122

<sup>33</sup> DOC Policy 205.120 and Work Release Program fact sheet:

[https://mn.gov/doc/assets/Work%20Release\\_tcm1089-309002.pdf](https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf)

<sup>34</sup> Work Release: <https://mn.gov/doc/community-supervision/offender-programs/work-release/>, Work Release Program fact sheet: [https://mn.gov/doc/assets/Work%20Release\\_tcm1089-309002.pdf](https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf)

past five years. They noted that the more programming individuals complete, the more eligible they are for work release and that some individuals may be required to return to a minimum custody facility and demonstrate at least 60 days of positive adjustment prior to entering work release.

With the advent of COVID-19, expanded work release has broadened eligibility criteria. According to employee interviewees, individuals can now be up to 90 days away from their supervised release date. Additionally, DOC interviewees noted that individuals with higher MnSTARR risk scores are considered for expanded work release provided that they remained discipline-free with good behavior and achieved a minimum custody level. Finally, employee interviewees said some offenses that exclude individuals from the work release program, such as weapons offenses, are not considered exclusionary under expanded work release, though violent crimes are still considered exclusionary.

Violations of conditions of release result in a continuum of responses, ranging from withdrawal of privileges up to revocation of release.<sup>35</sup> Individuals are terminated from the program for engaging in activity that results in a misdemeanor or felony.<sup>36</sup> Additionally, by statute, escape behaviors, which are characterized as the “willful failure of an inmate to report to or return from planned employment, seeking employment, educational or vocational training, or furlough” may result in revocation.<sup>37</sup>

For more detailed information on work release and expanded work release, including full program criteria and implementation processes, see DOC policies 205.120 and 205.122.

## Work release (outside of pandemic context)

### Successes

Employee interviewees noted a few primary successes of the work release program:

- It provides individuals with structure as they transition out of prison and allows them to make connections with family, friends, and other supports in the community (e.g., education, mental health, medical support).
- It helps reduce the recidivism rate.
- The per diem for supervising individuals on work release is less than the cost of keeping them in prison.

Employee interviewees also noted that staff are involved in actively pursuing ways to get people approved for work release. In addition to case workers in facilities encouraging individuals to engage in programming that would make them eligible, it was noted that there is improved communication between facility and field staff on how to increase eligibility.

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<sup>35</sup> Minnesota Statute 241.26, Subdivision 4: <https://www.revisor.mn.gov/statutes/cite/241.26>, Work Release Program fact sheet: [https://mn.gov/doc/assets/Work%20Release\\_tcm1089-309002.pdf](https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf)

<sup>36</sup> Work Release Program fact sheet: [https://mn.gov/doc/assets/Work%20Release\\_tcm1089-309002.pdf](https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf)

<sup>37</sup> Minnesota Statute 241.26, Subdivision 4: <https://www.revisor.mn.gov/statutes/cite/241.26>

An external interviewee also described Minnesota's work release program as largely successful at promoting successful reentry and economic integration.

## Challenges

Employee interviewees did not identify challenges with the work release program. They noted that work release is a long-standing program, DOC has established long-term partnerships with jails and halfway houses that understand the program's expectations, and individuals in the program know what is expected of them.

An external interviewee noted that historically, the challenges limiting the growth of Minnesota's work release program have been capacity constraints in the halfway houses and county jails as well as budgetary issues.

## Suggested improvements

Employee interviewees offered potential improvements for the work release program, including:

- Postpandemic, following new policies developed as a result of COVID-19 for the expanded work release program, which allow up to 12 months of participation and broadened the criteria for who is eligible.
- Postpandemic, continuing with expanded use of electronic monitoring that was used more heavily to create space in halfway houses that had COVID-19-positive cases.

## Concerns

Employee interviewees did not express any concerns about using the work release program to manage the prison population. One interviewee noted that it is a good program that has benefited individuals and provides opportunities. Another interviewee described it as a necessary program that has been able to meet a variety of needs and has remained flexible on eligibility criteria over the years, in order to engage more people.

## Risks to expansion

Employee interviewees did not express concerns about expanding the work release program to more people. One interviewee commented that, with any type of early release, some level of risk is assumed and that a variety of factors must be considered, such as the type of offense (e.g., violent or nonviolent) and MnSTARR risk score.

Another interviewee mentioned that DOC budgets are lean overall, and that it requires funding and staff to expand programming.

## Expanded work release

### Successes

Employee interviewees discussed successes of the COVID-19 expanded work release program:

- The modified supervision structure under expanded work release (i.e., more intense than supervised release) has led to a better transition for some individuals.

- DOC expanded the use of electronic monitoring for individuals in Phase II (i.e., individuals who are doing well, employed, following the conditions of their release, have stable housing) so that they could move out of halfway houses.

While one interviewee felt that expanded work release resulted in staff learning more about community resources across the state to support individuals in the program, another interviewee felt that staff did not have established relationships with services across the state.

## Challenges

Employee interviewees noted a few challenges with the expanded work release program:

- The program had to be put together quickly, which had an impact on orientation. Since program staff were no longer able to conduct group orientations due to COVID-19 safety measures, case workers were more heavily relied upon to explain the program to individuals. This was because there were not enough hours or program staff to conduct orientations one-on-one and because program staff were busy with one-on-one orientations for traditional work release. Reliance on other staff to orient individuals to the program could lead to misconceptions and unanswered questions.
- The program lacks the supervision structure and support that typically come from halfway houses or jails because individuals are released directly home. This resulted in the development of a supervision structure that was more intense than supervised release, which has been challenging to implement with limited staff and amid layoffs.
- DOC central office and prison facility staff disagreed about who was eligible for the program, based on their offense. Central office and facility staff interpreted the existing statute and policy changes due to the pandemic differently (e.g., eligibility of individuals who committed nonviolent offenses that had violent characteristics, eligibility of individuals who committed violent offenses but still qualified for early work release under the expanded criteria). Additional internal education on policy changes and interpretation would have helped mitigate confusion.
- Job searching under expanded work release has not been as viable as it was prior to the pandemic. Past research has shown that when individuals on work release are idle, the chance of success decreases. Additionally, communities expressed concerns about releasing incarcerated individuals for employment purposes when jobs are scarce (i.e., some community sentiment exists around prioritizing employment for un-incarcerated individuals).

## Suggested improvements

One interviewee noted that while transition planning has improved since the onset of the pandemic when the goal was to reduce the prison population quickly, staff and individuals involved in expanded work release would benefit from more time for transition planning. Decreased in-person access to individuals while they are incarcerated has made it challenging to get people connected to resources prior to release. While planning is occurring virtually, the process is not as seamless as face-to-face planning. They also noted that the fast turn-around times for expanded work release (e.g., five to six days) make it challenging to identify and set up supports prior to release, and to ensure individuals understand the conditions of their release.

Another interviewee suggested continuing the increased use of electronic monitoring for individuals on expanded work release, though they noted that most individuals are at lower risk for re-offending, and how long people are on early work release varies (e.g., a few days, up to 90 days). This interviewee also suggested more staffing to manage the additional supervision that comes with expanded work release.

One interviewee suggested not supervising individuals from a distance (e.g., across the state, over the phone). They said it is difficult to know whether someone is engaging in certain behaviors because it is not possible to go to their residence and check in with them. The interviewee also noted that it is difficult to build rapport with individuals from a distance, and to hold them accountable. Additionally, staff may not have relationships with law enforcement or social services in the area, making it more difficult to support the individual in the community. Rather than conducting supervision from a distance, this interviewee recommended having individuals supervised by staff in the county to which they are released.

## **Concerns**

Employee interviewees did not raise significant concerns about using expanded work release to manage the prison population. Employee interviewees reiterated that there is always some level of concern or risk when releasing people early and that DOC needs to be thoughtful about who is eligible for early release. One interviewee speculated that expanded work release would be the standard for the work release program in the future because releasing lower-risk individuals 90 days earlier is a relatively insignificant difference.

## **Risks to expansion**

Employee interviewees were asked if there were any risks to including more people in expanded work release during the pandemic. One interviewee noted that there would need to be enough resources (e.g., agents, community providers) to support expansion. Another interviewee commented on the more limited community resources available with the advent of COVID-19. It was also noted that individuals in prison need to be well prepared to transition to the community—that DOC has done its due diligence to ensure individuals are working toward behavior change while in prison. Finally, one interviewee expressed the importance of housing, observing that individuals are more successful in treatment and engagement when they have access to affordable, stable housing.

## **Impact on population and COVID-19 precautions**

Employee interviewees said that while expanded work release has had some impact on the prison population during the pandemic, other programming may be more or as influential. For example, employee interviewees noted that lower-risk individuals are likely to already be engaged in or qualify for other release programming, such as the Challenge Incarceration Program (CIP), traditional work release, or conditional release for drug offenders, making them less likely to be captured under the expanded work release program. One interviewee also said that other DOC initiatives, such as COVID-19 conditional medical release and reduced revocation of supervised release, were likely more impactful.

One interviewee noted that traditional work release numbers have decreased during the pandemic because a number of jails are not taking work release referrals and halfway houses do not always have availability outside of the Twin Cities metropolitan area. This interviewee also noted that prisons used to provide treatment that



was required to be completed prior to release (e.g., chemical dependency) later in the process, with the hope that the information and tools were fresh in people’s minds upon reentry. However, some facilities have begun offering some treatments earlier to increase the number of individuals eligible for release programming.

## Work release in national context

MAD interviewed corrections officials from four states about their release policies and practices—including any type of work release, and how those practices differed during the pandemic, if at all. In addition, MAD interviewed national experts and other stakeholders.

In general, other states and stakeholders did not view work release as a population management strategy but instead as a tool to support reentry. This was often because participants in many other states remain in jails or in halfway houses, similar to Minnesota’s traditional work release program. A few external interviewees also noted that from a public health perspective, work release could cause additional exposure risk from worksites. One interviewee said if someone is determined to be safe enough to work in society, from their perspective the person should be safe enough to release entirely.

Just one of the states interviewed has a work release program similar to Minnesota’s traditional work release program. In Iowa, work release participants live in a residential facility and then go on parole when that program is completed. Corrections officials said they push harder for parole over work release because individuals have a better success rate on parole and because work release program requirements are almost as structured as prison.

Oregon has work release at the county level. Prisoners may go outside the prison to work, but they come back to prison at the end of their shift. Pennsylvania does not have a work release program, but work is a part of some community corrections programs. It is a legal nuance, but the programs function much like work release, while allowing for more creative use of outside housing units for lower-risk individuals. Michigan allows inmates to apply to their vocational villages—a program that will earn a state or national certificate or credential when they are finished. Inmates must apply to participate and meet eligibility requirements. The vocational village program simulates a standard workday and participants are housed together within state facilities.

## Challenges

As with other types of release, bed space is a challenge for work release and related programs. Mental and physical health, age, and the job market can also be barriers. Inmates have to be able to hold a job to participate, and there must be jobs for them to work.

## COVID-19 work release

None of the corrections officials interviewed from other states said they used work release, or similar programs, as a population management strategy during the pandemic. In fact, in states like Pennsylvania, the community corrections centers were locked down early in the pandemic. As one official noted, the individuals on work release or working as a part of a community corrections program are likely to be working front-line or essential

jobs. This puts them at a higher risk of contracting COVID-19 while working, and then bringing it back to the residential facility, where it can spread easily.

One external interviewee felt that Minnesota’s early work release program lacked the “substance” of traditional work release. Specifically, this interviewee felt that early work release lacked sufficient supervision, particularly because home placements provide less structure than halfway houses and jails. More broadly, this interviewee noted that it can be challenging for other actors in the criminal justice system when people are sent to prison only to be quickly returned to the community, both logistically as well as because of the “message” it sends. In order to support greater use of work release, this interviewee expressed a desire to have more supervision resources and timely information sharing with local jurisdictions to effectively supervise people in the community.

Another external interviewee, while more supportive of early work release, noted that it was “not clear” how job placement was working in the context of the pandemic, or of how COVID-19 protocols were being followed at jobsites.

A few interviewees discussed the importance of thoughtful discharge planning, regardless of the type of release.<sup>38</sup> The National Academies report noted the importance of discharge planning in the context of COVID-19 in order to manage the already significant challenges faced upon reentry:

*“The COVID-19 pandemic has exacerbated the challenges faced by individuals reentering the community and the communities and families of formerly incarcerated individuals. Because incarcerated people are disproportionately from communities most affected by the COVID-19 pandemic, it is important to think of reentry and community safety as not only focused on individuals released from prison or jail, but also concerned with the communities to which they will return... Reentry during the pandemic will require a unique set of discharge plans, including testing and quarantining individuals prior to release, as well as supports and resources from community health care and housing systems. Absent these considerations, efforts to decarcerate during the COVID-19 pandemic will fall short of their fullest potential to protect public health.”<sup>39</sup>*

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<sup>38</sup> See, for example, “Preparing People for Reentry.” CSG Justice Center, May 11, 2020.

<https://csgjusticecenter.org/publications/preparing-people-for-reentry/>.

<sup>39</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020.

<https://doi.org/10.17226/25945>.

# Medical release

Medical release, sometimes called compassionate release, has historically been used in Minnesota and in other states not as a population management tool but instead to address concerns around health, safety, and compassion in end-of-life cases and cases where people need specialized health care not available in a correctional setting. In response to the COVID-19 pandemic, however, medical release has shifted to become a strategy for population management nationally.<sup>40</sup>

In interviews with both employees as well as external interviews with other states and stakeholders, several common themes emerged:

- In Minnesota and nationally, medical release has historically been ***small in scale*** relative to other programs or types of release.
- ***Placement and housing*** are a critical challenge. Nursing homes and other facilities are often unwilling to accept people convicted of a felony, there can be a challenging relationship with facilities even if they accept patients, and it is particularly challenging to find placements if there are other needs such as around accessibility.
- ***Connecting people with resources*** such as insurance has been a challenge in some states. Releasing people shifts medical costs from correctional departments to other insurance programs.
- States have been working to provide decision-makers in individual cases with more ***structure and guidance***. Relying on staff discretion may create the appearance of inconsistent or nonobjective determinations of prioritization and risk.

## Medical release in Minnesota

Five employees were interviewed about the conditional medical release (CMR) program. Employee interviewees were asked about program successes and challenges, suggestions for improvement, concerns about using the program to manage prison population levels, and risks to expanding the program. Employee interviewees were asked to reflect on both the CMR and COVID-19 CMR programs.

Themes across employee interviews mirrored those that emerged across all types of interviews, discussed above.

## Background on medical release in Minnesota

The purpose of conditional medical release is to place individuals that meet program criteria in the community for treatment or end-of-life care.<sup>41</sup> Individuals may be eligible for CMR prior to their release date (supervised or

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<sup>40</sup> While many external interviewees considered medical release to be a population management strategy in the context of the pandemic and DOC's COVID-19 response dashboard includes data on COVID-19 medical release under the "C19 Population Management Strategies" section, many employee interviewees did not consider COVID-19 conditional medical release to be a population management strategy.

<sup>41</sup> DOC Policy 203.200

target) if they “suffer from a grave illness or medical condition” and their release does not have an impact on public safety.<sup>42</sup> Employee interviewees noted that this typically includes two categories of individuals: those whose medical needs exceed what DOC Health Services can provide and those who are near end-of-life. While DOC has some resources within facilities to provide higher levels of care (e.g., transitional care units, skilled nursing), capacity is limited.

Prior to COVID-19, health services staff would identify individuals in facilities who may be appropriate for CMR by sending a letter to the director of DOC Health Services. If approved from a medical perspective, the individual’s case is discussed with DOC’s deputy commissioner for consideration of public safety risks (e.g., nature of the offense, programming completed, level of ambulation). If approved by the deputy commissioner and if it is not possible for them to receive care or treatment at home, medical release planners work to identify a placement for the individual. It is unclear, based on information provided by employee interviewees, whether individuals may be denied CMR based on housing—while some employee interviewees specifically stated that housing would not be a reason to deny a CMR (and that medical release planners would continue trying to find a placement), others said that if a placement ultimately could not be found, the CMR would not occur and the individual would remain in the facility until their death, or until their condition changed. Medical release planners also assist with enrolling individuals in Medical Assistance (MA). While describing the CMR process, employee interviewees emphasized that there are no fixed criteria for CMR eligibility and that assessments are made on a case-by-case basis. According to Minnesota Statute 244.05 Subdivision 8, “the commissioner must consider the offender’s age and medical condition, the health care needs of the offender, the offender’s custody classification and level of risk of violence, the appropriate level of community supervision, and alternative placements that may be available for the offender.” Additionally, “an inmate may not be released under this provision unless the commissioner has determined that the inmate’s health costs are likely to be borne by medical assistance, Medicaid, veterans benefits, or any other federal or state medical assistance programs or by the inmate.” Employee interviewees noted that, prior to COVID-19, CMR was a small program in Minnesota, serving a handful of individuals each year. Importantly, employee interviewees said they did not consider CMR to be a population management strategy, because the program is meant to be used for health and safety purposes.

From April 16 through August 24, 2020, DOC implemented COVID-19 CMR in order to reduce the population of individuals at risk for a poor outcome if infected with COVID-19 due to existing medical conditions. Information from DOC indicates that DOC provided individuals with information on how to apply for the expanded CMR program, and applications could be initiated by the inmate or their representative. Unlike CMR prior to COVID-19, individuals were responsible for identifying a release location and for enrolling in health insurance (though DOC staff worked with the Minnesota Department of Health (MDH) to expedite insurance applications through counties). Individuals were not released to settings that were deemed as congregate as the prison setting, such as shelters or large treatment centers; they were released to single home environments when possible. Applications were first reviewed to determine medical eligibility. Health risk assessments were developed and updated based on available guidance from the Centers for Disease Control and Prevention (CDC) and MDH, as well as the most current research. Individuals could file a supplemental application at a later date (during the COVID-19 CMR period) if there had been a change in their condition.

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<sup>42</sup> Minnesota Statute 244.04, Subdivision 8: <https://www.revisor.mn.gov/statutes/cite/244.05>

If an application was approved for medical reasons, a public safety assessment was conducted, which included the Office of Special Investigations, the Hearings and Release Unit, Community Re-Entry, and Risk Assessment and Community Notification. Each of the four groups was granted one vote and an application needed to receive at least two “yes” votes to proceed to commissioner review. The DOC Commissioner made the final decision in all CMR applications that made it through medical and public safety review. The COVID-19 CMR application process was concluded when applications were being received for individuals who had arrived at prison only a few weeks beforehand to avoid the commissioner overturning sentencing handed down by judges, who were aware of the COVID-19 pandemic at the time of sentencing.

An individual may be revoked from CMR if their medical condition improves to the extent that they no longer require external care and their presence in the community poses a more serious risk to public safety.<sup>43</sup>

For more detailed information on CMR procedures, see DOC policy 203.200.

## Conditional medical release (outside of pandemic context)

### Successes

Employee interviewees mentioned several successes of the CMR program, including:

- The ability to provide care to individuals that exceeds the level of care DOC Health Services can provide (e.g., ventilator care, one-to-one supervision, infusions). Occasionally, individuals receiving higher levels of care in the community can recover such that their medical condition can be managed within a prison facility. As one interviewee noted, this can be difficult to view as a success, because although the individual has improved, they are being returned to prison. However, as another interviewee noted, without CMR the individual would not have had the opportunity to improve in the prison facility.
- The ability to allow individuals to die comfortably, outside of a prison setting, such as in their home or in hospice.
- The ability to serve individuals with life sentences at Minnesota Security Hospital in St. Peter, given that most community providers will not accept such individuals to their care.

One interviewee noted that shifting the cost of medical care from DOC to medical insurance was a benefit of the CMR program, though it is not why individuals are accepted onto CMR. Another interviewee discussed the establishment of a decision-making process for individuals who are unable to make medical decisions for themselves and have no advance directive or surrogate. This process was not developed because of COVID-19, though the pandemic provided an opportunity to make it part of CMR. Using this new process, the medical director can contact the individual’s next of kin to help make upcoming care decisions, such as DNR/DNI orders.<sup>44</sup> In situations in which that is not possible, the medical director can seek a court-appointed guardian for the individual. This process has made some health care facilities more willing to accept these individuals, because the facilities are not responsible for decision-making.

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<sup>43</sup> Minnesota Statute 244.04, Subdivision 8: <https://www.revisor.mn.gov/statutes/cite/244.05>

<sup>44</sup> Do not resuscitate, do not intubate.

## Challenges

Most employee interviewees and external interviewees familiar with Minnesota’s CMR program said finding a placement for individuals is the biggest challenge CMR faces. This is particularly true for individuals who have committed sex offenses or murder, as most skilled nursing facilities (SNFs) or nursing homes will not accept them, even if they are immobile or have dementia. One employee interviewee noted that some community placements that are willing to accept individuals on CMR are not accessible. That is, medical release planners can find accessible housing *or* housing that will accept an inmate but finding accessible housing that will accept them is difficult. An external interviewee familiar with Minnesota’s CMR program noted that even when community placements accept a patient, implementing supervision within that facility can be a challenge because they are often not familiar with aspects of supervision such as restrictions on visitation.

Another employee interviewee noted that individuals do not always have family or friends to stay with, or do not have a place of their own. When individuals do have family or friends in the community, they are not always able to be released to their care, as family and friends are not always able to handle the level of care needed, even when provided with home health services. Housing is a significant challenge for DOC staff because, under CMR, medical release planners are responsible for identifying placements. However, most employee interviewees noted that medical release planners do everything they can to find placements, which can mean contacting a significant number of locations (e.g., hundreds), which takes time. One interviewee noted that, on occasion, medical release planners are unable to find a placement for an individual.

Providing higher levels of care was also noted as a challenge by one interviewee, because only one facility (Oak Park Heights) has a transitional care unit (TCU) with 24-hour care, and that unit has limited bed capacity. Access to higher-level care may affect imprisoned women differently than men, as the women’s prison facility (Shakopee) does not have a TCU—though some services, such as those provided in a nursing home, are available at that location.

## Suggested improvements

While some employee interviewees expressed a desire for a better placement acceptance rate, or faster processing of insurance by counties, none had suggestions for improving the CMR program itself. Most employee interviewees added that the program runs well.

## Concerns

Employee interviewees were asked about concerns they would have about using CMR to manage the prison population. One interviewee underscored that CMR is not a population management tool but is focused on the medical needs of individuals. Another interviewee said housing would become an even greater concern if medical release planners were responsible for a higher volume of placements, which are already difficult to find for a few people each year. One interviewee noted the possibility of more subjectivity entering into the public safety determination of CMR cases, if the volume of cases significantly increased.

## Risks to expansion

When asked about potential risks to expanding CMR to include more people, one employee interviewee said healthier individuals may be more mobile and therefore better able to engage in criminal behavior or substance use while on release. One interviewee said public safety was less of a concern compared with the lack of social supports available to medically vulnerable individuals upon release, to ensure their success in the community. One interviewee also said it is possible individuals would ultimately not receive adequate medical care outside of DOC Health Services because they may lack transportation to appointments, or they may not have a placement that can provide the level of care needed (i.e., DOC provides high-quality care that meets the needs of a majority of individuals).

## COVID-19 conditional medical release

### Successes

In addition to being able to release sick or at-risk individuals, employee interviewees discussed the following successes of the COVID-19 CMR process:

- DOC worked with MDH to create a centralized system to process and expedite MA applications with counties, so that individuals had health insurance upon release. Prior to COVID-19, counties might not accept MA applications within a certain timeframe of an individual's supervised release date. Additionally, while some counties have historically been quick to process applications, other counties have been unresponsive. The MA application process put in place under COVID-19 remains in place and helps ensure individuals have access to services outside of the prison facility.
- DOC worked with law schools to ensure that COVID-19 CMR applications were accessible (e.g., provided in different languages, available in braille).
- DOC has amended its policy for CMR review at intake based on learnings from COVID-19 CMR, whereby Health Services administrators monitor and evaluate facility populations on a monthly basis for CMR eligibility, and any Health Services staff can notify the facility Health Services Administrator if they identify an individual who may be eligible for CMR.
- DOC developed and maintained COVID-19 guidelines in conjunction with MDH and including information from the CDC.
- Few individuals in prison facilities experienced bad outcomes from COVID-19, despite a number of individuals being infected in facilities. Additionally, DOC has been able to keep individuals who were not eligible for COVID-19 CMR safe by implementing safety measures, such as provision of personal protective equipment (PPE) and isolation of infected individuals.

### Challenges

While a large number of inmates applied for COVID-19 CMR in Minnesota after DOC proactively notified them about their ability to apply, data from DOC shows that only 154 of 2,392 applications were ultimately

approved.<sup>45</sup> As a result, from a quantitative standpoint, the program did not have a large impact on prison population levels.

Looking operationally at medical release, employee interviewees said that unlike CMR, COVID-19 CMR did not experience the challenge of finding placements for individuals. This was because COVID-19 CMR required individuals to identify placements for themselves, rather than having medical release planners identify housing. However, placements identified by individuals were sometimes as congregate as prison settings, or included nursing homes or treatment centers that had ended intake or had experienced outbreaks at their locations. In home-based settings, individuals sometimes identified placements that involved regular contact with immune-compromised people in the home, or placements involving factors that were incompatible with an individual's release (e.g., placing an individual who had committed criminal sexual conduct in a home that runs a daycare). In some cases, family members also changed their minds about allowing the individual to be released to the home.

Employee interviewees mentioned that the COVID-19 CMR processing system had to be developed very quickly, noting that due to CMR's historically small size and different identification process (i.e., facility initiated versus individual application), a highly formal process had not been needed before. One interviewee noted that it is both a resource-intensive process to plan early release for many people, as well as a typically longer process (e.g., 90–120 days out from the release date). Since the general release process is more complex than medical and safety assessments, it was challenging to complete release planning on a compressed timescale, and with agents with high workloads. It was noted that DOC needs to be thoughtful about release planning so that individuals are set up for success upon release. Another interviewee mentioned that processing supplemental applications for COVID-19 CMR despite no change in health status (for many) was an administrative challenge.

Employee interviewees discussed subjectivity around the public safety review of applications, noting that there was much discussion around what constitutes public safety. In addition to the risk of reoffending, employee interviewees noted that it includes the need for treatment or support services (e.g., AA, mental health), the availability and ability of supervision services (e.g., less frequent visits, phone check-ins), the nature of an individual's crime (e.g., predatory sex offender), and having complex medical needs—all which involve services that have been stressed and stretched even thinner by the pandemic. One employee interviewee noted that there are public opinions and expectations regarding how public safety be evaluated. This interviewee also noted that the COVID-19 CMR program was not well received by victims, judges, or county attorneys because they felt the program altered an individual's sentence, though it was technically an alteration of their custody status.

Challenges were also noted on the medical side of the CMR program. Because COVID-19 is a novel virus, there is no algorithm to identify individuals at a higher risk for a poor outcome if infected. Instead, staff had to use the best available information at any point in time to make determinations, which was rapidly evolving at the beginning of the pandemic and remains dynamic. Though having a scale or ranking for conditions that put people at higher risk would have been helpful in decreasing subjectivity, staff tried to make fair decisions based on available information. Some conditions, such as diabetes, hypertension, hyperlipidemia, and cardiac concerns were easier to identify as risk factors early on, as were pregnancy and sickle cell anemia later on. The incidence

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<sup>45</sup> "COVID-19 Updates." Minnesota Department of Corrections, December 11, 2020. <https://mn.gov/doc/about/covid-19-updates/>.



of some conditions, such as asthma, also spiked during the pandemic, though many individuals had not been seen by health services for the condition prior to the pandemic. Also complicating the identification of individuals was that the recurrence risk of COVID-19 was initially unknown. Administratively, one interviewee mentioned that obtaining medical records to verify application details for individuals housed outside of DOC facilities (e.g., in jails where DOC leases space) was a challenge, though the records sometimes contained years' worth of medical information that could be useful.

Concern was raised among providers in facility health services regarding the amended CMR policy. Providers were concerned about liability and questioned whether they should be combing through all patients on their lists to identify potentially eligible individuals to move into case review.

### **Suggested improvements**

Employee interviewees suggested the following improvements to the COVID-19 CMR program:

- Keeping the COVID-19 CMR application process in place, rather than amending the CMR policy to accommodate the pandemic. Since individuals will continue to enter prison facilities with comorbidities that make them eligible for COVID-19 CMR, it would make more sense to continue the application process that allows individuals to apply, rather than amending the CMR policy, where the process is triggered by health services staff.
- Continue to reduce subjectivity around public safety assessment for cases.
- Maintain lists of individuals in facilities with chronic illnesses, which were developed at the onset of the pandemic and are created periodically to assist with administration of vaccines (e.g., influenza).

### **Concerns**

Most employee interviewees said that they did not have concerns about using COVID-19 CMR to reduce the prison population during the pandemic, or that they had no additional concerns outside of those discussed as challenges.

One interviewee noted that when individuals have to go to a hospital to receive care, it requires two officers per individual, 24 hours per day and 7 days per week, which is an intensive use of resources (i.e., six officers per day per person). The interviewee said that although this type of scenario did not present itself and was considered unlikely, if it were to happen, it would have a significant and negative impact on resources. Related to internal resources, this interviewee also noted that if medical release planners were to be responsible for placement, without more assistance identifying placements for individuals, it would not be possible to implement CMR on a larger scale.

### **Risks to expansion**

Employee interviewees generally did not have additional input on risks to expansion, outside of administrative concerns already discussed in the challenges and concerns sections, or the CMR risks section above.

One interviewee wondered whether individuals were safer in prison facilities than the community. The interviewee noted that their exposure to community spread as schools and businesses re-open depended on

which community they were being released to and how open or closed that community remained, and how rigid or relaxed the individual was about safety measures while in the community. Another interviewee also wondered whether individuals were safer in the community, particularly if they were released to a congregate nursing home setting, if they did not have a primary residence to be released to, and if they were unable to support themselves while on release.

### **Impact on population and COVID-19 precautions**

Most employee interviewees said that while COVID-19 CMR helped reduce the number of individuals in prison, it was not as big a factor in reducing the prison population compared with the closing of courts, changes to release violation revocations, and early work release. One interviewee said that while the impact of COVID-19 CMR was not large, population management was also not the goal of the initiative; rather, the program remained focused on the health and safety of individuals, as it had prior to the pandemic. Another interviewee noted that some facility locations, such as Stillwater, benefited from the combined efforts to reduce the prison population, allowing them to move to one individual per cell (i.e., single bunking), rather than two individuals per cell (i.e., double bunking).

## **Medical release in national context**

MAD interviewed corrections officials from four states about their release policies and practices—including any type of medical release, and how those practices differed during the pandemic, if at all. In addition, MAD interviewed national experts and other stakeholders.

Many external interviewees saw medical release as a promising mechanism to reduce prison populations in the context of COVID-19 given the direct relationship between the pandemic and prisoners' health. Nevertheless, limitations on placement and restrictions on eligibility have substantially reduced the impact of medical release programs as a pandemic population management tool.

### **Challenges**

For those inmates requiring medical care, finding a bed was a significant challenge noted by a range of interviewees. Interviewees said it is particularly difficult to find a bed for those who have committed crimes like arson or sex offenses. Regardless of the crime committed or risk factors, individuals who are eligible for any sort of conditional or compassionate medical release need to have access to adequate care upon release, and need a place to stay as well as some sort of insurance and access to medication. One external interviewee said there are cases in which individuals will receive better care in prison than outside.

The narrow nature of medical release policies was also a common challenge mentioned by external interviewees. One interviewee commented that each state's medical release statutes were constructed differently, but that many states only allow release for an existing condition—not for the risk of a condition. In two of the states interviewed, medical release programs were only used in very narrow circumstances, even outside of the pandemic. Iowa's governor recently created a task force to study the creation of a compassionate release program. Correctional staff in Iowa are responsible for finding housing such as a shelter, the VA, a

halfway house, or a DOC-run work release center. Like other states, interviewees said Iowa has found it hard to get people to nursing homes if they need that level of care.

A few external interviewees noted that the structure for approving medical release was a significant factor reducing the scale of these programs—including the reporting structure of the decision-maker, the guidance and criteria used, and the default presumptions about public safety risk. In an evaluation of the federal Bureau of Prisons' compassionate release program, the Department of Justice's Inspector General found that the program did "not have clear standards... resulting in ad hoc decision making," with staff having "varied and inconsistent understandings of the circumstances that warranted consideration."<sup>46</sup>

One interviewee noted that while many states have attempted to expand medical release under the pandemic, these efforts have affected a relatively small number of people. Another interviewee said states that have used parole boards or other bodies that have historically been "oriented towards finding reasons not to let people out" have had particularly limited success in using medical release as a large-scale population management tool. This interviewee felt that in order to use medical release to significantly reduce prison population levels, an independent decision-making body was valuable and that while Minnesota's process was better than relying on bodies such as parole boards, creating an entity fully outside of the structure of DOC to make these decisions would be preferable.

More broadly, this interviewee felt that rather than requiring a person to be medically end-of-life before they are considered for medical release, states should consider whether a person's inability to provide adequate self-care within a correctional facility renders their punishment qualitatively different. Similarly, in this view, the risks of congregate settings in a pandemic change the nature of the punishment of incarceration, posing a "substantial risk of serious harm" requiring action from officials under the eighth amendment's prohibition on cruel and unusual punishment.<sup>47</sup>

In their report, the National Academies of Sciences, Engineering, and Medicine committee recommended that states should "revise compassionate release policies to account for petitioners' medical condition, age, functional or cognitive impairment, or family circumstances," and that "because of the severity of the health risks, such applications should be reviewable by the courts or some other [external] decision maker."<sup>48</sup>

An external interviewee noted that, despite the challenges of current medical release policies, one structural advantage correctional systems have is that in-house medical units give them visibility into the medical vulnerability of some of their populations, allowing them to make more informed and proactive decisions about medical release based on an individual's medical condition and health risks.

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<sup>46</sup> *The Federal Bureau of Prisons' Compassionate Release Program*. U.S. Department of Justice Office of the Inspector General, April 2013. <https://oig.justice.gov/reports/2013/e1306.pdf>.

<sup>47</sup> Touchstone, James R. "Eighth Amendment Prohibits Prison Officials from Disregarding Known Substantial Risk of Serious Harm to Inmate," May 5, 2020. <https://cpoa.org/eighth-amendment-prohibits-prison-officials-from-disregarding-known-substantial-risk-of-serious-harm-to-inmate/>.

<sup>48</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020. <https://doi.org/10.17226/25945>.

One interviewee noted that even accepting the narrow medical criteria currently used for medical release, however, other restrictions on eligibility—such as on time served or the type of offense—combine with the narrow medical criteria in a way that overly restricts the availability of medical release. This interviewee felt that if health and compassion are truly the purpose of medical release then these other factors should play a much smaller, if any, role.

## COVID-19 medical release

A few external interviewees said that medical release was simply not originally intended to release people on a large scale—and that as a result, the systems and procedures used in medical release programs were ill-suited to the scale of the public health threat posed by COVID-19. One advocacy group described medical and compassionate release programs as “not a transparent or linear process,” but instead “an unpredictably ordered series of obstacles.”<sup>49</sup>

None of the four state officials interviewed said they utilized medical release as a population management strategy during the pandemic, although a few external interviewees described this as an approach that some states have taken. In states using commutations, pardons, or furloughs as a population management strategy, medically at-risk inmates were generally included in those programs.

While there is a medical release program in Oregon, an external interviewee said it is “so lawyered and calcified no one can use it.” Oregon does have a medically vulnerable category for commutations, which has been the avenue they have used most during the pandemic. Michigan allows the parole board to look at people for medical release under very limited circumstances before their earliest possible release date. Pennsylvania has a compassionate release program, but officials there ultimately decided it was not going to be an effective tool for population reduction under COVID-19, although they did include medically at-risk inmates under the state’s expanded furlough program for COVID-19.

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<sup>49</sup> Widra, Emily, and Wanda Bertram. “Compassionate Release Was Never Designed to Release Large Numbers of People.” Prison Policy Initiative, May 29, 2020. <https://www.prisonpolicy.org/blog/2020/05/29/compassionate-release/>.

# Release revocation

Criminal justice systems rely on sentences served both in correctional facilities such as jails and prisons and under community supervision programs such as supervised release, parole,<sup>50</sup> and probation. Minnesota has a determinate sentencing structure, where felony offenders automatically serve two-thirds of their sentence in a state prison and the final third of their sentence under community supervision.<sup>51</sup> This structure was implemented to address “a wide range of racial and socioeconomic disparities” in sentencing and to “prescribe presumptive sentences for all convicted felons.”<sup>52</sup> During the final third of a sentence, community supervision may be revoked if the conditions of release are violated.

In interviews with employees as well as external interviews with other states and stakeholders, several common themes emerged:

- Historically, the **revocation of supervised release has contributed substantially to prison population** levels in Minnesota as well as nationally. Across states, it is common for one-third to two-thirds of intake to be release revocation.
- There has been a concentrated **shift away from technical violations** leading to reincarceration, with states instead restructuring or offering informal and alternative sanctions. These efforts have increased even more during the pandemic.
- States have been working to provide decision-makers in individual cases with more **structure and guidance** in making sanction and revocation decisions. In parallel, states including Minnesota have worked to reduce the number of conditions of release in order to reduce the number of technical violations that occur.
- There is concern around developing **funding models** that provide support for people in a community setting, rather than tying correctional department funding directly to the number of people in state facilities.
- Different visions exist for **assessing risk to public safety**, and specifically what risk would be posed by further reducing revocation of supervised release. Similarly, there is disagreement around the role or importance of the threat of reincarceration as a deterrent discouraging people from violating the conditions of their release.

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<sup>50</sup> Supervised release is the primary community supervision program discussed in this document. Parole is not a type of supervision typically used in Minnesota (“only juvenile offenders and some life sentenced inmates are eligible”). See *Fact Sheet: Correctional Delivery Systems*. St. Paul, MN: Minnesota Department of Corrections, 2019. [https://mn.gov/doc/assets/Correctional%20Delivery%20Systems\\_tcm1089-308984.pdf](https://mn.gov/doc/assets/Correctional%20Delivery%20Systems_tcm1089-308984.pdf).

<sup>51</sup> How Supervision Works. Minnesota Department of Corrections. <https://mn.gov/doc/community-supervision/supervision-101faq/>.

<sup>52</sup> Nelson, Blake. “The Minnesota Sentencing Guidelines: The Effects of Determinate Sentencing on Disparities in Sentencing Decisions.” *Law & Inequality* 10, no. 2 (1992): 217–51. <https://scholarship.law.umn.edu/lawineq/vol10/iss2/3/>.

## Release revocation in Minnesota

Eleven employees were interviewed about reduced revocation of supervised release. Employee interviewees were asked about successes and challenges, suggestions for improvement, concerns about using reduced revocation to manage prison population levels, and risks to expansion. Employee interviewees were asked to reflect on reduced revocation prior to COVID-19 and during the pandemic.

Themes specific to employee interviews included:

- There is a perception among employees that reducing revocations during COVID-19 has reduced the number of people in state facilities. However, because structural changes were already underway, it is unclear what incremental impact was made by COVID-19-specific efforts.
- Different perceptions exist among employees of whether changes to reduce revocation are appropriate or go too far—there is a perceived tension between public safety and public health.
- Employees have concerns about the MnSTARR assessment, including that the tool is calibrated for prison settings rather than community settings, has a narrow view of risk, and may not effectively measure risk for women.
- Employees have concerns about a lack of programming resources in facilities, particularly when a lack of programming is preventing people from being eligible for certain types of release.

## Background on release revocation in Minnesota

Generally, individuals in Minnesota’s prison system serve the last one-third of their sentence on supervised release or intensive supervised release (ISR) in the community.<sup>53</sup> According to employee interviewees, supervised release and ISR balance meeting the needs (e.g., treatment) of an incarcerated individual in the community setting to reduce recidivism with maintaining public safety. Employee interviewees noted that research indicates individuals are more successful when they can remain connected to their community, receiving services in that setting. Individuals on supervised release must remain compliant with the conditions of their release, which include alcohol and drug testing and having an approved residence.<sup>54</sup> Prior to COVID-19, employee interviewees noted that DOC reduced the number of conditions of release based on evidence-based practices. This included limiting conditions that were redundant, conditions individuals could not comply with, and blanket conditions.

ISR involves a higher level of supervision for very high-risk individuals, including more frequent contact with supervising agents, electronic home monitoring, more frequent drug and alcohol screenings, curfews, and mandatory participation in education or employment.<sup>55</sup> Individuals on ISR may have additional conditions of release, such as participation in treatment (e.g., sex offender), programming (e.g., domestic violence), or support groups (e.g., Alcoholics Anonymous). ISR includes four phases, with each phase lasting approximately

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<sup>53</sup> How supervision works: <https://mn.gov/doc/community-supervision/supervision-101faq/>

<sup>54</sup> How supervision works: <https://mn.gov/doc/community-supervision/supervision-101faq/>

<sup>55</sup> ISR fact sheet: [https://mn.gov/doc/assets/Intensive%20Supervised%20Release%20%28ISR%29\\_tcm1089-371441.pdf](https://mn.gov/doc/assets/Intensive%20Supervised%20Release%20%28ISR%29_tcm1089-371441.pdf)

four months, decreasing the level of supervision involved with each phase. Phase four is reserved only for persons on Level 3 Predatory Offender Registration. Individuals on ISR may eventually transition to supervised release if they reduce their risk behavior; individuals may also be released directly from ISR upon reaching the end of their sentence.<sup>56</sup> Employee interviewees noted that prior to COVID-19, ISR was restructured to focus the program less on offense and more on risk, offering incentives to individuals to move to a less intense level of supervision faster by complying with the conditions of their release (e.g., completing programming).

Individuals may have their release revoked for violating the conditions of their release. According to employee interviewees, common violations that could lead to revocation prior to COVID-19 included absconding, committing new offenses (different from technical violations), committing person offenses, and being in the presence of a firearm. Employee interviewees noted that reducing the number of conditions was intended to reduce the number of people being revoked on technical violations, and to reduce the number of people being revoked without committing new crimes (unless the violation was violent or a person offense). They noted that this was an evidence-based approach to reducing recidivism because managing individuals in the community with resources is more successful than returning them to prison. With the onset of COVID-19, employee interviewees said reduced revocation was also intended to reduce the number of people returning to prison in order to decrease the risk of spreading the virus through new people entering the facility and through transmission by overcrowding (i.e., to increase space available for social distancing).

In addition to revising the conditions of release prior to COVID-19, employee interviewees noted that DOC also revised sanction guidelines. They said the original model considered only the severity of the offense and did not include consideration of the risk of reoffense. As the MnSTARR assessment was introduced, this model shifted to considering an individual's risk, though an individual risk score affected the severity level of a violation (i.e., a higher risk score could make a lower-level violation a higher overall severity level). Eventually, the model shifted to consider individual risk and violation independently, so that risk score did not unduly affect violation level. This reflected DOC's philosophical shift to revoking only individuals who were an imminent threat to public safety, allowing others to continue receiving programming in the community. Employee interviewees noted the intent to decrease warehousing individuals by providing more restructures.<sup>57</sup>

Employee interviewees described the revocation process before and during COVID-19. Prior to the pandemic, a pre-hearing assessment process determined whether an individual's conditions for release would be restructured, or whether there would be a hearing. This determination was made by reviewing both the MnSTARR score and the seriousness of the violation, where minor infractions did not result in a hearing. A hearing could result in a restructure or a revocation.

With the onset of the pandemic, employee interviewees noted an increase in the likelihood that individuals would be restructured and kept in the community, even when a violation rose to the level of a hearing. Employee interviewees observed this to be true even of more-serious violations that exceed technical violations,

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<sup>56</sup> ISR fact sheet: [https://mn.gov/doc/assets/Intensive%20Supervised%20Release%20%28ISR%29\\_tcm1089-371441.pdf](https://mn.gov/doc/assets/Intensive%20Supervised%20Release%20%28ISR%29_tcm1089-371441.pdf)

<sup>57</sup> "Warehousing" was a term used by interviewees to describe revoking individuals to prison where they would not remain long enough to receive services at the facility, effectively stopping programming and treatment and using the sanction to merely hold the individual in prison.

such as those involving weapons, assault, and high-level drug offenses. Employee interviewees also noted an increased use of “or less” dispositions, whereby an order for revocation is issued for 90 days “or less.” In such cases, individuals must have a release plan approved by their agent in 90 days or less. As these new release plans are developed, individuals are pulled out of the community setting, though employee interviewees reported short turn-around times of these dispositions (e.g., one week). Finally, employee interviewees mentioned a screening process adopted under COVID-19, in which a list of people in custody is regularly reviewed to identify additional release opportunities.

For more detailed information on supervised release or ISR and release revocation, see DOC policies 201.010 and 106.113.

## Reduced revocation prior to COVID-19

### Successes

Most employee interviewees discussed policy changes and philosophical shifts in release revocation, which began prior to the pandemic, as successes. Employee interviewees noted that these changes affected both supervised release and ISR, and included:

- Following evidence-based practices and reducing the number of conditions of release. The DOC has been transparent that revoking individuals to prison often results in merely serving more time in a facility but not receiving additional programming (known as “warehousing”). Instead, individuals should serve sentences in the community when possible, to continue receiving support services and engaging in prosocial activities (e.g., mentoring).
- Implementing the MnSTARR to assess an individual’s risk of reoffending.
- Developing a pre-hearing worksheet to provide additional structure, which considers both an individual’s MnSTARR score and the seriousness of the release violation in order to determine eligibility for a hearing. Under this system, minor infractions (e.g., technical violations) are not eligible for hearings, though individuals who have higher MnSTARR scores and commit more-serious violations are eligible. This system has helped decrease the number of individuals being revoked, which has helped reduced warehousing (a practice employee interviewees noted does not help reduce recidivism). The worksheet process also applied universal rankings to individuals based on their MnSTARR and violation severity scores, rather than determining overall severity on a case-by-case basis. As one interviewee noted, this helped streamline guidelines between agencies, removed personal bias in decision-making, and made the outcome more transparent to individuals.
- A cultural shift at the organizational level in how staff work with individuals on supervised release or ISR. As revocations have decreased, restructures have increased, which have involved staff identifying ways to address violations in the community setting, and stabilizing individuals with supports such as health insurance or housing in the community to increase rates of success. It was noted that addressing violations in the community whenever possible has been the model at the county level longer, in some cases, than it has been at the state level. DOC also began exploring the development of an intervention center, where individuals could be revoked for 30–45 days for stabilization, receiving programming (e.g.,



cognitive skills, chemical dependency) while continuing employment.<sup>58</sup> Employee interviewees noted that this type of center has been successful in Pennsylvania, Michigan, and Oregon.

- Moving toward an incentive-based structure, in which individuals have the opportunity to move to a less intense level of supervision faster if they remain condition-compliant and are actively working to change behaviors.

One interviewee noted that efforts to reduce revocations have led to strengthened relationships with community partners. They also observed a shift in sentencing, with some judges being more open to community-based alternatives. They noted that this may be, in part, due to judges being invited to participate in conversations about turning the corner on revocations.

## Challenges

Commonly, employee interviewees discussed a lack of resources as a challenge in reducing revocations, including:

- Less available programming for individuals in Greater Minnesota. Additionally, while there are more programming options in the Twin Cities metro, there is more competition for available spaces. One interviewee stated that DOC is not sufficiently investing in resources and supports to positively change lives and reduce recidivism.
- A lack of programming in Greater Minnesota leading to more individuals receiving services in the Twin Cities metro while being supervised by an agent in Greater Minnesota. This puts a strain on internal resources in Greater Minnesota and has led to friction between Community Corrections Act (CCA) and DOC agents.
- A general lack of funding for resources both in prison facilities and in the community. Employee interviewees noted that while the goal of reducing the prison population has been met, individuals are not being supported well. One interviewee said it is critical to address root causes of issues and the sole focus should not be on reducing numbers. Another interviewee said it is difficult to move cultural shifts at the organization level forward when there is a lack of funding to support the resources that make the changes possible. One interviewee commented on the small number of individuals who actually receive programming in prison facilities, despite many more individuals needing services—leading to individuals being warehoused in facilities while losing their connections to the community and external supports. Employee interviewees questioned how they could reduce revocations while funding was not available to support programming. They noted that DOC has made the promise of more funding to support change multiple times, but felt that the money never comes through. These interviewees felt as though they were asked to do more with less, and to make progress without funding. This was mentioned as particularly challenging for managing individuals on ISR in the community.
- Housing or bed space for Level 3 sex offenders, because releasing individuals into homelessness is either not allowed or at least makes supervision more difficult.<sup>59</sup> Employee interviewees mentioned that these

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<sup>58</sup> These efforts have been halted or delayed due to lack of funding, according to interviewees.

<sup>59</sup> There was not consensus on whether individuals are allowed to be released as homeless.

individuals may face a continuance of their release date in order to find housing because it is so difficult. One interviewee noted that some cities do not allow Level 3 offenders to reside in their community.

Employee interviewees also spoke at length about policy changes around revocation hearings. While a few felt that DOC needed to continue to shift staff mentality toward serving people in the community, many felt that while the shift was positive overall, it had swung too far. These employee interviewees noted that revocations are occurring less often, even for new, more serious offenses such as assault or being in possession of or in the presence of a firearm. Importantly, employee interviewees said they were not suggesting increasing revocations for technical violations.<sup>60</sup> Employee interviewees shared the following concerns, which existed prior to COVID-19, but have been enhanced with the onset of the pandemic:

- Community members or supervising agents will get hurt.
- DOC has become too focused on keeping people in the community in order to reduce the population, regardless of the circumstances (i.e., number of violations, seriousness of violation).
- Supervising agents are losing authority and it is becoming increasingly difficult to enforce conditions of release.
- Individuals do not have motivation to change their behaviors because they know they will not be revoked or feel that they have “a few freebies” (employee interviewees noted some individuals have been restructured 8–12 times or more).

A few employee interviewees noted that DOC has made many of these policy decisions without consulting with counties. They described a missed opportunity to develop changes to the revocation process together and build a better partnership. They also said the formation of better partnerships could lead to better restructure planning and crisis planning (e.g., for events such as the pandemic).

Employee interviewees felt that the ability to revoke individuals for 60–90 days is necessary for additional planning when all other resources have been exhausted. One interviewee said that rather than revoking individuals to prison for stabilization, halfway houses should be used to address issues while keeping people in the community.

One interviewee observed that incentives for reduced levels of supervision (e.g., within ISR or from ISR to supervised release) have been less attractive to individuals because incarcerated people have trended toward being younger, having shorter sentences, and having shorter supervision periods. The interviewee said individuals must serve at least two months on each of the three phases of ISR but may only be sentenced to six months on supervision, so there is no incentive for them to complete a phase early. This interviewee also observed that older individuals who serve longer sentences are more open to change and did not want to serve another long term, which they felt contributed to reduced recidivism rates among those individuals. In contrast, this interviewee described younger individuals as committing more violent offenses, having more personal

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<sup>60</sup> Interviewees had different definitions of what constituted a technical violation. Some external interviewees considered it a technical violation if the action would not have resulted in incarceration for someone not under supervision. Some other interviewees, however, considered it not to be a technical violation if the action could have resulted in a new sentence, regardless of whether someone not under supervision could have been charged for the offense.

issues to address, less willing to change their behaviors, and more impulsive, which they noted may be because they have not yet reached full brain development (i.e., they are under 25 years of age).

Employee interviewees also discussed the MnSTARR tool, noting that individuals are not reassessed using this (or another) tool while they are on supervised release. They said this means an individual's risk score could be increasing or decreasing, but any change is unknown unless they are revoked. Employee interviewees felt that adjustment to supervision should be factored into an individual's risk score. While this is currently not the case, one interviewee mentioned that DOC is working to identify or create a community-based risk assessment tool. Employee interviewees also commented on potential flaws in the MnSTARR tool, including:

- It is only calibrated for the Minnesota prison population and not for a larger population, such as all people in Minnesota communities, so it provides a narrower measure of risk.
- It is not well understood by staff but is a large part of both release planning and revocation.

One interviewee also commented on possible issues with individuals applying to step down to a lower level of supervision within ISR. This interviewee said individuals seeking to move to the next phase of supervision are required to complete a form articulating how and why they have made changes. They speculated that some individuals claim to not want to fill out the form because it is too formal, but they actually have literacy issues that prevent them from completing it. The interviewee reported that staff do offer to help complete the form if a literacy issue is suspected, but that the process, while developed for accountability, is very cumbersome for both the individual and staff.

Finally, one interviewee discussed victim challenges around truth in sentencing given that some individuals are eligible for early release (i.e., sooner than serving two-thirds of their sentence). This interviewee noted that some programs, such as CIP, allow individuals to be released before they have served two-thirds of their sentence. They said CIP is an excellent program, but from a victim's perspective may not be reflective of truth in sentencing. They also noted that this has been a long-standing challenge of release programming more generally.

## Suggested improvements

Employee interviewees suggested improvements to both supervised release and reduced revocation:

- Investing in resources both in the community and in facilities, through state funding and through savings achieved by not imprisoning individuals.
  - Do not move DOC cost savings back into the general fund and instead invest them in resources that will better the lives of incarcerated individuals. Move to a funding model where the money follows the client, whether they are in a facility or in the community.
  - Develop check-in hubs in the community, which a few employees described as having been discussed but which from their perspective had never been fully implemented.<sup>61</sup>
  - Invest in community resources in Greater Minnesota.

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<sup>61</sup> While one interviewee discussed a pilot program in Ramsey County and another interviewee discussed hubs implemented in Minneapolis and St. Paul, other interviewees described these as not yet fully implemented.

- Invest in community resources that are stretched particularly thin, such as those for serious and pervasive mental illness.
- Invest in internal programming so that treatment can be expanded in facilities. Interviewees described programming in facilities as not always quick or easy to get into and with barriers to accessing it (e.g., staff perceptions or attitudes toward individuals). Individuals should be able to move through programming in facilities at the same pace they would in the community. Interviewees felt that individuals sit in prison for too long waiting for programming and it would be possible to reduce prison bed days by expanding programming. More programming would also be beneficial for individuals who are revoked, to ensure they still have access to resources while in prison.
- Ensure enough resources are allocated to counties for release planning and restructuring (i.e., case management). Underfunding internal resources may lead to individuals falling through the cracks and committing more-serious violations, which can negatively affect public support for community-based supervision.
- Reevaluating the severity levels of violations, as a few interviewees felt that some violations do not qualify for hearings but should, or because there are not enough resources to hold hearings for violations that should qualify. For example, an interviewee said that a repeat DWI offender who consumes alcohol on supervised release but has a low risk score could receive a restructure, rather than a hearing.
  - Alternatively, a few employee interviewees suggested reverting back to the supervision model in place five or more years ago, revoking individuals more often to increase compliance.<sup>62</sup>
- Creating a risk assessment tool that accounts for adjustment to supervision in the community.
- Removing barriers that limit early release from supervision.
  - Provide incentives for early release from supervision, based on participation in programming that reduces recidivism. That is, rather than considering only the length of time under supervision, consider progress made.
  - Similarly, do not wait to determine eligibility for supervised release until an individual has served two-thirds of their sentence. Instead, eligibility for supervised release could be based on interest<sup>63</sup> and participation in treatment, particularly for low-risk individuals. This would involve both statutory change and a philosophical shift from length of time to rehabilitation progress.
- Developing relationships between supervising agents and offenders prior to release to begin discussions around expectations, roles, and resources, and to build rapport and trust. During the pandemic, this work could begin virtually.
- Sharing more DOC data with counties and partners to help drive decision making.

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<sup>62</sup> This suggestion from employee interviewees was in direct tension with the perspectives of several external interviewees.

<sup>63</sup> These suggested improvements from employee interviewees would need to be carefully considered in the context of Minnesota's determinate sentencing structure, particularly the goal of reducing subjective decision-making that historically resulted in racial and socioeconomic disparities in sentence lengths.

## Concerns

A few employee interviewees expressed no concerns about using reduced revocation to manage the prison population. One noted that some staff buy into the philosophy shift and others do not. Another interviewee expressed interest in doing even more for justice-involved individuals.

In contrast, a few employee interviewees were concerned that reduced revocation was being used to manage the prison population at the cost of public safety. They noted that if a situation is dire enough that an individual needs to be revoked, that option should still be available to maintain public safety. Employee interviewees said DOC should not be so focused on reducing revocations that they are unwilling to return an individual to a facility, resulting in new crimes being committed while on supervision. They cautioned against focusing on politically driven goals at the expense of public safety. One interviewee also cautioned against making broad, sweeping decisions based on violations because some individuals will present with low reoffense risk scores but will commit more-serious violations (i.e., outliers). Another interviewee said that while it makes sense to provide supports such as chemical dependency, some individuals will not engage in programming or treatment while on supervision and will remain a public safety risk.

A few employee interviewees said there is always some level of risk involved in supervised release. One suggested that this could be better mitigated by providing transition services for more people.

## Risks to expansion

Employee interviewees were asked about risks related to expanding the use of reduced revocation. One interviewee said they had no concerns about expanding reduced revocation, noting that DOC should be doing more to positively affect people's lives and should discontinue warehousing.

One interviewee said there are not enough agents to supervise people in the community who require heavy supervision and there are not enough transition services. A few employee interviewees felt that risk of expansion was dependent on the offense committed and why individuals are in prison, or their MnSTARR score. For example, one interviewee felt that reduced revocation should not be expanded to include assaultive behavior because it could result in violent actions against community members or supervising agents. Another interviewee said individuals with higher MnSTARR scores are more likely to reoffend, which could create more problems in the community.

One interviewee discussed concerns with reliance on the MnSTARR because it is not well understood by staff, does not account for programming completed in the community or violations, and because it positively weights completion of chemical dependency treatment, even if an individual is not chemically dependent. This interviewee also noted that a flaw in the MnSTARR tool required DOC to change the threshold for female scores that result in a hearing. They noted that because it would take too long to fix the tool itself, the threshold was changed instead.

One interviewee commented on the importance of remaining invested in the rehabilitation of individuals, particularly those with a mental illness, no matter how difficult they may be to reach with current interventions. They also described clients in the community who struggle with mental health issues but are not willing to utilize community resources identified in their mental health plan or take their medications. They observed that some

individuals have stabilized in facilities once they received the treatment, medication, or other resources needed. However, they become so stable that they no longer meet the standard for mental health planning and do not reenter the community with a mental health plan. The interviewee said this perpetuates a cycle of failure in the community. They highlighted that supervising agents do not have enough specialized training to provide mental health supports to individuals, and they are not viewed by clients as being as objective as mental health professionals not associated with DOC.

### **Timely release and reduced revocation**

Employee interviewees were asked if staff actively pursue ways to get people approved for supervised release or ensure they stay in the community when possible, and provided mixed responses, including:

- Some work harder than others, including both inmates and staff.
- It is technically up to the individual to develop a release plan in partnership with their case worker, but staff work very hard to help secure resources, such as housing.
- Staff work hard to find placements for individuals, though people may be put on an “or less” disposition if housing is particularly difficult to find. Under this disposition, individuals have 90 days or less to identify housing (or other resources) while in a facility. Other times, hard-to-place individuals (e.g., sex offenders) will receive a continuance of release so that staff can continue working to find a placement prior to release (i.e., so individuals are not released homeless).
- There has been an effort to ensure a continuance of release does not happen because it could end in litigation if there is a perception that it was due to lack of effort.
- Staff involvement has improved, possibly because of litigation. Staff more consistently use time spent waiting for a hearing to assess individuals and discuss resources.
- Staff have a lot of responsibility for connecting individuals with resources. Additionally, some individuals (i.e., inmates) have become savvy about using available resources over the years.

One interviewee clarified that individuals are not approved but have the right to be released on their supervised release date, unless they have committed a violation or do not have an approved release plan. Another interviewee clarified that supervising agents do not have any impact on release decisions; rather, once an individual has served two-thirds of their sentence, they are eligible for supervised release.

### **Reduced revocation during COVID-19**

DOC data indicate 28 people were released under the formal sanction reduction program, which released people in state facilities who were serving time for technical violations.<sup>64</sup> More significantly, active caseload numbers for release revocation hearings decreased, following preexisting trends.

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<sup>64</sup> The specific process and criteria used for the sanction reduction program were not discussed in interviews for this research. Data come from “COVID-19 Updates.” Minnesota Department of Corrections, December 11, 2020. <https://mn.gov/doc/about/covid-19-updates/>.

## Successes

Employee interviewees mentioned reduced revocation successes realized during COVID-19, including:

- Releasing lower-risk individuals and returning only those who pose a risk to public safety (i.e., are at a high risk to reoffend) reduced people's risk of a poor outcome due to COVID-19 because it removed them from a congregate living setting.
- DOC screened more individuals for possible release than before through a sanction reduction process developed during the pandemic. This involves a review of individuals who have been returned to prison to determine who could be released early.
- Staff were challenged to stabilize individuals in the community because revocation was only an option for serious violations that pose an imminent threat to public safety. One interviewee speculated that this would become business as usual after the pandemic.
- Some treatment interventions were available virtually and some supervision occurred virtually.
- DOC set money aside to help individuals pay the first month or two of rent, as well as a damage deposit, in order to assist with housing.
- One interviewee said hearings were no longer held on one day of the week in their agency, which helped reduce the number of days individuals were in a facility waiting for a hearing. They noted that the sheriff assisted them in this effort, helping move people from jails more quickly.

## Challenges

Employee interviewees identified challenges with reduced revocation during the pandemic. Primarily, employee interviewees described a tension between public safety and public health, believing that DOC policies have shifted too far in the direction of managing individuals in the community. These interviewees felt that DOC has become focused on body management at the cost of changing behaviors and that public safety has taken a backseat to public health.

Many employee interviewees discussed the increased difficulty in obtaining a hearing since the onset of the pandemic, resulting in multiple restructures they feel undermine the authority of hearing officers and supervising agents to hold individuals accountable. Employee interviewees felt that some individuals continue to violate the conditions of their release because they know it is unlikely they will be returned to prison. Employee interviewees observed that more people are absconding and that some individuals have been restructured more than 12 times. They attributed violators ignoring supervising agents to the increase in restructures, which gives the appearance of less accountability. Employee interviewees noted that with the advent of the pandemic, individuals are being kept in the community even after committing more-serious offenses, such as weapons offenses, assault, and high-level drug offenses. One interviewee observed that some individuals have overdosed on drugs or been the victim of weapons offenses themselves while on release. This interviewee cited concerns that individuals are being returned to the community without a better plan and without a willingness to participate in the conditions of their release. Another interviewee commented on managing chemical dependency in the community. They noted that although addiction is complicated, they felt there must be a point at which individuals are brought back to prison if they continue to use in the community and not engage in treatment. This interviewee also felt that, in addition to public safety, there are concerns for the safety of supervising agents when individuals violate the conditions of their release multiple times, in more-serious ways.

A few employee interviewees observed that a significant number of people are being arrested because they have had no contact with their supervising agent or committed new crimes. For example, one interviewee observed an influx in arrests for new criminal behavior, noting that new criminal behavior used to account for approximately 20 percent of warrants but has increased to 40–50 percent of warrants. Another interviewee said approximately 30–40 percent of people on supervised release have gone no contact or committed new crimes.<sup>65</sup>

While discussing revocation challenges, one interviewee reflected on the effectiveness of revocation, noting that prison does not cure people and that programming (e.g., education, cognitive skills, therapy, treatment) is what is helpful. However, they also noted that more resources are needed to actually treat people in facilities and in the community. Another interviewee commented on the difficulty in obtaining chemical dependency directives, even when individuals violate such conditions multiple times.

In contrast to the above challenges, one interviewee felt that the shift in managing revocations is more reflective of individuals needing to shift away from a referee or accountability mindset. Another interviewee also discussed staff mindset, noting that such changes can take time and that supervising agents have been asked to make that shift quickly. They also observed that some individuals feel they are being asked to figure out how to manage people in the community, even when they are out of resources, which has led to staff feeling hopeless and helpless and burdened by a responsibility to find ways to keep the community safe.

A few employee interviewees commented on the challenges of safely supervising individuals who are released, whether in-person or virtually. In-person supervision concerns were related to viral transmission, while virtual supervision concerns were related to the accessibility of required technology, such as owning a cell phone or computer. Employee interviewees noted other challenges related to supervision during the pandemic, including:

- Difficulty developing rapport with individuals virtually
- Difficulty reading body language and other signals during virtual hearings
- Not having as good an understanding of what is happening in an individual's life, and therefore not being able to identify problems in advance to prevent or minimize harm
- Not conducting Breathalyzers (due to viral transmission) and only conducting uranalysis when there are clear and present behaviors

A few employee interviewees also noted other challenges:

- One interviewee said simply releasing individuals from congregate living in prison does not guarantee their safety in the community if they are not following COVID-19 safety measures.
- One interviewee observed that DOC is approving release plans even when housing locations are less than desirable (e.g., locations where an individual may be more likely to violate). Additionally, they mentioned that supervising agents have been asked to approve housing without full investigation.
- One interviewee discussed concerns related to supervision in early release programs. They noted that not all early release programs have resources to support good supervision prior to the transition to supervised release, which affects how well individuals adjust to supervised release.

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<sup>65</sup> These percentages reflect an interviewee's impression of recent trends, not a direct analysis of administrative data.



- One interviewee commented on the need for more flexibility in how individuals are supervised locally, putting more trust in counties to supervise people.

## Suggested improvements

A few employee interviewees felt that in order to improve reduced revocation or supervised release during the pandemic, DOC should continue managing people in the community. One interviewee reiterated that simply sending individuals back to prison does not change behaviors, and supervising agents will eventually have to work with them in the community after the revocation period is over. As a possible alternative, this interviewee suggested using local jail time as a sanction in lieu of prison. They noted that keeping individuals in a local jail allows supervising agents to maintain contact and continue providing supports, which is not possible when individuals are revoked to prison. Another interviewee suggested accepting an increased number of repeat offenders into CIP, which may involve expanding eligibility criteria (e.g., time left on sentence, time served in prison prior to participation).

Employee interviewees also discussed improvements they would recommend related to resources, including:

- Continuing funding support for housing to reduce revocations based on loss of housing (e.g., they appear to be absconding but are actually living in a tent because they do not have stable housing).
- Increase funding for supervision as caseloads will increase when courts reopen.
- Increase funding for training around evidence-based practices and case planning.

One interviewee also suggested releasing individuals who are engaged in facility-based programming to community-based programming, because programming in facilities has been halted due to the pandemic. They noted that this would not have an impact on a significant number of individuals, but it would be better than warehousing them or incarcerating them longer than needed due to halted programming.

## Concerns

Employee interviewees were asked about concerns related to using reduced revocation to manage the prison population during the pandemic. A few employee interviewees reiterated concern that individuals are learning they can violate the conditions of their release without consequence, which affects public safety. One interviewee also expressed concern that some release location options (e.g., halfway houses, inpatient treatment centers) will continue to be problematic during the pandemic, as they have experienced, or have the potential to experience outbreaks.

## Risks to expansion

When asked about risks to expanding the use of reduced revocation to more people during the pandemic, a few employee interviewees discussed the following:

- Expansion needs to be done in a way that builds a continuum of programming and policy options. It has been challenging to change practices quickly in response to the pandemic and it would have been better to have more time to line up interventions and supports.
- Resources (e.g., more supervising agents) are needed to support expansion.

## Impact on population and COVID-19 precautions

Employee interviewees were unsure of the impact of reduced revocation on COVID-19 safety measures in facilities, such as social distancing and crowding. They felt that practice changes did help decrease the prison population during the pandemic because a screening process was introduced to potentially release individuals who had been revoked, because the number of hearings has decreased, and because it has been more difficult to revoke individuals. However, they said it is difficult to determine how much of an impact reduced revocation has had because revocations began decreasing prior to COVID-19 with the shift away from technical violation revocations.

## Other impacts

Separately, one interviewee expressed hope that the pandemic would change DOC's approach to virtual supervision. This interviewee discussed a virtual supervision initiative that began in 2019 and said that while face-to-face and phone supervision has been DOC's model, many individuals on supervision, particularly younger individuals, use virtual platforms to connect. This inspired DOC to create a virtual platform (and accompanying policies) for case planning, intervention, and programming; however, this method of supervision was not widely accepted by staff. This interviewee expressed hopefulness that the pandemic, which has shifted work to virtual platforms, will help shape supervision in the future, to include virtual options as well as face-to-face options. They noted that this option could be especially helpful for individuals in Greater Minnesota.

## Release revocation in national context

MAD interviewed corrections officials from four states about their release policies and practices—including revocation of supervised release, and how those practices differed during the pandemic, if at all. In addition, MAD interviewed national experts and other stakeholders.

External interviews described widespread, nationwide efforts to reduce the revocation of supervised release, particularly for technical violations. "This is probably the most prevalent strategy we are hearing about around the system," said one interviewee. Another interviewee described reducing the revocation of supervised release as "low hanging fruit."

Interviewees described a variety of different actors playing a role in this shift, including correctional departments, governors, and legislatures. Historically, revocation of supervised release and of probation has been a major feeder of the prison population, with one expert estimating that for most states between one-third and two-thirds of prison intake has been release revocation. During fiscal year 2020, forty percent of Minnesota's state prison admissions were release revocation, eighty seven percent of which were without a new sentence.<sup>66</sup>

All of the states interviewed described efforts to keep people in the community after they have been released. For example, states described efforts to provide necessary programming, training, and medication with the goal of keeping individuals from returning to prison. Specific initiatives included:

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<sup>66</sup> *Adult Prison Population Summary*. Minnesota Department of Corrections, July 1, 2020. [https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%207-1-2020\\_tcm1089-441100.pdf](https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%207-1-2020_tcm1089-441100.pdf).

- Michigan had a similar sanction reduction program to Minnesota’s. If people were serving time in prison on a technical violation, they were actively considered for release. Michigan also looked at those back in prison for other violations who had completed their required programming before their anticipated release. If, for example, they had been sent back for a year but at eight months had already completed their program, their parole would be accelerated. Michigan community caseworkers were said to be sending people back to prison only in the most significant cases, where public safety was the most significant factor.
- The rate of revocation dropped in Iowa. If correctional staff determined that offenders were harming people, they were sent back to prison. If the underlying issue was connected to other issues, an offender was given alternative sanctions that kept them in the community.
- The system in Oregon was designed with the intent to not bring people back to prison. Recently, about 20 percent of intake has been through revocations. Most sanctions have been in the community setting, and revocations into custody of less than a year have been served locally.

The National Academies of Sciences, Engineering, and Medicine committee recommended that departments should reduce the public health impact of community supervision during the pandemic by “administratively eliminating or greatly limiting revocation for technical violations, replacing in-person office visits wherever possible with noncontact means of collecting supervision reports, and removing conditions on parole or probation that require an individual to apply for or obtain work.”<sup>67</sup>

## Challenges

As with other types of release, the availability of housing and programming in the community are challenges for individuals who are on supervised release. Access to employment and medical care can also be barriers. State officials felt that if the pieces are not in place to set up an inmate for success upon release, the chances of them having their release revoked increase. One external interviewee said that supervision can be revoked because of a perception that more programming and services are provided in prisons than would be available to someone in the community. This interviewee noted the importance of both increasing resources and programming available in the community and of ensuring that decisionmakers have accurate information about the actual services available both in prisons and in community settings. Another interviewee said that the logistical and financial expectations of supervised release are a substantial burden.

Behavior that creates public safety concerns was also a challenge discussed by state officials. While several state officials and employee interviewees raised public safety concerns about reducing the revocation of supervised release, other interviewees emphasized that a large body of research exists to understand the likelihood of recidivism, and that most reincarceration occurs as a result of technical violations to supervision rather than a new criminal offense. The National Academies committee studying correctional facility responses to COVID-19 concluded that “research on recidivism suggests that correctional authorities could decarcerate in a manner that

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<sup>67</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020. <https://doi.org/10.17226/25945>.

would pose relatively little risk to public safety.”<sup>68</sup> Similarly, Franco-Paredes and Ghandnoosh argue in an article in *The Lancet Infectious Diseases* that “releasing people from correctional facilities as a pandemic-era public health intervention is safe and can support both public safety and community rebuilding” and that “properly managed, correctional depopulation will prevent considerable COVID-19 morbidity and mortality and reduce prevailing socioeconomic and health inequities.”<sup>69</sup>

One external interviewee noted that there is fundamental disagreement among different stakeholders about the role or importance of the threat of reincarceration as a deterrent to violating the conditions of their release, with some viewing it as essential and others viewing it as completely unnecessary. One external interviewee felt that people may feel that they have a “free pass” if there is no threat of being put back in prison. Meanwhile, another interviewee felt that there should be no reincarceration for actions that are not independent crimes and noted that several states have stopped revoking release for technical violations entirely.

A few external interviewees described national efforts to reduce revocations as insufficiently ambitious. One interviewee noted that despite substantial work in this area, tens of thousands of people are returned to state prisons every year for technical violations of their supervision, and suggested that there should be repercussions other than incarceration for activity that would not be a crime for other people in the population. This interviewee also suggested a greater focus on increasing the accessibility of conditions of release, for example, reducing supervision fees and fines, ensuring that people have access to transportation to get to their check in meetings, and embracing phone and video supervision meetings. External interviewees did praise efforts, such as those in Minnesota, to reduce the number of conditions of release. One interviewee noted that previously, conditions of release could be, in their view, internally contradictory or simply impossible to abide by. A few interviewees also highlighted as a promising practice the use of greater structure in guiding officer discretion on what types of sanctions to impose, such as the pre-hearing worksheet used in Minnesota.

The several waves of reform to community supervision in Minnesota and nationally have also resulted in pushback from other actors in the criminal justice system. One interviewee said, for instance, that the increasing use of informal sanctions conferences has led some judges to feel that their discretion has been removed from the process. Another external interviewee noted that it can be challenging for other actors in the criminal justice system when data on releases is not shared in a timely manner with local jurisdictions.

## COVID-19 reduced revocation

All four states interviewed described their goal as keeping individuals on any type of supervised release out in the community. Where there are considerable public safety concerns, however, correctional officials said that individuals are still being sent back to prison. Corrections officials in other states talked about working harder with individuals who may be relapsing into substance use or abuse, or who may have stopped taking medications, to keep them out of prison. These interviewees also talked about creative use of transitional or

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<sup>68</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020. <https://doi.org/10.17226/25945>.

<sup>69</sup> Franco-Paredes, Carlos, and Nazgol Ghandnoosh. “Decarceration and Community Re-Entry in the COVID-19 Era.” *The Lancet Infectious Diseases*, September 29, 2020. [https://doi.org/10.1016/S1473-3099\(20\)30730-1](https://doi.org/10.1016/S1473-3099(20)30730-1).

provisional housing plans so inmates could be released. In Michigan, individuals who had their release revoked and had completed the programming that was required under their sentence before their term was up were moved through the release process faster.

# Other themes

## Role of reduced intake on population levels

Both in Minnesota and nationally, prison population levels during the pandemic have been affected more by a reduction in intake than an increase in release.

### Quantifying Minnesota's decline in intake

Data from DOC shows that average weekly prisoner intake in May through September 2020 was about half of 2019 levels, resulting in more than 1,000 fewer prisoners in DOC facilities than would otherwise be expected.<sup>70</sup>

Looking more granularly at changes to prisoner intake, DOC saw a 45 percent reduction in new commits and a 72 percent reduction in intake from revocation of supervised release in May and June 2020 compared with similar weeks in 2019, and these trends continued to a lesser extent through November 2020.<sup>71</sup> Over the course of 2020 as a whole, DOC is on track to record more than a one third decline in new commits and close to half the number of admissions for release revocation.<sup>72</sup> These trends are the primary driver of DOC's overall reduction in prison population levels.

#### Change in admissions in 2020 compared to 2019

	May-June 2019 <sup>73</sup>	May-June 2020 <sup>74</sup>	July-Nov. 2019	July-Nov. 2020	Full Year 2019	Full Year 2020 (Proj.) <sup>75</sup>
New commits	337	185 (-45%)	1,781	1,030 (-42%)	4,315	2,736 (-37%)
Release revocation	284	80 (-72%)	1,202	607 (-50%)	2,822	1,546 (-45%)

Meanwhile, DOC's COVID-19-specific release programs resulted in the release of 220 prisoners through June 2020 and a total of 349 by December 2020, as recorded in DOC data.<sup>76</sup> COVID-19-specific releases in DOC data

<sup>70</sup> MAD analysis of data provided by DOC.

<sup>71</sup> MAD analysis of weekly data for six weeks in the May-June period of 2019 compared to weekly data for six weeks in the May-June period of 2020.

<sup>72</sup> Although there have been many fewer revocations of release, the share of revocations without a new sentence has largely been unchanged: 88% in July-November 2019 compared to 85% in July-November 2020, and 87% in 2019 as a whole compared to a projected 84% in 2020 as a whole.

<sup>73</sup> Weekly data for six weeks in the May-June period of 2019.

<sup>74</sup> Weekly data for six weeks in the May-June period of 2020.

<sup>75</sup> Based on data from January through November 2020, projected out by MAD through December 2020.

<sup>76</sup> "COVID-19 Updates." Minnesota Department of Corrections, December 11, 2020.

<https://mn.gov/doc/about/covid-19-updates/>.

coincided with a decline in other release types, however. A large increase in medical release and a moderate increase in work release were offset by declines in standard supervised release and intensive supervised release. As a result, on an absolute basis DOC may end 2020 with fewer releases to supervision and fewer discharges from prison than in 2019 and a relatively stable level of release and discharge relative to population levels.<sup>77</sup>

**Change in releases in 2020 compared to 2019<sup>78</sup>**

	July-November 2019	July-November 2020	Full Year 2019	Full Year 2020 (Proj.) <sup>79</sup>
Standard Supervised Release	1,464	925 (-37%)	3,487	2,751 (-21%)
Intensive Supervised Release	615	436 (-29%)	1,379	1,186 (-14%)
Conditional Medical Release (Traditional and COVID-19)	2	83 (+4,050%)	6	180 (+2,900%)
Work Release (Traditional and COVID-19)	196	236 (+20%)	456	586 (+28%)
Challenge Incarceration Program	164	171 (+4%)	412	415 (+1%)
Other (CRP, Parole)	4	10 (+150%)	10	21 (+107%)
<b>Total releases to supervision</b>	<b>2,445</b>	<b>1,861 (-24%)</b>	<b>5,750</b>	<b>5,138 (-11%)</b>
Prison population (March)	-	-	9,099	8,857
Releases relative to prison population <sup>80</sup>	-	-	63 per 100	58 per 100

**Change in discharges from prison in 2020 compared to 2019<sup>81</sup>**

	July-November 2019	July-November 2020	Full Year 2019	Full Year 2020 (Proj.) <sup>82</sup>
Expiration	319	132 (-59%)	770	444 (-42%)
Court Order	6	17 (+183%)	16	35 (+118%)
Death	4	8 (+100%)	11	14 (+29%)
Released	61	30 (-51%)	123	99 (-19%)

<sup>77</sup> MAD analysis of DOC data. These trends may be influenced by a variety of factors, including the overall decline in prison population levels as well as shifts in the types and lengths of sentences being served.

<sup>78</sup> Based on DOC data provided to OBFC. Does not include institution transfers in or institution transfers out.

<sup>79</sup> Based on data from January through November 2020, projected out by MAD through December 2020.

<sup>80</sup> Total releases to supervision relative to prison population reported by DOC in March of each year. This is not a direct measure of the share of inmates who are released, because this counts all releases over the course of the year but only counts inmates present in March in the population.

<sup>81</sup> Based on DOC data provided to OBFC. Does not include institution transfers in or institution transfers out.

<sup>82</sup> Based on data from January through November 2020, projected out by MAD through December 2020.

Total discharges	390	187 (-52%)	920	591 (-36%)
Prison population (March)	-	-	9,099	8,857
Discharges relative to prison population <sup>83</sup>	-	-	10 per 100	7 per 100

## Understanding changes in context

Taken together, actions to reduce prison intake have had the single largest impact on prison population levels in Minnesota, and external interviewees saw this as consistent with national trends. “The reductions in incarceration that have occurred,” the National Academies committee wrote, “appear to have resulted mainly from declines in arrests, jail bookings, and prisons admissions because of temporary closures of state and local courts rather than proactive efforts to decarcerate prisons and jails.”<sup>84</sup> Indeed, external interviewees noted that these shifts are the result of actions by multiple actors at different stages of the pipeline, including declines in arrests by police officers, sheriffs, and other peace officers; charging decisions by prosecutors; sentencing and release determinations by courts; and policies set by correctional facilities at both the county and state levels. During the pandemic, these actors have made decisions designed to reduce the population of county jails<sup>85</sup> and state prisons.

Among state correctional agencies specifically, relaxing criteria for release revocation—a strategy focused on reducing intake and one of Minnesota’s core strategies—was the single most common population management strategy among states surveyed.<sup>86</sup> As discussed above, release revocation was also the category of DOC prisoner intake with the most significant decline in Minnesota during the pandemic.

Looking across states, external interviewees also discussed changes at other levels of the criminal justice system:

- **Arrest and charging level:** Prison officials from outside Minnesota noted that in the early stages of the pandemic, with fewer people leaving their homes, crime patterns changed. Several other external interviewees noted different patterns and practices for law enforcement around which crimes would lead to arrest and among prosecutors of which crimes would lead to criminal charges.

<sup>83</sup> Total discharges relative to prison population reported by DOC in March of each year. This is not a direct measure of the share of inmates who are discharged, because this counts all discharges over the course of the year but only counts inmates present in March in the population.

<sup>84</sup> National Academies of Sciences, Engineering, and Medicine. *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: National Academies Press, 2020.

<https://doi.org/10.17226/25945>.

<sup>85</sup> As of November 29, 2020, in data provided to OBFC the Minnesota Department of Corrections and Minnesota Department of Health reported 410 cases of COVID-19 in local jail inmates along with an additional 377 cases among jail staff and visitors. External interviewees said that reducing state prison population levels would be unhelpful from a public health standpoint to the extent that inmates were merely shifted from state prisons to county jails because county jails have higher rates of turnover and other exposure risks.

<sup>86</sup> MAD analysis of unpublished data from the Council of State Governments Justice Center and the Association of Paroling Authorities International provided by interviewee.



- **County jail level of intake:** County jails are taking their own actions to reduce their populations during the pandemic. In addition, some state prisons have suspended admissions from county jails, although a few external interviewees felt strongly that remaining in a county jail was a worse outcome for incarcerated people than being in a state prison.
- **Court level of intake:** External interviewees noted that some courts are not meeting during the pandemic, and some judges are altering sentences or where sentences are served. In Minnesota and several other states, it is still not possible to impanel a jury, so those trials are not taking place. Bench trials may be happening, however. There was a period where there were no trials happening at all in many places around the country.

One external interviewee noted that these different elements are all interconnected—that, for instance, a lack of jury trials leads to longer stays in county jails, which is reducing jail capacity and in turn reducing the number of arrests.

The corrections officials interviewed outside of Minnesota also all described changes in the way new inmates were brought to state prisons from county jails. Before the pandemic, in most cases, sheriffs would bring new inmates to a prison on their own schedule, without having to notify prison officials. Now, however, prisons are requiring appointments, or at least advance notice of when custody transfer will happen. Prison officials outside Minnesota noted testing and/or quarantining requirements for new inmates, as well. In Pennsylvania, officials took that one step further and used their not-yet-decommissioned prison as a single facility for intake into the system. This allowed for quarantining those coming from county jails. There was enough space in that facility that cohorts with positive COVID-19 cases or potential exposure could be easily separated.

## Other approaches to release

Other states have used different approaches to COVID-19 population management rooted in their own distinct state laws and policies. The Council of State Governments Justice Center and Association of Paroling Authorities International surveyed state paroling authorities to determine what approaches were the most common measures used to reduce prison populations in 2020. Strategies used by Minnesota that were similar to those used by other states surveyed included relaxing criteria for revocations (47 percent of states surveyed), accelerated reviews of those previously denied parole (44 percent), compassionate/medical releases (38 percent), and limiting time of revocations (24 percent).<sup>87</sup>

Additional strategies used by other states, as discussed by external interviewees and as described in the survey,<sup>88</sup> included:

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<sup>87</sup> Unpublished survey data from the Council of State Governments Justice Center and the Association of Paroling Authorities International provided by interviewee. 47 states received the survey and 31 state paroling authorities responded along with a few non-state authorities (e.g., Canada).

<sup>88</sup> Council of State Governments Justice Center and the Association of Paroling Authorities International.

- **Restrictions on admission to state prison:** Thirty-five percent of states surveyed reported imposing restrictions on admission to state facilities.<sup>89</sup>
- **Furlough:** Twenty-four percent of states reported increasing the use of furloughs. In Minnesota, furloughs are not actively used and are limited in statute to up to three five-day periods in a year,<sup>90</sup> but external interviewees described more expansive furlough authority in other states. In some states, governors had used furloughs as a tool to help get prison populations down during the pandemic for individuals who would be eligible for parole in the near future. Other states used furloughs for medically vulnerable individuals. Some states required these individuals be in prison for nonperson crimes to be eligible.
- **More-aggressive use of parole and good time policies:** Twenty-one percent of states reported using good time or similar credits within the structure of their correctional systems. While Minnesota has a determinate sentencing system, other states described the option to reduce sentences by a certain percentage administratively for good behavior or performance in programs. However, states interviewed described these policies as an incentive to get inmates to complete their programming and avoid situations or behaviors that would lead to discipline, not as a population management tool. Interviewees described efforts to “ramp up” paroling activities during the pandemic, such as reviewing individual cases to identify potential community programs or other opportunities that would enable earlier release.
- **Commutations and pardons:** Fifteen percent of states reported an increase in use of clemency such as commutations or pardons in response to the pandemic. Some states described turning to commutations and pardons because of the limitations and restrictions on other release programs. One external interviewee described clemency as a “huge lever” because it “bypasses a lot of bureaucracy” and can lead to a relatively quick release that does not involve prosecutors, courts, or parole boards, although noted that different states have different practices around the use of commutations and pardons. This interviewee described clemency as a valuable tool to achieve goals such as releasing people who are medically vulnerable or releasing people who are near the end of their sentences.
- **Programming needed for release:** Twelve percent of states surveyed reported awarding credit for program participation even for people who were unable to attend programming during the pandemic. Some states interviewed separately described an intense focus on making sure those about to be released, or those already in the community on supervised release, have the programming and supports they need to be successful outside prison, with case workers and others working to find a stable housing situation and ensuring inmates have the mental health and/or medical care they need to stay out of prison after they are released.
- **Emergency powers of warden to relocate prisoners:** Only 6 percent of states surveyed reported using these powers. One external interviewee said that while several states have laws that give the warden of a prison the authority to relocate people in an emergency, these are rarely used. This interviewee also described overcrowding release triggers in statute or in a legal settlement that can cap the population of facilities.

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<sup>89</sup> While restricting admissions was not a population management strategy described by employee interviewees, one external interviewee said that, in this person’s view, DOC appears to not be processing people as quickly as they had been in the past.

<sup>90</sup> Minnesota Statutes 244.07: <https://www.revisor.mn.gov/statutes/cite/244.07>.

Beyond using additional authority, several interviewees also discussed the importance, in their view, of using existing authority more aggressively. Looking nationally, one external interviewee described most states as failing to move the needle. Another interviewee described DOC policies and practices specifically as interpreting eligibility more narrowly than required under Minnesota statutes. While employee interviewees generally described Minnesota's approach to reducing population as effective or perhaps even overly aggressive, external interviewees generally described the response as insufficiently aggressive.

## Existing efforts to reduce population levels

Like Minnesota, several states interviewed had already been working to lower their prison populations for some time before the COVID-19 pandemic. As a result, efforts to reduce population during the pandemic took place alongside existing efforts to reduce prison population. States including Michigan and Iowa described using data and evidence-based approaches to make sure inmates were able to take part in the programming they needed at the right time, to make sure they were meeting requirements necessary for release. These states also have centralized programming decisions to shorten waiting lists and introduced approaches such as cognitive behavioral programming.

In Pennsylvania, the Justice Reinvestment Initiative started their efforts to reduce corrections spending in 2011.<sup>91</sup> The program reshaped incarceration for low-level and drug offenders. By 2020, officials described the prison population in the state dropping so much that they were able to close three prisons and had started the process on a fourth. Some states have been working to provide more supportive services for parolees to help them be successful and stay out of prison. "We're working aggressively to say yes instead of no," said one prison official outside Minnesota.

## Broader reflections

In an interview with Commissioner Paul Schnell, broader implications of the medical release, work release, and reduced revocation of supervised release initiatives were discussed. Some of these themes were also noted in interviews with other employees and have been highlighted throughout the report.

- COVID-19 exacerbated existing capacity issues in the community (e.g., available employment, treatment programming). It also revealed dynamics within facilities. For example, the challenges in achieving complete compliance on COVID-19 safety measures, such as mask wearing, in facilities the size of small towns that include inmates with a variety of opinions on the measures.
- Changes in policy or statute, even if temporary, can elicit negative public feedback, create negative perceptions, or decrease public support for initiatives (e.g., the perception that CMR altered sentencing, rather than custody status; handling of predatory sex offenders who may be at risk for COVID-19; the 90-day early work release period being perceived as an initiative that would release a significant number of inmates).

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<sup>91</sup> "JRI in Pennsylvania (2011-2012)." Pennsylvania Commission on Crime and Delinquency, n.d. [https://www.pccd.pa.gov/Pages/JRI%20Subpages/JRI-in-Pennsylvania-\(2011-2012\).aspx](https://www.pccd.pa.gov/Pages/JRI%20Subpages/JRI-in-Pennsylvania-(2011-2012).aspx).

- It is challenging to develop good policy (e.g., lowering returns to prison) during a crisis, which may need to focus more on quick population reduction than other priorities.
- In the long term, DOC needs to develop effective, smart criminal justice reforms, which could be damaged by a perception that DOC was being reckless with early release, even within the context of a public health crisis. The likelihood of affecting the reform agenda would decrease if something went seriously wrong with early release due to COVID-19. These factors need to be balanced when making shorter-term decisions.
- DOC must ensure that individual needs are being met as the prison population is reduced—it cannot focus solely on the reduction of facility numbers. If needs are not met, individuals will be more likely to reoffend in the community and end up back in the criminal justice system. Policy must focus not only on numbers, but on improving people’s lives.