

JUNE 2021

# Federal PROBATION

*a journal of correctional  
philosophy and practice*

**SPECIAL ISSUE ON: THE COVID-19 PANDEMIC AND FEDERAL PROBATION  
AND PRETRIAL SERVICES: REFLECTING ON A YEAR OF UPHEAVAL**

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*By Stephanie Denton, Melinda Torres Felix, Monica Mannino, LaToya Myles*

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## **PUBLISHED BY**

*The Administrative Office of the U.S. Courts*

**Judge Roslynn R. Mauskopf**, *Director*

**John J. Fitzgerald**, *Chief*

*Probation and Pretrial Services Office*

*Federal Probation* ISSN 0014-9128 is dedicated to informing its readers about current thought, research, and practice in criminal justice, community supervision, and corrections. The journal welcomes the contributions of persons who work with or study defendants and offenders and invites authors to submit articles describing experience or significant findings regarding the prevention and control of crime and delinquency. A style sheet is available from the editor.

*Federal Probation* is published three times yearly—in June, September, and December. Permission to quote is granted on the condition that appropriate credit is given the author and *Federal Probation*. For information about reprinting articles, please contact the editor.

Subscriptions to *Federal Probation* are available from the Superintendent of Documents of the Government Printing Office at an annual rate of \$16.50 (\$22.40 foreign). Please see the subscription order form on the last page of this issue for more information.

*Federal Probation* can also be accessed online at no charge at [www.uscourts.gov](http://www.uscourts.gov).

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The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and reviews is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts,



# Introduction to Special Issue on the COVID-19 Pandemic and Federal Probation and Pretrial Services: Reflecting on a Year of Upheaval

Scott W. VanBenschoten  
 Chief, National Program Development Division  
 Probation and Pretrial Services Office  
 Administrative Office of the U.S. Courts  
 and Guest Editor

**THE WORD “UNPRECEDENTED”** is used far too often as hyperbole. In fact, it is used so often that it has lost the power of its meaning. The Merriam-Webster dictionary defines “unprecedented” to mean “having no precedent...unexampled.” The impact of COVID-19 on Federal Probation and Pretrial Services during 2020 squarely lands on that definition.

Although the 1919 flu pandemic gave some sense of context to the COVID-19 situation, it offered few direct lessons for our system, since Federal Probation and Pretrial Services had not yet been established. (The Federal Probation Act was passed in 1925, and the first federal probation officer was appointed in 1927, eight years after the flu pandemic.) The system had no relevant experience to reach back and draw from in formulating how to react during this tumultuous time. This special edition of *Federal Probation* is meant to document what happened during the initial stages of the COVID-19 pandemic in an effort to explain to contemporary readers what was occurring at the policy level, at the leadership level, and in the trenches of the work of the federal probation and pretrial services system. We also expect this issue of *Federal Probation* to become an historical document for future generations of probation and pretrial services leaders. Perhaps, if they are faced with a

similar situation, they will find here a context for our system’s responses to the COVID-19 pandemic and some ideas on how to respond to their own challenging times.

This special issue opens with “A National Response to a Global Pandemic in a Decentralized System,” John Fitzgerald’s description of the national response to the pandemic. Fitzgerald establishes the big picture from the vantage point of the chief of the Probation and Pretrial Services Office at the Administrative Office of the U.S. Courts.

The second article attempts to portray the extreme difficulty of leading in a time of rapidly changing circumstances. “Leadership Perspective from the Field: Key Districts Initially Affected by the COVID-19 Pandemic,” by Christina Oscanoa and Vanessa Starr, used interviews to understand the thinking and decision-making process of chiefs and staff that served in the initial “hotspots” of the COVID-19 pandemic.

Next, we turn to “Survey of U.S. Federal Probation and Pretrial Services Agencies’ Adaptations to COVID-19,” in which Thomas Cohen and Vanessa Starr apply qualitative techniques to better understand the realities of service delivery and the general work of officers during this time frame. In a decentralized system, responses by offices varied. This article identifies and explains both the

similarities and differences of service delivery that occurred across the nation.

Then follow a series of articles examining specific areas of our work and how these were adapted during the pandemic: “Pretrial Work in a COVID-19 Environment” (Hicks, Valdez Hoffer, & Cohen), “Presentence Work in a COVID-19 Environment” (Whaley, Snyder, Kent, Merolla, & Cohen), “Risk, Need, and Responsivity Supervision in the Pandemic” (Hronick, Vernier-Gelven, & Starr), “First Step Act, COVID-19, and the Future of Location Monitoring” (Whetzel, Levinsohn, Cornish, & Cohen), “Considerations for Supervision of Persons Charged with or Convicted of Sex Offenses During the COVID-19 Pandemic” (Spidell, LaFratta, Merolla, & Starr), and “The Impact of COVID-19 on Testing and Treatment” (Mangione & Cohen). The authors of these articles are point-people at the Probation and Pretrial Services Office for each of the respective topic areas or officers in districts that specialize in the area for which they wrote. Additionally, many of them were supported by Thomas Cohen, who provided them with data.

The Federal Probation and Pretrial Services System operates a training academy in Charleston, SC. Training plays a significant role in improving officer safety and the quality of interactions with the people involved in

the criminal justice system. “Training During a Pandemic: The Federal Probation and Pretrial Academy’s Journey into a Virtual World” (Denton, Benefield, Hudson, Rios & Unterreiner) examines how training was adapted to meet the needs of officers during a time of social separation.

The last article, and maybe the most

significant, examines the issue of staff wellness during an incredibly stressful and isolated time. “Innovations from the U.S. Probation and Pretrial Services Wellness Committee During the 2020 Pandemic” (Denton, Torres Felix, Mannino, & Myles) explores how the committee attempted to meet the needs of staff during this challenging period.

Although 2020 was unprecedented, this special edition of *Federal Probation* clearly articulates the extraordinary efforts, versatility, and success of all staff as they met the challenge to continue serving the courts, the people involved in the criminal justice system, and the community during a pandemic.

# A National Response to a Global Pandemic in a Decentralized System

John J. Fitzgerald

Chief, Probation and Pretrial Services Office  
Administrative Office of the U.S. Courts

**THE COVID-19 PANDEMIC** challenged many of the institutions that society relies on, including the criminal justice system. Changes had to be made at every stage, from hearings and trials to pretrial release and detention, sentencing, incarceration, and post-conviction supervision. The federal Judiciary, and the federal probation and pretrial services system in particular, relied on its unique governance structure, talented leaders, and commitment to the core mission to adapt operations to keep safe those being investigated and supervised, as well as staff, while continuing to keep the wheels of justice moving.

This article will outline some of the measures taken by the federal probation and pretrial services system in response to the pandemic. It will discuss the federal Judiciary's unique governance structure and will focus on the steps taken at the national level to help districts navigate through this unprecedented period of operations. In particular, the article will discuss the steps taken to secure resources, modify statutes, and collaborate with other national entities to address pandemic-related needs. Finally, it will conclude with an assessment of how lessons learned during the pandemic may shape the future of the system.

## Local and National Governance

The federal probation and pretrial services system consists of 93 probation offices and 17 separate pretrial services offices (as of May 2021). Critical decisions regarding operations are shared among each district and the national Judiciary entities, including the Judicial Conference of the United States

(Conference) and the Administrative Office of the U.S. Courts (AO).

The specific duties of pretrial services are generally spelled out in 18 U.S.C. § 3154, and include, among other things, preparing pretrial services reports, supervising defendants released pending trial or sentencing, and contracting for treatment and monitoring services for defendants who are released.

The duties of probation officers are primarily listed in 18 U.S.C. § 3603, and include instructing a person on supervision about the conditions specified by the sentencing court; keeping informed, to the degree required by the conditions specified by the sentencing court, about the conduct and condition of a person under supervision, and using all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under supervision; and to bring about improvements in the conduct and condition of the person under supervision. Additionally, under 18 U.S.C. § 3552, probation officers are tasked with preparing presentence reports for the courts.

While the general policies and procedures for the work of probation and pretrial services officers are included in the *Guide to Judiciary Policy* and various procedural manuals issued by the AO, each district has wide latitude in developing local policies and procedures governing how the work is performed.

The Director of the AO is charged with, among other things:

- Investigating the work of probation and pretrial services offices,

- Formulating general rules for the proper conduct of the probation and pretrial services work, and
- Endeavoring by all suitable means to promote the efficient administration of the probation and pretrial services system and the enforcement of the probation and pretrial services laws in all United States courts.<sup>1</sup>

Additionally, the Director, under the supervision of the Conference, is charged with developing budget requests and disbursing funds.<sup>2</sup> In ordinary times, this shared governance ensures that (1) annual budget requests reflect the branch's priorities based on Judicial Conference policies and (2) key decisions on staffing and budget utilization are made at the local level, where chief probation and pretrial services officers and chief district judges are in the best position to assess needs and deploy resources.

## Supplemental Funding

In the early days of the pandemic, AO staff, on behalf of the probation and pretrial services system, performed a needs analysis to determine what additional costs might be incurred. It was clear from the outset that there would be disruptions to the delivery of treatment, testing, and monitoring services. It was estimated that there would be a shift in treatment modalities—moving from in-person, group sessions to more individual, remote (telemedicine) sessions. Additionally, it was projected that drug testing practices would change,

<sup>1</sup> See e.g., 18 U.S.C. § 3154 and § 3672.

<sup>2</sup> 28 U.S.C. §§ 604-605.

relying less on urinalysis and transitioning to more costly methods like transdermal patches. Finally, it was estimated that the pandemic would result in an increase in the number of people placed on home confinement with location monitoring.

To prepare for these changes in treatment, testing, and monitoring, the AO submitted a request to Congress for supplemental funding. The request was limited to treatment, testing, and monitoring services related to the supervision function, and did not address other pandemic-related requirements, such as personal protective equipment, additional IT equipment and services, or modifications to workspaces.

On March 27, 2020, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act)<sup>3</sup> was enacted. While the bulk of this legislation was directed at providing emergency assistance to state and local governments, individuals, and employers, Congress appropriated \$7.5 million for supplemental needs of the Judiciary, including \$5 million for the needs of probation and pretrial services offices. The AO’s ability to quickly assess the system’s needs allowed the Judiciary to submit this request in time for Congress’s expedited passage of the CARES Act. More importantly, this additional funding assured chief probation and pretrial services officers across the country that funding would be there to cover any pandemic-related adjustments needed in their treatment, testing, and monitoring programs.

## Legislative Fixes

From the start of the pandemic, it was clear that prisoners and detainees were among the most vulnerable populations in society. The courts and the Federal Bureau of Prisons (BOP) were immediately confronted with the challenge of balancing the safety of the inmates and the need to ensure the execution of the sentence. There quickly emerged several strategies to move lower risk inmates out of BOP facilities and back into the community, either through a reduction in sentence or placement on home confinement.

Under the First Step Act of 2018 (FSA),<sup>4</sup> the courts were authorized under 18 U.S.C. § 3582(c)(1)(A) to reduce the term of imprisonment imposed on an inmate who “fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a

motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Before the FSA, the only way an inmate could receive a reduction in sentence was if the BOP submitted a petition to the court. But post-FSA, inmates had the opportunity to directly petition the court to reduce the term of imprisonment.

Additionally, the BOP relied on two existing authorities—one expanded under the CARES Act—to further reduce the size of the federal prison population. First, the BOP took advantage of its authority to place inmates into prerelease home confinement under 18 U.S.C. § 3624. Ordinarily, such placements would be limited to six months or 10 percent of the sentence, whichever was higher. However, under the CARES Act, the Attorney General was authorized to expand the use of home confinement. Accordingly, on March 26, 2020, the Attorney General issued guidance to the Director of the BOP, ordering that low-risk inmates be screened and placed on home confinement, notwithstanding the limitations in § 3624.<sup>5</sup>

The second mechanism used by the BOP was the elderly home confinement program, which was originally authorized under the Second Chance Act,<sup>6</sup> and expanded under the FSA. This program allows the BOP to place certain inmates who are age 60 or older, and who have served two-thirds of their sentence of imprisonment, to complete the remainder of their prison sentence on home confinement.

While the expanded use of home confinement and compassionate release worked in reducing the number of inmates housed in BOP facilities, these remedies raised new issues and implementation challenges that would require attention. As a result, the Judicial Conference and its Executive Committee, upon recommendations of the Criminal Law Committee and the Defender Services Committee, set out to review the patchwork of statutes and make recommendations to Congress on how to improve their operation. The recommendations included:

### *Clarifying and Harmonizing the*

<sup>5</sup> Memorandum from Attorney General William Barr to the Director of the Federal Bureau of Prisons, “Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic,” March 26, 2020, available at: [https://www.bop.gov/coronavirus/docs/bop\\_memo\\_home\\_confinement.pdf](https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf).

<sup>6</sup> Pub. L. 110-199.

***Obligation of Probation Officers to Assist Inmates on Prerelease Custody:*** Several statutory provisions<sup>7</sup> direct probation officers to assist in the supervision of inmates placed on prerelease custody in the community; however, these provisions are inconsistent and result in confusion about expectations. The Conference recommended adopting a consistent standard requiring probation officers to assist inmates on prerelease custody to the “extent practicable.”

Additionally, the Conference agreed to seek legislation that would harmonize the method of monitoring inmates in prerelease custody. Across the different statutes, inmates would be released to “home confinement,” “home detention,” or “electronic monitoring.” Since these terms have different meanings under the Judiciary’s policies, the Conference agreed to recommend legislation that would adopt a uniform monitoring method, such as the method adopted by the Sentencing Commission in its 2018 edition of the Sentencing Guidelines Manual.

***Facilitating Early Termination of Supervised Release:*** Section 3583(e)(1) of Title 18 allows for the court to “[t]erminate a term of supervised release and discharge the defendant released at any time *after the expiration of one year of supervised release*, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice” (emphasis added). The requirement that a person must complete one year of supervised release before being eligible for early termination may result in some people completing longer periods of supervision than are necessary to achieve the purposes of sentencing. For example, in some instances, it may be unnecessary that a person compassionately released from the BOP complete one year of supervised release. Similarly, inmates who have served longer periods of prerelease custody in the community may have demonstrated that early termination is warranted before completing one year of supervised release. Accordingly, the Conference has agreed to seek legislation that would allow for the early termination of supervised release in some cases before the person completes one year of supervised release.

### *Improving Procedures Around*

<sup>7</sup> See e.g., 18 U.S.C. §§ 3624(c)(3), (g)(7)-(8), and 34 U.S.C. § 60541(g)(4).

<sup>3</sup> Pub. L. 116-136.

<sup>4</sup> Pub. L. 115-391.



**Compassionate Release:** The Conference agreed to seek several legislative provisions designed to improve the procedures surrounding compassionate release motions.

**Increasing Access to BOP Medical Records for Compassionate Release Motions:** One of the early challenges that courts experienced upon receiving direct petitions for compassionate release from inmates was the lack of consistent procedures to obtain the inmates' medical records. In some districts, courts shifted that duty to assistant U.S. attorneys. In others, requests were submitted directly by the court, sometimes through the probation office, to the BOP. The lack of a standard approach resulted in confusion and delays. To address this, the Conference agreed to seek legislation that would clarify the duty of the BOP to supply the medical records of inmates seeking compassionate release to the probation office, the attorney for the government, and the attorney for the inmate.

**Waiving the Time Limits and Requirement to Exhaust Administrative Remedies Before an Inmate Can File a Compassionate Release Petition with the Court:** The FSA's creation of a direct petition to the court for compassionate release included a requirement that the inmate exhaust all administrative remedies or wait 30 days from submitting a request for compassionate release to the warden. Both of these provisions were intended to give the BOP an opportunity to review the merits of the request before making its own recommendation to the courts. However, as the pandemic increased the risk to inmates' health and safety, these timelines served as barriers to getting petitions in front of the court expeditiously. Accordingly, the Conference agreed to seek legislation allowing a defendant, after filing a request for compassionate release relief with the BOP, to file a motion for compassionate release directly in the district court before 30 days have lapsed if the exhaustion of administrative remedies would be futile or the 30-day lapse would cause serious harm to the defendant's health. The amendment recommended by the Conference would apply to the period during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to COVID19 and end 30 days after the national emergency term.

**Appointment of Counsel:** Sections 3006A and 3582 of Title 18 are silent on whether an inmate may have counsel appointed to assist in filing a compassionate release petition with the court. The lack of explicit

authority resulted in judges reaching different conclusions as to whether courts may appoint counsel as a discretionary matter under the Criminal Justice Act. To address this ambiguity, the Conference agreed to recommend amending section 3582 to explicitly permit the appointment of counsel for this purpose. Having appointed counsel would facilitate the presentation of well-prepared and well-reasoned motions and the weeding out of unmeritorious petitions and acceleration of meritorious ones.

**Imposing Multiple Terms of Supervised Release:** Section 3624(e) of Title 18 instructs that a term of supervised release "runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release" (emphasis added). Section 3582(c)(1) includes a provision allowing the court, when granting compassionate release, to impose "a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment." When read together with § 3624(e), it appears that any term of supervised release imposed in connection with compassionate release must be served consecutively to any other term of supervised release. This may reflect Congress's intent, but it raises questions about whether this results in unnecessary duplication and potentially lengthy supervised release periods that may conflict with established social science research indicating that excessive supervision is not necessary to achieve positive outcomes and in some cases may even be counterproductive. The Conference agreed to seek legislation that would clarify this result.

## Interagency Coordination

During the best of times, the efficient operation of the federal criminal justice system relies on close coordination between the Judiciary and the DOJ, and especially the BOP. The need for close coordination was never clearer than during the pandemic. Driven by over-arching concerns for the safety of inmates and employees, the courts, DOJ, and BOP all took steps to alter operations, including changes to in-person court proceedings, inmate admissions and transfers, and the use of home confinement and compassionate release. No agency could make a change without considering the impact on its criminal justice partners. Accordingly, the regular means of coordinating had to be enhanced.

Before the pandemic the Judiciary and the BOP formed an interagency working group designed to address matters of mutual concern related to the execution of sentences of imprisonment. The original charter for the group called for one meeting each quarter, with agenda topics mutually agreed upon by the chair of the group (the chair of the Criminal Law Committee) and the BOP. The first several meetings of the Judiciary/BOP Working Group focused on things like the BOP's closure of several residential reentry centers (RRCs) across the country, measures to protect inmates who were cooperating witnesses, and the implementation of the FSA.

Beginning in the spring of 2020, the focus of the working group, and the urgency of the discussions, took on a new shape. First, meetings went from being held once per quarter to every other week. Additionally, to ensure the conversations were comprehensive, representatives from the DOJ's Criminal Division and the Deputy Attorney General's Office were invited. Early topics of conversation during the pandemic included limiting inmate admissions and transfers, establishing quarantine procedures within the BOP, and finding ways to promote remote court appearances by inmates. Eventually, as described above, focus shifted to understanding the BOP's use of early release procedures and facilitating compassionate release proceedings.

By the spring of 2021, the conversations shifted to inmate and staff vaccinations and the hopeful return to normal operations. The increased collaboration between the courts, the DOJ, and BOP paid off in several ways. First, AO and BOP staff enhanced discussions on inmate reentry and the placement of inmates on home confinement. These early conversations gave the BOP the opportunity to find alternate methods of supervising inmates in the community when probation officers were unable to step in. Second, critical information on changes in BOP operations were quickly shared with the courts, giving judges, defense attorneys, and probation and pretrial services officers the opportunity to adjust their own operations accordingly. Finally, the working group members identified and suggested improvements to numerous procedures developed during the pandemic, including procedures on obtaining inmates' medical records in connection with compassionate release petitions.

## Other Activities at the National Level

In addition to the above, the AO and the Judicial Conference took assorted actions to help the judiciary through the pandemic.

**Adjustments to Workload:** Annual funding for probation and pretrial services offices is based on the results of a workload formula. Typically, workload from July 1 to June 30 is used to determine staffing allocations for the subsequent fiscal year. From July 1, 2019, to March 31, 2020, the national aggregate workload of probation and pretrial services offices increased by more than 400 positions. However, beginning in April 2020, workload began to plummet. By March 2021, the system was down almost 1,100 positions. These declines were mostly attributable to changes in pretrial services activations (due to the suspension of grand juries) and presentence reports (due to the suspension of criminal jury trials and fewer defendants pleading guilty). To track the changes in workload and other metrics, AO staff developed and deployed a series of data dashboards, allowing managers at the AO and in the courts to easily observe the trends on a weekly basis.

It was widely assumed that once the pandemic ended, workload would begin to rebound. Any loss of staff during the pandemic, therefore, would result in severe staff shortages once the work resumed. To avoid this result, AO staff proposed, and the Conference approved, a revised allotment method for fiscal year 2021. The revised method would use workload for the 12-month period starting April 1, 2019, and ending March 31, 2020. By shifting the statistical period, the sharp decline in workload at the start of the pandemic would be avoided, and the probation and pretrial services offices would be better situated for when the workload resumed.

**Adjustments to Training:** All new probation and pretrial services officers are invited to participate in a six-week initial training program at the training academy in Charleston, South Carolina. Additionally, each officer must complete 40 hours of annual continuing education. As the pandemic hit, AO staff were forced to shift training from mostly in person to remote. Curricula were revised, and staff quickly acclimated to the on-line platforms available. Although there were certain training components that could not be replicated remotely (e.g., firearms range training, officer response tactics training), participation in the remote training programs was high. Due to the challenges across the country of accessing firearms ranges, many of which were closed

due to local ordinances and social distancing rules, the AO extended the qualification timelines for officers and instructors until range time could be secured.

**Adjustments to Office Reviews:** Under 18 U.S.C. § 3672, the Director of the AO “shall investigate the work of the probation officers and make recommendations concerning the same to the respective judges.” Pre-pandemic, reviews were conducted in-district by a team of officers led by AO staff. The move to remote operations and the restrictions on travel made the continuation of in-person reviews impossible. In an attempt to carry out the scheduled work, AO staff and the chiefs in the districts selected for reviews worked together to convert on-site reviews to remote reviews. Team members were granted access to the district’s case management system and assigned cases to review using the standard instruments. AO team leads used the Microsoft Teams platform to hold daily team meetings and to check in with the district’s management. While several components of the reviews had to be curtailed (e.g., ride-alongs with officers, visits to treatment providers), the remote reviews allowed the AO to largely stick to its schedule. The success of the remote reviews has inspired the AO to pilot a hybrid review process in fiscal year 2022. Under this revised protocol, case file reviews will be conducted off-site, but a small team will still visit the district to conduct components that cannot be performed remotely.

**Adjustments to Communications:** Before the pandemic, most of the communication with the probation and pretrial services chiefs was through weekly emails from AO staff. At the suggestion of the Chiefs Advisory Group, an advice-giving body of chiefs elected by their peers, the AO steadily increased communications until it was an almost daily occurrence. These communications updated the chiefs on what the national judiciary entities were doing in response to the pandemic, shared best practices and suggested adjustments to operations, announced remote training opportunities, and, quite importantly, provided advice and resources designed to promote wellness during a period when stress, personally and professionally, was at an all-time high.

Communications were also improved by chiefs sharing with fellow chiefs. With the assistance of the Federal Judicial Center, and under the leadership of people like Chief Probation Officer Connie Smith from the Western District of Washington, nationwide videoconferences were arranged to give chiefs an opportunity to hear from one another and share important

information about how each of them was adjusting operations. Chief Smith, headquartered in Seattle, had the unfortunate distinction of witnessing the effects of the pandemic earlier than the rest of the country, and her experiences and advice helped all of her colleagues prepare for what was to come. Moreover, these videoconferences allowed chiefs to see and hear one another, which offered a benefit that could not be achieved through emails or memoranda.

## Conclusion

Like all other criminal justice agencies, the federal probation and pretrial services system had to adapt in response to the global pandemic. At the district level, chiefs and chief judges took the necessary steps to evaluate conditions and transition to remote operations. Interviews and court appearances were conducted over video, and fieldwork was facilitated by mobile phone video applications. Time will tell if the interruption in regular supervision services had an impact on the ability of people under supervision to succeed.

Despite the unprecedented nature of the pandemic, the Judiciary responded as it often does—with a commitment to the fair administration of justice. Judiciary personnel identified and secured resources needed to continue critical operations. They analyzed statutes, policies, and procedures and made recommendations to improve their effectiveness. Staff from the DOJ, BOP, and the courts enhanced their communication and collaboration, meeting regularly to solve problems as they emerged. Training and other critical services were modified so they could be delivered remotely and keep officers’ skills honed while they worked out of the office and travel opportunities were limited.

Clearly, the lessons learned during the pandemic will inform future policies and procedures. For example, there will most certainly be ongoing discussions and evaluations of telework. Operationally, AO staff are already evaluating data on virtual contacts to see if there is a way to continue these practices and increase officers’ productivity, efficiency, and effectiveness. There is a commitment to preserve promising practices that reduce costs and improve service delivery, which may impact future training programs and, as noted above, how office reviews are conducted.

The world hopes to never again endure the pain, loss, and disruptions experienced during the pandemic. While the federal probation and pretrial services system was tested, it will emerge stronger and better prepared to take on the challenges to come.

# Leadership Perspective from the Field: Key Districts Initially Affected by the COVID-19 Pandemic

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**IN AN EFFORT** to capture and preserve a record of what it was like for leaders in our system during this unprecedented time, we conducted interviews with several chief U.S. probation officers in the districts that were initially affected by the pandemic. These interviews were undertaken to obtain leadership insights from the individuals in significant leadership roles having to make critical decisions. At times, these decisions were made multiple times a day to ensure the safety of their staff and the people they supervise. Several of these districts suffered devastating loss of life at a level never experienced in their lifetimes from what would become a national emergency brought about by the COVID-19 pandemic.

## Western District of Washington

The first district affected by the pandemic was the Western District of Washington. Because they were the first to have to find answers to how to safely work and supervise caseloads with COVID-19, this district proved to be an asset to the rest of the system, shortening the learning curve of other districts by generously sharing experiences and offering guidance. Now-retired Chief U.S. Probation Officer Connie Gits provided her initial thoughts and responses to the situation.

*How are we going to do this? My first thought was how do we protect our staff and how do we protect those we serve? I had to go into action*

*mode and not over analyzing it, because as a chief you have to take action. Some of my colleagues thought I was an alarmist, overreacting, neurotic, and needing to calm down, especially when I started some of the first phone calls (Connie's Corona Calls). The opinions of my peers were very reflective of the nation and how it was similarly divided. I decided not to expend the energy on trying to convince others, and decided it was important to take action with my chief judge, my staff, and my stakeholders. When we were seeing people in the field, we carried extra masks and if someone (under supervision) refused to wear one, then we terminate the contact. It's about the safety issue, which is uncomfortable to do, but nothing is worth it. Exposing yourself to COVID-19 and then bringing it home to loved ones and exposing them was not an option.*

*There were judges that were coming into the courthouse. This was concerning. I have a very good relationship with the chief judge and was very fortunate to be able to talk with my chief judge. I had to draw boundaries with the judges. The judges knew I had my staff's best interest at heart, for the protection of everyone.*

*....Do you understand how that impacts the court staff, the probation and pretrial staff? The judges expect these people to come into the courthouse, and that was not fair...and nobody is going to say anything to the judge. So, I had to ask my chief judge for his support. I don't*

*want my staff coming in for hearings, conducting interviews, or going to our federal detention center, where COVID-19 was ramping up. I had to tell the judge that I'm not letting my staff come in...think about what we bring into the courtroom. Over 75 percent of our work is done in the community, we bring the greatest exposure into a courtroom.*

*We obtained personal protective equipment, masks, face shields, and painter-like suits, as it was unclear at the time how it was spread. It was a challenge, but we had a bit of an advantage because it started here first, and we were able to obtain them easily. We had them in cars, distributed individually, and for each office. It was a lot of logistics in the distribution of equipment, it required a great deal of communication, coordination, with the point person, procurement person, and budget analyst.*

*I started these calls, I called them "Corona Calls." I started setting up calls and then later partnered with the FJC [Federal Judicial Center] because they had a platform I could use to have more people. I didn't do that [start the calls] for any attention for myself. We were ahead of the curve and I felt an obligation to help my other colleagues in other districts... here's how to get ready and don't dilly dally. You got to do it now. It was the West Coast and the East Coast, and it was moving towards the middle. It didn't feel right to not share with others what we were experiencing.*

*Now that I've retired, when I look back on*

*it now, I was operating in the moment hoping I was doing what's right. As a chief you never know about how people feel about your decisions. I had a nice gift, in that when I left [retired] people were able to express that to me. "Thank you so much for protecting us," "For making us your priority," "For caring about us," "For making decisions that people didn't like." It was touching and made me feel good.... the protection of the staff and the community was paramount.*

### **Southern District of New York**

Meanwhile, the Southern District of New York was shortly also dealing with the intense impact of the pandemic. New York City (NYC) was an epicenter of the coronavirus disease 2019 (COVID-19) outbreak in the United States during spring 2020. Approximately 203,000 cases of laboratory-confirmed COVID-19 were reported in NYC during the first three months of the pandemic. The crude fatality rate among confirmed cases was 9.2 percent overall and 32.1 percent among hospitalized patients.<sup>1</sup> Chief U.S. Probation Officer Michael Fitzpatrick provided an account of his initial thoughts and responses during that time.

*It was March 16, 2020, and I was in the office for a meeting to advise staff that we were moving to step 1 of our shutdown plan. There were a lot of nervous faces in that meeting, because if you think back to March 16, nobody really knew what was going on. That was a Monday, we were at step 4 by Tuesday, that is how quickly it moved. Things went from full operation to only having a duty officer in each office division location. No one was allowed to enter the courthouse. Everything stopped except people getting released from jail...that kept happening. We started a virtual intake process where people released were given instructions to call. I was concerned about missing people being released. We used the "red flag report" as a check and balance and set up the virtual intakes to complete everything except taking an initial drug test.*

*Keeping staff morale up has been difficult; we've used Microsoft Teams for retirement events and employee recognition events. We tried to keep constant communication and keep people informed about what was going*

*on. One thing we know that we will be facing is an incredible wave of presentence investigations that is going to hit us eventually. I did an analysis looking at the last six months (April–September): we had 233 guilty pleas. The previous 5 years looking at that same period, the lowest number of guilty pleas and verdicts we had was over 700. So, although arrest slowed during the COVID shutdown, looking at that modeling for this district, we are likely to get presentence investigations 17 months after an arrest. So, we're talking about the people who were arrested a year and a half ago. They're all sitting out there.... There's going to be a back-log of guilty pleas and sentencings once court operations resume. We'll need to prepare staff and brace for that wave of work.*

*To safeguard staff, we allowed virtual contacts and home inspections using whatever technology available, FaceTime, Zoom, etc. For staff that needed to go into the office we purchased PPE for everybody: masks, faceguards, hand sanitizer, gloves, everything you could think of. Initially, one challenge was the availability of PPE, there was price gouging going on and although we had the money we had to shop around for reasonable prices. All the court offices in the district purchased PPE together to get better economy of scale. We also realized we needed to learn and train people how to properly use the equipment. We hired an epidemiologist, who consulted us on developing policies for bringing people back into the courthouse when that time comes.*

*Looking back, in reference to if there was a resource I wish I had at the beginning of this, it would be a stockpile of PPE. It would have been helpful to know where we could have gone to get that right away. We have a lot of flexibility as to how we write policy and how we design programs in our district. Having that flexibility was very helpful. We've never had to use it in the way we did now. I procured things I've never thought I would be procuring as a chief.*

### **Eastern District of New York**

Chief Pretrial Officer Roberto Cordeiro provided an account of the initial impact of the pandemic in the Eastern District of New York Pretrial Services Office. The Eastern District of New York, like the Southern District of New York, was faced early on with the impacts of COVID-19. Chief Cordeiro provides a perspective from a pretrial standpoint during a time when we as a system were still learning and adapting to the challenges brought on by the pandemic. At this point the number of

infections was beginning to rise in other parts of the country.

*We first heard about COVID-19 in the fall of 2019, and here in New York Eastern, we're always very sensitive because we are a Port of Entry location. We also have two airports. So, anything that's happening in the world raises the attention of our stakeholders. We frequently talk about it because we could easily be impacted by anyone flying in.*

*I recall the situation with Ebola and having multiple meetings to discuss that because we obviously were getting flights from all the different countries who were dealing with that issue. So it was no different with COVID-19, these conversations were already taking place, but I remember the first time that we received notice was mid-February that this is on the horizon, and that we need to keep an eye on this. We were given a set of guidelines to consider. At that time, in mid-February, there wasn't much national attention. There were a few reports coming out of the administration but nothing serious. So, we weren't changing reporting practices or the way we were interacting with defendants coming in. All of that was left unchanged at that time.*

*Then I recall that later in February going into the first week of March things happened, and so quickly. It was so reactive. I remember sending emails in the morning and I was overriding those instructions by two o'clock in the afternoon. It was happening at such a pace that I was reading some reports in the morning, thinking about it, talking about it with my management team, having a stakeholder meeting at 10 a.m. and then changing everything by 11:30 a.m. It was at such a fast pace that you knew there had to be some concerns among staff.*

*I recall the month of March just really being critical. I was primarily listening and giving directions, and checking the way we operate in this busy district to plan to go completely remote by the end of the month. What to do with arraignments? This is a constitutional function that we are responsible for. So, what do we do with these arrangements? Do we go completely remote? If so, there's really no such thing as completely remote, arraignments in pretrial still needs [a pretrial officer] to meet with the person. Even if it's just after the fact to install location monitoring equipment, the marshals need to be present, agents need to be in the building. There were all sorts of questions about the protocols and how to go about doing this as safely as possible. Plus, with new information*

<sup>1</sup> Bialek, S., Bowen, V., Chow, N., et al.; CDC COVID-19 Response Team. Geographic differences in COVID-19 cases, deaths, and incidence—United States, February 12–April 7, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:465–71.

coming in every day.

The Eastern District of New York was the most affected in the beginning. We heard reports with Connie's District in the Western District of Washington. She was very good at coaching us all through the first few steps of what she was going through. But after a week or so our numbers were just so much more than anybody else, particularly in Queens and parts of Brooklyn. They were just growing every day by the thousands. In the month of March in New York City we had over 200,000 cases of COVID-19. In the last week of March, there were 500 deaths per day.

There were reports of streets being closed because they had refrigerated trucks for bodies. Our officers were witnessing that as they were going out in the street. That was in the news every day, there were ships coming to the ports to serve as hospitals. There was this panic amongst everyone because we just didn't know how bad this was going to be.

By the second week of March, we completely suspended in-person reporting and any drug testing coming into the building. The court really cut down on immigrations ceremonies, grand jury trials, and anything that created activity and traffic coming into the courthouse was canceled. Once the court started decreasing the traffic, we did the same thing. Therefore, reducing the need to have officers meet with defendants because we were going to go completely into a very minimal skeleton crew. We canceled field [visits], which was tough because we're a district that has almost 300 location monitoring cases. There's a lot of activity that happens in the field, so we had to make difficult decisions. How do we handle the volume? With 300 cases, there were a good number of cases daily where equipment just fails. How do we get to them? How do they come to us? When we have that contact, how long should it be? Who should be doing this? There were all sorts of decisions to figure it out. Once we got through those first few weeks, we figured out a system that could address the most high-risk cases and deal with the emergency situations and the Constitutional part of our job, which was to deal with arraignments and first appearances. After that we started figuring out the finer details of making sure that officers had protection. This was happening so fast; I didn't even have time to go and purchase face masks or sanitizing equipment until this point.

All new arrests and activations in the beginning were slow, but we were extremely busy with emergency bail hearings. So, we

basically looked at a list of about 500 detainees who were high-risk cases, older people with underlying conditions or anyone who had dealt with cancer in the past and had weak immune systems. These folks were all identified early on and we then had to go through all those cases and have bail emergency hearings almost daily.

March, April, and May we were still dealing with those bail emergency hearings and we were obviously incurring a lot of new cases and all of them for the most part were being released on location monitoring. There was that issue of, you know, how do we hook them up safely?

Towards the end of March there was more information out there and advice coming from the CDC with suggestions on how to set up our space. We were supplying staff with masks, purchasing plexiglass for offices and interview rooms, and making sure there was enough personal protection equipment. We made sure that was all available for folks to use. We made sure that there was very little staff in the office and those who were in were asked to keep their personal space and have very little contact with others. We went almost completely virtual.

## District of New Hampshire

Chief U.S. Probation Officer Jonathan Hurtig at the time was serving as the chair of the Chief's Advisory Group (CAG). The CAG's purpose is "To provide advice to the Administrative Office on policies, procedures, and programs affecting the probation and pretrial services system and to provide chiefs an opportunity for input into the development of national policies." The Chief's Advisory Group membership includes six chief probation officers and two chief pretrial services officers. Members are elected in a regional election process to two-year terms with ratification by the director. The term of office of the representatives begins on Jan. 1 and expires on Dec. 31 of the second year of service. The members represent all circuits, and traditionally the group meets face-to-face twice a year with monthly remote calls. The chair of the CAG is elected by majority vote of the members and serves a two-year term with ratification by the director of the Administrative Office.

Chief Hurtig recalled:

... [T]he system's varied response was agile in comparison to some other industries and entities. Right away we started communication with one another, looking for ways to continue

to carry out our core mission while keeping staff and the people we serve safe.

How districts adapted, and what they had to adapt to varied depending on a couple of different things. First, how COVID-19 impacted them in their communities. Those that were hit hard, initially, had to take steps sooner; also [there was] the culture of the particular court and what judges were comfortable with and allowing their office to do. State mandates and restrictions had an impact on what different districts could do as well. But over time I think every district when they had to, based on what they were experiencing with numbers, adapted well and impressively.

We all embraced the use of technology and utilizing virtual supervision techniques. We moved quickly to try to modify treatment contracts and to allow for Telehealth. We met with various epidemiologists to discuss ways in which to keep staff safe while still having contact with people. The system responded well, especially when you think about it being a decentralized system where there's no straight directive coming out telling us what exactly to do. In some ways that gives us more agility and flexibility to implement things faster, but it also creates large inconsistencies and variations in what districts did. Overall, I think from the outside looking in, what we were able to do was impressive.

The informal as well as the structured communication that we had early on with the COVID-19 calls [Connie's Corona Calls] that occurred on a weekly basis or sending out information on a regular basis sooner as opposed to waiting for the weekly message [PPSO weekly messages], I think all of that really had a positive impact. Early in the process, the CAG communicated with Fitz that we needed to have real-time structured communication, and that we couldn't wait for a Friday message to come or wait for a memo from the Director. It was critically important that we receive updated information, and all of us receive that information in real time as soon as possible. So, he [Fitz] began sending emails and real-time information daily to the chiefs.

Things varied so much from one district to another; the biggest thing was the impact of COVID-19 in a particular community. Obviously, if you look at Seattle it affected them first. If you look at New York, particularly in the city and talking about the five boroughs, they were devastated. Some of the larger metropolitan areas were impacted hard. They needed to address things a little bit differently than the districts that weren't

impacted initially. I think that was the largest driving factor but the other big piece is, the court, the court culture, and what the particular court was comfortable with regarding restricting access to the facility for people, and whether or not they felt comfortable having officers going out and conducting fieldwork. Depending on the chief's relationship with the court and how they work together, I think that influenced a lot of things.

When it came to procuring personal protective equipment, I was lucky enough to have a procurement person that was sort of a bulldog in the process and she was able to get us everything we needed. Early in the process we were able to equip staff with everything they needed to do their jobs. But I do think that at least early on that procuring equipment restricted a lot of folks from doing things because personal protective equipment just wasn't available.

Districts were left to sort of fend for themselves. We were lucky here because we had a robust pandemic policy already in place, along with a supply of a thousand masks and different things like that. They weren't the N95 masks, but we had an ample supply of gloves, masks, gowns, etc., to get us through the initial step until we were able to procure other things. But it was like the "Wild Wild West" in terms of trying to get equipment. I know it became an issue in one of the CAG meetings. As a result of that, we put together a list of companies and sites that we were able to successfully purchase things from and then make that information available across the country. It was a challenging thing.

I was concerned about staff wellness prior to the pandemic, and much more concerned about it now. The biggest issue continues to be staff figuring out how to balance all of this. I have a very high percentage of my staff that have young school-age children. How do you manage to get all this done? Working, being a parent, being a teacher, all of it and not losing your mind. It's extremely challenging. I think as a chief, you must be flexible. You must be adaptable; you have to be understanding, you have to get used to people not working the traditional office hours.

What are the long-term effects going to be on folks? I think there's going to be a lot of positives that we can take from all this, but I also think there may also be a lot of collateral damage for people to work through.

During the pandemic, it reminds us about getting back to basics. We need to focus on working with the people under supervision and

putting out good reports, presentence reports, bail reports, and focusing on the right things. We have to free up officers' time to do that. We've added on so much responsibility for officers to do the administrative stuff that it takes away their ability to actually work with people. Reducing some of the administrative tasks as much as we can will benefit us all.

## District of North Dakota

Wade Warren, Chief U.S. Probation Officer in the District of North Dakota, provided his account of the events and reactions related to staff wellness and how his district was affected. Chief Warren at this time also serves as a member of the U.S. Probation and Pretrial Wellness Committee. Chief Warren is focused on navigating his district through the pandemic as well as assisting the wellness committee in collecting and disseminating wellness resources nationally.

The U.S. Probation and Pretrial Wellness Committee, composed of probation and pretrial services staff, focuses on staff's physical, mental, and emotional well-being. The committee works to promote stress-reducing resources through biennial conferences, maintaining online wellness resources, and offering in-district wellness assistance with staff support.

Chief Warren recalls that:

... [O]ver a decade ago, when a coworker took her own life, the Wellness Committee was created. It was the event that moved the system forward in this area. I think people paid attention to that and recognized the impact this job has over a long period of time. The first few years our mission was suicide prevention and some programs at the training academy on resiliency. In 2017, Matt Rowland [former Chief of the Probation & Pretrial Services Office at the AO] moved the Wellness Committee under the [Federal Probation and Pretrial] Academy [in Charleston, SC], so we had a budget and were able to offer several trainings. People have become more comfortable talking about the effects of the job openly and going to get help. We have become a much younger agency, and they take their wellness more seriously. The rise in officer/staff suicide has moved the system to make changes. Talking about the effects of the job and talking openly about getting help and removing the stigma. Wellness has become a top priority. The districts also have moved towards wellness, especially towards peer-to-peer support. It has been over 12 years in the making.

We have an active wellness website and we

try to make that a go-to resource. Since the pandemic we have done everything virtual. We've helped sponsor several virtual wellness trainings with the FJC. Wellness is a topic that is always at the top of the list.

The committee tries to also support districts when creating their own wellness trainings. We try to determine what might be of real use to staff. The pandemic has impacted families with school-age children, there obviously seems to be impact there, so not just on operations but on people's personal lives. On the wellness side, I don't know that we really know the kind of mental health effects the pandemic will have on our staff. Maybe some things will show up afterwards or people will disclose things later. We'll have to wait and see.

For the District of North Dakota in preparing for the pandemic, I reacted quickly to information I received in mid-February. I knew what we needed to prepare and start to get ready for COVID. We were ready the first week of March. I created a PowerPoint for staff and got everyone ready. We were all ready with teleworking capability, having prepared previously for snow days.

About 45 percent of our work is on reservations in the northern tier, so we previously approached the AO on telemedicine. With the pandemic we moved a lot more cases to telemedicine. More of our contacts were conducted curbside, using FaceTime, and phone calls. There might have been an initial escalation of revocations that eventually leveled off with some initial compliance issues.

For staff, people struggled with the lack of connection. Our staff, out of 43 employees, we have had 9 positive cases. We had one staff member who should have been hospitalized but the hospital was full; thankfully it was controlled. I think there is a lot to be learned from this pandemic. From a wellness perspective, the mental health effect of the pandemic on people I think will be underestimated.

There was a slow impact of the pandemic in North Dakota. I found that officers would let their guard down and wouldn't necessarily have their masks on and would be very relaxed. There is a desire to get back to normal, but there really wasn't resistance from staff in implementing safety protocols.

## Final Takeaways

The initial responses to the pandemic varied by districts based on geographical location, the impact of COVID on their community, and individual state mandates. The unanimous sentiment of the chiefs interviewed

was the need to rapidly change operational plans while maintaining communication with staff to provide consistency through these uncertain times. Early in the pandemic, communication occurred often, even daily. Chiefs were making decisions on a variety of operational issues such as office staffing and what that looked like; fieldwork and the protocols; supervision practices and

technological tools; and safety protocols related to personal protective equipment (PPE). Several districts consulted with epidemiologists to develop and create best practices for staff to remain safe and healthy while conducting their duties. Another notable theme from chiefs was the extraordinary collaboration, communication, and support provided to one another during the

pandemic, which was an event on a scale that none of them had ever experienced before and produced a level of challenge they had never encountered in our system. The acts of convergence within a decentralized system will be one of the more powerful takeaways of the events that took place in 2020.

# Survey of U.S. Probation and Pretrial Services Agencies' Adaptations to COVID-19

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**THE COVID-19 PANDEMIC** has created unparalleled challenges for the federal probation and pretrial services system. Federal officers, whether at the post-conviction or pretrial levels, often engage in work which involves extensive in-person interactions between themselves and their clients and judiciary personnel. Prior to the pandemic, much of this work occurred in venues where social distancing and other protocols to limit disease transmission were difficult to implement, such as courthouses, jails, probation and pretrial offices, and the homes, workplaces, and neighborhoods of persons on pretrial or post-conviction supervision. As part of their duties, federal officers engage in a myriad of activities that involve close contacts with various individuals, including interviewing persons charged with federal offenses, testifying in court at pretrial, sentencing, or revocations hearings, conducting home inspections for persons on pretrial or post-conviction

supervision, and requiring clients on supervision to meet with officers in the office or home for periodic check-ins on their status and compliance with supervision conditions (Latessa & Lovins, 2019; Petersilia, 1997). Moreover, officers often engage in monitoring activities that can necessitate the need to engage in close contacts with individuals on pretrial or post-conviction supervision. For example, they attach location monitoring devices, perform drug testing, and execute searches of homes or computer devices (Cohen, 2019; Latessa & Lovins, 2019). Last, many federal officers have integrated evidence-based practices into their supervision stratagems by using cognitive-behavioral strategies to reduce the likelihood of recidivism (Robinson et al., 2011). These cognitive-based approaches frequently entail extensive face-to-face contacts (Andrews & Bonta, 2010).

Persons on federal pretrial or post-conviction supervision are also often required by their conditions of supervision or by the officers that supervise them to engage in activities that could place them at risk of exposure to COVID-19. Some of these requirements include attending group therapy sessions to alleviate substance use or mental health issues or receive sex offender treatment (Andrews & Bonta, 2010). Moreover, persons on supervision may be required to meet with officers, find and maintain employment, and submit to home inspections or drug testing. These activities could potentially place individuals

on supervision at greater risk than the general population, since many of these persons have pre-existing health conditions and limited access to healthcare (Clark et al., 2013; Vaughn et al., 2012; Viglione et al., 2020b).

The issuance of stay-at-home orders by states during the pandemic's initial stages and the need to ensure the safety of officers, support staff, and clients from disease exposure resulted in substantial changes to the traditional ways in which the federal system supervises its clients and conducts its normal business. It is important to acknowledge that many of these changes occurred rapidly, without a pre-existing roadmap of how to conduct supervision during a pandemic (Viglione et al., 2020b). While some research on community corrections responses to the pandemic has occurred at the state level (see Koetzle & Schwalbe, 2020; Martin & Zettler, 2020; Sawn et al., 2020; Viglione et al., 2020a), no efforts to explore the federal system's responses and reactions have occurred until now.

The current research surveyed 109 federal probation<sup>2</sup> and pretrial chiefs at the district level to gauge the responses of federal community corrections to the pandemic. Specifically, the survey attempted to examine:

<sup>1</sup> The authors would like to thank Professor Jill Viglione, who graciously provided us with permission to use the University of Central Florida's COVID community corrections survey as a basis for our research. Also, special thanks to Scott VanBenschoten and Christina Oscanoa for their helpful suggestions and comments. Special thanks as well to Ellen Fielding for editing this document. Direct correspondence to Thomas H. Cohen, Administrative Office of the U.S. Courts – Probation and Pretrial Services Office, One Columbus Circle, NE, Washington DC 20544 (email: thomas\_cohen@ao.uscourts.gov).

<sup>2</sup> The terms post-conviction supervision and probation are used interchangeably throughout this paper. They refer to persons being supervised (for a term of typically three years) after serving their federal prison sentence or persons sentenced to straight probation without any incarceration term.



- The types of actions federal probation and pretrial agencies initially undertook in response to the pandemic and changes in those responses over time;
  - The use of technologies as an alternative means for in-person supervision, the extent to which federal offices experienced COVID-19 outbreaks and responses to these outbreaks;
  - The perceptions of district chiefs about the major challenges faced by federal probation and pretrial services agencies and the most beneficial strategies used to address these challenges; and
  - The types of resources chiefs used when deploying policies aimed at mitigating the pandemic's effects.
- The initial and subsequent strategies employed to reduce risk of disease exposure among officers, support staff, and clients;
  - The use of various technological platforms in client supervision;
  - The extent to which officers, support staff, and clients were exposed to COVID-19 and district responses to these exposures;
  - The perceptions of chiefs about the challenges posed by the pandemic and the most beneficial responses to these challenges; and
  - The resources used to adapt and respond to the pandemic.

The report's subsequent sections explicate the methods and data used for the current research, the major findings generated from the survey, and the implications of these findings and directions for future research.

## Methods

### *Survey Instrument Development*

Data for the current study were obtained through self-report surveys of federal probation and pretrial chiefs located in all 94 federal judicial districts. The specific data collection instrument was based on a survey funded by the National Science Foundation in collaboration with the University of Central Florida (UCF) for a project titled "Adapting Community Corrections in Response to COVID-19" (University of Central Florida, n.d). UCF's research effort, led by Professor Jill Viglione, measures the pandemic's impact on the nation's community corrections systems (Viglione et al., 2020a). Of the 347 community corrections agencies that completed the UCF survey, nearly all (99 percent) hailed from county or state probation or parole entities. It should also be noted that some components of the UCF questionnaire were based upon recommendations and guidelines on conducting community supervision during the pandemic promulgated by Executives Transforming Probation and Parole (EXiT) and the Vera Institute of Justice (Vera, 2020). More information about UCF's COVID-19 research project can be found at <https://ccie.ucf.edu/adapt-cc/>.

We modified UCF's survey instrument for our current research effort before submitting it to federal probation and pretrial chiefs. The survey instrument measures several aspects of the federal supervision system's responses to the pandemic, including:

### *Data Collection*

Once developed, an electronic version of the survey was distributed by email to all 110 federal probation and pretrial chiefs in the 94 federal judicial districts. In the federal supervision system, 76 chiefs are located in districts with combined probation and pretrial offices and 34 chiefs preside over districts in which the pretrial ( $n = 17$ ) and probation ( $n = 17$ ) offices are separate. An initial email providing information about the study and requesting that each chief complete the survey at the earliest convenience was sent out in early February 2021. The email message contained a link to the survey instrument, which was distributed using Microsoft Forms. After the initial email invitation, the chiefs were sent several reminders to complete the survey, with the final reminder submitted in early March 2021.

The outreach effort resulted in 109 of the 110 chiefs submitting complete surveys. The 99 percent response rate means that the survey's results are essentially representative of the entire federal probation and pretrial system. Of the 109 persons who completed the survey, 105 were either district chiefs or their deputies, while the remainder were a combination of administrative manager ( $n = 1$ ), supervisory officer ( $n = 2$ ), or line officer ( $n = 1$ ).

### *Analytical Methods*

The survey data were exported from Microsoft Forms and uploaded into Stata version 16.1 for subsequent analysis. The report uses descriptive statistics to provide a basic overview of the federal supervision system's adaptations to the COVID-19 pandemic. Since the research is exploratory and provides a first-time examination of the federal system's reactions and responses to the pandemic, no inferential techniques were employed.

## Findings

### *Initial and Subsequent Responses to the Pandemic*

First, we examined the initial actions undertaken by federal supervision agencies in response to the pandemic, within the time frame of March through May 2020. All 109 chiefs reported that they engaged in some combination of preventative, containment, or response measures at the pandemic's onset (see Table 1, next page). Nearly every agency (95 percent or more) reported that they provided free face masks to officers, shared information and guidance about COVID-19 with officers and support staff, or allowed officers to work remotely (e.g., telework). Additionally, 90 percent of respondents allowed their officers and staff to use rotating work schedules or skeleton crews. The requirement that officers or individuals on supervision wear face masks was mandated by over four-fifths of offices; moreover, nearly three-fourths of respondents provided face masks to individuals on supervision. Screening tools meant to identify officers or clients with possible exposure to COVID-19 were employed by 61 percent of respondents, while 34 percent used screening tools as a means of detecting people at higher risk of infection. Approximately half the agencies provided training that could assist officers in responding to COVID-19. In comparison, 9 percent of respondents reported that they created medical care plans for individuals on supervision.

The responses of federal probation and pretrial agencies to the pandemic from June 2020 through October 2020 and from November 2020 through January 2021 are provided in Table 2. Generally, results show that most federal probation and pretrial agencies continued using a mix of preventative, containment, and response measures. In fact, over a fifth of respondents reported employing some responses more frequently between June through October 2020, including sharing information and guidance with officers, staff, and supervisees, using screening tools to identify persons with possible exposure or higher risk of infection, and providing officer and staff training on COVID-19 disease response protocols. From November 2020 through January 2021, some measures such as sharing information, officer/staff training, and the provision of medical care plans were used less frequently; however, most of the preventative measures or the response and containment actions involving the use of screening tools or the provision of remote work witnessed minimal reductions in their use.

*Application of Technologies in Response to the Pandemic*

This section provides an overview of the technological applications federal probation and pretrial agencies employed in response to the pandemic. An examination of federal probation and pretrial case processing data shows that the pandemic coincided with substantial declines of in-person contacts between officers and their clients and corresponding increases in telephone and other electronic contacts during the same period; these patterns were manifested at both the post-conviction and pretrial levels and occurred irrespective of risk levels (see other articles in this issue of *Federal Probation*, including Hicks, Valdez Hoffer, & Cohen, 2021; and Hronick, Vernier-Gelven, & Starr, 2021). In this section, we explore the types of technologies used by officers to supervise clients, the novelty of these technological applications, the challenges involved in their application and deployment, and the subsequent plans for using these technologies once the pandemic has subsided.

The frequency with which various technologies are employed as a substitute to supervise clients on federal probation or pretrial supervision are provided in Table 3. The technological platforms witnessing the greatest use included telephone calls and text messaging; over 70 percent of respondents

reported using these applications a great deal. Other technological applications manifesting extensive usage included telehealth for substance use and mental health counseling and video-conferencing; over 60 percent of

respondents reported using these applications a great deal during the pandemic. About half of respondents indicated that their officers used email a great deal. The technological applications manifesting relatively little or

**TABLE 1**  
**Initial responses of federal probation or pretrial agencies to the COVID-19 pandemic**

Response type	Number	Percent
<b>Prevention</b>		
Provided face masks to officers	107	98.2%
Required officers wear a face mask	96	88.1
Required individuals on supervision wear a face mask	90	82.6
Provided face masks for individuals on supervision	79	72.5
<b>Containment</b>		
Shared information and guidance with staff	105	96.3%
Shared information and guidance with supervisees	72	66.1
Used screening tool to identify possible exposure	66	60.6
Used screening tool to identify people at higher risk of infection	37	33.9
<b>Response</b>		
Allowed officers to work remotely (e.g., telework)	107	98.2%
Allowed for rotating work schedules/skeleton crews	98	89.9
Provided training for staff for responding to COVID-19	58	53.2
Created medical care plans for individuals on supervision	10	9.2

*Note: Includes 109 respondents located in 94 federal judicial districts. Measures initial responses to the pandemic from March through May 2020.*

**TABLE 2**  
**Subsequent responses of federal probation or pretrial agencies to the COVID-19 pandemic for various time periods**

Response type	June 2020 through October 2020			November 2020 through January 2021		
	Less frequently	No change	More frequently	Less frequently	No change	More frequently
<b>Prevention</b>						
Provided face masks to officers	1.9%	84.1%	14.0%	0.9%	97.2%	1.9%
Required officers wear a face mask	0.9	80.4	18.7	0.0	97.2	2.8
Required individuals on supervision wear a face mask	0.0	87.2	12.8	0.0	96.8	3.2
Provided face masks for individuals on supervision	2.4	91.5	6.1	4.8	94.0	1.2
<b>Containment</b>						
Shared information and guidance with staff	0.9%	72.0%	27.1%	11.3%	77.4%	11.3%
Shared information and guidance with supervisees	9.2	69.7	21.1	13.5	77.0	9.5
Used screening tool to identify possible exposure	2.7	70.7	26.7	2.6	90.9	6.5
Used screening tool to identify people at higher risk of infection	4.1	75.5	20.4	3.9	90.4	5.8
<b>Response</b>						
Allowed officers to work remotely (e.g., telework)	4.6%	83.3%	12.0%	3.7%	87.0%	9.3%
Allowed for rotating work schedules/skeleton crews	1.9	78.6	19.4	3.9	88.2	7.8
Provided training for staff for responding to COVID-19	10.3	66.2	23.5	27.4	64.4	8.2
Created medical care plans for individuals on supervision	5.9	82.4	11.8	21.1	63.2	15.8

*Note: Measures responses to the pandemic which occurred during time frame of June 2020 through October 2020 and November 2020 through January 2021.*

no use included kiosks and postcards. The newness of some of these technologies are explored in the next section.

Several technologies currently being used to supervise clients on federal probation or pretrial supervision were relatively new or were not being extensively used before the pandemic. Specifically, over 90 percent of respondents reported that the use of telehealth

for substance use or mental health counseling represented new ways of treating persons on post-conviction or pretrial supervision; furthermore, telehealth focused on criminal behavior issues constituted novel supervision techniques for 71 percent of respondents (see Figure 1). In addition, video-conferencing technologies (such as FaceTime and Zoom) saw extensive first-time use among

three-fourths of federal supervision agencies. Of the various video-conferencing technologies, Microsoft Teams, FaceTime, and Zoom were employed by over four-fifths of agencies making use of these platforms (data not shown). Other technologies, including texting, email, and telephone calls, witnessed extensive use prior to the pandemic.

While many federal districts adapted to the pandemic through the integration of new technological applications, several challenges involving their implementation should be noted. Nearly half of respondents reported that unreliable internet access was a barrier to using new technologies; about a third indicated that increased cybersecurity risks constituted a barrier to their use or to allowing officers to work remotely (see Figure 2, next page). Interestingly, 36 percent of respondents reported that they encountered no challenges in the application of new technologies or remote work. We also asked district chiefs to specify any particular challenges their officers faced in using video-conferencing technologies to supervise individuals. About half the respondents noted that many clients cannot use certain technologies; a third mentioned that internet connections are problematic, especially in rural areas; and a tenth raised the issue of supervising sex offenders as representing serious impediments to the effective use of video-conferencing technologies in supervision (data not shown).

A final aspect of video-conferencing technologies involves plans for their continued use. Most respondents (71 percent) specified that they will continue using video-conferencing technologies even after the pandemic ends (see Figure 3, next page). Another 17 percent reported that they will regularly use video-conferencing applications until either effective treatments are available, the risk to vulnerable populations has decreased, or widespread distribution of vaccines has occurred. The remaining 12 percent stated that they have either stopped using video-conferencing devices, will allow their use in only limited or special circumstances, or will cease using them once the state has fully re-opened.

### Presence of COVID-19 Outbreaks Among Federal Probation and Pretrial Agencies

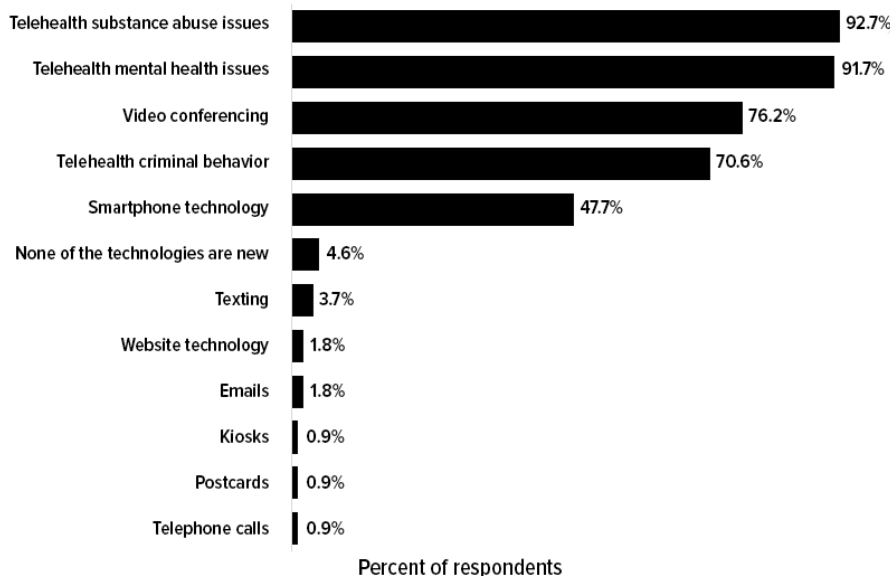
This section explores the prevalence of COVID-19 outbreaks among officers, support staff, and clients in the federal supervision system and the system's responses to these outbreaks. Of the 109 chiefs responding to

**TABLE 3**  
Use of technology to supervise clients on federal probation or pretrial supervision during the COVID-19 pandemic

Type of technology	Technology use frequency				
	A great deal	A moderate amount	Occasionally	Rarely	Never
Telephone calls	85.3%	11.0%	3.7%	0.0%	0.0%
Texting	71.6	20.2	8.3	0.0	0.0
Telehealth substance use services	68.8	21.1	7.3	2.8	0.0
Telehealth mental health services	64.2	25.7	8.3	0.9	0.9
Video conferencing	62.4	33.0	3.7	0.9	0.0
Emails	51.4	30.3	14.7	3.7	0.0
Smartphone technology	33.0	32.1	12.8	10.1	11.9
Telehealth criminal behavior	33.0	19.3	20.2	9.2	18.4
Website technology	23.9	11.0	10.1	8.3	46.8
Kiosks	1.8	2.8	0.0	11.9	83.5
Postcards	1.8	0.0	0.9	11.0	86.2

Note: Includes 109 respondents located in 94 federal judicial districts.

**FIGURE 1**  
Technologies newly used to supervise persons on federal probation or pretrial supervision that were not used prior to the COVID-19 pandemic



Note: Includes 109 respondents located in 94 federal judicial districts. Percentages will not sum to 100% as districts can report multiple new technologies.

the survey, 101 (93 percent) confirmed that at least one or more of their officers or support staff had tested positive for COVID-19 (see Table 4). Moreover, 94 of 109 respondents (86 percent) observed that their officers supervised persons on post-conviction or pretrial supervision who were COVID-19 positive. District chiefs also estimated the number of their officers or support staff with COVID-19; on average, each district had seven officers and five support staff persons testing positive for the virus (data not shown). The 109 chiefs, however, reported anywhere from 1 to 40 support staff persons or officers infected by COVID-19.

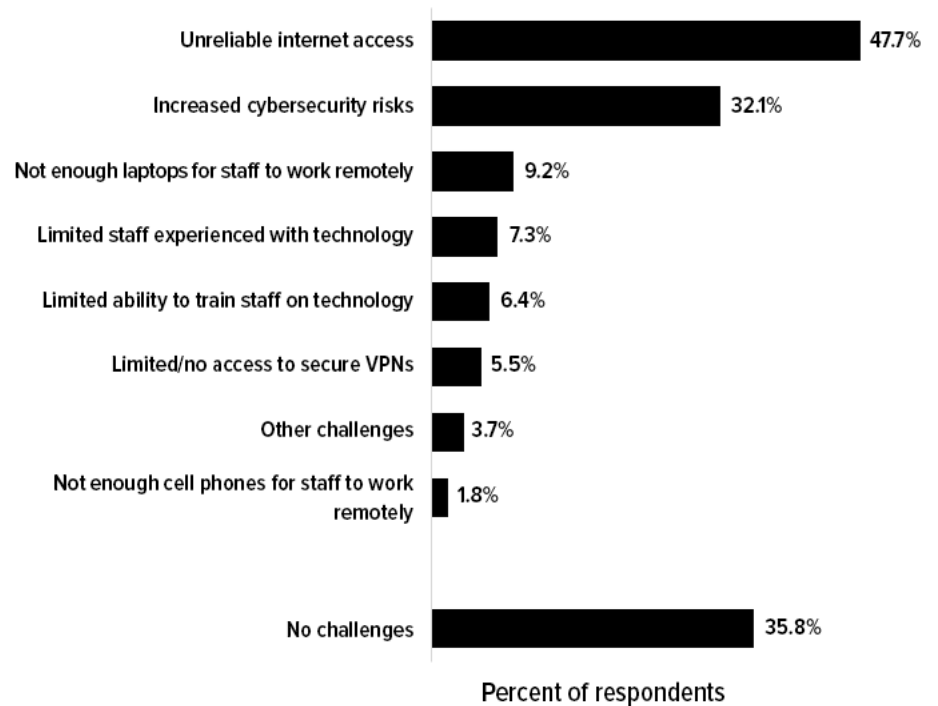
The districts used a combination of policies and measures in response to officers or support staff testing positive for COVID-19. Nearly 90 percent of respondents required officers or support staff testing positive for the virus to quarantine until negative, while over 75 percent used contact tracing, allowing officers to work remotely, employing cleaning services or increasing cleaning, and encouraging officers or support staff infected by COVID-19 to seek medical attention (see Table 5). Similar strategies were implemented when clients tested positive for the virus. Over four-fifths (83 percent) of respondents required the use of remote supervision until an individual client infected with the virus was cleared; moreover, over three-fifths responded to a positive COVID-19 test among clients by mandating remote work (63

percent) or encouraging the seeking of medical care (62 percent).

*Perceptions of the Challenges Posed by the Pandemic*

We now examine each district chief's perceptions of the most significant challenges posed

**FIGURE 2**  
Challenges federal probation and pretrial agencies face in implementing new technology and remote work during the COVID-19 pandemic



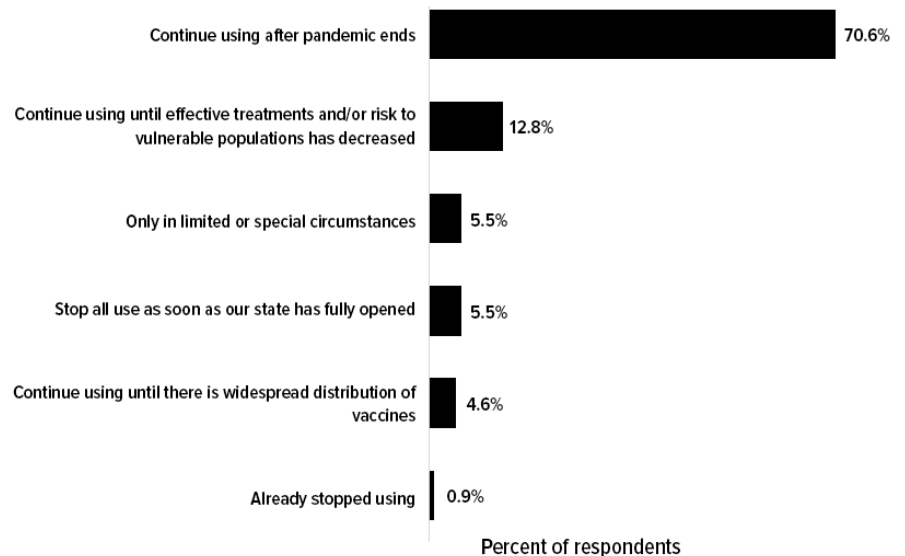
Note: Includes 109 respondents located in 94 federal judicial districts. Percentages will not sum to 100% as districts can report multiple challenges.

**TABLE 4**  
COVID-19 cases reported in federal probation or pretrial agencies among officers, support staff, and clients

Presence of Covid in office	Agencies with Covid cases	
	Number	Percent
<b>Confirmed cases – officers or support staff</b>		
Yes	101	92.7%
No	5	4.6
Unknown	3	2.8
<b>Confirmed cases – clients</b>		
Yes	94	86.2%
No	7	6.4
Unknown	8	7.3

Note: Includes 109 respondents located in 94 federal judicial districts.

**FIGURE 3**  
Plans to continue using videoconferencing technologies for persons on federal probation or pretrial supervision



Note: Includes 109 respondents located in 94 federal judicial districts.

by the pandemic and the strategies employed to address these challenges. First, we asked district chiefs whether any particular issue (such as drug testing or home contacts) represented a challenge; we then inquired into the severity of these challenges. Certain issues were identified as representing challenges by over 95 percent of chiefs, including the ability to conduct in-person meetings with clients, client access to the necessary technologies, treatment providers closing or limiting admission to their facilities, supervisees unable to obtain employment, fear of contracting COVID-19 among officers or support staff, and officers unable to test for drugs or respond to client noncompliance with supervision conditions (see Table 6).

An examination of chief perceptions about the seriousness of these challenges is displayed in Figure 4 (next page). The challenges district chiefs considered most serious included the limited ability to test supervisees for drugs and to meet face-to-face with persons on pretrial or post-conviction supervision; over half the chiefs designating these issues a challenge listed them at the serious level. The fear among officers and support staff of contracting COVID-19 and the refusal of many jails to accept persons violating their supervision terms were also deemed serious challenges by 40 percent or more of chiefs who rated these issues as problematic. In addition, over half the chiefs reported that client access to technology and the difficulties involved in

holding supervisees accountable by responding to noncompliance or initiating revocation proceedings presented a moderate challenge during the pandemic.

District chiefs were also asked to provide their opinions about the most beneficial strategies used to address the pandemic. According to district chiefs, the most beneficial strategies included allowing officers to telework, mandating mask mandates for all officers/staff, providing access to PPE, and permitting officers/staff to work in rotating schedules or skeleton crews; over four-fifths of chiefs reported that these strategies were the most beneficial (see Figure 5, next page). Additionally, the availability of telehealth services and the use of video-conferencing technologies were deemed mostly beneficial strategies by over three-fourths of federal probation and pretrial chiefs.

*Data Sources Used to Adapt and Respond to the Pandemic*

Last, we explored the resources used to adapt and respond to the pandemic. All 109 respondents reported using guidelines issued by the Centers for Disease Control (CDC); 69 percent marked that they used guidelines issued by the Federal Judiciary Emergency Response Team (JERT); and 60 percent stated that guidance from the U.S. Department of Health and Human Services (DHS) was used when devising policies in response to the pandemic (see Table 7). Conversely, less than 10 percent of

federal probation and pretrial chiefs reported using guidelines issued by the American Probation and Parole Association (APPA), the Executives Transforming Probation and Parole (EXiT), or the Vera Institute of Justice (Vera, 2020). Regarding specific data sources used to track the prevalence of COVID-19 in local communities, 88 percent of district chiefs indicated that they turned to COVID-19 trackers maintained by state systems and 41 percent relied upon the John Hopkins University's COVID-19 tracker. Finally, 17 of the 109 district chiefs hired consultants to provide them with advice on how to best protect their officers, support staff, and clients during the pandemic.

**TABLE 5**  
**Policies implemented in response to identification of positive COVID-19 cases in federal probation and pretrial agencies**

Responses to Covid	Officers or support staff		Clients	
	Number of agencies	Percent	Number of agencies	Percent
Required officers or support staff to quarantine until negative	97	88.9%	--	--
Contact tracing	87	79.8	60	55.1%
Remote work for officers or support staff	86	78.9	69	63.3
Cleaning services/increased cleaning	83	76.2	49	45.0
Encouraged medical attention	83	76.2	68	62.4
Skeleton crew in office	67	61.5	60	55.1
Test officers or support staff	56	51.4	45	41.3
Closed office temporarily	42	38.5	32	29.4
Remote supervision for individual until cleared	--	--	90	82.6

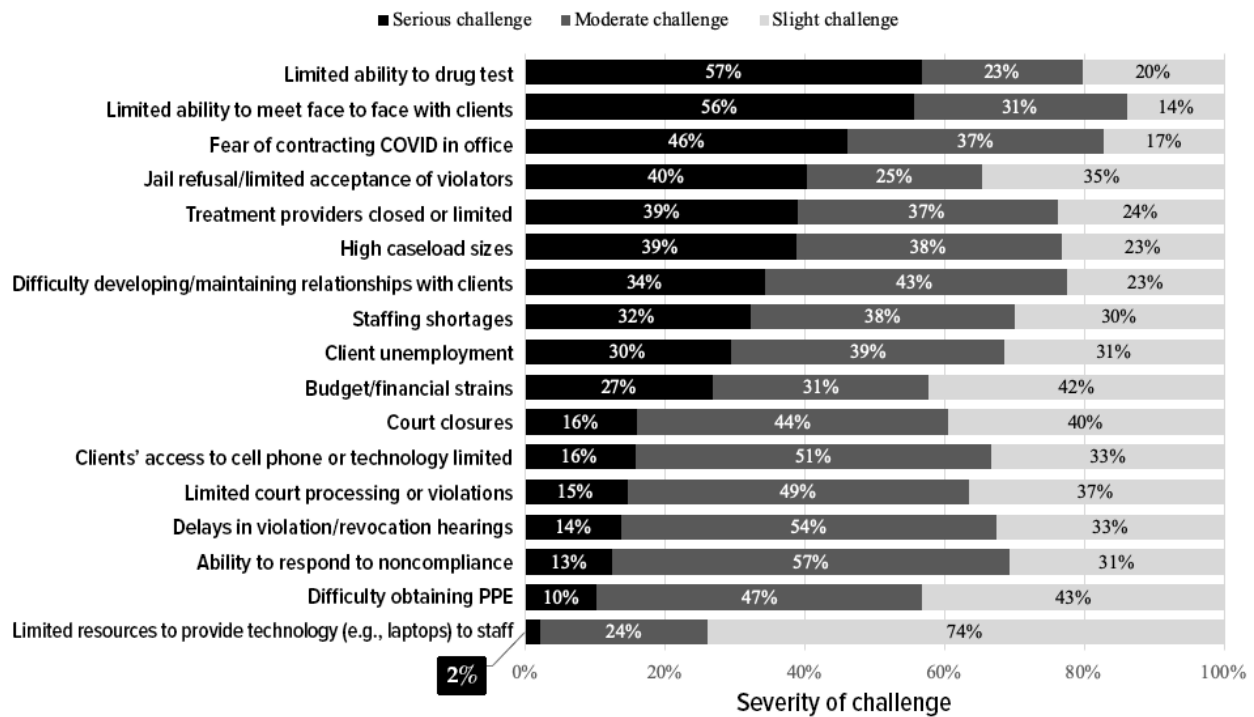
Note: Includes 109 respondents located in 94 federal judicial districts.  
-- Not applicable

**TABLE 6**  
**Challenges federal probation and pretrial agencies faced in responding to the COVID-19 pandemic**

Types of challenges	Agencies identifying challenge	
	Number	Percent
Limited ability to meet face-to-face with clients	108	99.1%
Clients' access to cell phone or technology limited	108	99.1
Treatment providers closed or limited	105	96.3
Client unemployment	105	96.3
Limited ability to drug test	104	95.4
Fear of contracting COVID in office	104	95.4
Ability to respond to noncompliance	104	95.4
Difficulty developing/maintaining relationships with clients	102	93.6
Delays in violation/revocation hearings	95	87.2
High caseload sizes	90	82.6
Difficulty obtaining PPE	88	80.7
Staffing shortages	87	79.8
Limited court processing or violations	82	75.2
Court closures	81	74.3
Budget/financial strains	78	71.6
Jail refusal/limited acceptance of violators	72	66.1
Limited resources to provide technology (e.g., laptops) to staff	46	42.2

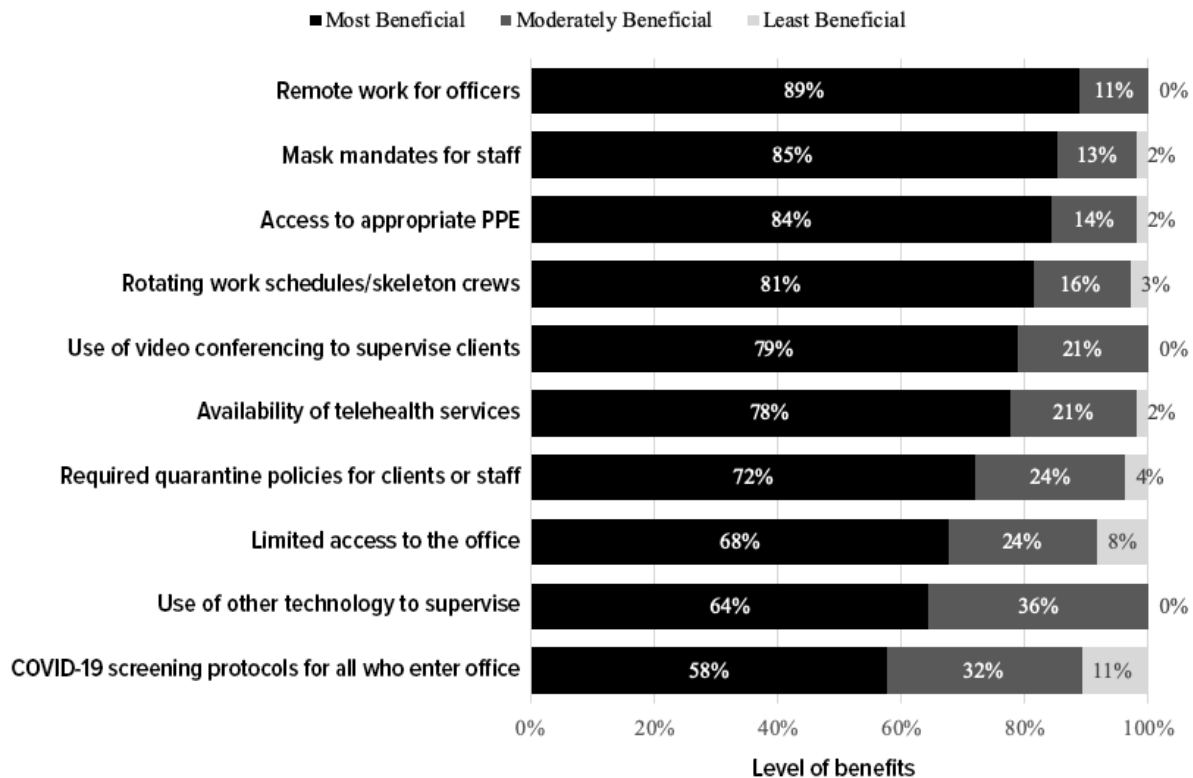
Note: Includes 109 respondents located in 94 federal judicial districts.

**FIGURE 4**  
Severity of challenges federal probation and pretrial agencies faced in responding to the COVID-19 pandemic



Note: For each response type, the number of respondents excludes those who marked not applicable. See preceding table for the number of respondents who identified a challenge for each response type.

**FIGURE 5**  
Strategies federal probation and pretrial agencies use that have been beneficial in responding to the COVID-19 pandemic



Note: For each response type, the number of respondents excludes those who marked not applicable. Over 95% of the 109 respondents indicate that the above detailed strategies were beneficial with the exception of rotating work schedules (6% not applicable), limiting office access (12% not applicable), and COVID-screening protocols (22% not applicable).

## Discussion and Conclusion

The study's main purpose was to examine the federal supervision system's responses and adaptations to the COVID-19 pandemic. The pandemic presented unparalleled challenges to the federal probation and pretrial system. Specifically, many daily activities conducted prior to the pandemic, including the interaction among officers and court personnel; the contacts between officers and their pre-trial or post-conviction clients at the office, home, workplace, or community; the opportunities for officers to build rapport with their clients; the application of drug testing and location monitoring; and the capacity of officers to track and respond to noncompliance, underwent substantial changes during the pandemic. The current study attempted to measure how these changes manifested themselves in the federal supervision system by assessing district responses to the pandemic, examining technological alternatives to in-person supervision, exploring the frequency of COVID-19 outbreaks among district offices, gauging district chiefs' perceptions of the major challenges experienced

during the pandemic and the most beneficial responses to those challenges, and analyzing the main resources district chiefs used when developing responses to the pandemic.

In general, results show that nearly all districts instituted some combination of preventative, containment, and response measures aimed at protecting their officers, support staff, and clients from the virus. Many of these actions centered on providing face masks and requiring their use, sharing information across districts, employing screening tools, and authorizing the extensive use of telework or rotating work schedules. These measures were instituted at the start of the pandemic, and most districts have continued using them.

The survey also highlighted that districts, and their treatment providers, adapted various technological platforms to supervise persons in lieu of in-person contacts. Districts reported the widespread use of several technologies, including telephone calls, texting, telehealth, and video-conferencing (such as FaceTime and Zoom) as a mechanism for administering supervision or treatment. Several of these

technologies, particularly telehealth or video-conferencing, were relatively new, and many districts reported that they plan to continue using them after the pandemic subsides. The major impediments to implementing these technologies were unreliable internet access, especially in rural areas; increased cybersecurity risks; and the inability of supervisees to adapt to the necessary technologies.

Despite the system's attempts to limit exposure to COVID-19, nearly all the chiefs reported that at least one of their support staff, officers, or clients tested positive for the virus, with several districts manifesting multiple outbreaks. Districts reacted to the presence of COVID-19 among their officers and support staff by engaging in a variety of responses ranging from requiring the use of quarantines to contact tracing to cleaning offices and to encouraging all affected personnel to seek medical attention.

The survey also revealed insightful information about the chief's perceptions of the key challenges districts faced in response to the pandemic and the most beneficial strategies for addressing these challenges. According to the chiefs, the pandemic generated several serious challenges to effective supervision, including the limited ability to drug test, meet face-to-face with clients, and use jails as a means of holding violators accountable. Many chiefs also stated that officer/staff fear of contracting COVID-19 represented a serious concern. In addition, they reported that issues involving officer capacity to actively respond to noncompliance and initiate revocation hearings in response to noncompliance were of moderate concern. The most beneficial strategies addressing these and other challenges that arose during the pandemic were the use of remote work/rotating work schedules, staff mask mandates, access to PPE, the use of video-conferencing technologies, and the application of telehealth by treatment providers. Finally, most of the respondent chiefs reported using resources and guidelines issued by the CDC, JERT, and DHS when developing responses to the pandemic.

Many of the findings reported above align with research currently being conducted on state and local probation and parole agencies. Specifically, the UCF survey of the nation's probation and parole agencies found that the largest changes reported by these entities were the decrease of in-person contacts and the corresponding move to various technologies (such as telephone calls, video-conferencing, email, and texting) as a mechanism for supervising

**TABLE 7**  
**Resources and data sources used by federal probation and pretrial agencies in response to the COVID-19 pandemic**

Resources and data sources used	Number	Percent
<b>Resources used to adapt and respond to pandemic</b>		
Center for Disease Control Guidelines	109	100.0%
Judiciary Emergency Response Team's Guidelines	75	68.8
U.S. Department of Health and Human Services Guidance	65	59.6
World Health Organization Guidance	30	27.5
State and Local Departments of Public Health	13	11.9
APPA's Pandemic Influenza Preparedness and Response Planning Guidelines	6	5.5
Other Resources	5	4.6
EXiT: Executives Transforming Probation & Parole COVID-19 Response Statement	4	3.7
Vera Institute of Justice's Guidelines for Preventative and Responsive Measures	1	0.9
<b>Data sources about prevalence of COVID-19 to assist in decision-making</b>		
COVID-19 trackers maintained by state systems	96	88.1%
COVID-19 tracker maintained by John Hopkins Website	45	41.3
COVID-19 trackers maintained by major news organizations	40	36.7
Other data sources	10	9.2
<b>Hired a consultant to address COVID-19-related concerns</b>		
Yes, consultant hired	17	15.6%
No, but did seek professional advice	6	5.5
No consultation services sought	86	78.9

Note: Includes 109 respondents located in 94 federal judicial districts.  
APPA = American Probation and Parole Association.

individuals (Viglione et al., 2020b). Similar to the federal system, many state community correction agencies noted that the use of video-conferencing technologies represented a novel method of supervision (Viglione et al., 2020b). Another major resemblance between the federal supervision system and state and local systems involved the challenges of holding people accountable for violations. Many state agency directors expressed concerns that courthouse closures or delays in case processing, the unwillingness of many courts to execute arrest warrants or hear violation cases, and the limited capacity of jails to accept probation/parole violators severely restricted their capacity to revoke persons in violation of their supervision conditions (Viglione et al., 2020b). Federal probation and pretrial chiefs expressed similar concerns in the current survey. Last, as in the federal system, many state probation and parole directors asserted that the restrained capacity to test persons on supervision for drugs and hence monitor the extent to which persons might be relapsing into drug addiction was a major concern (Viglione et al., 2020b).

Findings from the current survey have several major implications for the federal supervision field. First, it is important to acknowledge that the federal system, without any major roadmap or prior planning mechanisms, was able to develop and then quickly implement a series of preventative, containment, and response measures that allowed officers to continue conducting the business of supervision during this challenging time. While the federal system should take solace in its ability to quickly adapt to challenging circumstances, federal supervision agencies should further strengthen and prioritize disaster preparedness so that business operations can continue without major interruptions in response to any future crises.

Of all the adaptations in federal supervision that occurred in response to the pandemic, perhaps the most significant entailed the move from face-to-face to various electronic forms of supervision and treatment. As demonstrated in the current research and in other articles published in this issue of *Federal Probation*, the pandemic has forced the federal probation and pretrial system to substitute in-person for electronic supervision irrespective of a client's risk level or supervision status. While the implications of replacing in-person for electronic supervision and telehealth could be potentially profound, little research exists on the efficacy

of virtual supervision and telehealth treatment modalities that could provide guidance for the federal system (Viglione et al., 2020b). The few research studies conducted were at the state or local level, centered on the application of kiosks or telephone systems of supervision, and examined the applications of these electronic supervision mechanisms on a subset of low-risk supervisees (Barnes et al., 2010, 2012; Belshaw, 2011; Ogden & Horrocks, 2000; Viglione & Taxman, 2018; Viglione et al., 2020b; Wilson et al., 2007).

The dearth of existing research, combined with the massive implementation of virtual supervision, means that little is known about how the contours of federal pretrial and post-conviction supervision changed during the pandemic. Key issues, including the extent to which the content and patterns of virtual interactions differ from in-person communications, the topics discussed by officers and their clients in a virtual environment, and officers' attitudes about employing virtual supervision techniques, are unknown. Another area of concern entails what happens to the modes of supervision when officers are restricted from conducting home visits and observing the client's family and other intimate partners. Although some researchers have begun exploring differences in the communication patterns between in-person and virtual contacts (see Koetzle & Schwalbe, 2020), much additional work, particularly in the federal area, is needed. Moreover, almost nothing is understood about the changes that occurred in substance use, mental health, and sex offender treatment through the extensive use of telehealth practices. Finally, and perhaps most important, little is understood about whether community safety was endangered, or whether perhaps it was not impacted at all, by the replacement of face-to-face with virtual supervision. The federal supervision system should seek to fill these informational gaps by examining these issues with the goal of better understanding how virtual supervision can continue to be integrated into daily practices. Perhaps a greater subset of persons on pretrial or post-conviction supervision could be supervised through remote methods than originally envisioned prior to the pandemic.

The federal system's ability to respond to violations and hold violators accountable constituted another major change to the traditional modes of supervision. In fact, the continued presence of COVID-19 might place long-term limits on the capacity of federal

officers to apply revocations as a method of ensuring compliance with supervision conditions. If federal officers are precluded from using revocations at pre-pandemic levels, other non-incarceration methods of responding to noncompliance will have to be explored. Probation and pretrial chiefs should investigate the feasibility of applying a system of community or graduated sanctions rather than use revocations to respond to noncompliance both during and perhaps after the pandemic subsides (Viglione et al., 2020b). Future research should consider exploring whether community-based non-incarceration approaches for dealing with noncompliance can be used in place of revoking someone from pretrial or post-conviction supervision. A related issue involves the ability to drug test and hence monitor individual relapses into drug addiction. Federal agencies will have to rely on expert advice on conducting drug testing safely while COVID-19 remains an issue.

The COVID-19 pandemic has had enormous impacts on community supervision at the local, state, and federal levels. While some research has focused on the pandemic's effects among state probation and parole agencies, the current research provides a first-time examination into the pandemic's impact on the federal supervision system. A survey of 109 federal probation and pretrial chiefs revealed that the system responded rapidly to the pandemic's onset by implementing a series of preventative, containment, and response measures and continued to use those measures into 2021. The survey also showed that most federal supervision agencies substituted various technological platforms for in-person supervision and treatment and that most respondents indicated they plan to continue using these technologies even after the pandemic ends. Moreover, the pandemic's direct impact on federal pretrial and post-conviction agencies was explored with results showing that most federal districts had at least one, if not several, officers or support staff persons testing positive for the virus. Last, the survey revealed that many chiefs were concerned about the pandemic's effect on officers' capacity to meet in person and build rapport with their clients, monitor their clients for potential relapse into drug use, and hold persons accountable for violating their supervision terms. Future research will need to explore whether the move away from in-person to electronic supervision affected the patterns of communication between officers and clients and whether community safety was impacted by the drastic changes in supervision



occurring during this time. Ultimately, the federal supervision system will need to ascertain at a district and national level what aspects of pandemic supervision should be maintained or discarded after the pandemic ends.

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# Pretrial Work in a COVID-19 Environment

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**IN 2020, THE UNITED STATES** Probation and Pretrial Services system faced unprecedented circumstances associated with the outbreak of the COVID-19 coronavirus. As the front door to the criminal justice system, Pretrial Services was immediately impacted by numerous challenges during a very rapidly changing situation. Across the country, officers were warned of the danger of COVID exposure due to close contact with others, resulting in changes to nearly every aspect of pretrial work, from arrest through imposition of sentence. Probation and pretrial staff were left to modify their approaches to basic pretrial duties associated with both investigations and supervision using new and innovative approaches. While these new approaches enabled officers to carry out the mission of pretrial services, they often generated an unfamiliar and previously unimagined work environment. As we pass the one-year anniversary of the emergence of the COVID-19 pandemic in our country, the Probation and Pretrial Services Office (PPSO) is gathering data on the impacts of the pandemic and how lessons learned during this time may contribute to the future of pretrial services.

## Trends During COVID-19

The duties of pretrial services officers are captured in 18 U.S.C. § 3154; they begin with the investigative duties to “Collect, verify, and report to the judicial officer, prior to the

release hearing, information pertaining to the pretrial release of each individual *charged with an offense* [our emphasis].” Therefore, though probation and pretrial services officers may have no control over the cases that are brought into the criminal justice system, the workload of officers is directly tied to the activations of new cases. Figure 1 (next page) captures trends in case activations from fiscal years 2018 through 2020 and reflects how activations declined during the pandemic’s initial stages and then somewhat recovered. Prior to the pandemic, overall, case activations had been steadily increasing; however, with the start of the COVID-19 outbreak in 2020, pretrial activations declined from 9,758 activations per month in February 2020 to 2,226 activations per month in April 2020, a decrease of 77 percent. Since the pandemic’s initial onset, the number of monthly pretrial activations has somewhat rebounded. By September 2020, a total of 7,674 pretrial activations had been filed, representing an increase of about 245 percent from the April 2020 low point. The monthly pretrial activation number, however, is still below the peak of nearly 11,000 activations filed in October 2019. Additionally, at the pandemic’s initial onset (February through April 2020), activations involving illegal aliens witnessed a steeper decline (90 percent decrease) than activations involving U.S. citizens (66 percent decrease).

In addition to changes in the number of cases charged, there were also changes to the types of cases that entered the federal criminal justice system during the COVID-19 pandemic. (See Figure 2, next page.) Prior to the pandemic, immigration offenses had been the primary offenses charged in federal courts, followed by drug offenses. There was a decline in all case types during the pandemic’s initial stages (February through April 2020). Immigration cases, however, saw the largest declines; their monthly case activation numbers declined by 90 percent at the pandemic’s outset. Conversely, all the other major case types (e.g., drugs, financial, sex, violence, and weapons) saw their monthly case activation numbers decrease by 60 to 70 percent from February through April 2020. While all charge types later increased, drug cases accounted for the most common case type, followed by immigration for the first time in several years.

One of the more interesting changes within the first six months of the COVID-19 era is related to the release and detention decision (Figure 3, page 26). After experiencing a steady increase in the national detention rate for nearly 30 years, PPSO has dedicated a significant portion of resources for several years toward initiatives geared at reducing unnecessary detention. Only recently had the probation and pretrial services system seen a turnaround in the national release and

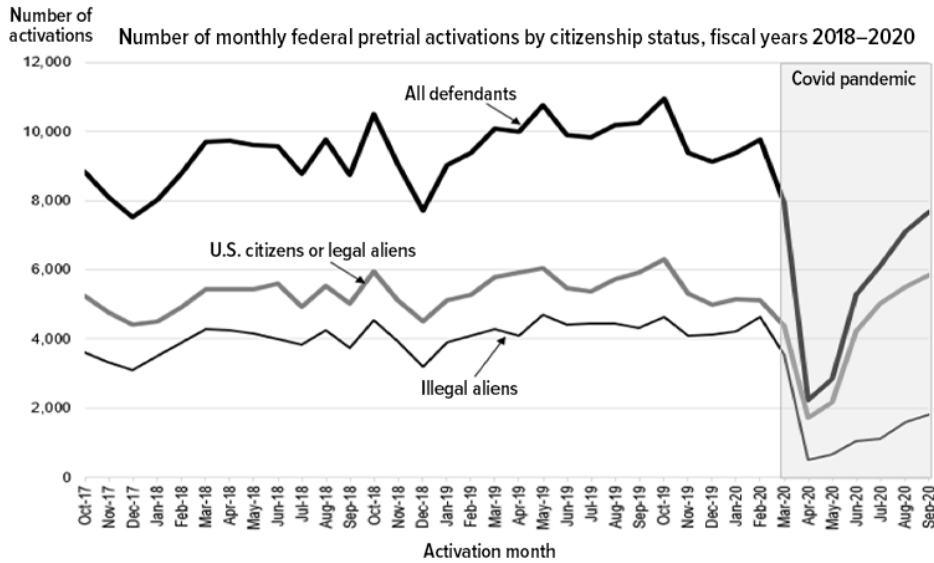
detention rates. For example, between fiscal year 2018 and fiscal year 2019, the country experienced the first increase in pretrial release of approximately 2 percent. A recent review of release rates for the 12-month period ending in March of 2021 revealed an increase in the national release rate to 46 percent, up from 42 percent in 2019 (Source: DSS 1294). Figure 3 (next page) outlines the

overall trends in the number and percent of defendants released on a monthly basis between fiscal year 2018 and fiscal year 2020. During the pandemic, the pretrial release rate for all defendants experienced one of the largest increases, increasing by 14 percentage points from 22 percent in February 2020 to 36 percent in September 2020.

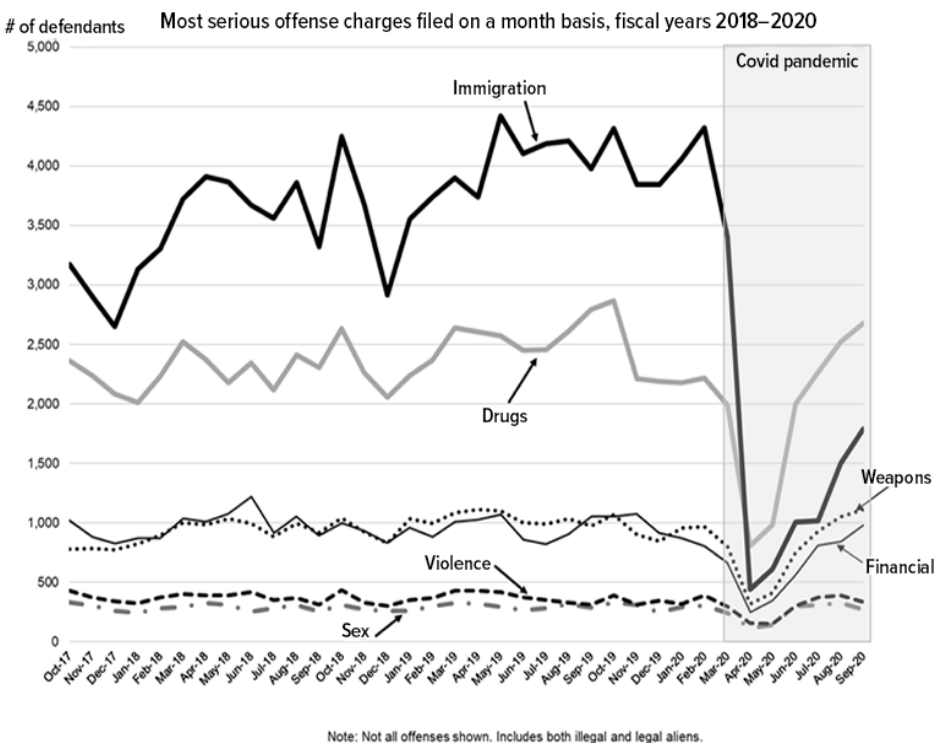
Therefore, while the number of defendants

released declined because there were fewer case activations, the percentage on pretrial release increased. There may be several explanations for this increase, including that there were fewer immigration-related case filings, which tend to have very low release rates. Additionally, concerns related to COVID-19 outbreaks within local jail and detention facilities influenced release decisions. Courts throughout the system were confronted with an urgent need to balance pretrial detention decisions with health and safety concerns. However, we note that officer recommendations for release also increased during the same time period, as outlined in Figure 4 (next page). In fact, during the pandemic, officer recommendations for release increased by 16 percentage points, from 24 percent in March 2020 to 40 percent in June 2020. Both the increase in release and the increase in officer recommendations for release are especially noteworthy given the rise in defendants charged with drug offenses.

**FIGURE 1**  
Federal preactivations by citizenship status



**FIGURE 2**  
Most serious offense charges



**Pretrial Investigations**

Any analysis of the impacts of COVID-19 to the federal pretrial system is meaningless without reviewing specific examples of how the pandemic affected probation and pretrial staff in their completion of the work. While across the nation we saw case activations decline, charge types shift, and release rates continue to rise during the pandemic, probation and pretrial services staff met various challenges head on, being creative within national policy and procedures to ensure that the mission associated with pretrial services was fulfilled. Probation and pretrial services staff shifted their mindset and daily routines and employed new methods to approach the job. For example, districts adopted new means of technology to conduct interviews, found different workspaces that allowed for acceptable social distance between officers, offenders, attorneys, and other court staff, and converted pretrial interviews to virtual platforms when approved by the court. During the initial transition, many staff members found themselves in situations where traditional in-person interviews were not possible. In accordance with national policy and procedures that provide guidance on situations that preclude an interview, officers were still able to ensure that bail reports were completed. As a result, the rates of completion of bail reports were unaffected between fiscal year 2019 (95.3 percent) and fiscal year 2020 (95.6 percent) (Source: Table H-2). Despite the direct impact of COVID-19

on the ability of probation and pretrial staff to interact in person with defendants, overall interview rates were also unaffected: The interview rate (excluding illegal aliens) was 83 percent in 2019 and 2020. (There was a slight dip in interview rates in April 2020 to 78 percent, but then it rebounded to 83 percent for the remainder of 2020.)

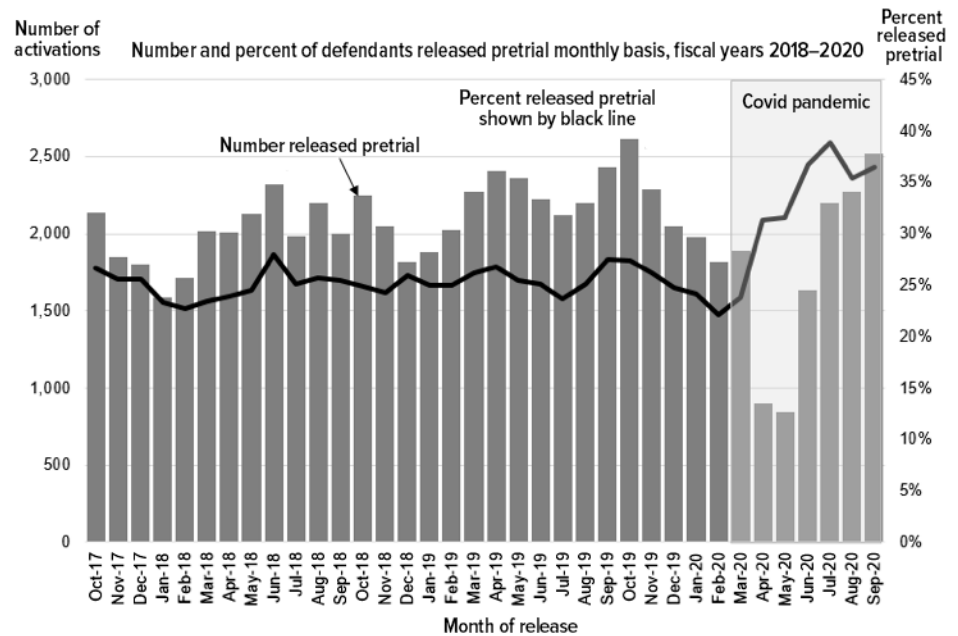
The pretrial risk assessment tool (PTRA)<sup>1</sup> is an objective, quantifiable instrument that provides a consistent and valid method of predicting risk of failure to appear; new criminal arrests; and technical violations of conditions imposed leading to revocation. Much of the information required to complete the PTRA is usually obtained during the pretrial interview. In those districts where, due to the COVID-19 pandemic, interviews with defendants were limited, PTRA completion became a challenging task. When officers contacted PPSO about this concern, they were reminded that the PTRA still produces a valid score with up to four missing items and most of the information can be obtained through other means. In those cases where a PTRA is completed with the four missing items and the defendant is released, the PTRA can be reassessed after the defendant is released and able to provide the missing information for case planning purposes if needed. Figure 5 (next page) shows trends in the number of PTRAs completed between fiscal years 2018 through 2020. Overall, the PTRA completion numbers show that officers continued to conduct PTRA assessments, as the pattern of assessments mirrored the overall monthly activation trends for U.S. citizens or legal aliens. PTRA assessments are infrequently conducted on illegal aliens. During the pandemic's initial stages (February through April 2020), the number of monthly PTRA assessments declined by 54 percent. From April through September 2020, however, the number of PTRAs completed by officers rose from 2,510 assessments to 6,237 assessments, an increase of 148 percent. Essentially, the number of completed PTRAs has rebounded to its pre-COVID numbers and demonstrates that officers continue to use this assessment instrument despite the barriers to interviewing and meeting with defendants presented by the pandemic.

<sup>1</sup> See Lowenkamp & Whetzel (2009); Cadigan, Johnson, & Lowenkamp (2012); Cadigan & Lowenkamp (2011); and Cohen, Lowenkamp, & Hicks (2018); and VanNostrand & Keebler (2009) for information about the construction, validation, and implementation of the PTRA in the federal pretrial system.

In addition to modifications of interviews, completion of reports without an interview, and completion of the PTRA with missing items, pretrial services staff made other adjustments related to pretrial investigations. In the COVID-19 pandemic, even when interviews could be accomplished by leveraging technology, obtaining signatures from defendants remained a daunting task. Given this challenge, officers were reminded to

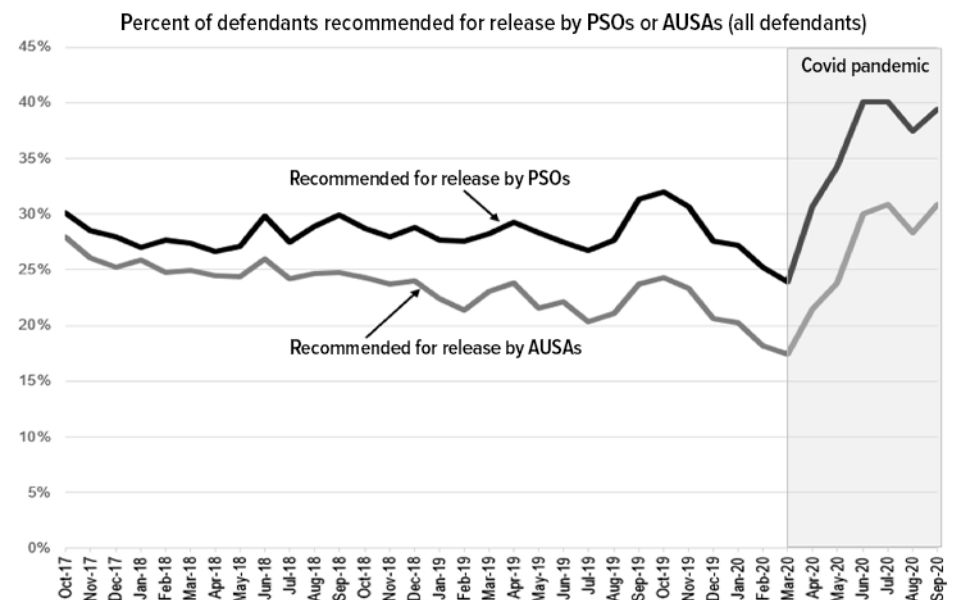
consult national policy, which outlines how to approach forms when signatures are not available. Additionally, where most pretrial training had been provided in person in the past, officers seeking training were directed to online resources. Online training resources included Blackboard courses on the PTRA and evidence-based decision making in pretrial; in addition, national trainings such as the Detention Reduction Outreach Program

**FIGURE 3**  
**Defendants released pretrial**



Note. Table includes U.S. citizens, legal aliens, and illegal aliens. It excludes transfers, material witnesses, etc

**FIGURE 4**  
**Defendants recommended for release by PSOs or AUSAs**



(DROP) were successfully converted to a virtual platform during 2020.

### Pretrial Supervision

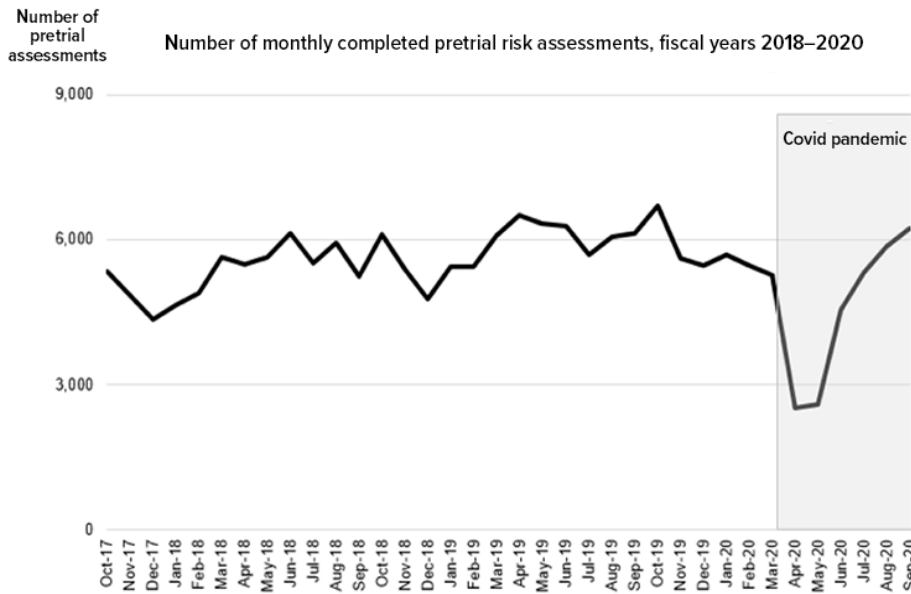
The impacts of COVID-19 to pretrial supervision duties were especially significant. As outlined in national policy, officers determine the frequency with which defendants are to report to pretrial services and the types of contact (e.g., personal, telephone). Unless specified

by the court, the frequency and method of reporting are to be based on the conditions imposed by the court and the defendant's assessed risk. Further, one of the most valuable activities available to the officer in pretrial supervision is the home contact. However, with close contact between people being identified as the primary method of spreading the virus,<sup>2</sup> establishing personal contact with

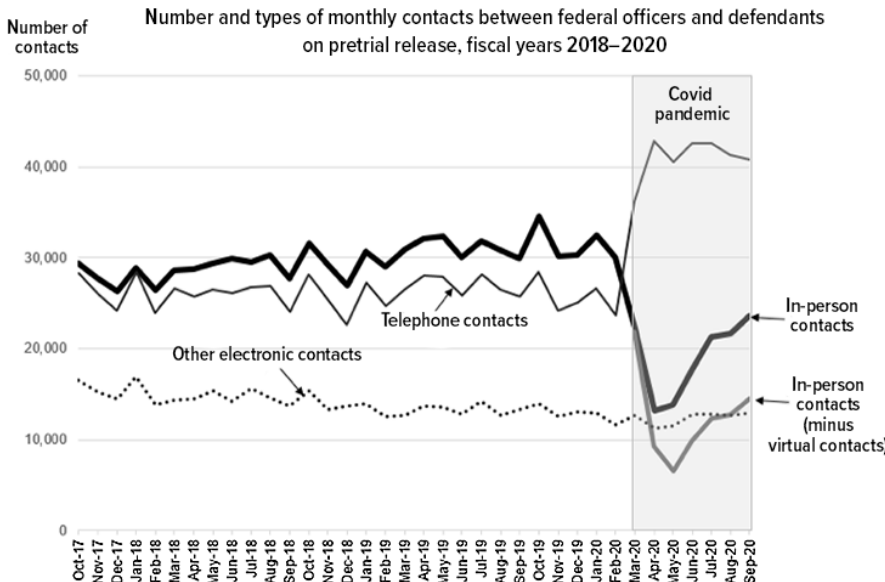
<sup>2</sup> Centers for Disease Control and Prevention.

defendants became especially challenging. As a result, both the frequency of contacts and the types of contacts were impacted nationally (See Figure 6). During national calls, chiefs reported struggles to secure adequate personal protective equipment (PPE) for officers to use during in-person contacts with defendants. As a result, one strategy many districts turned to was to increase virtual contacts with defendants, using a variety of digital platforms. In response to this change, a new virtual contact field was added to the PACTS<sup>3</sup> database in April of 2020, allowing for the tracking of contacts between officers and defendants in a virtual environment for the first time. Figure 6 shows how the ways officers interact with defendants has changed during the pandemic. Specifically, officers are seeing defendants less in person but have increased their electronic (particularly their telephone) contacts with released defendants. For example, at the time of the pandemic's initial onset (February through April 2020), the total number of in-person contacts (e.g., contacts in which the officer contacted the defendants in the office, their home, place of employment, or community) fell by 56 percent; conversely, the number of telephone contacts between officers and defendants rose by 81 percent within this time frame. These patterns exemplify how pretrial officers ensured that, even when physical contact wasn't possible, they did not lose touch with the defendants they supervise. Further, research has shown telephone contacts with defendants can have a positive impact on outcomes such as rates of failure to appear.

**FIGURE 5**  
Monthly completed Pretrial Risk Assessments



**FIGURE 6**  
Number and types of monthly contacts



In addition to changes to the frequency of contacts, the locations of meetings with defendants also shifted. Prior to the pandemic, in-person community and home contacts were a valuable tool for supervision, but officers also recognized the value of meeting with defendants in the office and in the community depending on the circumstances of the case. Before the pandemic, nearly three-fifths of contacts took place in an officer's workplace, while a third occurred in a defendant's home (see Figure 7). As COVID-19 emerged, meetings at the probation and pretrial services

(2020). Social Distancing: Keep a Safe Distance to Slow the Spread. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

<sup>3</sup> The Probation and Pretrial Services Automated Case Management Tracking System (PACTS) is the case management system used by probation and pretrial services offices to manage the supervision and investigation of defendants and offenders.

offices declined to the point where they were the locus of about quarter of contacts; conversely, contacts occurring in the defendant's home constituted over half of all contacts. These home contacts, however, were mostly digital. About half the home contacts involved a virtual interaction between officers and defendants, whereas 16 percent of office visits involved a digital interaction.

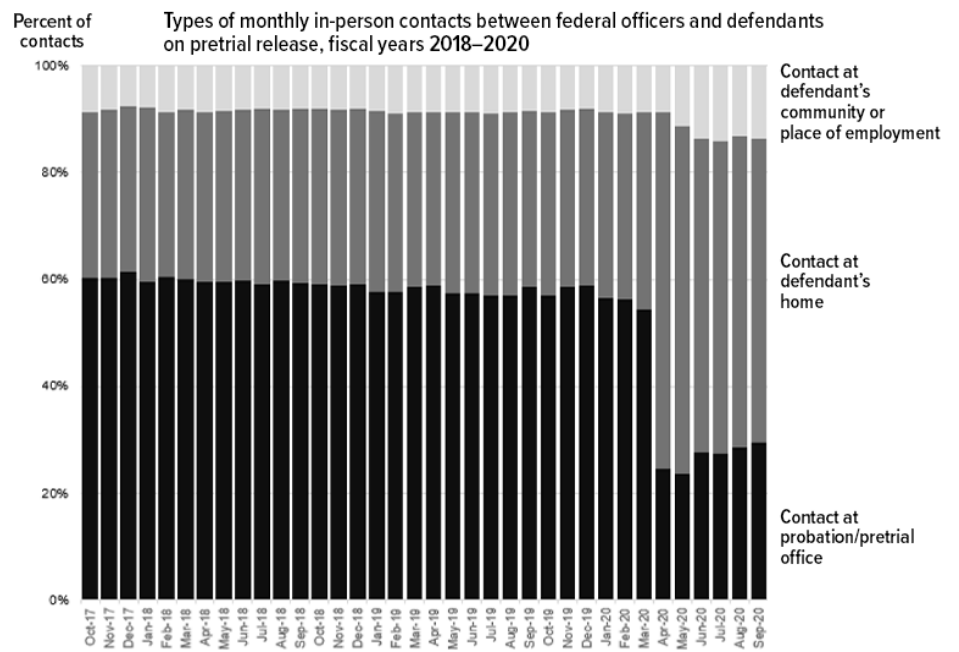
Because the conditions imposed by the court are a major driving force behind the intensity of supervision, it is important to review the number of special conditions imposed during any analysis of pretrial supervision. During the COVID-19 pandemic, the total number of special conditions imposed initially declined by nearly 50 percent from 18,628 conditions imposed in February 2020 to 9,434 conditions imposed in May 2020. The decrease in the total conditions imposed tracks the total number of defendants released pretrial during the same time frame (i.e., since fewer people were released, during the time frame there were fewer total conditions imposed) (see Figure 8). During the same time period (February through May, 2020), however, there was a slight increase in the average number of special conditions imposed, from 9.7 to 10.6 conditions per defendant. Hence, numbers suggest that while fewer defendants were released pretrial, judges imposed more conditions on those released pretrial. These numbers later returned to pre-COVID levels (Figure 8).

One alternative to detention that was initially imposed on pretrial defendants on a much more frequent basis during the COVID-19 pandemic was location monitoring (LM).<sup>4</sup> Location restrictions are movement restrictions on the location of a defendant in the community during specific hours, approved by the supervising officer. The level of restriction in the location monitoring program ranges between a curfew and 24-hour home incarceration as determined by the court on a case-by-case basis. At the onset of the COVID-19 pandemic, the federal probation and pretrial services system realized an increase of nearly 20 percentage points in the percentage of defendants released with a condition of location monitoring (Figure 9, next page). The imposition of this often labor-intensive condition quickly returned to pre-COVID imposition rates within a few months.

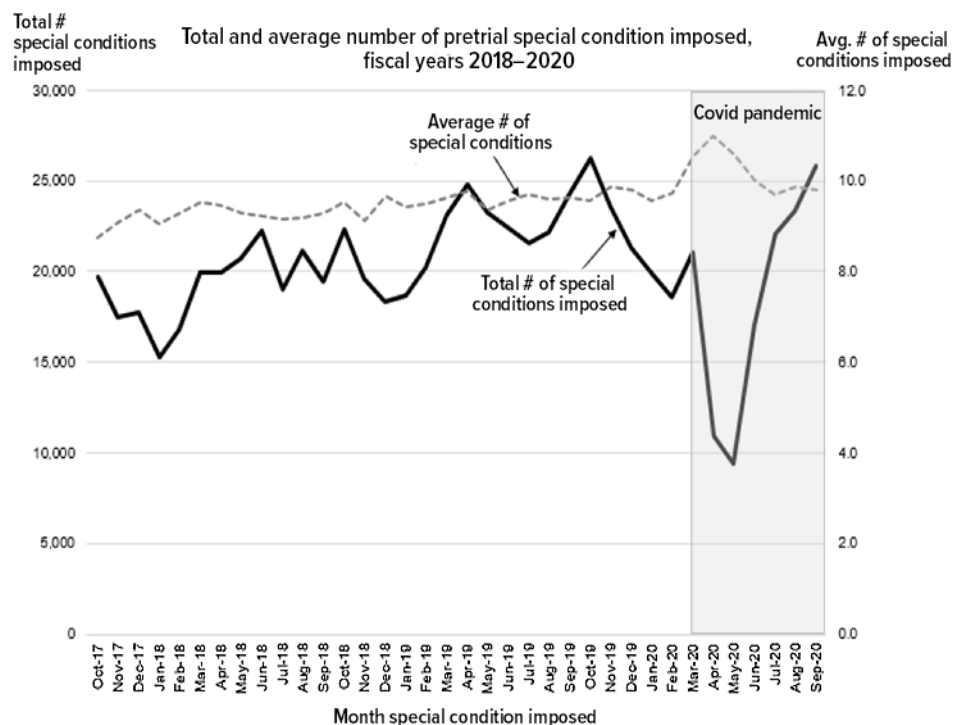
In addition to variations in contacts and conditions, probation and pretrial services offices also looked to national policies and procedures for other modified approaches to effectively supervising pretrial defendants. In accordance with the statute and national policy, districts were reminded of their duty

to treat supervision as a fluid process involving regular staffing of cases between officers and supervisors and the duty to consider removing supervision conditions when appropriate as defendant circumstances change. Additionally, they were reminded of their ability to adopt low-intensity supervision

**FIGURE 7**  
Types of monthly in-person contacts



**FIGURE 8**  
Pretrial special conditions imposed



<sup>4</sup> See Whetzel, Levinsohn, Cornish, & Cohen (this issue of *Federal Probation*, 85(1) June 2021).

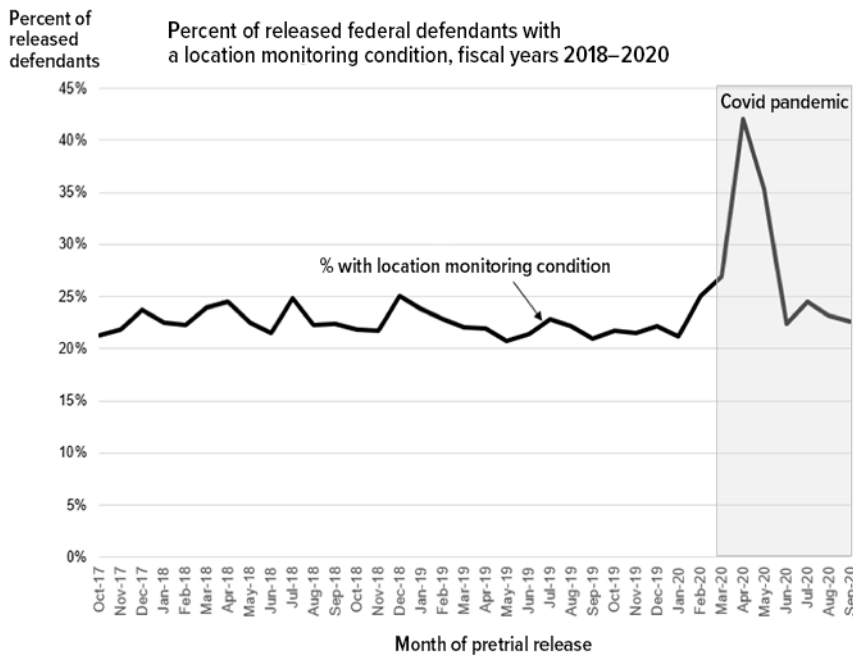
policies for those cases meeting the criteria outlined in national policy. Finally, regarding case planning, districts revisited the ability of supervisors to defer formal evaluations in stable cases where defendants remain in full compliance and meet the additional criteria outlined in the national policy.

Based on the statutory requirement that pretrial defendants in the federal system are to be released on bond with only the least

restrictive conditions to reasonably ensure their appearance in court and the safety of the community, success and failure in the area of pretrial supervision is measured by reviewing rates of failure to appear for hearings, rates of rearrests for new crimes, and rates of violations of conditions of pretrial supervision resulting in revocation of pretrial defendants. Historically, failure rates in the federal system are much lower than most people would

suspect. For example, for the 12-month period ending in March of 2021, national failure rates remained low as follows: failure to appear (1.7 percent), new criminal arrests (2.3 percent), and technical violations (4.1 percent). Figure 10 captures trends in pretrial supervision outcomes for the three-year period between fiscal years 2018 through 2020. As reflected, the number of all types of violations—including rearrests, revocations, and failures to appear—fell during the pandemic’s initial stages and then increased. For example, the number of defendants revoked from pretrial supervision or missing their court appearances fell by 56 percent between February and April 2020, and the number of defendants rearrested for new crimes declined by 44 percent during the same time span.

**FIGURE 9**  
Percent of released federal defendants with LM condition

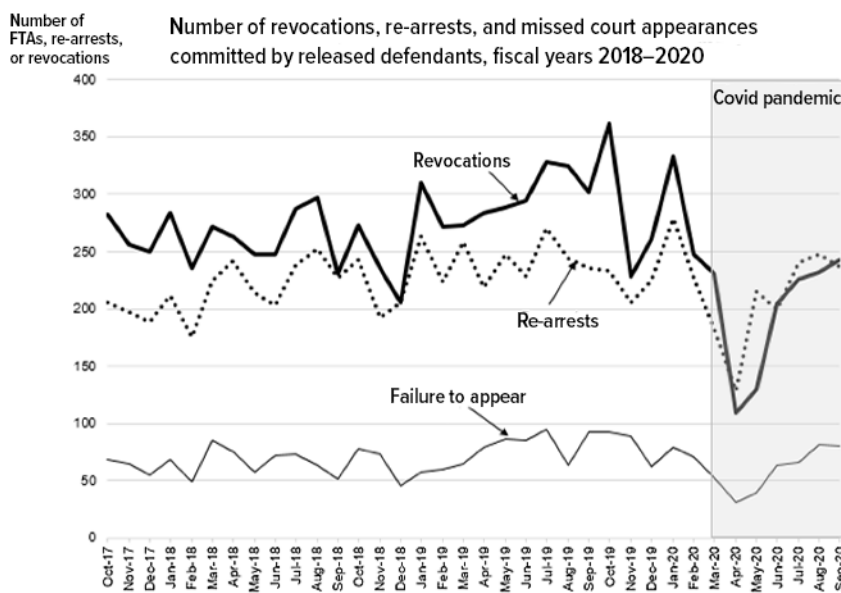


**Summary of the COVID-19 Impact**

A year after the emergence of the COVID-19 coronavirus, the federal probation and pretrial system has an opportunity to explore lessons of the past year and better understand the effects of the pandemic on pretrial services. In several instances, probation and pretrial services staff have created new approaches to accomplishing core duties. These changes warrant continued research and discussions on their impacts related to pretrial outcomes. For now, there are three important takeaways that cannot be overlooked:

First, as identified throughout this article, changes were made to federal probation and pretrial offices’ methods of achieving the duties and objectives of pretrial services. While these approaches were entirely new to many districts within the system, it is important to note that many of the alternatives employed were consistent with current national policy and procedures. Though districts may have had to familiarize themselves with new practices, many of them are consistent with the guidance outlined in the *Guide to Judiciary Policy* and the *Pretrial Services Procedures Manual*. Therefore, as districts begin working toward reconstitution efforts, they can consider those practices and procedures that have worked well during the COVID-19 pandemic and recognize it may be possible to continue them moving forward or to develop other creative approaches to completing pretrial work. Districts can use the lessons learned from the pandemic experience to continue to evaluate their local policies and procedures, compare them with current national policies and evidence-based practices, and implement

**FIGURE 10**  
Released defendants’ revocations, arrests, and FTAs



the most effective means to achieving the mission of pretrial services for the future.

In pretrial services, the federal risk principle provides three guiding principles: risk assessment tools are necessary; low-risk defendants are more likely to fail when released with alternatives to detention compared to those released without; and alternatives to detention are most effective for moderate- and high- risk category defendants. In fact, defendants with no risk factors can be released with no pretrial supervision. Prior to the pandemic, research had shown that districts were using standard conditions and releasing moderate- and high-risk defendants with the same number of conditions of release regardless of the high rates of success research had shown for each PTRAs category. During the COVID-19 outbreak, it became essential for districts to prioritize resources and reserve the most labor-intensive tasks for the highest risk cases. Therefore, the pandemic actually helped to show many districts the true value of the application of evidence-based practices in prioritizing resources and workload.

Finally, during the COVID-19 pandemic the country continued to experience an increase in pretrial release rates without adverse effects on pretrial supervision

outcomes. Over the past several years there have been multiple initiatives developed across the country in an effort to reduce unnecessary pretrial detention. Yet, hesitation has continued to exist, most often due to the perceived potential for adverse events related to the release of pretrial defendants. The COVID-19 pandemic has provided the federal probation and pretrial services system with a glimpse of what can be achieved in a short period. In fiscal year 2020 alone, 1,454 pretrial defendants experienced dismissal or acquittal of their case after having been detained throughout the entire pendency of the case. Pretrial services must consider the outcomes of the COVID-19 pandemic and advance initiatives aimed at reducing unnecessary detention.

### Conclusion

The COVID-19 experience has given the federal probation and pretrial services system the opportunity to evaluate how the operational changes to pretrial investigations and supervision have impacted outcomes in pretrial services. As outlined here, an initial analysis has shown that districts have the ability to be creative within national policy; the risk principle is valid and should be used to guide our resources; and by integrating national

policy and procedures and evidence-based practices, districts could see a prolonged reduction in unnecessary detention with no negative impacts on outcomes even beyond COVID-19.

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# Presentence Work in a COVID-19 Environment

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**THE COVID-19 PANDEMIC** has forced changes upon nearly every aspect of our personal and professional lives; presentence work was not spared. In response to these challenges, presentence units across the country have adapted, problem-solved, struggled, and ultimately endured to continue serving the court and the community.

Despite national policy and shared data systems, the 94 districts across the country are diverse, representing different sizes and court philosophies and facing different geographical challenges, defendant populations, logistical barriers, budget constraints, and a variety of other circumstances and difficulties. Specific practices are consequently equally varied.

Precisely describing the reality of each individual district's experience of the pandemic could consume entire volumes of journal articles, but this one aims to capture *generally* what presentence practice looked like pre-pandemic and how the discipline responded when confronted by this novel challenge.

## **Presentence Work Before the Pandemic**

A presentence report provides a comprehensive, concise, and accurate picture of a defendant to assist the court in making a fair sentencing decision. Under Rule 32 of the Federal Rules of Criminal Procedure, the presentence report must reliably depict the

defendant's criminal history and personal history and properly calculate the sentencing guidelines.<sup>1</sup> The presentence report also includes a sentencing recommendation and justification, requiring a "careful assessment of all of the facts relating to the defendant and the case, followed by a determination, based on the applicable statutes and guidelines, as to what the officer believes to be an appropriate sentence."<sup>2</sup>

To provide the court with a comprehensive presentence report and a thoughtful

<sup>1</sup> Fed. R. Crim. P. 32.

<sup>2</sup> Guide to Judiciary Policy Guide, Volume 8, Part D, Chapter 5, §510(a).

and valuable sentencing recommendation, probation officers assigned to complete presentence reports must perform a thorough investigation into each case. The primary investigative tasks include, but are not limited to, (1) interviewing the defendant, (2) obtaining documentation and verification, (3) completing a home investigation, (4) speaking with collateral contacts, (5) communicating with defense counsel and the assistant United States attorney or the assigned case agent, (6) gathering victim impact statements when appropriate, and (7) when applicable, discussing the defendant with the assigned pretrial services officer.

After the investigation, the officer drafts the presentence report and recommendation, addresses any objections by counsel in an addendum, and attends the sentencing hearing.

Of the presentence responsibilities, the *Guide* describes the defendant interview as “the pivotal component of the presentence investigation.”<sup>3</sup> Before the pandemic, best practices dictated that presentence interviews be conducted in person whenever possible. For defendants in custody, presentence interviews were completed at the federal or local facility that housed the defendant. For out-of-custody defendants, presentence interviews generally occurred at the probation office.

The environment created by an in-person interview was considered important because presentence officers must discuss intimate and often difficult topics with the people they interview. In most cases they must do so without the benefit of prior interactions or an established relationship with that person. Quickly building rapport and trust with a defendant is crucial and can be streamlined with appropriate eye contact and body language and a thoughtful demeanor. Furthermore, the in-person interview holds investigative value; the officer observes and evaluates visual cues into the defendant’s behavior, demeanor, willingness to change, veracity, and sincerity and makes other insights crucial to assessing the statutory factors of sentencing.

Additionally, third-party documentation is often needed to verify the information gathered during the interview. This requires an authorization form signed by the defendant agreeing to the release of the information. The process of obtaining these signatures was simple when interviews took place in person: The officer printed the forms and brought them to

the interview, and the defendant signed them.

Following the interview, the officer takes several more steps to better understand the defendant; two of the most crucial are the home investigation and the collateral contacts. Prior to the pandemic, the officer visited the defendant’s home to assess, among other things, the standard of living and community ties and the nature and circumstances of the residence and surrounding neighborhood.

This home visit was especially crucial in districts that have bifurcated pretrial services and probation offices. The home visit was the first opportunity for officers to interact with the defendant’s family and support system. In many cases this is the first time the family has interacted with a law enforcement officer for a purpose other than to facilitate an arrest or bring new charges. The home visit provided the officer with the opportunity to reinforce one of the primary missions of this work: to help defendants maintain long-term positive changes in their lives. It was a time to set a positive tone with the family, aiding in creating a strong and trusting foundation for future interactions and eventual supervised release.

The home visit also provided the officer with an opportunity to conduct an interview with someone close to the defendant. This is a vital part of the presentence investigation; the officer can corroborate aspects of the defendant’s statements about biographical details, learn about aspects of the defendant that may not have been discussed during the presentence interview, gain a deeper understanding of the defendant’s relationships and community ties, and receive a third-party perspective of the defendant. Additionally, the probation officer portrays how the officer can be a valuable resource for the family in understanding the sentencing process.

While in-person interactions were a central part of presentence work before the pandemic, virtual interactions also took place. For example, it was not always possible to interview a defendant’s family or significant other during a home inspection. In those instances, the probation officer generally spoke to the collateral contact on the telephone. Other investigative tasks were done in person when convenient, but often took place over the phone. For example, to learn more about the crime, officers often spoke with the assistant United States attorneys or case agents over the phone. Discussions with the defendant’s pretrial services officers occurred over the phone, through email, or in person. Conversations with others in the presentence unit regarding

the defendant generally took place over the phone or in person.

Prior to the pandemic, the sentencing hearing took place in a courtroom with all parties present. According to the Federal Rules of Criminal Procedure, “the defendant must be present at . . . the sentencing.”<sup>4</sup> Pre-pandemic, at least four circuits interpreted this to prohibit virtual appearances by defendants at sentencings.<sup>5</sup> In some districts, probation officers occasionally appeared virtually, but this appears to have been rare.

The in-person nature of the interview, the home investigation, and the sentencing hearing was a critical part of a thorough investigation, providing the framework for a useful presentence report and a thoughtful sentencing recommendation. When the pandemic unexpectedly forced the work to be entirely virtual, districts across the country were required to adapt, solve novel problems, and acclimate to a new way of performing a presentence investigation in a short period of time.

## Presentence Work in a COVID-19 Environment

As terms like “social distancing,” “Zoom,” and “quarantine” were added to the country’s lexicon, the judiciary raced to keep our courts running, our rights preserved, and our communities safe.

Pursuant to the Coronavirus Aid, Relief, and Economic Security, or CARES, Act, enacted on March 27, 2020, the Judicial Conference found, on March 29, 2020, that “emergency conditions due to the pandemic have and will materially affect the functioning of federal courts...,” allowing chief district

<sup>4</sup> Fed. R. Crim. P. 43(a)(3).

<sup>5</sup> See *U.S. v. Torres-Palma*, 290 F.3d 1244, 1246–48 (10th Cir. 2002) (“[V]ideo conferencing for sentencing is not within the scope of a district court’s discretion.”); *U.S. v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001) (same); *U.S. v. Navarro*, 169 F.3d 228, 239 (5th Cir. 1999) (same); *U.S. v. Williams*, 641 F.3d 758, 764–64 (6th Cir. 2011) (citation omitted) (“The text of [then] Rule 43 [did] not allow video conferencing. The structure of the Rule [did] not support it. As our sister circuits have recognized, and anyone who has used video conferencing software is aware, ‘virtual reality is rarely a substitute for actual presence.’...While an individual may determine that the benefits of not having to travel outweigh the costs of having a meeting by video conference, we do not, and cannot, perform such a balancing with a criminal defendant’s rights. Until such time as the drafters of the Rule instruct us otherwise, district courts may not conduct sentencing hearings by video conference.”).

<sup>3</sup> Guide to Judiciary Policy Guide, Volume 8, Part D, Chapter 2, §220.

judges to temporarily authorize the use of video teleconferencing for certain criminal proceedings with the consent of the defendant.<sup>6</sup> Additionally, federal courts across the country suspended the timing requirements established by the Speedy Trial Act, which allows for continuances of criminal proceedings to be excluded under the Act when “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.”<sup>7</sup>

The temporary suspension of the Speedy Trial Act requirements and the authorization to use videoconferencing in response to the material effect of the pandemic on federal courts has now been extended in most districts for over a year. In retrospect, it is striking how reserved the initial CARES Act finding was; the pandemic has caused a profound shift in the way our systems operate—both inside and outside the judiciary. The somewhat conservative approach during the initial months of the pandemic provided courts, probation offices, and federal defenders with flexibility to begin exploring options for what

many might have expected to be a short-term national crisis. More than one year later, as the country continues to struggle with the effects of the pandemic, the courts will likely consider whether procedures adopted during the pandemic should be continued post-pandemic.

*Workload*

One of the biggest impacts that the COVID-19 pandemic had on presentence work was not the shift to working from home or the decline of in-person communication; instead, it was the dramatic fluctuation of workload and the reduction of sentencing hearings being held.

For the first time, guilty pleas and sentencing—the hearings most often associated with presentence work—could be conducted remotely. But despite the legal authority and technological capacity for these hearings to occur virtually, data received from the Administrative Office of the United States Courts suggests that parties were hesitant to do so.<sup>8</sup>

<sup>8</sup> The data used for this analysis were obtained from Administrative Office of the U.S. Courts’ case management system and were authorized for use in this article. The data encompassed all presentence reports assigned and submitted on a monthly basis during the time frame between fiscal years 2018 and 2020.

As seen in Figure 1, before the pandemic began, from October 2017 until February 2020, an average of 5,735 presentence investigation reports were assigned monthly across all districts. In March 2020, that number dropped to 4,480, and then to 1,820 by April 2020.

The number of submitted presentence reports also declined, although the decrease was less extreme, and the decline was more gradual. From October 2017 until February 2020, an average of 5,582 presentence investigation reports were submitted monthly across all districts. This number decreased steadily from March 2020 until July 2020, the lowest month, with only 2,988 presentence reports submitted.

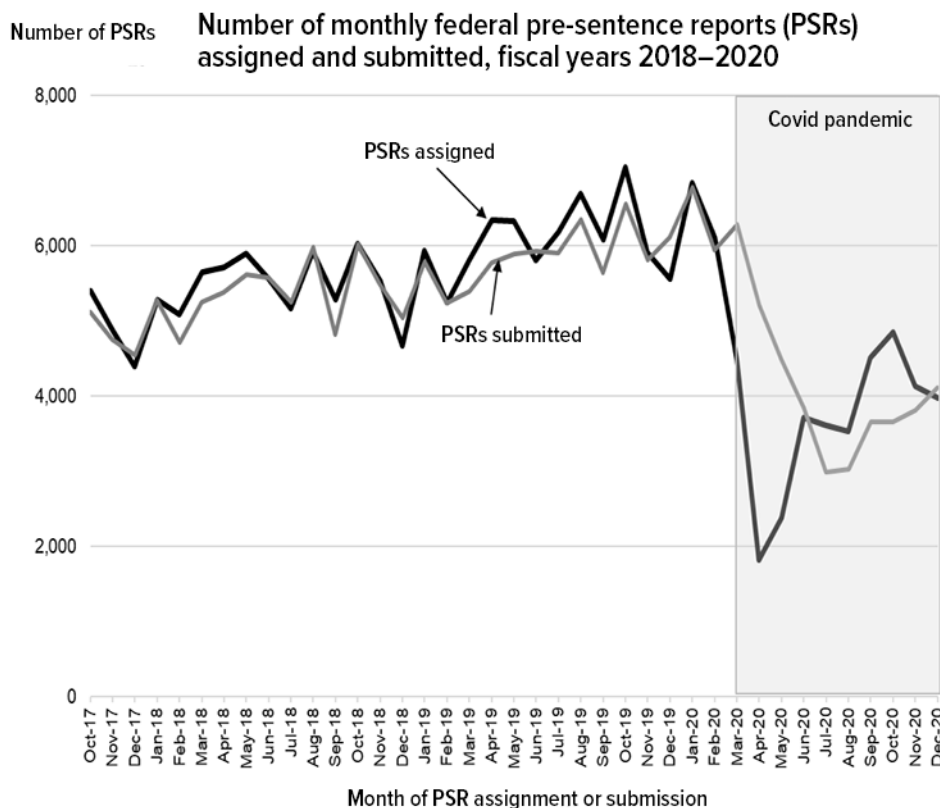
After the sharp drop in presentence investigation report assignments from February 2020 to April 2020, the numbers slowly crept up, averaging 4,320 monthly assignments during the last quarter of 2020. Presentence investigation report submissions didn’t begin increasing until August 2020, and during the final quarter of 2020, the average for monthly submissions was 3,860.

The decline in the number of monthly presentence reports assigned followed a similar pattern in nearly all major crime types. Immigration cases had the steepest drop, declining by 41.8 percent, while sexual offenses were impacted the least, declining by 23.9 percent during the COVID pandemic. After the significant drop in April 2020, presentence reports assigned for all crime types have been increasing. However, immigration cases seem to be rebounding at a slower rate than the other crime types, as illustrated in Figure 2 (next page).

The decrease in assignments corresponds directly to a decrease in guilty pleas or verdicts. Whether the decrease in adjudications was a direct result of reduced prosecution efforts (stemming from a shift in investigation and charging practices by the executive branch and other federal agencies) or limitations on in-person court proceedings related to the pandemic is unclear.

There has also been a significant decrease in the number of monthly sentences through the first quarter of 2021. Information was also obtained regarding the most serious conviction offenses for these presentence reports and the number of federal sentences imposed on a monthly basis for the same time period. Examining sentencing patterns for a period encompassing over three fiscal years demonstrates the extent to which the pandemic significantly impacted federal sentencing trends and practices.

**FIGURE 1**  
**Monthly presentence reports assigned and submitted**



imposed. Before the pandemic began, from October 2017 until February 2020, an average of 5,330 sentences were imposed monthly across all districts. In March 2020 that number dropped to 4,509, and by April 2020 only 3,060 sentences were imposed. The following months had an increase in sentences imposed, but as shown in Figure 3 (next page), sentencing hearings are not yet occurring at a pre-pandemic rate.

For presentence officers, this means that cases are not being resolved, even if the presentence report has been submitted, and instead are remaining on their caseload.

*The Impact of a Reduced Caseload and the Constraints Posed by the Pandemic*

The impact of the trends discussed above varied from district to district, but for many, a decrease in presentence report assignments did not mean a decrease in work. Unsurprisingly, officers used the temporary decrease in caseload to complete projects and trainings, to take on additional duties, and to assist other units.

For example, in the District of Minnesota, the Western District of Washington, the Southern District of Florida, and possibly other districts, when presentence assignments decreased, officers assisted with compassionate release investigations and backed up Pretrial Services. In the District of Connecticut, a presentence officer took on a location-monitoring hybrid caseload due to the increased number of defendants released on bond with location monitoring conditions. In the Southern District of Florida, officers conducted compassionate release investigations, supported Pretrial Services, assisted with the low-risk caseloads, responded to collateral record requests from other districts and agencies, and completed prerelease investigations. In the Eastern District of Michigan, the presentence unit took on all collateral requests and helped Pretrial Services complete criminal histories. Additionally, four officers from the Eastern District of Michigan served on a remote temporary duty assignment writing presentence reports for the District of Alaska, because, interestingly, its workload drastically increased during the pandemic.

This is a small sample of the extra functions presentence officers took on while their presentence caseloads were reduced; presentence officers across the country likely provided similar support to their districts. And while there was a significant drop in case assignments, presentence work never stopped.

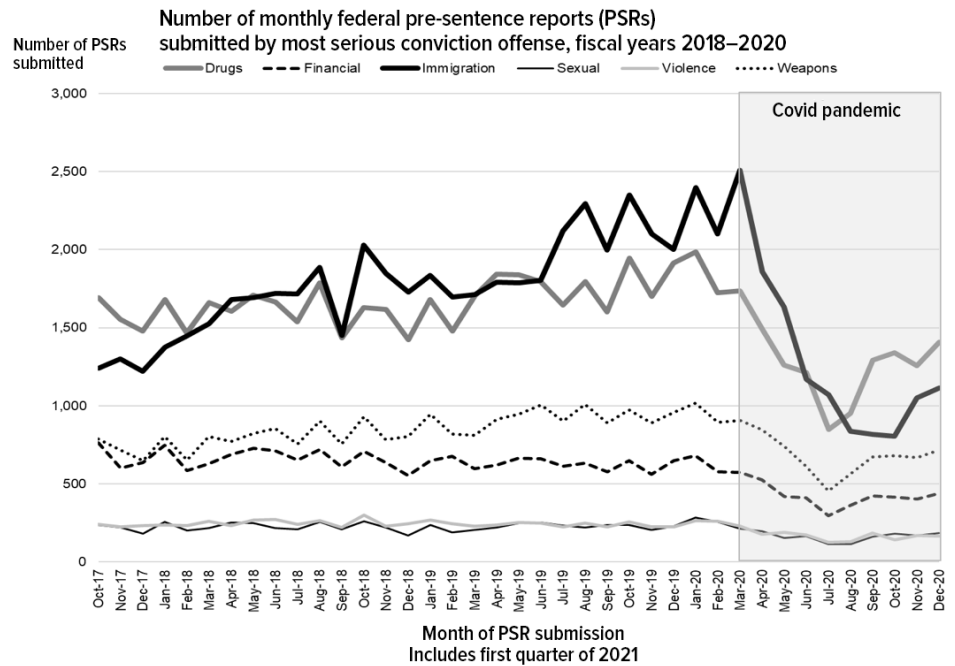
Presentence officers continued to have assignments, and the pandemic posed significant complications in the way presentence officers carried out their duties.

*Virtual Interviews*

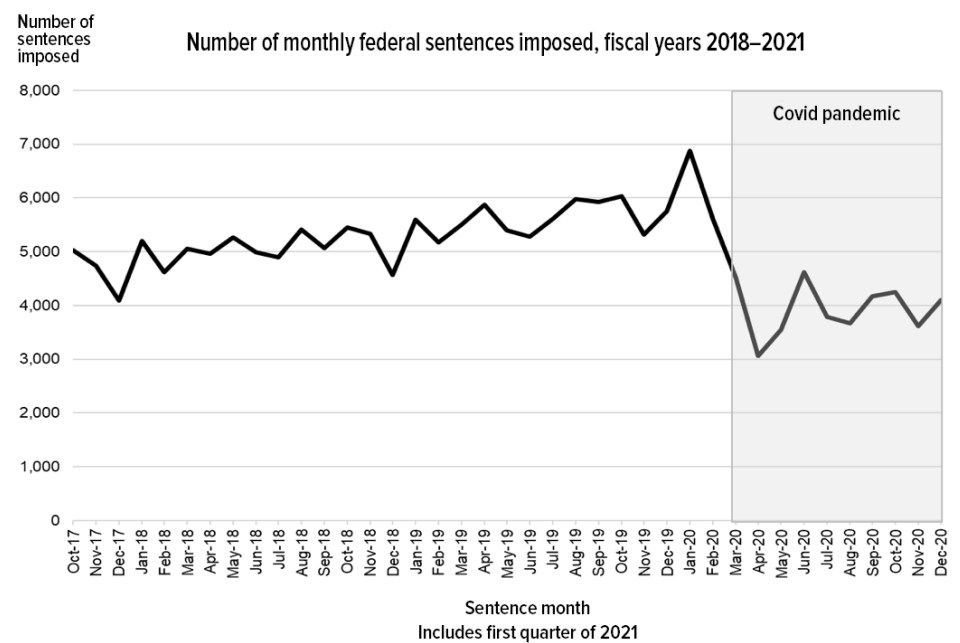
The presentence interview is now completed by videoconferencing or over the telephone. Neither of these options is ideal; quickly

building rapport with a defendant is much more difficult in a virtual environment. However, videoconferencing does offer some parallels to being in person. Being able to see one another allows both parties to give and receive non-verbal feedback such as nodding or leaning in, it assists in distinguishing between whether the speaker is taking a thoughtful pause or has finished speaking,

**FIGURE 2**  
Monthly presentence reports assigned by most serious conviction



**FIGURE 3**  
Monthly federal sentences imposed



and it makes clear to the defendant that the probation officer is focused on and present in the interview. Though videoconferencing is significantly different from spending time with someone in person, a probation officer can create a trusting and comfortable environment for the defendant over video.

Unfortunately, doing so becomes even more difficult when interviews are conducted over the phone. There is no longer any body language or non-verbal feedback; accidental interruptions become more frequent; and a sense of connection is even more difficult to foster. However, probation officers are trained to interview and to speak with defendants, and luckily many of the skills are transferrable to the telephone.

Districts across the country have had to adapt and do so quickly. Conducting an interview over video is relatively simple when the defendant is out of custody. However, for in-custody defendants, conducting a video interview requires more logistical problem solving.

According to a poll conducted during a training put on by the Federal Judicial Center titled “Presentence Practice During a Pandemic,” nearly a year after the pandemic began, approximately 40 percent of the participants were conducting interviews over the phone. Just over 50 percent were conducting interviews using video conference, and a few officers had resumed in-person interviews.<sup>9</sup>

Some districts, however, were very successful in working with the United States Marshals Service to secure video interviews with detained defendants. For example, the Eastern District of Michigan worked closely with the United States Marshals Service to incorporate video interviews within their holding facilities, and the District of Minnesota was able to provide iPads for use by defendants during video interviews. This creativity and cooperation illustrate the resourcefulness of the 94 districts and the importance of positive relationships between agencies.

### *Verifications and Home Inspections*

Other aspects of presentence work have presented difficult logistical questions in the face of a pandemic. Obtaining signatures for

releases of information pre-pandemic was simple; now it requires coordination with contacts at the local or federal facilities for in-custody defendants, assistance from attorneys for out-of-custody defendants, and a significant loss of control over the process for the officers. Whether a form will be returned with a signature is largely contingent on the effective and efficient help of others.

Home inspections are now done virtually, making it difficult for the officer to get a true sense of the home and the community. The home inspection is largely dictated by the defendant, who holds the phone or computer as the inspection is conducted. Although a virtual home inspection is certainly more beneficial than not conducting one at all, it can be challenging to assess the defendant's living conditions based on the view the defendant provides or chooses not to provide. Additionally, assessing the entire property and surrounding areas is challenging in a virtual environment.

### *Officer Training and Education*

The pandemic forced the judiciary's training agencies to adapt in order to reach presentence officers at a distance. The most notable effect was the cancellation of in-person programs and the expansion of virtual programs. Training modalities—like eLearning courses, live webinars, and podcasts—that had previously been supplements to in-person education programs became the primary ways for officers to participate in judiciary education. Training agencies enhanced their websites to highlight educational resources for presentence officers to use in self-guided study. The primary agencies responsible for training officers on the presentence investigation process are the Administrative Office, the Federal Judicial Center, and the United States Sentencing Commission. These agencies have independent statutory missions, but all play important roles in educating presentence officers.<sup>10</sup> These agencies increased collaboration

<sup>10</sup> The Administrative Office was established in 1939 “to support the constitutional and statutory mission of the federal judiciary to provide equal justice under the law as an independent and equal branch of government.” See Ricardo S. Martinez, *Federal Sentencing Policy: Role of the Judicial Conference of the United States and the Administrative Office of the U.S. Courts*, 81 Federal Probation 3 (2017).

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967, on the recommendation of the Judicial Conference of the United States. 28 U.S.C. §§ 620–629.

during the pandemic and adapted to ensure that newly hired and experienced officers received training opportunities.

The Administrative Office's Federal Probation and Pretrial Services Academy (FPPA), which provides a 6-week initial officer training and orientation, was not immune to the effects of the pandemic. On March 13, 2020, Initial Probation and Pretrial Training (IPPT) classes 2004 and 2005 were sent home from Charleston, South Carolina, and in-person training was suspended indefinitely. The FPPA adapted their operations and provided the first virtual class, Contact Safety, on June 10, 2020. Since that time, the FPPA has developed virtual versions of the IPPT, Post-Conviction Risk Assessment (PCRA), and Firearms Instructor Recertification (FIR) programs, along with more than seven stand-alone classes. As of June 2, 2021, 408 students have completed the virtual IPPT program, 128 students have completed the virtual FIR program, and over 6,000 students have participated in stand-alone virtual classes. The course evaluations for all these programs have been overwhelmingly positive, and the FPPA is considering keeping some level of virtual training post-reconstitution.

In-district training of presentence officers looked different during the pandemic as well. For example, before the pandemic, the District of New Mexico broke presentence training into two primary phases. The first phase lasted approximately two and a half days and covered the basic topics such as interviewing, home contacts, sentencing guidelines, criminal history, statutory requirements for presentence reports, and others. When the first phase of training was complete, officers were assigned several straightforward cases. After gaining some familiarity with the work, the officer participated in Phase II training, which included more complex topics, such as career offender cases, armed career criminal cases, and how to work with victims. Additionally, each officer was assigned a mentor and had access to the district's six sentencing guideline specialists to answer any questions that arose.

In June 2020, the District of New Mexico held an all-virtual Phase I training. The group being trained consisted of 2 newly promoted

The United States Sentencing Commission was created by Congress as part of the Sentencing Reform Act of 1984 and was charged with formulating national sentencing guidelines to define the parameters for federal judges to apply in their sentencing decisions. P.L. No. 98-473, 98 Stat. 1987.

<sup>9</sup> The poll was conducted on March 9, 2021. The question asked was “How are you conducting interviews right now?” Of the 269 answers received, 15 officers answered “in person” (5.58%), 110 officers answered “using telephone conference” (40.89%), and 144 officers answered “using video conference” (53.53%).

SUSPOs, 3 brand-new officers, 1 promotion, and 1 lateral transfer from postconviction to presentence. Instead of all-day trainings, the specialists in charge of training broke it up into half-day trainings to avoid videoconferencing fatigue. According to Victoria Loya, a sentencing guidelines specialist who has been with the District of New Mexico for over 10 years, the most challenging parts of the virtual training were the technological hurdles, building rapport with the new officers, and the difficulty of teaching some topics using just a computer screen.

However, by the Phase II training, conducted in July 2020, the trainers were more familiar with the technology and more comfortable with virtual teaching. Specialists from both the north and the south office in New Mexico were able to be part of each training, spreading the work of training the officers out among more specialists. During the trainings, the specialists began to use surveys, polls, and timed competitions and overall made the virtual trainings more interactive. Ultimately, Ms. Loya felt that the virtual training was effective; though there are some things that will always be better trained in person, training virtually does have its advantages and, moving forward, should be considered a viable option.

Similarly, the District of Minnesota trained two new presentence officers during the pandemic. Leah Heino, a sentencing guideline specialist who has been with the District of Minnesota for 15 years, commented that virtual training seemed “so daunting,” but that she was pleasantly surprised by how well it went. In fact, she noted that some tasks were simplified by the virtual environment; for example, Ms. Heino was able to easily sit in on the new officers’ presentence interviews

and could send chat messages to the officer if something was missed.

Many districts also noted that the United States Sentencing Commission and the Federal Judicial Center did an excellent job of increasing their self-paced online and virtual training opportunities as well as providing small-group, district-specific training.<sup>11</sup>

### *Positive Impacts of the Pandemic*

The increased use of video software has prompted several positive changes to presentence work. Prior to the pandemic, many districts had two primary modes of communicating with parties involved in the process: in-person or over the phone. Now, officers have a comfort level with videoconferencing that didn’t previously exist. It is an option for much of the communication that previously occurred over the phone. Probation officers can speak with defendants’ families over videoconferencing, defendants residing in other states can now be interviewed on video instead of over the phone, and assistant United States attorneys can present case information to probation officers on video and with screensharing capabilities. Furthermore, districts with multiple office locations can use videoconferencing to hold meetings and unit-wide staffings, allowing cohesion among officers in a wider geographical area than pre-pandemic.

Though there is loss in those areas where districts shifted from in-person to video, there is also gain in those areas where districts shifted from telephone to video.

Prior to the pandemic, some districts may have faced challenges conducting virtual interviews in cases where geographical and budgetary concerns existed. The pandemic

demonstrated that although it may not be ideal, virtual interviewing may be useful in certain situations post-pandemic.

Additionally, it is important to note that the staff supporting presentence officers, and all officers, are critical to completing presentence work. Historically, support staff generally did not telework. The pandemic has demonstrated that support staff can provide their critical assistance in an environment other than an office setting. This will benefit the system as a whole should an emergency event occur in the future.

### **Conclusion**

The COVID-19 pandemic has certainly been disruptive to presentence work, but presentence has proven to be a flexible discipline, made up of resilient workers that have adapted well to a virtual environment. This time has provided clarity for officers of every function in that these new ways of working have forced presentence units to distill the work to its essential purposes and devise creative ways to meet those purposes.

As the judiciary slowly begins reconstitution efforts for a post-pandemic world, each district will assess local needs and resources with direction from their local courts and support from the AO, Federal Judicial Center, and other partner agencies to determine how presentence work will proceed. Some practices adopted during the pandemic likely will remain in place, while others will not. Hopefully, when the pandemic no longer dictates operations, presentence units will be thoughtful about incorporating the important lessons learned during this time to continue to serve the court, the defendants, and the community.

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<sup>11</sup> Among other resources, the United States Sentencing Commission provides self-paced “Core eLearning Curriculum” for officers to learn about the Sentencing Guidelines, basic criminal history, basic relevant conduct, and grouping rules, which can be found at <https://www.ussc.gov/education>.

The Federal Judicial Center has a presentence officer resource page that includes trainings for officers on such topics as recommending conditions of post-conviction supervision, writing skills, and developments in federal sentencing. This can be found at <https://fjc.dcn/content/355357/resources-new-presentence-officers>.

# Risk, Need, and Responsivity Supervision in the Pandemic

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**THE PANDEMIC HAS** impacted the way many U.S. probation offices across the country have traditionally conducted business. This article demonstrates federal probation officers' use of technology, adherence to the risk, need, and responsivity principles, and innovations to get the job done, despite the challenges.

In mid-late March 2020, a majority of offices across the country required officers to work remotely. In most instances, this occurred with little to no advance notice. As a result, supervision officers were tasked with figuring out how to perform their job duties without reporting to the office or conducting field visits. This article will examine data from January 2017 through December 2020 regarding personal contacts, collateral contacts, revocation rates, employment, restitution, and revocations, as well as highlight some adjustments officers made with regard to supervision practices and how they were able to perform their duties.

Interviews with officers from across the country revealed that the most significant changes in supervision operations during the pandemic centered around in-person contacts with the person under supervision, as well as collateral contacts. Many districts discontinued in-person contacts (including home and office contacts) at the outset of the pandemic as shown in Figure 1 (next page). Between January 2017 and February 2020, an average of 21.62 percent of persons under supervision

had in-person office contacts per month. That number of in-person office contacts decreased dramatically to an average of 7 percent per month from March 2020 to December 2020. The same time period also showed the average number of in-home contacts decreasing from approximately 26 percent to 22 percent. In-person community contacts showed marginal decreases from 5 percent to 3 percent and employment contacts decreased from 3 percent to 2 percent. Data from Decision Support Systems (DSS) shows a slight increase in successful in-person community contacts during non-standard hours (from approximately 12.8 percent prior to the pandemic to 13.8 percent during the pandemic). This was reflected in many of the interviews conducted with officers. Officers with rural caseloads indicated the least amount of change in the way they conducted community-based supervision. While most staff began to telework in March 2020, field visits using social distancing protocols remained an option in many places.

Although officers decreased the in-person contacts in homes and offices, they also implemented various virtual platforms to make contact with persons under supervision and/or collateral contacts, including FaceTime, Google Duo, Zoom, Signal app, and WhatsApp, in addition to the traditional use of phone calls, texting, and e-mailing. In order to provide districts with a way to track the use of these new virtual contacts, the Case

Management Systems Office (CMSO) at the Administrative Office of the U.S. Courts (AO) released PACTS version 1.23.8 and iPACTS version 2.9.4 on April 26, 2020, and Decision Support System (DSS) version 5.1.1 on April 28, 2020. The release added a new "Virtual Contact" chronological flag to be used when chronological entry activity involved the use of an application with a mobile or computer communications device that enables people to speak to each other while simultaneously observing each other on a video display.

Figure 2 (next page) reflects the changes in how officers conducted supervision by telephone and on virtual platforms. Data from January 2017 through March 2020 showed that personal contacts with persons under supervision averaged approximately 29.5 percent of all contacts. From March 2020 to December 2020 (a period that included implementation of the virtual flag), that percentage of contacts increased sharply to nearly 50 percent, as officers adapted to socially-distant supervision.

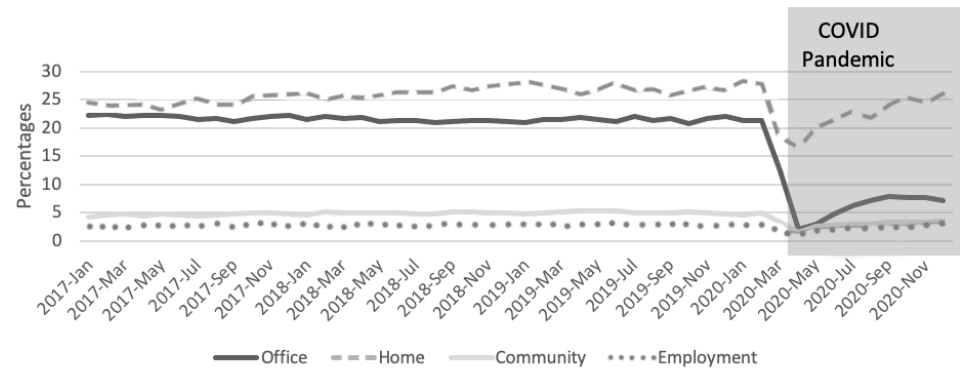
The transition in supervision due to COVID-19 also changed the frequency and manner of our contact with collaterals. As indicated in Figures 3 and 4 (next page), contact with collateral contacts was fairly consistent from January 2017 to March 2020. During that time frame, contacts with collaterals in the home occurred on average approximately 15.5 percent of the time. From March 2020 through December 2020, that

percentage dropped to just 8 percent, reflecting the biggest decrease in contacts in the collateral category. During the same time periods, community contacts with collaterals had a marginal decrease from approximately 4 percent (January 17 to March 20) to 3 percent after March 2020. Contacts with law enforcement remained more or less unchanged despite the pandemic. Not surprisingly, as officers moved into a more socially distant role, contact with treatment providers increased from an average of just over 29.5 percent of the time, to approximately 33 percent. Prior to the COVID-19 pandemic, 23 percent of the time officers made contact with all collaterals by using the telephone. This average increased sharply to 29 percent after March 2020, which would also include any virtual contacts with collaterals. This change was also reflected in the interviews conducted with officers, many of whom indicated that contacts continued but the manner in which they occurred changed.

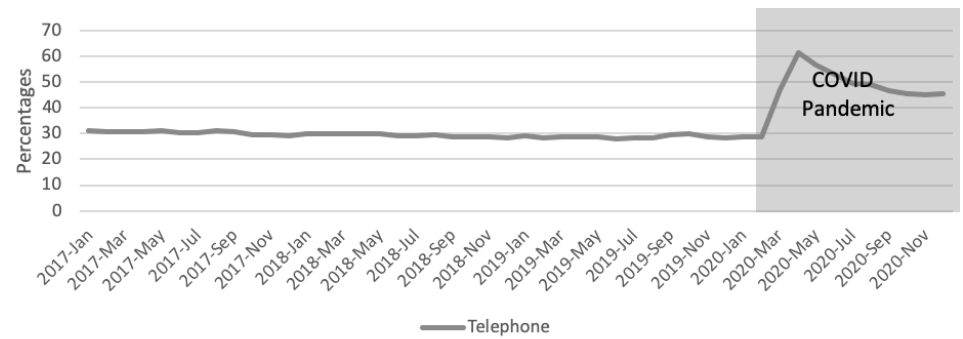
Although there was a noticeable change in the method of making contacts with persons under supervision and with collateral contacts, interviews from officers across the country revealed little difference in the actual supervision work. For example, officers interviewed reported that contact requirements remained the same (although the contact requirements included a variety of options outside of in-person contact). Additionally, officers stated that interactions remained focused on risk-driven supervision and targeting dynamic risk factors. Officers also reported that they were more sensitive to responsivity factors during the pandemic, which included issues related to transportation, child care, lack of technology or limited ability/understanding to use technology, and mental health. Data from Decision Support Systems (DSS) shows that from October 2017 – February 2020, the average number of days between all contacts was 33.3 days for intense risk, 47.9 days for elevated risk, 75 days for basic risk, and 161.5 for minimum risk. From March 2020–December 2020, the average number of days between contacts was: 37.6 days for intense risk, 57.1 for elevated risk, 88.6 for basic risk, and 129.9 for minimum risk. These numbers, in conjunction with their respective risk levels, indicate that officers continued to adhere to the risk, need, and responsivity principles in contacting higher risk people more frequently than lower risk ones.

At the start of 2020, there were approximately 125,882 people under

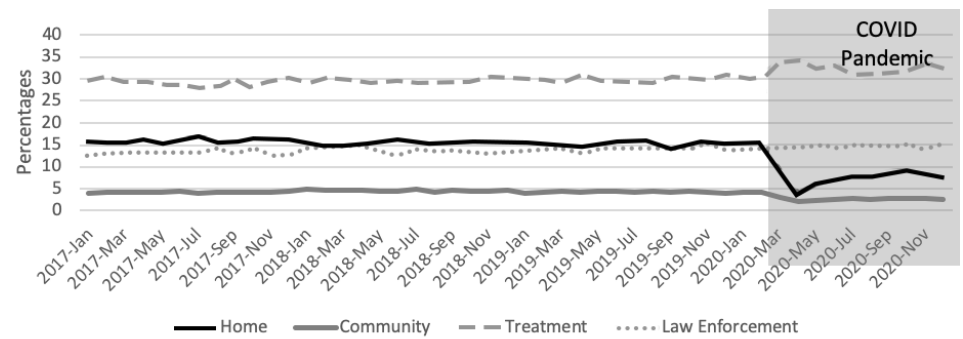
**FIGURE 1**  
Personal contacts with persons under federal probation supervision



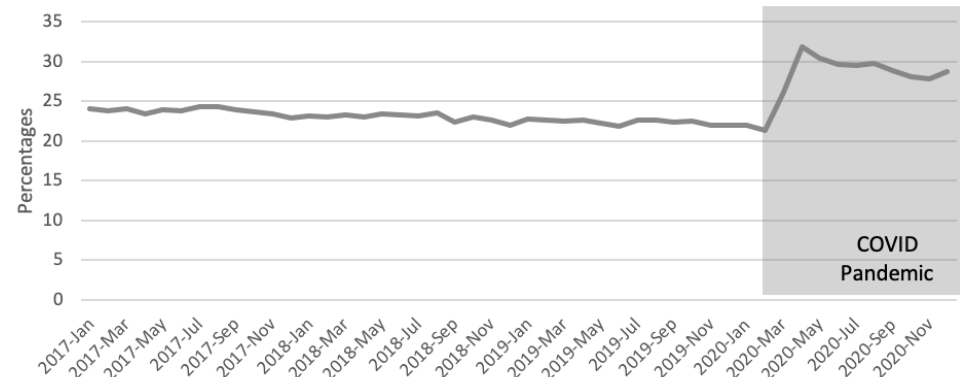
**FIGURE 2**  
Personal contacts using virtual flag with persons under federal probation supervision



**FIGURE 3**  
Personal contacts with collaterals



**FIGURE 4**  
Collateral contacts





federal post-conviction supervision. Approximately 11 percent of those under post-conviction supervision are in the high-risk category, approximately 24 percent in the moderate-risk category, approximately 43 percent in the low/moderate-risk category, and approximately 22 percent in the low-risk category. Prior to the pandemic, the average number of monthly contacts was 33,575 on low-risk cases, 57,982 on low/moderate-risk cases, 50,649 on moderate-risk cases, and

21,846 on high-risk cases. During the pandemic, there was an increase in the average number of personal contacts for moderate- and high-risk cases, with the average number of monthly contacts at 33,439 for low-risk cases, 57,363 for low/moderate-risk cases, 54,738 for moderate-risk cases, and 23,978 for high-risk cases. As evidenced in Figure 5, officers have been supervising individuals in accordance with the Risk, Need, and Responsivity principle, with more efforts focused on high- and

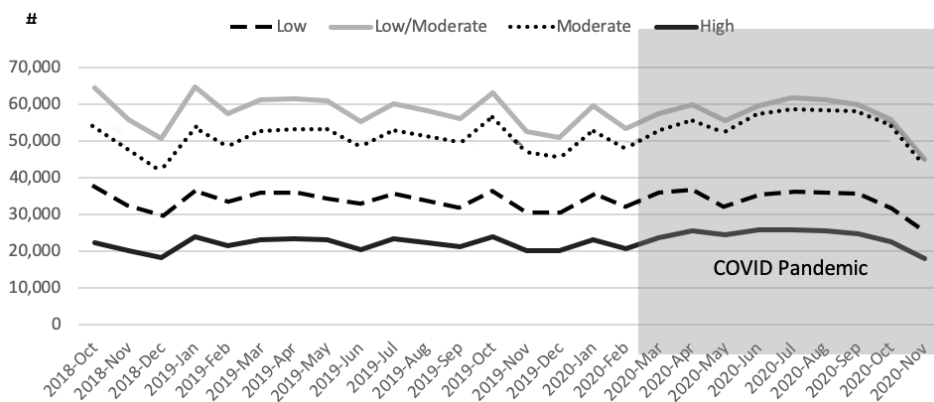
moderate-risk cases, and less time on the low-moderate and low-risk cases.

Figure 6 demonstrates how contacts with persons under supervision changed in respective risk categories: Office contacts with high-risk persons under supervision occurred on average approximately 21 percent of the time prior to March 2020. That percentage of office contacts decreased to an average of 6 percent of the time after March 2020, as many offices were closed to the public. Figure 6 also illustrates a marginal change in contacts with high-risk persons under supervision at their homes, moving from an average of approximately 23.5 percent before the pandemic to 22 percent of the time after March 2020. The most notable change involved contact via telephone, which reflects an increase of nearly 18 percent from approximately 30 percent before March 2020 to 48 percent of the time after that. This number reflects the changes in how officers adapted to socially distant supervision while still addressing criminogenic needs and working to manage risk. Overall, these numbers reflect statements from officers that were interviewed regarding the types of contacts that were occurring during the pandemic, compared to regular supervision practices during pre-COVID supervision. The data indicate the large shift in supervision practices in response to changes in policy, procedure, and COVID-19 related protocols.

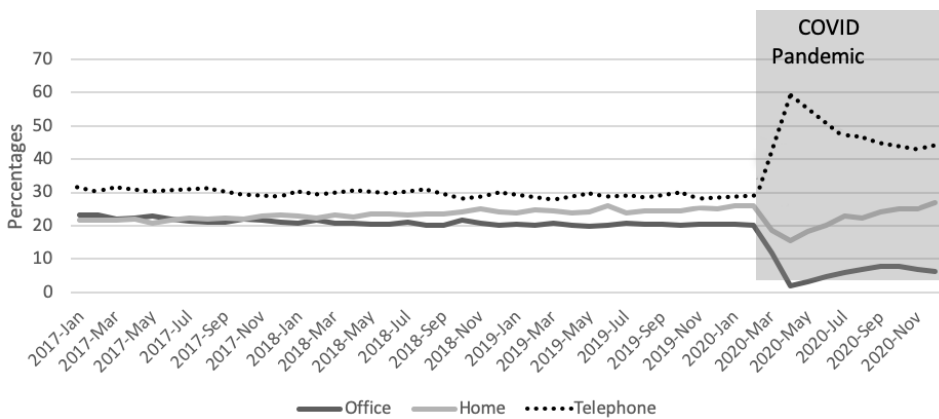
Figure 7 reflects a breakdown in the percentage of contacts in the office, home, and via telephone for moderate-risk cases. From January 2017 to February 2020, out of all contacts for persons under supervision in the moderate category, approximately 22 percent were in person in the office. After COVID-19 protocols were put in place, that percentage of contacts reduced to an average of approximately 7 percent through the end of 2020. There was a slight decrease in contacts at the residence, from an average of 25 percent pre-pandemic to 22 percent after the beginning of March 2020. Finally, telephone contacts increased approximately 21 percent, from 30 percent to nearly 51 percent. As indicated above, the location of contacts with persons under supervision was very similar to that of those in the high-risk category based on changes made due to COVID-19 related protocols.

Figure 8 (next page) reflects contacts for persons under supervision in the low/moderate-risk category. The percentages of these contacts are very similar to those reflected in the high- and moderate-risk categories. From January 2017 to February 2020: Persons

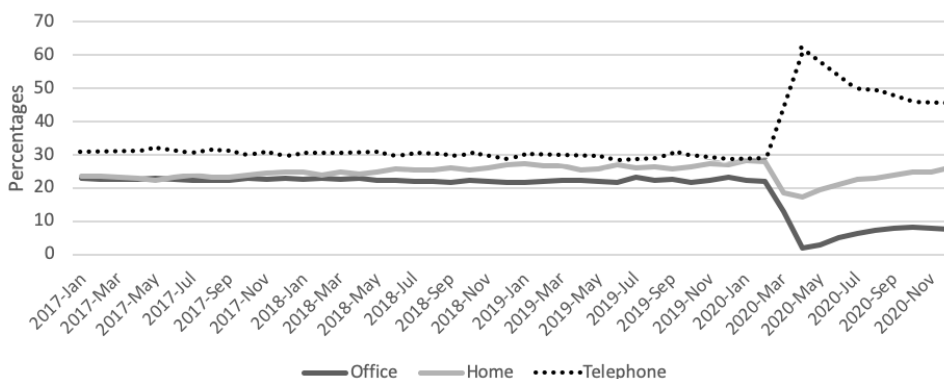
**FIGURE 5**  
Number of personal contacts by PCRA risk level



**FIGURE 6**  
Personal contacts for persons under supervision in the high-risk category



**FIGURE 7**  
Personal contacts for persons under supervision in the moderate-risk category



under supervision in this risk category were contacted in person at the office on average 22 percent of the time, with that percentage reducing to approximately 7 percent from March 2020 through the end of the year. Contacts with persons under supervision at the home decreased from 26 percent to an average of 22 percent. Telephone contact during these respective time frames increased from 29.5 percent to almost 51 percent. In an effort to acknowledge the challenges presented by the pandemic and to help districts alleviate some workload, in March 2020, the Probation and Pretrial Services Office, with endorsement of the Criminal Law Committee, provided districts with guidance to temporarily move persons under supervision on low-moderate/category 1 caseload to low-risk supervision (administrative caseload).

The final category related to person under supervision risk level is in the low-risk category. Percentages in the low-risk category moved in a direction not unlike the other three categories. As reflected in Figure 9, in-office contacts went from 19.5 percent from January 2017 to February 2020, to an average of 6 percent from March 2020 through the end of the year. Contacts with persons under supervision at home saw a decrease from 28 percent to an average of 22 percent. Last, telephone contacts went from an average of 28 percent to 48 percent, with an overall increase of 20 percent. These results also very closely mirror the data from the other three risk categories.

Overall, despite the challenges presented through the pandemic, the evidence shows that officers continued to supervise individuals in accordance with the risk, need, and responsibility principles, with more efforts focused on high- and moderate-risk cases, and less time on the low-moderate and low-risk cases.

Amid the pandemic, many districts experienced changes in operations regarding closure of courthouses, virtual court hearings, decrease in local arrests/new law violations, etc. The officers interviewed noted that they needed to get more creative with alternative sanctions due to requests from the court to decrease the number of Petitions for Warrant submitted to the court. As indicated in Figure 10, from January 2017 through February 2020, the national monthly average number of persons under federal supervision revoked was 2,030. During the pandemic, the number of persons under federal supervision revoked monthly was significantly decreased to 1,430.

Another change noted during the pandemic concerned employment. Figure 11 (next page)

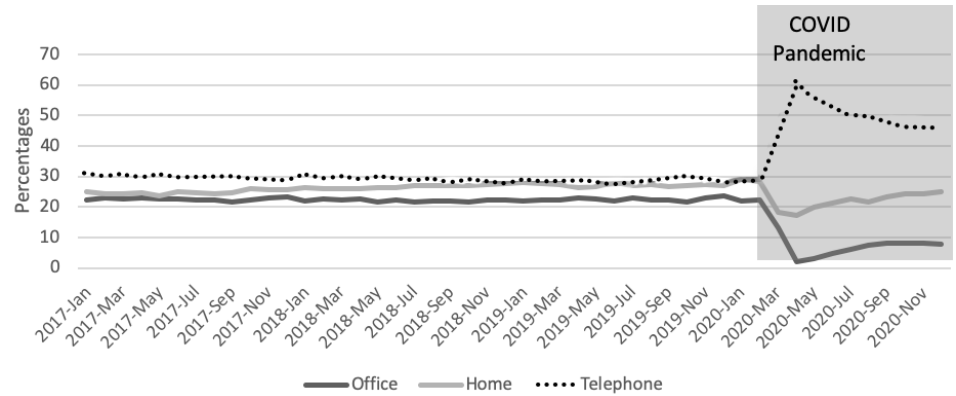
depicts the national monthly unemployment rate, which went from approximately 3.5 percent to 14.7 percent when the pandemic started.

For those persons under federal supervision, Figures 12 and 13 (next page) depict the time frame of January 2017 through February 2020, showing pre-pandemic that there was an average national employment rate of 71.5 percent, with a national unemployment rate of 28.4

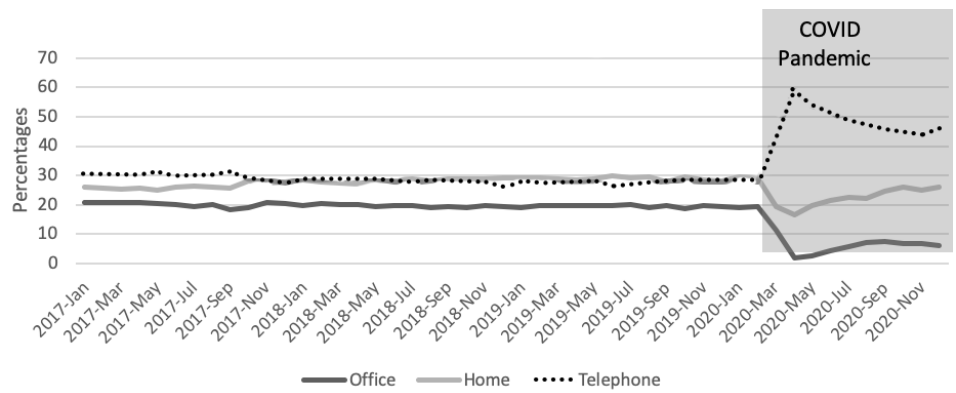
percent. However, during the pandemic, the average national employment rate for persons under supervision decreased to 67.7 percent, with their national unemployment rate averaging 33.4 percent.

In line with this decrease in employment during the pandemic, the PCRA risk assessment reflected an increase in average scores for the dynamic risk factor of employment.

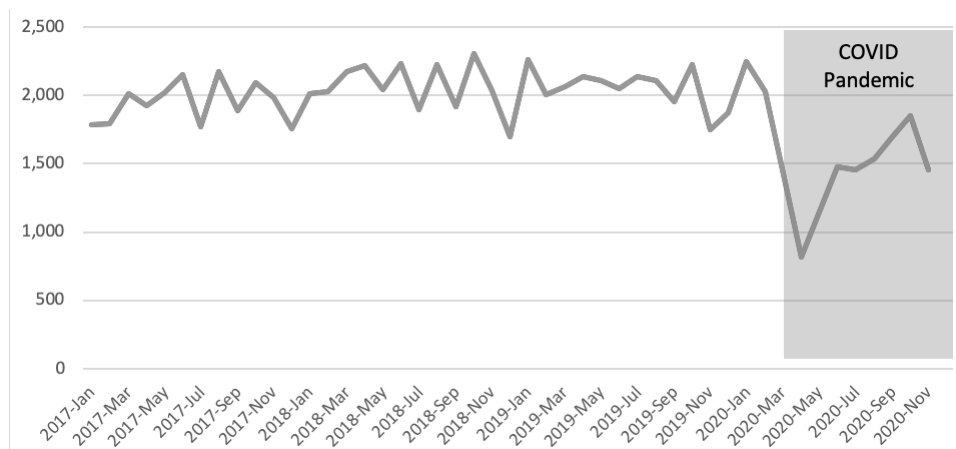
**FIGURE 8**  
Personal contacts for persons under supervision in the low/moderate-risk category



**FIGURE 9**  
Personal contacts for persons under supervision in the low-risk category



**FIGURE 10**  
Number of persons under supervision revoked



According to Figure 14 (next page), from January 2017 through February 2020, the average score on the PCRA risk assessment for education/employment was 1.37, increasing to an average of 1.53 from March 2020 through November 2020. Slight changes were also noted in social networks (an average of 1.18 from January 2017 through February 2020 to 1.16 from March 2020 through November 2020); substance abuse (an average of .61 from January 2017 through February 2020 to .64 from March 2020 through November 2020); and cognitions (an average of .23 from

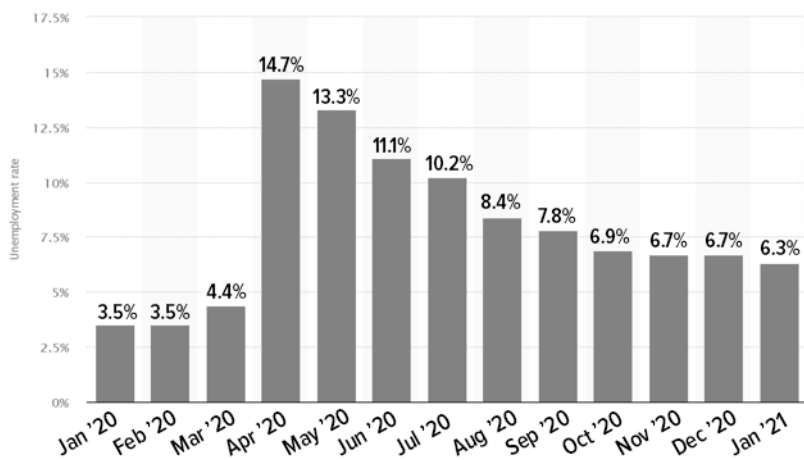
January 2017 through February 2020 to .25 from March 2020 through November 2020).

The officers interviewed were asked if they addressed dynamic risk factors any differently during the pandemic. Their responses reflect that they were still addressing dynamic risk factors during every interaction with the person under supervision. However, some officers noted at the outset of the pandemic that persons under supervision had more responsivity issues. In addition, both persons under supervision and officers experienced greater stress due to the unknown health risks

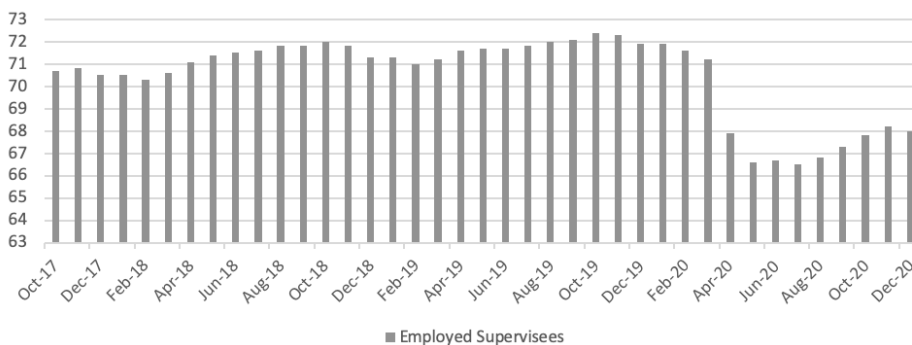
associated with COVID-19, the additional challenges of working from home, childcare, limited use of technology, basic needs, educational barriers, lack of transportation, etc. Many officers noted an increase in mental health issues, with conversations focusing on coping and stabilizing. Some officers noted being more compassionate or lenient due to this commonality of challenges and the understanding that everyone across the country was experiencing change and people have different coping mechanisms. In many instances, officers noted the quality of the conversations with the person under supervision had improved with the shift to telephone or virtual contacts due to both parties being in a safe, secure, and comfortable environment.

From the officers interviewed, the most common evidence-based practice used during the pandemic was Staff Training Aimed at Reducing Rearrest (STARR). STARR, in an effort to develop more effective relationships, provides officers with several techniques that can develop more effective relationships with persons under supervision, including relationship skills (e.g. active listening); role clarification; effective use of reinforcement; effective use of authority, disapproval, and punishment; teaching, applying, and reviewing the cognitive model; thinking reports; and problem solving. Some officers reported finding it more difficult to use the interventions in a virtual environment because of the worksheets involved and the lack of in-person interaction when teaching, applying, and reviewing the skills. On the other hand, some officers found a work-around in the virtual environment by sending the worksheets/homework to the person under supervision via text or e-mail so they could work on the skills remotely. One officer explained that their district implemented a plan to use bridging skills and interventions with all high, moderate, and violent risk cases. Decision Support System (DSS) data<sup>1</sup> for the ten-month period prior to the pandemic showed that STARR skills were used in 7.3 percent of contacts, whereas for the first ten months of the pandemic, STARR skills were used 6.6 percent of the time. Some officers also reported use of journals and Moral Reconciliation Therapy during the pandemic. Most officers interviewed stated that STARR boosters continued during the pandemic, but the format was moved to a virtual environment (generally Microsoft Teams).

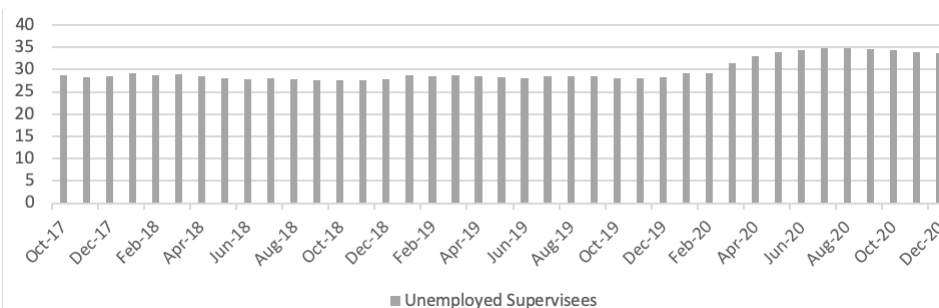
**FIGURE 11**  
Monthly unemployment rate in the United States



**FIGURE 12**  
Employment percentages of post-conviction persons under supervision



**FIGURE 13**  
Unemployed percentages of post-conviction persons under supervision



<sup>1</sup> DSS report 1280 STARR Skills Usage Report (Post Conviction) – National \* District Metrics.

Another area where officers got creative during the pandemic was in administering the Psychological Inventory of Criminal Thinking Styles (PICTS), which is the self-assessment portion of the Post Conviction Risk Assessment for the person under supervision. Many of the officers were used to administering the PICTS with the person under supervision during either office or home contacts; in some cases they would mail the PICTS. With the closure of offices throughout the country and significant decreases in field contacts, officers were no longer able to administer the PICTS in person or have office accessibility to mail copies of the PICTS. Officers reported e-mailing or texting the PICTS to the person under supervision; the person under supervision would then complete the PICTS and either e-mail it to the officer or in some instances take photos of each completed page and text it to the officer. Many officers reported now reading through each question of the PICTS to the person under supervision by telephone or through a virtual platform. Data from Decision Support Systems (DSS) showed the Post-Conviction Risk Assessment was timely completed 84.3 percent<sup>2</sup> of the time for the one year preceding the pandemic. During the pandemic, from March 2020 through December 2020, DSS data shows the Post-Conviction Risk Assessment was timely completed 86.8 percent of the time. Although the officers reported that the pandemic created challenges to their typical methods of conducting business operations, they felt they adapted through the changes and were able to complete the necessary work.

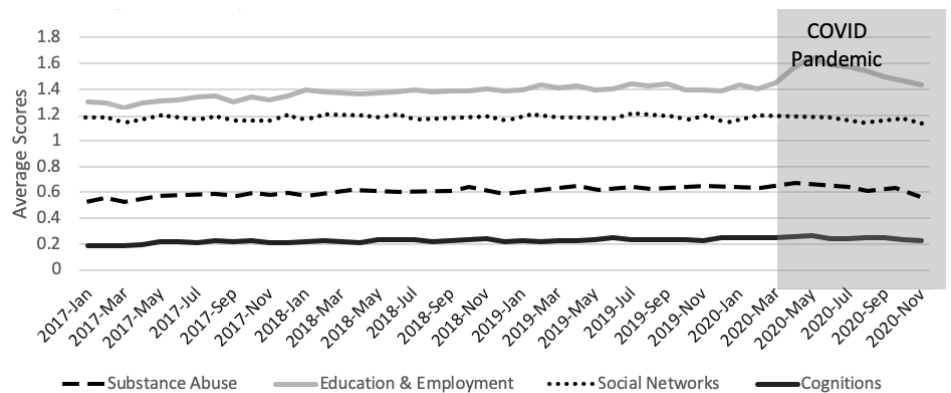
Figure 15 reflects the collection percentages of special assessment fees, fines, and restitution. There was no discernable difference noted regarding restitution percentages collected over the past three years. However, there was a marked decrease in the percentage of fines collected, with the decline starting approximately July 2019 with the lowest percentage indicated around July 2020. The percentage of fines collected decreased from an average of 90.5 percent prior to the pandemic (October 2017 to December 2019) to just 65.5 percent after COVID-19 (April 2020 to December 2020), in a very noticeable 25 percent drop in collection rates. Special assessment collection did decrease a few percentage points prior to the pandemic; however, special assessment collection has

increased since October 2020.

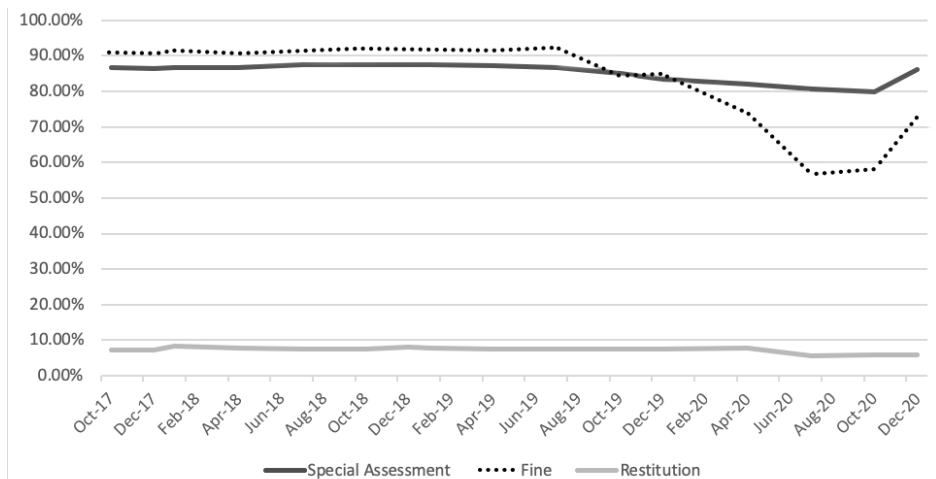
In summary, we learned the most significant change in supervision operations centered around the decreased in-person contacts. Districts quickly adapted at the outset of the pandemic through the use of technology, including telephonic and virtual platforms, to conduct business and maintain contacts with persons under supervision and collaterals. During these interactions with persons under supervision, officers were able to incorporate evidence-based practices, including use of STARR bridging skills and interventions. Officers considered a variety of sanctions and alternatives to addressing noncompliance, as well as evaluating cases that could move to an administrative caseload. Despite the pandemic and the many challenges presented, officers demonstrated their capability to adapt and perform their job duties. In accordance with risk, need, and responsivity principles, officers remained focused on risk-driven supervision, targeted dynamic risk factors, and were sensitive to increased responsivity issues.

Going forward, districts are now better prepared for situations in which they may need to implement Continuity of Operations Plans with all staff working remotely. Additionally, the pandemic has highlighted the ability of staff to get the job done via working flexible schedules, including non-traditional hours and adjusted/split work-days, which districts may want to consider allowing into the future. Districts now have valuable information about office space needs, which may help reduce their GSA footprint. Further, districts can incorporate the importance of technology within their budget projections, necessary training, addition of new staff, etc. Some districts may continue using virtual platforms as part of their standard supervision operations, as well as incorporating some of the innovative options for sanctions and addressing noncompliance. One thing is certain: throughout the pandemic, districts have demonstrated perseverance, innovation, and flexibility, which help set a strong foundation for identifying best practices.

**FIGURE 14**  
Dynamic risk factors from the PCRA risk assessment



**FIGURE 15**  
Collection percentages of special assessments, fines, and restitution



<sup>2</sup> DSS report 1305 PCRA Timeliness for Time Period - National & District.

# First Step Act, COVID-19, and the Future of Location Monitoring

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**THE ENACTMENT OF** the First Step Act (FSA) in December 2018 ushered in major changes to federal reentry practices, particularly regarding the expansion of location monitoring, the dominant method of remote supervision in community corrections. A little more than a year later, COVID-19 disrupted practices and demanded a quick expansion of virtual supervision methods. These changes, and a surge of COVID-19-driven releases onto location monitoring, strained U.S. Probation and Pretrial Services staff. In this article, we first describe how U.S. probation and pretrial services initially absorbed FSA's expansion of federal location monitoring. We next describe how COVID-19 impacted the use of location monitoring and demanded innovation. (This section includes commentary from three leaders in the field.) In a sense, the passage of FSA and the arrival of COVID-19 created a natural experiment, providing an opportunity to reexamine long-held assumptions about how location monitoring should be provided and the role of virtual supervision. The article concludes with questions whose answers will likely shape the future of community supervision in a post-pandemic era.

## Location Monitoring and the First Step Act

Offices have used location monitoring technology to enforce restrictive court-imposed home

confinement conditions for several decades.<sup>1</sup> Courts impose home confinement conditions as an alternative to pretrial detention and as a sanction for noncompliance in pretrial and post-conviction supervision.<sup>2</sup> Except for placement in halfway houses—referred to as Residential Reentry Centers (RRCs) in the federal system—location monitoring is considered the most restrictive condition the court can impose, and, consistent with the risk principle, should be reserved for those presenting the highest risk to community safety. In addition to supervising those on location monitoring by court order, U.S. probation officers have, for several decades, supervised a small number of select lower risk Bureau of Prison (BOP) inmates in prerelease

status.<sup>3</sup> Referred to as the Federal Location Monitoring (FLM) program, the arrangement is made possible through an Inter-Agency Reimbursable Agreement between the BOP and the Probation and Pretrial Services Office (PPSO) within the Administrative Office of the U.S. Courts (AO) under 18 U.S.C. 3624(c) (2)-(3).<sup>4</sup> Traditionally, fewer than half of the U.S. probation offices in the federal courts' 94 districts chose to participate in the FLM program.<sup>5</sup> For years, PPSO encouraged U.S. probation offices to participate in the FLM program, given both the savings and the research supporting the transition of low-risk inmates from custody. The call for expansion of FLM had, until recently, been met with modest results.<sup>6</sup>

The FSA, as enacted in December 2018, represents the most comprehensive criminal justice reform in decades. Unfortunately, this

<sup>1</sup> See Annesley K. Schmidt, "Electronic Monitoring: What Does the Literature Tell Us?" *Federal Probation*, Volume 62, Number 2, December 1998; Darren Gowen, "Overview of the Federal Home Confinement Program (1988-1996)," *Federal Probation*, Volume 64, Number 2, December 2000; Darren Gowen, "Remote Location Monitoring—A Supervision Strategy to Enhance Risk Control," *Federal Probation*, Volume 65, Number 2, September 2001; Ryan Petroff and Trent Cornish, "Developing an Effective Location Monitoring Program," *Federal Probation*, Volume 74, Number 2, September 2010.

<sup>2</sup> For the quarter ending December 31, 2020, there were 31,326 individuals on pretrial supervision and 125,882 on post-conviction supervision. As of March 2021, there were 10,285 participants on location monitoring.

<sup>3</sup> While supervised by U.S. probation officers, inmates remain under the jurisdiction of the Attorney General.

<sup>4</sup> The statute limits inmates' prerelease status to six months or 10 percent of their sentence, whichever is less.

<sup>5</sup> U.S. probation offices are under no statutory requirement to participate in the program. Given the resource demands, many chose not to participate.

<sup>6</sup> See Trent Cornish and Jay Whetzel, "Location Monitoring for Low-Risk Inmates: A Cost-Effective and Evidence-Based Reentry Strategy," *Federal Probation*, Volume 78, Number 1, June 2014.

watershed reform was immediately followed by a massive federal government shutdown that lasted for months, hobbling initial implementation efforts. In addition to several sentencing (or “front end”) provisions, the FSA greatly expanded the use of location monitoring with BOP prerelease inmates.<sup>7</sup> First, the FSA directed that home confinement<sup>8</sup> with location monitoring should be the preferred prerelease option for all low-risk, low-need inmates.<sup>9</sup> Second, FSA directed the BOP to expand an earlier pilot home-confinement prerelease program for elderly inmates to all BOP institutions. Inmates who were at least 60 years old; had completed two-thirds of their sentence; and had no history of violent offending, sex crimes, or crimes of treason became eligible for release onto home confinement.<sup>10</sup> Third, the FSA’s landmark provision directed the BOP to create a risk assessment tool that could be applied to all inmates and then used to determine in which evidence-based recidivism-reducing programming they should participate. Program completion would generate prerelease credits that could allow inmates to earn additional time in prerelease status, including home confinement.<sup>11</sup> Fourth, and at the time not necessarily linked to home confinement, was the change in how inmates, typically those terminally ill, could apply for compassionate release, also known as a reduction in sentence. The revised provision authorized inmates to file requests for compassionate release directly with the sentencing court if denied by the BOP, once they had exhausted all administrative remedies.<sup>12</sup> Taken together, these statutory changes presented an

increased demand for location monitoring alongside implementation challenges to the U.S. probation and pretrial services location monitoring program.<sup>13</sup>

The FSA changes came at a time of already significant strain in the U.S. probation and pretrial system. For one, U.S. probation and pretrial chiefs, as well as the rest of the federal judiciary, were facing a 9.4 percent budget cut. While workload often varies across the judiciary’s 94 districts for a host of reasons,<sup>14</sup> cuts of that scale sometimes require restructuring of both personnel and operational priorities. Supervising individuals on location monitoring places significant demand on the officer and requires 24-hour availability to respond to alerts and notifications. Given the personal strain this work can bring, location monitoring positions are often difficult to fill. Expansion of Global Positioning Systems (GPS) technology and associated requirements to constantly track participants, as opposed to Radio Frequency (RF) technology, exacerbated the stress officers faced.<sup>15</sup> The FSA language itself complicated matters further, as U.S. probation’s responsibility to assist the BOP was specified differently under each of the three location monitoring provisions. While the judiciary has requested that Congress create more consistent statutory language, there has been no change to date.<sup>16</sup>

In response to the increased location monitoring workload and budgetary constraints, PPSO took several steps to help expand FLM program participation. Beginning in the second quarter of fiscal year 2020, the

AOUSC provided requesting districts with supplemental advance funding for any FLM case activated in the previous quarter. The advance funding mechanism, while modest, provides districts with new incentives to accept BOP cases.<sup>17</sup> The early funding is in addition to the regular workload credit the districts receive in arrears under the traditional workload process. The advance funding provision was continued into fiscal year 2021. To further address workload demands, during the cyclical updating of the probation and pretrial services workload system, the AO made changes to fund FLM cases in the same manner as cases that had come under the judiciary’s jurisdiction, based upon risk level as determined by the Post-Conviction Risk Assessment instrument.<sup>18</sup> This addressed field concerns that FLM cases had been traditionally underfunded. In response to FSA and past implementation hurdles, PPSO and the BOP began rewriting the interagency agreement to account for the various new provisions and to clarify roles and responsibilities.<sup>19</sup> Under the revised agreement, the AO increased the rate of reimbursement charged to the BOP, but the new rate is still significantly lower than that the BOP pays private RRC providers for a similar service. Due to the legislative changes, added incentives, and program updates, the number of inmates accepted by U.S. probation into the FLM program increased by 350 percent by March 2021.<sup>20</sup> Simultaneously, to provide some quality-of-life improvements for location monitoring officers, PPSO began working to develop a call center model with the national vendor. The model enables Monitoring Call Center staff to respond and investigate 12 pre-approved events before officers are contacted via alert notification, which is described later in this article as part of “Supporting the Field.”

<sup>7</sup> See Jay Whetzel and Sarah Johnson, “‘To the Greatest Extent Practicable’—Confronting the Implementation Challenges of the First Step Act,” *Federal Probation*, Volume 83, Number 3, December 2019.

<sup>8</sup> Home Confinement, referred to as Home Detention in the U.S. probation and pretrial services system, requires participants to remain at the residence at all times, except for pre-approved and scheduled absences for employment, education, religious activities, treatment, attorney visits, court appearances, court-ordered obligations, or other activities as approved by the supervising officer.

<sup>9</sup> 18 U.S.C. Section 3624(c)(2).

<sup>10</sup> 34 U.S.C. Section 60541. One challenge in this provision is that inmates may have many years of their sentence left to serve. Traditionally, U.S. probation offices try to limit home confinement sanction to a short time frame, such as a few months.

<sup>11</sup> 18 U.S.C. Section 3632 and 18 U.S.C. Section 3624(g).

<sup>12</sup> 18 U.S.C. Section 3582(c)(1)(A)(i).

<sup>13</sup> For a detailed explanation of statutory challenges and the judiciary’s effort to address them, see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020.

<sup>14</sup> Changes in prosecutorial priorities, which may vary by district, directly impact U.S. Probation and Pretrial Services workload and budgeting. Different approaches to border enforcement also drive system workload.

<sup>15</sup> GPS technology has 11 additional alerts compared to RF. It requires officers to review GPS tracks daily and to ensure participant compliance with daily tracker charging. There are also environmental issues with GPS trackers entering poor cellular reception areas (e.g., large factories, high rise buildings, and rural areas).

<sup>16</sup> Again see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020.

<sup>17</sup> During fiscal year 2020, participating districts had received \$691,390 in Advance FLM funding.

<sup>18</sup> James Johnson et al., “The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA),” *Federal Probation*, Volume 75, Number 2, September 2011. See also “Driving Evidence-Based Supervision to the Next Level: Utilizing PCRA, Drivers and Effective Supervision Techniques,” *Federal Probation*, Volume 78, Number 3, December 2014.

<sup>19</sup> The New Agreement was finalized in July 2020.

<sup>20</sup> Until very recently, there were on average 100 BOP inmates enrolled in the FLM Program. Prior to COVID-19, the program had increased to 250, driven by FSA demands alone.

## The Location Monitoring Response to the Pandemic: Innovating for Safety, Maintaining the Mission

While some medical experts anticipated that the world would soon face its worst pandemic in 100 years, the rest of us, arguably, were unprepared for COVID-19. Few areas of modern life have not been drastically impacted by the pandemic. Criminal justice systems, including custodial and community-based corrections, have been forced to adjust practices, in some cases dramatically. Prisons and detention centers, with no capacity to “socially distance,” almost unavoidably became hotbeds of infection.<sup>21</sup> This had an immediate impact on the entire criminal system, and the U.S. courts were no exception. Given the decentralized nature of the federal courts, as well as the differential spread of the virus, U.S. probation and pretrial services offices locally adjusted practices as deemed appropriate and in coordination with their local court and health officials. While many federal courthouses closed completely and began fully remote operations, less impacted regions maintained regular operations. The ability to respond to virtual supervision demands varied by region and the availability of resources. In general, federal probation and pretrial offices throughout the system were confronted with maintaining continuity of operations in unprecedented times. Few, if any, offices had personal protective equipment or had previously established protocols on how to conduct supervision during a pandemic.

For some jurisdictions, supervision shifted to “remote” under COVID-19.<sup>22</sup> Location monitoring was particularly affected for two main reasons. First, such technology was traditionally reserved for the highest risk persons under supervision. For some higher risk defendants, those charged with certain sex offenses, the

technology is required by statute.<sup>23</sup> Rightly or wrongly, location monitoring seems to provide releasing authorities with greater levels of confidence when placing higher risk supervisees back into the community. Second, as described earlier, installation of the dominant technologies requires close personal contact between the officer and the participant. In many probation and pretrial offices, officers installing location monitoring equipment on the newly released were the only staff physically present in the office. COVID-19 also severely impacted location monitoring participants (e.g., loss of employment, lack of housing, medical vulnerability).<sup>24</sup> Many persons charged with or convicted of a sex-related offense are on location monitoring. Restricted to their homes on location monitoring, due to their risk level, instant offense, past noncompliance, and compounded social isolation, these men and women are arguably the most challenged subset of the federal supervision population.<sup>25</sup>

In response to the pandemic and beginning in March 2020, PPSO provided updated location monitoring guidance to courts. Given social distancing demands, the pandemic significantly impacted officers’ ability to complete routine in-person equipment inspections and home assessments, including the placement of location monitoring equipment within the residence, and to properly investigate equipment tamperers. Many officer duties and responsibilities shifted to alternative methods such as virtual contacts. PPSO recommended the use of virtual platforms such as FaceTime or Skype to limit personal contact and to complete home inspections, verify placement of equipment in the residence, conduct required 30-day community contacts, inspect equipment (base unit and transmitter/tracker), and address equipment issues or equipment tamper-related alerts.

PPSO also offered the use of less-invasive technologies as an alternative to traditional location monitoring equipment (GPS and RF),

as personal contact is not required for installation and there is no physical equipment to check monthly. One such technology, Voice Recognition, which is part of the judiciary’s national contract, relies on automated calls from a host computer to a home telephone landline at a participant’s residence, using voice biometrics, to verify a respondent’s identity and presence in the approved residence. PPSO also authorized the use of virtual monitoring supervision, another monitoring alternative that, while not part of the national location monitoring contract, uses a smartphone application to monitor defendants and persons under supervision with a location monitoring condition. Many districts procured the current vendor’s virtual monitoring supervision product, SmartLINK, for use during the pandemic. SmartLINK uses two-factor authentication (facial recognition, fingerprint, and/or password), depending on the mobile device’s available functions. The mobile device’s GPS locational services verify the participant’s presence at a location (e.g., residence, employment, treatment) during scheduled, random, or on-demand check-in calls/contacts. Policy changes involved the adjustment of rules, practices, and procedures to allow FLM participants to be monitored in the community using virtual monitoring supervision.<sup>26</sup>

COVID-19 specifically required flexibility in the use of technology, changes in procedural requirements, and a different manner of engagement between the officer and the person under supervision. In-person contact between the probation officer and the person under supervision, be it for monitoring or intervention purposes,<sup>27</sup> has traditionally been deemed essential in community corrections. In contrast, the term “remote” supervision was reserved for other, technology-based methods used by officers to monitor the location (e.g., RF, GPS, Voice Recognition), internet usage (e.g., computer monitoring software), or substance use (e.g., remote transdermal alcohol testing) of those under supervision. In some instances, the abilities of these technologies to

<sup>21</sup> As of 4/28/201, The BOP has 127,324 federal inmates in BOP-managed institutions and 13,607 in community-based facilities. The BOP staff complement is approximately 36,000. There are 199 federal inmates and 161 staff who currently have confirmed positive test results for COVID-19 nationwide. Currently, 46,455 inmates and 6,710 staff have recovered. There have been 233 federal inmate deaths and 5 BOP staff member deaths attributed to COVID-19. Of the inmate deaths, 5 occurred while on home confinement. BOP website.

<sup>22</sup> PPSO authorized and supported the use of “telehealth” substance abuse disorder treatment and mental health treatment for those under supervision. See Christopher Mangione, “The Impact of COVID-19 on Treatment and Testing,” this issue.

<sup>23</sup> 18 U.S.C. 3142(c)(1)(B).

<sup>24</sup> In federal probation and pretrial services, months spent on substance abuse testing and treatment decreased during the pandemic while money spent assisting those on supervision with basic needs through Second Chance Act authority increased 80 percent.

<sup>25</sup> See Lisa Bishop, “The Challenges of GPS and Sex Offender Management,” *Federal Probation*, Volume 74, Number 2, September 2010. Also, Michelle Spidell et al., “Considerations for Supervision of Persons Charged with or Convicted of Sex Offenses During the COVID-19 Pandemic,” this issue of *Federal Probation* (Vol. 85, no. 1).

<sup>26</sup> Mandatory 30-day personal community contact requirements could be accomplished through virtual means using FaceTime or Skype. Same-day LM installation requirements were modified to include installation delays due to inmate travel considerations and officer safety concerns. Home inspections for new referrals were permitted using a virtual tour of the residence, via FaceTime or Skype.

<sup>27</sup> U.S. Probation’s supervision framework for those under post-conviction supervision consists of Monitoring, Restrictions, and Interventions. *Guide to Judiciary Policy*, Volume 8.

provide community safety have been oversold, and authorities have not realized the critical role the officer plays in ensuring that these methods are used effectively.<sup>28</sup> During the COVID-19 pandemic, agencies were challenged to make a direct shift from in-person community supervision and treatment programming to “virtual” contact.

## The Continued Challenge

Throughout the pandemic, PPSO worked to maintain the integrity of the location monitoring program while accommodating the COVID-19 reality and supporting field staff. COVID-19, however, continued to challenge the system in its impact on bail reviews and compassionate release and with the passage of the CARES Act in March 2020.

As mentioned above, COVID-19 impacted jail and prison populations nationwide. The U.S. Marshals Service and the BOP were not spared. The U.S. Marshals rely on a large network of contracted local jails to house most federal defendants who are ordered held in pretrial detention due to their risk of nonappearance, danger to the community, or both.<sup>29</sup> Around the country, federal courts began holding (mostly remotely) bail review hearings, prompted by certain defendants’ reported vulnerability to COVID-19 and/or to the prevalence of infection within certain jails. Given concerns of exposure in jails and prisons, there was an effort to reduce incarceration, and defendants previously ordered detained were often released on location monitoring, directly increasing officer workload. Relatedly, given that many BOP facilities stopped accepting new inmate admissions,<sup>30</sup> sentenced defendants in the community on location monitoring had their self-surrender dates extended, thus remaining on officers’ caseloads.

FSA made major changes in how BOP inmates were able to seek a reduction in sentence under compassionate release

provisions.<sup>31</sup> Widespread dissatisfaction with how the BOP had exercised its discretion with compassionate release fueled the legislative change. Prior to FSA, the BOP requested, and the court typically granted, compassionate release for 20 to 30 inmates per year. FSA allowed inmates to directly petition the sentencing court for compassionate release if the BOP denied the request or failed to respond in a timely fashion. Initially, the increase in granted motions was gradual. In the month of November 2019, the courts granted 17 motions for compassionate release. In March 2020, courts also granted 17. But by April 2020, as the threat of COVID—particularly to the aged and physically vulnerable—became clear, courts granted 131 motions. Courts granted 237 in May, 281 in June, 362 in July, 338 in August, and 222 in September. This exponential increase in compassionate release should not necessarily have impacted location monitoring. However, when granting a motion and credit for time served, many courts exercised their discretion and replaced all or part of the remaining sentence with a period of home confinement with location monitoring.

In response to COVID-19, in late March 2020, Congress passed the CARES Act, sweeping legislation aimed at helping the nation weather the pandemic. Within the massive bill, one provision authorized the U.S. Attorney General (AG), if he found COVID-19 was disrupting BOP operations, to lift the statutorily limited time frames for home confinement under 18 U.S.C. 3624(c) (i.e., 10 percent of the sentence or 6 months, whichever was less). In April 2020, the Attorney General lifted those limits. Although vacillations in the home confinement eligibility criteria created considerable confusion, a very large number of inmates have returned to the community early under the CARES Act. Fortunately, the AO had conveyed to Department of Justice authorities that U.S. probation was not positioned to absorb a large number of inmates onto home confinement. While the BOP-contracted RRCs absorbed the lion’s share of CARES Act releases, inmates returning to more remote

locations are often supervised by U.S. probation officers under the FLM program.

## The Impact on Location Monitoring Supervision—The Field Perspective

Upon enactment of the FSA—with its complexities, ambiguities, and inconsistencies—and continually during the early months of the COVID-19 pandemic, PPSO provided guidance to the courts as quickly and as thoroughly as possible. The “real work” of community supervision, however, fell to the probation and pretrial services officers in the field, who did their best to innovate as required by the circumstances on the ground. Chief U.S. Probation Officer Robin Grimes of the Northern District of Ohio reported that her office “has improvised on a number of occasions throughout the pandemic in order to fulfill their mission.” As noted earlier, the combination of terms “remote supervision” and location monitoring may suggest a lack of in-person contacts or in-person equipment inspections. In fact, however, the technology requires direct officer engagement to ensure proper equipment functioning and to guard against participants’ attempts to evade the technology.

The Northern District of Ohio’s Probation Office’s LM program was impacted significantly by the court granting inmates pro se requests for compassionate release with considerable periods of home confinement in lieu of the custodial term, which was converted to time served. Chief Grimes expanded:

The act of installing, inspecting and effectively monitoring equipment created unique challenges to our officers, as distance had to be maintained while the integrity of effective supervision is maintained. Location monitoring has been a preference for judges and attorneys when conditions of release are being considered as a measure to protect the public. The increase in location monitoring cases has placed a strain on resources, necessary equipment, and the time and workload of our officers.

Chief Grimes also addressed the limitations of using FaceTime and other virtual supervision methods when supervising defendants and persons under post-conviction supervision. Virtual supervision methods have “required our officers to have conversations with our clients about why current

<sup>28</sup> See Trent Cornish, “The Many Purposes of Location Monitoring,” *Federal Probation*, Volume 74, Number 2, September 2010.

<sup>29</sup> As of October 5, 2020, the U.S. Marshals Service housed 60,910 federal pretrial defendants in over 800 different facilities, the vast majority of which were contracted county or sheriff facilities. Report of John Sheehan, U.S. Marshals Service, to PPSO.

<sup>30</sup> At the height of the pandemic, 60 BOP facilities were not accepting any new admissions. As of October 5, 2020, that number had been reduced to 5. Report of John Sheehan, U.S. Marshals Service to PPSO.

<sup>31</sup> Again, see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020; and Jay Whetzel and Sarah Johnson, “‘To the Greatest Extent Practicable’—Confronting the Implementation Challenges of the First Step Act,” *Federal Probation*, Volume 83, Number 3, December 2019.



supervision methods look this way, and has left officers feeling inadequate about the strategies applied to a case when thorough home inspections, searches, and the invasiveness associated with typical supervision strategies have been suspended.” While disruptive to officers’ monitoring function, COVID-19-required cautions also seem to impact the critical relationship building between officers and those under supervision.

Building a rapport with the primary stakeholders, persons under supervision or inmates, has become a challenge because the contacts are limited due to virtual supervision. In cases where contacts are in person, barriers, shields and distancing are all tactics used to keep our staff and clients safe, but these safeguards create psychological distancing in terms of building relationships as we previously have experienced.

Some of the earliest, most severe COVID-19 outbreaks were in the northeastern United States, which immediately disrupted court operations, including pretrial services. In the District of New Jersey, things quickly became complicated. When the federal courthouse suddenly closed, U.S. pretrial services officers were unable to access the spare location monitoring equipment that was needed to fulfill the release orders on pretrial defendants. When asked how COVID-19 had impacted them, Chief U.S. Pretrial Services Officer Jon Muller, District of New Jersey, explained:

Early on, the numerous emergency requests for bail as a result of COVID-19 impacted our program since many of the releases were placed on some form of location monitoring. Our location monitoring caseload grew about 15-20 percent. Due to safety concerns and the growing number of COVID-19 exposures in the jail, we added SmartLink to our available technology. As we approach September, our caseloads have remained high since sentencing have been postponed and we haven’t had much attrition as a result of [delayed] BOP surrenders.

In these circumstances, as noted earlier, pretrial defendants whom the court had previously determined needed to be detained<sup>32</sup> had their status revisited due to possible COVID-19 vulnerability. Moreover, some were released

<sup>32</sup> As of 12/31/2020, 67.1 percent, or 44,228, of the 65,913 federal defendants were held in pretrial detention. U.S. Courts H-Tables Table H-14.

on a new, alternative remote supervision technology. Again, from Chief Muller:

I believe we have maintained the level of supervision our court expects from us on LM cases. Officers have been fantastic throughout this pandemic and remained in the field conducting community supervision at a distance and facilitating as many LM installations as possible in the controlled environment of the jail and arresting agent’s offices.

In the District of New Mexico, Chief U.S. Probation Officer Margaret Vigil noted they likewise experienced an increase in location monitoring cases due to COVID-19-driven bail reviews. For higher risk defendants who might normally be released into a BOP-contracted Residential Reentry Center (RRC), COVID-19 outbreaks in the RRC eliminated that option as an alternative to detention, leading the courts to order location monitoring. In some cases, for higher risk sex offenders, location monitoring is statutorily mandated as a condition of pretrial release<sup>33</sup> and alternative “virtual” technologies were not considered appropriate.

PPSO has relied upon the field to be aware of how various courts have responded to COVID-19 and adjust the operations in each office consistent with their court’s directives. Just as courts responded differently to the pandemic, any resumption of normal operations, referred to as reconstitution, will likely proceed in a somewhat patchwork fashion.

## Supporting the Field

Prior to FSA and the pandemic, PPSO had taken multiple steps to support location monitoring officers in the field and maintain program integrity. In the wake of several natural disasters, particularly Hurricane Katrina in 2005, PPSO organized what is referred to as the “PPSO LM Emergency Response Team,” comprising experienced officers who can assume supervision and respond to alerts in regions of the country that are being seriously impacted by natural disasters (e.g., hurricanes, forest fires, earthquakes, tornadoes) or other local issues (e.g., civil unrest, lack of staffing). Unfortunately, circumstances have required team activation on multiple occasions.

As mentioned above, PPSO was aware of the demands that location monitoring places upon officers. PPSO investigated alert data, particularly the volume of after-hours

<sup>33</sup> 18 U.S.C. 3142(c)(1)(B)(xii).

“nuisance” (e.g., power loss, low battery) alerts that unnecessarily negatively impact officers’ quality of life. To mitigate this, PPSO added a provision to the national contract solicitation that included a Monitoring Call Center that would investigate alerts proactively and attempt to resolve the alert before an officer receives an alert notification, thus reducing an officer’s workload. For this initiative, vendor staff contact the LM participant and/or a collateral source to investigate the alert and gain valuable information for the officer. All location monitoring cases can be enrolled within this program, including FLM cases. The Monitoring Call Center was piloted between February and July 2020 in three districts. In July 2020, the Monitoring Call Center national rollout began, and all districts gained access to the program in December 2020. Currently, 6695 participants in 89 districts are enrolled within this program, with the level of participant enrollment varying by district. Since the release of the Monitoring Call Center, after-hour alert notifications have decreased by 56 percent, with decreased alert notifications of 48 percent for all time periods. Alerts generated during business hours are frequently driven by equipment installations or adjustments of approved leave schedules.

PPSO had also already begun tracking advancements in technology, including the exploration of alternative monitoring methods,<sup>34</sup> including “virtual” supervision technology. Updated hardware has also been provided by the contract vendor. In late 2019, new GPS technology, the LOC8XT, was released to the field.<sup>35</sup> In addition, a new radio frequency unit, the Homeguard (HG) 2020, underwent field testing from summer 2020 to spring 2021, with an anticipated release date of early summer 2021.<sup>36</sup>

<sup>34</sup> In September 2018, PPSO released a Request for Information (RFI) to solicit ideas for a “Virtual Supervision Application” (VSA) that might complement and/or replace traditional location monitoring equipment. Ultimately PPSO decided to create its own VSA functionality as part of its planned new case management system, PACTS 360.

<sup>35</sup> This GPS tracker has the following advanced features compared to the current GPS tracker: non-removal battery; longer battery life; wireless charging; 5G-ready LTE technology.

<sup>36</sup> The HG2020 RF base unit has the following advanced features compared to the current RF base unit: 5G-ready LTE technology; advanced motion and tamper detection; GPS and Wi-Fi receiver location acquisition; guest detection; ability to send the participant text messages via the digital screen; officer digital screen function to assist with the installation process, including range testing and

Between July 2020 and December 2020, PPSO held weekly training webinars covering the use of the Monitoring Call Center, the new Low-Risk Key Alert Protocol, recent and future vendor software changes, and new equipment updates. The technology and software updates, in addition to the comprehensive training sessions, were made to assist the field with the effective supervision of location monitoring participants.<sup>37</sup>

### Program Impact to Date

As discussed above, location monitoring plays a key role in federal community corrections, for defendants under pretrial services supervision, for BOP inmates in prerelease custody, and for those on post-conviction supervision. Moreover, the statutory and policy landscape, the technological variations, as well as the inter-agency operational context, are decidedly complex. COVID-19 has not made things easier. The charts and tables that follow provide a snapshot of how location monitoring has grown and evolved over the past year.

cellular strength measurement. The HG2020 RF bracelet has the following advanced features compared to the current RF bracelet: smaller and lighter design; two-year internal battery; advanced tamper detection including proximity and case tampers; no motion sensor.

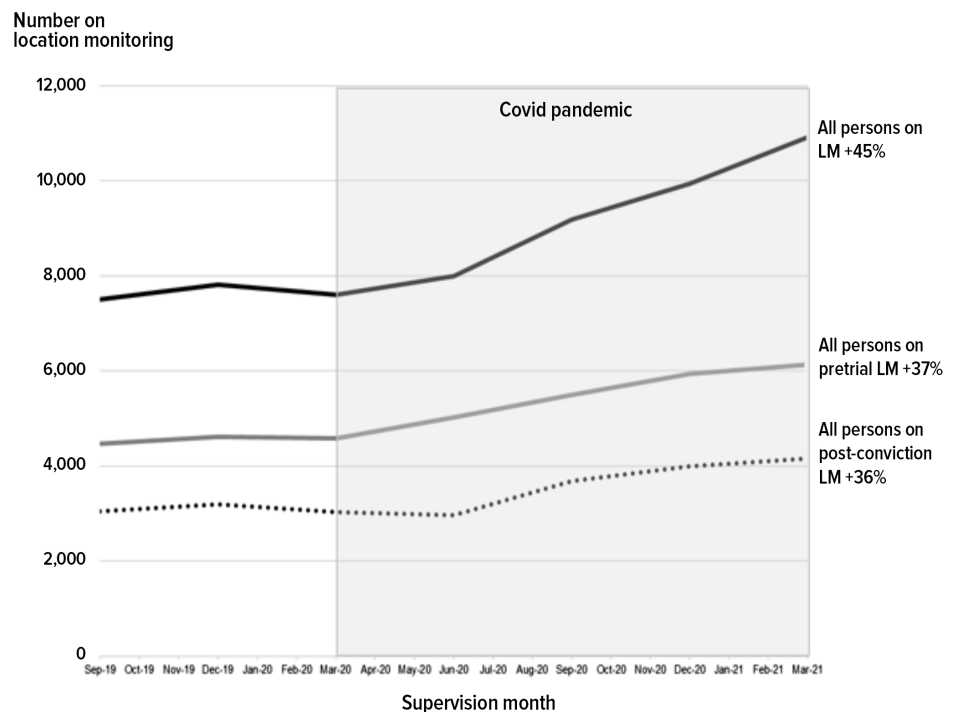
<sup>37</sup> Webinars addressed the use of Monitoring Call Center; Low-Risk Protocol; relaxing of national policies due to COVID-19 (e.g., delayed range testing, virtual monthly contacts and equipment checks, virtual home inspections, virtual tamper inspections); release of a mobile application for officers to be able to access their caseload from the field and easily make any adjustments to schedules and/or equipment; software updates to notify an officer of a possible GPS zone or scheduling error (avoid officer error); notes made within the mobile app will transfer to PACTS; approval of wearable mobile devices (e.g., Apple watch) to allow officers to respond to alerts without carrying a mobile telephone at all times (e.g., working out, lawn care, swimming, sporting events). The wearable mobile device allows the officer the ability to be notified of alerts (e.g., wrist vibration) without making a disturbance of loud sounders (e.g., wake up family members, movie theater).

As shown in Figure 1, prior to COVID-19, enrollment in location monitoring was fairly stable. Pretrial cases increased almost immediately with the start of the pandemic, whereas the post-conviction increase lagged, likely driven by the courts' rulings regarding compassionate release petitions. As discussed earlier, FSA had increased the ability of the incarcerated to seek relief, but the increased vulnerability of those in poor health during the pandemic appears to have influenced decision-making. Additionally, some districts

agreed to accept BOP inmates onto location monitoring under the CARES Act authority. Location monitoring overall increased more than the respective categories.

Table 1 shows changes in the type of technology used. While Radio-Frequency and Global Positioning remained the dominant technologies used for location monitoring, offices expanded the use of Voice Recognition and also deployed "virtual" SmartLink technology reliant on cell-phone applications. Absent COVID-19, such growth would have

**FIGURE 1**  
Growth and changes in U.S. probation and pretrial services location monitoring, total enrollment September 2019–March 2021



**TABLE 2**  
Federal Location Monitoring Program (FLM) - BOP Inmates supervised by U.S. Probation

Average Enrollment 2010-2018	March 2020	September 2020
100 +/-10	250	450

**TABLE 1**  
Changes in the types of location monitoring programs for the U.S. probation and pretrial services system, September 2019–March 2021

Location monitoring programs	Number of persons on location monitoring supervision							Percent change
	September-2019	December-2019	March-2020	June-2020	September-2020	December-2020	March-2021	
Radio frequency	4,028	4,230	4,165	3,976	4,496	4,899	5,050	25%
Global Positioning Systems	3,324	3,421	3,351	3,363	3,836	4,197	4,431	33%
Smart LINK	4	5	5	381	569	563	563	13975%
Voice Recognition	155	155	82	276	281	277	247	59%

Note: Includes person on location monitoring supervision at the pretrial or post-conviction levels.

been unlikely. It remains to be seen if the use of these alternatives continues to grow.

From pre-FSA to September 2020, the FLM program realized a 350 percent increase in participants (see Table 2). While significant from U.S. probations' perspective, the numbers pale in comparison to the increase in BOP-contracted RRCs' location monitoring program numbers. As of October 2020, there were 8,004 BOP inmates on home confinement, driven primarily by the CARES Act releases.<sup>38</sup>

<sup>38</sup> The volume of BOP Home Confinement is three times higher than it has ever been. Email from Jon Gustin, Reentry Administrator, Federal Bureau of Prisons, October 5, 2020.

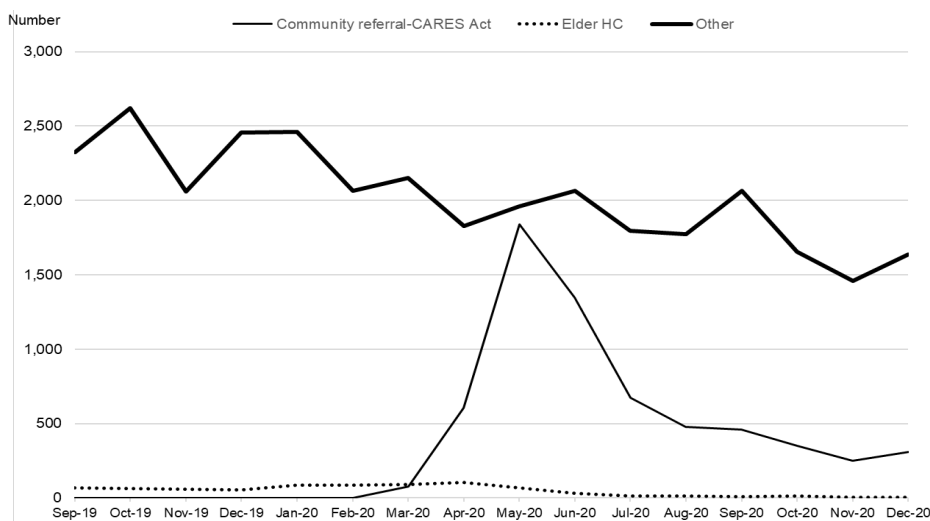
Figure 2 is from data provided by the BOP and is particularly telling about COVID-19's impact on community corrections, well beyond the federal probation system's role. The Elderly Home Confinement program (dotted line), fueled in part by COVID-19 concerns, grew as the pandemic took hold. However, under CARES Act authority, the BOP relied heavily on the contracted RRC providers to supervise inmates with location monitoring, initially with procedural adjustments similar to those put in place by federal probation.

Prisons, October 5, 2020.

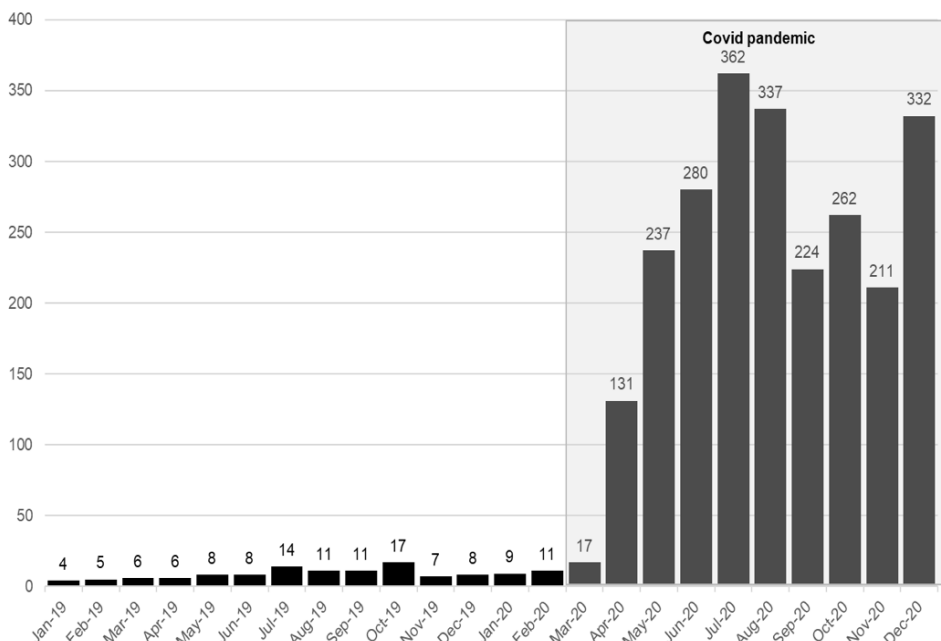
The CARES Act gave the Attorney General and BOP tremendous discretion to place low-risk inmates in prerelease custody, some with many years left to serve.<sup>39</sup> The decline in placement of inmates under the Elderly Home Confinement program from March to October is directly linked to the increase in placement under the CARES Act authority. As age is a COVID-19 risk factor, the BOP has processed numerous inmates who would otherwise be eligible in the Elderly Home Confinement program under authorities prescribed under the CARES Act. Systems do not allow the inmates to be tracked or processed under multiple authorities for placement.<sup>40</sup> This program may continue to grow, regardless of COVID-19, given that there are over 9,000 inmates 61 years of age or older housed within the BOP.<sup>41</sup> Also reflected in Figure 2 is the decline in residential placement into RRCs. Historically, the RRCs have physically housed most BOP prerelease inmates within their facilities, with a minority being placed on location monitoring.<sup>42</sup>

As noted above, a larger story for the future of community corrections and remote supervision—and perhaps for the federal criminal justice system itself—is whether the thousands of BOP inmates released early under CARES Act authority succeed, that is, do not recidivate. In recent testimony before the House Appropriations Subcommittee, the BOP Director reported to Congress that of over 22,000 inmates placed in early prerelease custody during the pandemic, only 21 had been returned to custody for noncompliance; of those, only 1 was for a new arrest.<sup>43</sup> Such a low rate of program failure will likely encourage advocates for expanding alternatives to incarceration. Last, in a complicated

**FIGURE 2**  
Number of FURL TRANS releases to RRC/HC, September 2019–December 2020



**FIGURE 3**  
Number of persons placed on compassionate release, 2019–2020



<sup>39</sup> PPSO advised U.S. probation offices to focus their investigative and supervision efforts on prerelease inmates who had six months or less to serve, consistent with the original statutory authority. Offices retained discretion to accept or reject referrals from the BOP. The BOP also relied on their ability to furlough inmates, in 30-day increments, pending their being acceptance into the RRC location monitoring programs.

<sup>40</sup> Email from Jon Gustin, Reentry Administrator, federal Bureau of Prisons, October 7, 2020.

<sup>41</sup> See BOP website [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp)

<sup>42</sup> RRCs are paid significantly more for housing inmates than for monitoring them with technology in their homes, approximately \$109 per day compared to \$57 per day. Under a recently renegotiated agreement, BOP reimburses U.S. Probation \$30 per day for supervising prerelease inmates on location monitoring.

<sup>43</sup> BOP Director Carvejal, March 18, 2021.

but perhaps predictable development, the Department of Justice has opined that once the pandemic is declared over, inmates in early pre-release status must be returned to custody.<sup>44</sup> This will likely be disruptive for the BOP, U.S. probation, the RRCs, and especially for the thousands of men and women who will have surely become accustomed to living at home, albeit with limited liberty.

Figure 3 shows the dramatic increase in the number of persons who have come under U.S. probation supervision by way of Compassionate Release. Most of these were not placed on location monitoring. As described earlier, there is no requirement that courts impose that condition, and the federal judiciary's Committee on Criminal Law has advised judicial officers that imposing special terms of supervision and home confinement conditions are not required, and to do so may impose unnecessary demands on probation resources. Even after COVID-19, pro se petitions directly to the court for Compassionate Release will likely continue, as will judges choosing to use location monitoring technology to limit the liberty of those whose petitions they grant.

### Location Monitoring Going Forward—A Natural Experiment in “Remote” Supervision?

Every so often, when physical or social circumstances change suddenly and drastically, an opportunity emerges to “test” our assumptions about how things work. Such occasions are sometimes referred to as natural experiments. According to Britannica.com, a natural experiment is an “observational study in which an event or a situation that allows for the random or seemingly random assignment of study subjects to different groups is exploited to answer a particular question.”<sup>45</sup> Researchers world-wide will exhaustively explore how COVID-19 impacted a full range of practices, and, hopefully, policy makers will make use of what, if anything, is learned. In the criminal justice research literature, two such natural experiments stand out. In the first, the Finnish police strike of 1976, researchers investigated whether the absence of police led to an increase in crime. In the second, researchers compared the recidivism rates of Louisiana parolees who returned to their homes after Hurricane Katrina to those who

started new lives elsewhere.<sup>46</sup> The takeaway here, for community corrections, is that police strikes, hurricanes and, arguably, new legislation followed by a world-wide pandemic have something in common: They present unique opportunities to evaluate criminal justice practices, including location monitoring.

Fully understanding COVID-19's impact on U.S. Probation and Pretrial Services practices and outcomes would require a research agenda far beyond the scope of this paper, and this special issue. However, sudden statutory changes, social distancing demands and resulting adjustments in procedural requirements, as well as the deployment of new technologies, clearly impacted the location monitoring program. The changes present empirical questions. As described above, FSA brought new categories of inmates and persons under post-conviction supervision,

<sup>46</sup> In early 1976, the police across the nation of Finland went on strike for 17 days. Afterwards, criminologists sought to assess the “amount and nature of public disturbance during the strike, as well as the special precautions, such as arming themselves, that citizens took at the time.” Methodologically, the biggest challenge was, since police were on strike and not making arrests, there were no official records of crime. The researchers sought out non-traditional data. For example, they found that admissions of victims of violent crime at Helsinki medical clinics was double the average during the two-week period. They also found that apparent homicides during the strike were double those of the same period the previous year. Phone interviews of citizens revealed a slightly increased incidence of burglaries and vandalism. (Takala, 1979 NCJRS Abstract, NCJ #63502). Based on these findings, one might infer that the absence of police reduced deterrence and resulted in increased criminality during the strike, a sort of “the cats away, the mice will play” hypothesis. Similarly, we do not know if changes in community corrections during the pandemic, either in reduced monitoring or reduced interventions, led to increases in recidivism. More recently and closer to home, research into the impact of Hurricane Katrina in 2005 on criminal justice outcomes explored a natural experiment in community corrections. Given that many prisoners return to a relatively small number of concentrated, disadvantaged communities, the researcher investigated whether releasing inmates who chose not to return to their original communities might have different levels of recidivism. In this instance, Hurricane Katrina was “an exogenous source of variation that influenced where a parolee would reside upon release from prison.” The researcher found that those inmates who chose not to return to their former locality had substantially lower likelihood of reincarceration (David S. Kirk, *American Sociology Review*, June 1, 2009). Perhaps inmates who relocated were able to avoid the entrenched criminal networks in their original communities, or they were able to establish new routines that were less criminogenic.

including the elderly, some with many years left to serve. Will elderly participants present different supervision challenges? Will they have better supervision outcomes? Will location monitoring program compliance diminish over extended periods? Will location monitoring provide a just punishment that is less costly than incarceration for the aged, as Congress perhaps assumed? Can location monitoring play a larger role in safely reducing incarceration? Courts have also granted Compassionate Release to inmates facing potentially terminal illnesses—or enhanced COVID-19 vulnerability—and placed them on location monitoring, many with long terms of home confinement and terms of supervised release. Will location monitoring be suitable for very sick participants with a wide variety of medical conditions? Will participants' medical requirements and doctors' visits complicate location monitoring scheduling? Courts likewise revisited detention orders for higher risk defendants and released them due to COVID-19 concerns. If there are no detectable increases in those defendants' rates of noncompliance, rearrest, or failure to appear, will courts increase their use of location monitoring? If there are increases in noncompliance, will courts grow again more cautious in a post-pandemic environment? As detailed above, the risk of contagion required new strategies in daily supervision practices. Location monitoring technology is not foolproof. Did supervision using FaceTime and related technologies, including “virtual” home and equipment inspections, compromise program integrity? Are cell phone-based technologies using biometric recognition sufficient to enforce the courts' orders and assure participant compliance? Should adjustments to procedural requirements that were made due to the pandemic be reversed?

These are indeed unusual times that have greatly impacted criminal justice practices, as well as the lives of criminal justice practitioners. Probation and pretrial services officers, while not typically considered first responders, are nevertheless required to be in the community and supervise defendants, BOP inmates, and those under post-conviction supervision. Location monitoring officers serve on the “front line” of community-based supervision and often have the highest risk caseloads, requiring supervision 24 hours a day, seven days a week. As the pandemic continues, we cannot say when things will return to normal, or what a new normal might look like. That uncertainty can and will cause anxiety.

<sup>44</sup> DOJ <https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/17/2021-01-15-home-confine.pdf>.

<sup>45</sup> EncyclopediaBritannica.com July 26, 2020.

PPSO has dedicated energy and resources to providing tools and strategies to help location monitoring officers persevere through these times, and PPSO depends upon the field's perspective and feedback. As a system, we

will have to explore the questions above, and we should use what we learn as best we can to improve supervision outcomes, to ensure officer safety and well-being, to be cost effective, and to support the fair administration of

justice. Collectively, we will work together to fulfill our mission despite the uncertainties and challenges.

# Considerations for Supervision of Persons Charged with or Convicted of Sex Offenses During the COVID-19 Pandemic

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**SUPERVISING PERSONS CHARGED** with or convicted of a sex offense (sex offenders) has long challenged pretrial services and probation officers. The secretive nature of sexual offending behavior requires oversight of multiple areas of an individual's lifestyle, behaviors, sexual deviance, social networks, and mental state. Prior to the COVID-19 pandemic, officers supervised sex offenders from a risk-based, multifaceted, offense-centered approach relying on intensive in-person direct contact, collateral contact follow-up, treatment consultation, and regular polygraph testing and follow-up. In some areas of the country, due to variations in virulence and differential responses by federal courts, COVID-19 immediately disrupted officers' established practices. The possibility of in-person interactions ended abruptly in certain areas of the country, and restrictions on sex offenders having computers or other "smart" devices limited officers' ability to "go virtual." This article explains the special considerations, adjustments, and effects on both officers and sex offenders during the COVID-19 pandemic and considers whether there are possible lessons to be learned from

the interruption of traditional practices. It remains an empirical question whether the adjustments to sex offender supervision during COVID-19 impacted community safety and success on supervision.

## **Sex Offense-Specific Supervision Pre-COVID-19**

The supervision of sex offenders requires ongoing collaboration and communication with a myriad of supervision partners coupled with an ongoing assessment of risks they may pose to the community. Effective supervision of sex offenders demands the thoughtful integration of several strategies: ensuring a thorough investigation, facilitating reentry effectively (no small feat for people who often have limited remaining support systems when they release from incarceration), providing appropriate levels of supervision, referring to appropriate types of treatment, and verifying sex offender registration. Effective supervision also requires ongoing collaboration among those responsible for carrying it out.<sup>1</sup> The

<sup>1</sup> The Comprehensive Approach to Sex Offender Management, Center for Sex Offender Management,

supervision of sex offenders is more demanding and intensive than the supervision of most other defendants and persons under supervision. Sex offenders may pose distinct and inherent risks to the public due to the harm they cause to other people if they recidivate.

Although the public tends to view all sex offenders as high risk, the level of risk sex offenders pose is one of the important ways in which sex offenders differ from one another. Some have a high likelihood of general and sexual recidivism, while others are at relatively low risk to recidivate, generally or sexually. Persons convicted of possession of child sexual abuse materials with no other criminal history are generally at a lower risk to recidivate than those who are convicted of sexual abuse (hands-on offense). Those who have been previously convicted of a sex offense and are convicted of failure to comply with the sex offender registry laws are more likely to recidivate (nonsexual violence and sexual re-offense) than other persons convicted

of sexual offenses.<sup>2</sup> Research indicates that increasing public safety by reducing the risk of recidivism is more likely to be successful when the intensity of correctional interventions matches the person under supervision's risk level, also known as the risk principle.<sup>3</sup> Research further indicates that ignoring the risk principle leads to a significant increase in recidivism for both low- and high-risk sexual offenders.<sup>4</sup> The risk factors this population presents often necessitate such enhanced and non-traditional supervision strategies to ensure community protection as:

- Enhanced fieldwork—including unscheduled home inspections and employment and community contacts—conducted during both traditional and non-traditional hours;
- Regular staffing with the treatment providers, including vendors who provide specialized services to pretrial defendants and polygraph examiners;
- Establishment of a network of collateral contacts (such as family members, state probation/parole officers, and local law enforcement) who are contacted routinely during supervision;
- Use of sex offense-specific treatment and physiological tools<sup>5</sup>;
- Monitoring of the sex offender's employment;
- Location monitoring;
- Routine computer monitoring and computer searches;
- Home, vehicle, and person searches;
- Community observation; and
- Use of a chaperone program<sup>6</sup> or court-

appointed third-party custodian.

### Sex Offense-Specific Supervision Considerations During COVID-19

Beginning in March 2020, COVID-19 disrupted the traditional methods used by officers supervising sex offenders. Officers' ability to conduct home contacts and community contacts was placed on a temporary hold, and in-person sex offender treatment was disrupted in certain areas of the country. As a result, the Probation and Pretrial Services Office (PPSO) at the Administrative Office of the United States Courts (AOUSC) proactively held five nationwide virtual discussions with officers around the country to collaboratively develop alternative practices in maintaining oversight and risk-based supervision of this population. Recognizing the difficulties and stress officers may be experiencing regarding the effective supervision of this population, during the pandemic the AOUSC provided them with a platform to share their experiences and connect with others dealing with similar issues. In August and September 2020, the AOUSC held another six virtual discussions with officers and management to collaborate on success and challenges using alternative practices.

### Assessing Risk During COVID-19

To effectively supervise sex offenders, officers were faced with the challenge of assessing and addressing the acute and stable dynamic risk factors associated with sexual recidivism, using nontraditional means. Officers were tasked with not only assessing and addressing those risks that may lead to sexual recidivism, failure to appear for court, and potential for self-harm, but also determining the appropriate level of supervision based on the virtual supervision means available. Approximately 57 percent of persons under post-conviction supervision for a sexual offense committed their offense using a computer or the internet.<sup>7</sup> A significant number of these individuals did not have access to a "smart" phone or computer due to restrictive supervision conditions, thus limiting an officer's ability to conduct virtual

face-to-face contact. Due to these restrictions, officers were left trying to develop enhanced forms of communication to manage the sex offenders under their supervision. The limited resources available to officers to visually connect with their sex offenders often left officers in a state of heightened anxiety due to their decreased face-to-face contact and presence in the sex offender's home.

### Personal Contacts

During COVID-19, districts were operating at varying degrees of quarantine across the country, and officers had to use all available means to maintain a risk-based supervision strategy for sex offenders. Most jurisdictions, at some point in time, were faced with the inability to freely meet with sex offenders within their homes. In districts where fieldwork was restricted, officers used virtual face-to-face contacts or telephone contacts. The use of virtual contacts and telephone contacts were implemented.

Officers quickly identified those sex offenders with no access to a "smart" device or the internet and held discussions with PPSO regarding alternatives. The question posed was, "What should we do if the person under supervision does not have video conferencing capability?" Officers were challenged to investigate other options. Did the person live with someone who has a smart device or computer that the person under supervision could use for this specific purpose? If yes, the officer could arrange a virtual visit with that individual and establish them as a collateral contact, if they were not already. If the person under supervision had a condition restricting their access to the internet or certain devices, the officer might need to consider asking the court to re-evaluate that condition via modification of conditions during the time of the pandemic. This dilemma left officers struggling with the decision between allowing a sex offender access to a smart device and the internet, versus being unable to have some level of a visual assessment of the individual and their environment. If the individual was allowed to access the internet for the purpose of supervision, officers mitigated the potential risk with additional conditions limiting the person's access, as well as monitoring the person's internet use. If not, using telephone and socially distanced contact appeared to be the option relied upon. If telephone contact was the only means of access, the officer should consider if the person under supervision was connecting to a mobile device. In the case

<sup>2</sup> Cohen, T. and Spidell, M. (2016). *How Dangerous Are They? An Analysis of Sex Offenders Under Federal Post-Conviction Supervision*, Federal Probation 80, No. 2: 21-32.

<sup>3</sup> Andrews, D.A., and Bonta, J. (2003). *The Psychology of Criminal Conduct*, 4th edition, Anderson Publishing, Cincinnati, OH.

<sup>4</sup> Lovins, B., Lowenkamp, C., and Latessa, E., *Applying the Risk Principle to Sex Offenders*, The Prison Journal, Vol. 89, No. 3, September 2009.

<sup>5</sup> Visual reaction time (VRT) is a computer program used to assess both normal and deviant sexual attraction by measuring visual reaction time and penile plethysmography (PPG) or phallometry is measurement of blood flow to the penis, typically used as a proxy for measurement of sexual arousal.

<sup>6</sup> Another way to enhance effective community supervision of persons charged with or convicted of sex offenses is through chaperone training (adapted from Center for Sex Offender Management, 2012). These trainings are designed for laypersons, as well as semi-professional and professional staff who are interested in learning effective methods to safely

supervise, support, and manage the risk that persons charged with or convicted of sex offenses pose in community settings.

<sup>7</sup> Probation and Pretrial Services Automated Case Tracking System (PACTS), the case management system used by federal probation and pretrial officers.

of mobile devices, officers had to address whether or not the device had a camera and texting capability. In this instance, officers were encouraged to leverage mobile technology to maintain virtual contact with sex offenders to the greatest degree possible.

The use of video conferencing applications (such as FaceTime) versus traditional phone calls had distinct advantages over still photos. Video calls potentially provide more information about the demeanor, mental state, and overall engagement of the individual in the supervision process. Surroundings and background of the individual's location can also be noted, as well as any third parties in the home or with the person under supervision. Furthermore, the officer's act of engaging in a video call with an individual may heighten the awareness of the person under supervision—and of collateral sources that may be present—of the supervision process. Of course, if video conferencing or the use of a mobile application to contact the person under supervision was not possible, a traditional telephone contact was the officer's only option.

Figure 1 shows, nationally, the effect of the COVID-19 pandemic on office, home, community, and telephone contacts. From October 2018 to February 2020 the percentage of office contacts (13-15 percent), home contacts (42-44 percent), community contacts (8-9 percent) and telephone contacts (18-20 percent) was consistent. In March 2020 home contacts dropped to 29 percent and continued to decline in April, hitting a low of 23.4 percent. The home contacts started a slow increase in May 2021 (27.6 percent) and continued to increase over the next few months, with September 2020 rising to 36.4

percent despite the ongoing pandemic. With the decrease in home and office contacts, the need to maintain supervision over sex offenders turned to virtual techniques and the use of telephone contacts. Telephone contacts rose sharply in March 2020 to 41.4 percent and continued to increase in April to almost 60 percent of all contacts. Telephone contacts decreased slightly over the summer to 37 percent in September 2020, presumably as in-person contacts started to resume.

### Neighborhood Inspection and Community Observation

The potential for decreased home contacts and assessments emphasizes the importance of both neighborhood inspection and community observation. Due to school cancellations, virtual schooling, work from home environments and a lack of available community activities, neighbors of persons under supervision and the sex offenders themselves were home more during COVID-19. This created opportunities for risk that may not have previously been present. As a result, neighborhood inspections proved helpful when assessing risks in the neighborhood due to the possibility of the sex offender remaining at or near the residence for long periods of time. Increased community observation determined potential changes in patterns and/or visitors to and from the person's residence.

### Family Members, Significant Others, and Friends

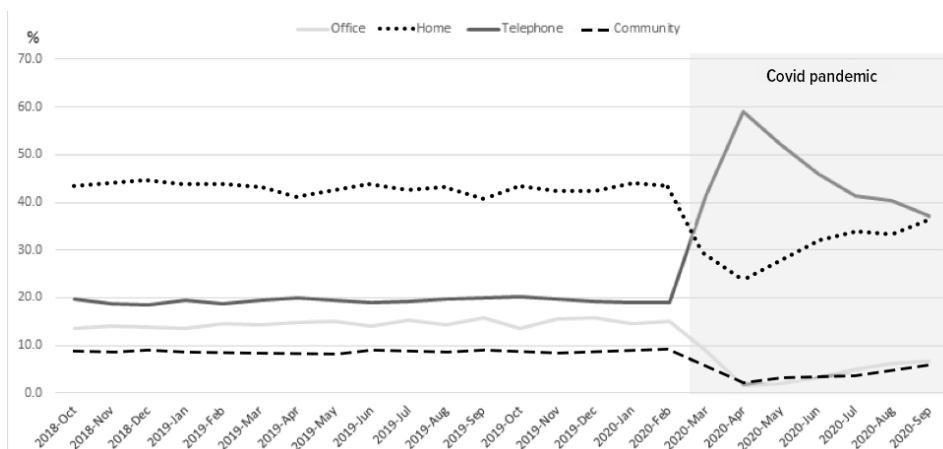
It is important to ensure that family members understand the conditions of the person's release and of the charges, even more so in the COVID-19 environment where supervision is disrupted. Family members and significant

others may be able to verify the sex offender's information and provide additional information about the person under supervision. Contact with collateral sources may offer great insight, asking specific questions about how the person is doing during the pandemic and whether any areas of concern are present. During the virtual training sessions at the onset of COVID-19, PPSO emphasized the need to increase collateral contacts to assess the need for intervention, if necessary, due to the possibility of a decrease of in-person face-to-face contacts with officers. The collateral contacts could serve as a conduit for the officer to understand what has been occurring in a sex offender's life more clearly. Trusted collateral contacts may have maintained close contact with the person under supervision and may have a different point of view to discuss with the officer.

### Treatment Needs and Polygraph Testing

Treatment and polygraph testing brought on a whole new set of challenges for supervision. Before COVID-19, telemedicine was used on a limited basis. The pandemic forced districts to reconsider this approach. Staff from PPSO worked with probation and pretrial services offices from around the country to develop language allowing telemedicine given local COVID-19 conditions. The goal was to minimize the exposure of those under supervision to the virus and to assist in reducing its spread. The use of telemedicine was authorized for the duration of the pandemic to provide health care delivery, diagnosis, consultation, and treatment and the transfer of medical data through interactive audio, video, or electronic/data communications.<sup>8</sup> The approach toward supervision pre-COVID-19 had generally been in-person group treatment. Districts had to work to communicate the needs of the sex offenders under supervision and determine the capability of the treatment agencies to work from a virtual platform while maintaining confidentiality and privacy. Many districts accomplished this through amending contract treatment from group to individual, which could occur remotely, either by telephone call or video conferencing technologies. As treatment agencies adapted and solidified their remote practices, group treatment was able to resume via video conferencing. As depicted in Figure 2 from February-April 2020, there

**FIGURE 1**  
Percentage of personal contacts for post-conviction sex offense supervisees



<sup>8</sup> Mangione, C. (2021). The impact of Covid-19 on treatment and testing, *Federal Probation* 85(1) (this issue).



was a 70 percent decrease in group specialized treatment units, and a 30 percent increase in individual specialized treatment for persons under pretrial supervision. Persons under post-conviction supervision saw similar adjustments. Figure 3 shows that from February-April 2020, there was a 54 percent decrease in post-conviction sex offender treatment group units and a 54 percent increase in individual sex offender treatment units.

Polygraph testing, because it requires close contact and proximity and also because of the equipment required, could not be conducted virtually or remotely. Providers needed to arrange a safe environment for both the polygrapher and the sex offender. As a result, there was a significant decrease (78 percent) in the number of polygraph tests being administered at the beginning of the pandemic (see Figure 4, next page). However, this frequency gradually increased as providers adjusted practices over the next several months, and it fully rebounded by August of 2020.

### Location Monitoring

Location Monitoring (LM) plays an integral role in supervision of sex offenders at the pretrial stage, as many are statutorily required to be on location monitoring.<sup>9</sup> The use of location monitoring during the pandemic increased as judges became aware of the potential health risks to those placed in custody. Officers supervising individuals with LM conditions found themselves in circumstances where close personal contact and in-home contact were unavoidable at times. Officers were forced to use technology, when available, to virtually problem solve with sex offenders who were experiencing equipment issues and used creative and inventive methods to maintain social distancing when completing hook-ups using small tents or curtains. All alternative methods of location monitoring were explored and used in varying degrees by districts. One such technology, Voice Recognition, which is part of the judiciary’s national contract, relies on automated calls from a host computer to a home telephone landline at a participant’s residence, using voice biometrics, to verify a respondent’s identity and presence in the approved residence. PPSO also authorized the use of virtual monitoring supervision, another monitoring alternative that, while not part of the national location monitoring contract, involves the

use of a smartphone application to monitor defendants and persons under supervision with a location monitoring condition. Many districts procured the current vendor’s virtual monitoring supervision product, SmartLINK, for use during the pandemic.<sup>10</sup>

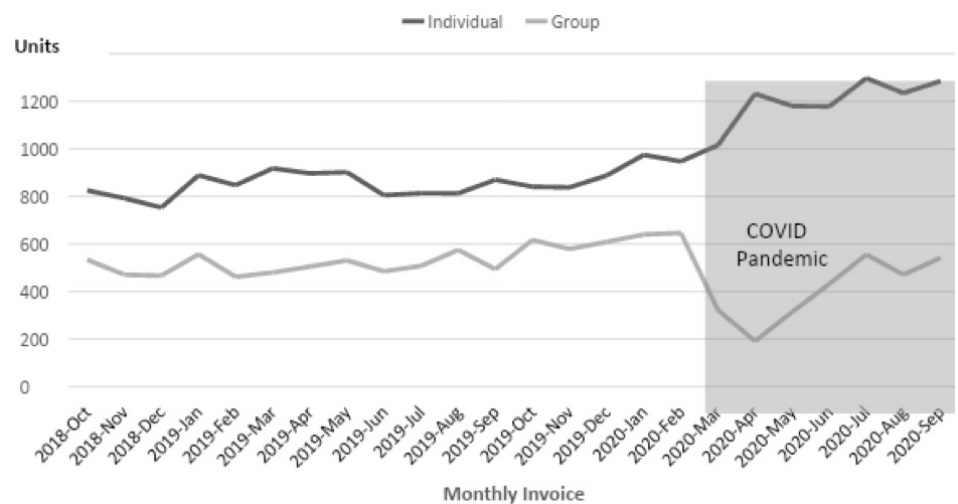
### Internet and Computer Monitoring

According to John Shehan, Vice President of the Exploited Children Division at the National Center for Missing and Exploited Children:

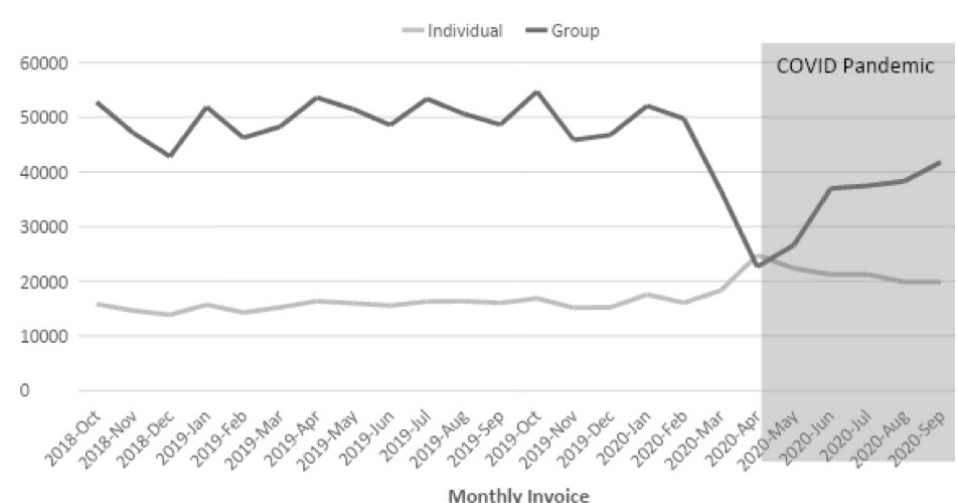
<sup>10</sup> Whetzel, J., Levinsohn, S., Cornish, T., & Cohen, T. (2021). *First Step Act, COVID-19, and the future of location monitoring*, Federal Probation, 85(1), this issue.

COVID-19 has presented challenges and opportunities in the fight against child sexual exploitation. In the first quarter of 2020, NCMEC became aware of predators openly discussing the pandemic as an opportunity to entice unsupervised children into producing sexually explicit material. At the same time, we experienced an explosion in reporting to our Cyber Tipline from both the public and electronic service providers, all while transitioning to a telework environment. I couldn’t be more proud of the staff at NCMEC for demonstrating their ability to adapt and respond during this time while always maintaining their commitment to the children we serve. Our teams used the

**FIGURE 2**  
Pretrial specialized services counseling



**FIGURE 3**  
Post-conviction sex offender counseling



<sup>9</sup> The Adam Walsh Act, Codified at 18 U.S.C. § 3142.

unique challenge that COVID-19 presented and focused on the opportunity to creatively improve workflows, both operational and technical, identify new methods to assist in removing online child sexual abuse material and support the rescue of children from sexually abusive situations.<sup>11</sup>

Internet and computer monitoring play a crucial role in the comprehensive approach

<sup>11</sup> Shehan, John, "Exploited Children," National Center for Missing and Exploited Children, October 20, 2020 <https://www.missingkids.org/blog/2020/covid-19-and-missing-and-exploited-children>.

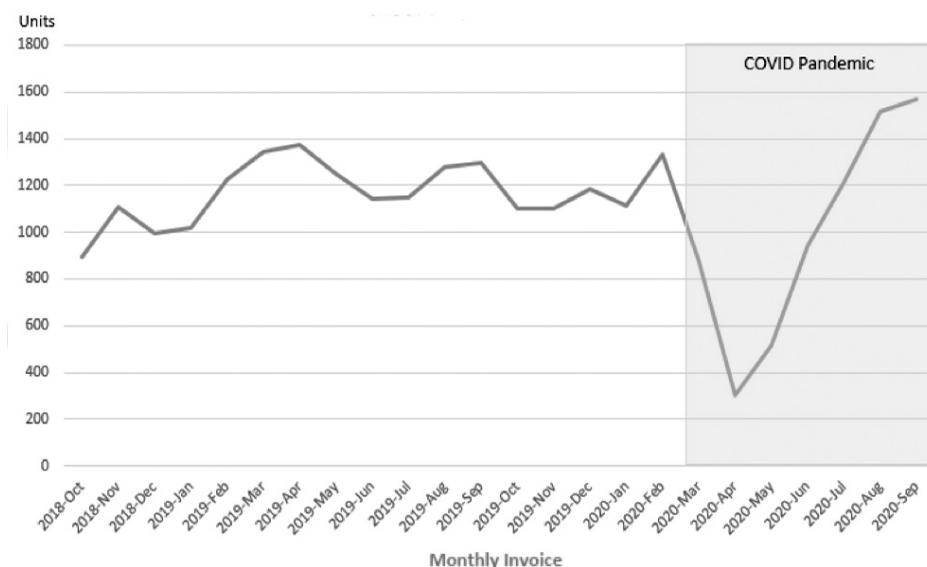
to supervising sex offenders in the federal system. Cohen and Spidell (2016) found in the years 2007-2013 that individuals convicted of possession, receipt, distribution, or production of online child sexual exploitation material accounted for the largest numbers of sex offenders under post-conviction supervision. Three-fifths (60 percent) of the 7,416 (sample) federal sex offenders had an instant offense conviction for online child exploitation material offenses.<sup>12</sup> Consistently, over the

<sup>12</sup> Cohen, T., & Spidell, M. (2016). How dangerous are they? An analysis of sex offenders under federal post-conviction supervision. *Federal Probation*, 80(2), 21-32.

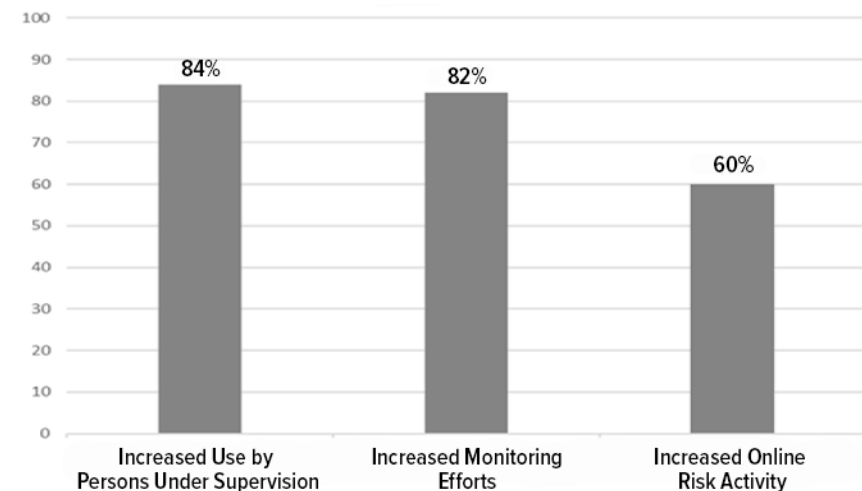
last three years, 70-80 percent of sex offenders on pretrial and post-conviction supervision have an internet and computer monitoring condition.<sup>13</sup>

Officers' responsibility to monitor the internet and computer use of sex offenders under supervision became heightened during COVID-19. As more time was spent quarantined, the use of the internet became more and more crucial to everyday life, communication, news, and shopping and supervision activities were conducted using computers and the internet. Due to sex offenders' increased internet and computer use, officers' review of monitoring data increased as well. An opinion survey (Figure 5) of supervision officers showed that 84 percent of officers believe that their sex offenders under supervision increased their internet and computer use, 82 percent of officers increased their monitoring efforts, and 60 percent of officers who responded believe their sex offenders under supervision increased their risk-related activity on the internet or their computers.

**FIGURE 4**  
Sex offender polygraph examinations



**FIGURE 5**  
Survey of federal officers supervising sex offenders: Respondents' opinion on effect of pandemic on internet use and online risk activity, and whether they increased monitoring efforts



**Officer Wellness During COVID-19**

The job of a probation officer is incredibly stressful. Most officers consider high case-loads, excessive paperwork, and deadlines to be main contributors to their stress levels. Those officers supervising persons charged with or convicted of sex offenses know that this task requires intense and innovative methods enhancing typical supervision strategies and thus enhancing those stress levels. Supervising sex offenders has been shown to exact "an emotional and psychological cost" on the officer and other staff working directly or indirectly with this population.<sup>14</sup>

Secondary trauma has been described as a natural response that occurs because of experiencing the emotional impact of working with victims of trauma or traumatic experiences. It is usually cumulative; however, it has also been described as occurring in a more acute form, following a single particularly troubling case or work-related experience. Some research has suggested that the longer and more severe the exposure to trauma, the greater the likelihood

<sup>13</sup> Probation and Pretrial Services Automated Case Tracking System (PACTS), the case management system used by federal probation and pretrial officers. (2018-2020).

<sup>14</sup> Pullen & Pullen. (1996). Secondary trauma associated with managing sex offenders. *Managing Adult Sex Offenders: A Containment Approach*, p. 103.

of experiencing secondary trauma.<sup>15</sup> In a 2011 study by Severson and Pettus-Davis, parole officers and supervisors reported having thoughts, attitudes, and behaviors consistent with the symptoms of secondary trauma. They described high levels of stress associated with their interactions with sex offenders and the ways in which this stress influenced their supervision approaches and personal lives. The officers also described the burden of feeling a societally imposed personal responsibility for preventing sex offenders from offending again. The officer accounts from the study indicate that the stress of supervising sex offenders is manifested in the officers' own physical and emotional reactions.<sup>16</sup>

Personal experiences and characteristics also may make one more vulnerable to this type of trauma. Those experiencing secondary trauma have reported mild to moderate physiological symptoms, difficulty sleeping, concentration problems, and increased substance use. However, secondary trauma has also been known to affect some persons' world views or cognitive schema, which include assumptions and beliefs a person makes about self, others, and the world. It also may affect a person's memory system. Some have reported experiencing anger, sadness, depression, anxiety, fear, mistrust of others, and other psychological indicators of secondary trauma.<sup>17</sup> Officers and other staff may be exposed to secondary trauma in working closely with victims of sex crimes and examining evidence of such crimes during investigations. Officers and other staff may also be subject to the extraordinary pressures of trying to protect the community from new sex offenses.

The emergence of COVID-19 forced officers away from familiar and traditional

methods of supervision, leaving many to believe that they were not meeting that societally imposed responsibility for preventing sex offenders from offending again. The overwhelming sense of not having access to home visits and the lack of treatment and polygraph testing made officers feel less in control of portions of the sex offender's supervision in the community. This lack of access and control caused considerable added stress to an already stressful role.

The isolation and lack of in-person contact with peers also contributed to added stress on officers. Many officers rely on peer support for their personal wellness. Officers that supervise sex offenders sometimes find that peer professionals are their primary source of maintaining wellness, since their peers outside of the office cannot relate to the supervision of sex offenders, the work, or the material an officer is subjected to on a daily basis. Similar to how COVID-19 restricted in-person interactions between probation officers and sex offenders, officers were also restricted from access to peer support and community resources to promote officer wellness.

Again, officers found themselves using alternate means of communication to support their wellness. These took the form of virtual meetings and staffing about cases, and virtual coffee hours with staff to discuss how they were coping with the isolation. In short, districts and their staff adapted.

## Conclusion

COVID-19 has affected people's lives in different ways, but all feel that normalcy and routine is altered. Officers supervising sex offenders were impacted in additional ways that were not predicted. As a result, adjustments were

made, ingenuity underscored the resilience of officers, alternative ways of assessment and communication were established, systematic adjustments to expand access to treatment were sought, and the ways that officers supported one another were highlighted.

The supervision of sex offenders presented unique challenges that brought about unique solutions. This population whose deviance thrives on physical and emotional isolation and secrecy found themselves thrust into a high-risk situation through no fault of their own. The Administrative Office provided support and guidance and districts made decisions about how to proceed moving forward with the balance of mitigating risk to the public and providing officers with the safest environment for effectuating their jobs and meeting our mission.

As we look to the future and begin reconstitution, we should take what we have learned over the last year and retain those practices that may enhance our supervision of sex offenders. For example, the use of virtual face-to-face contact may assist officers in their supervision of sex offenders by adding a layer of contact to their normal in-person meetings. The use of telemedicine may bring sex offense-specific treatment to areas where services are otherwise limited, such as remote areas or geographically challenged areas that may not have direct access to sex offense-specific treatment providers and may have relied on traditional mental health providers or no treatment for this population. Supervising sex offenders during a pandemic brought officers and management together to seek alternative supervision strategies and put us all in a situation where our collective ideas were greater than our individual practices.

<sup>15</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. (2006). *Secondary Trauma and the Management of Sex Offenders in the Community.*

<sup>16</sup> Severson, M., & Pettus-Davis, C. (2011). Parole officers' experiences of the symptoms of secondary trauma in the supervision of sex offenders. *International Journal of Offender Therapy and Comparative Criminology*, 57(1) 1-20.

<sup>17</sup> Pullen & Pullen. (1996). Secondary trauma associated with managing sex offenders, *Managing Adult Sex Offenders: A Containment Approach.*

# The Impact of COVID-19 on Treatment and Testing

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**SUBSTANCE USE DISORDER** treatment and mental health disorder treatment are tools that help U.S. probation and pretrial services officers supervise or monitor persons under supervision in the community. Substance use disorder treatment, which includes drug testing and services such as counseling and detoxification, is provided to persons under supervision who use illicit substances, prescription drugs, or alcohol. Mental health treatment, which includes services such as psychological/psychiatric evaluations; individual, family, or group counseling; and medication, is provided to persons who suffer from mental health problems. These individuals are either on probation, parole, or supervised release after being in prison, or on pretrial supervision while waiting to appear in court. Treatment is ordered either by the U.S. magistrate or district judge or by the U.S. Parole Commission as a condition of release to the community. Prior to the COVID-19 pandemic, services were overwhelmingly delivered in person. This article examines how the federal probation and pretrial services system adjusted testing protocols and treatment service delivery to reduce exposure and increase social distancing. As we look to the future, many programs and providers have adjusted the way they conduct business and are not solely relying on in-person treatment.

## **Provision of Treatment Services**

Historically, treatment and testing services have been administered in person, to individuals under federal probation and pretrial

services supervision, in traditional office settings throughout communities across the country either in a group or individual setting. The use of telemedicine to provide services to remote and underserved populations had been of interest to federal probation and pretrial services for many years and used on a limited basis. In March 2020, COVID-19 emerged and quickly changed the way in which services were provided. Out of necessity, staff from the Administrative Office of the United States Courts, Probation and Pretrial Services Office worked with probation and pretrial services offices from around the country to develop language allowing for the use of telemedicine in response to local COVID-19 conditions. The goal was to reduce spread of the virus and minimize exposure to persons under supervision. The use of telemedicine was authorized for the duration of the pandemic to provide health care delivery, diagnosis, consultation, treatment, and the transfer of medical data through interactive audio, video, or electronic/data communications. PPSO required providers to adhere to and meet the same legal, ethical, and confidentiality standards when providing telemedicine. Districts were required to virtually monitor contract providers to ensure that they were still adhering to these standards. Providers were required to obtain the consent of the individuals under federal supervision before the delivery of telemedicine services and include documentation of that in the treatment record. The provision of services in this manner was allowed for both group and individual services.

The COVID-19 pandemic dramatically shifted substance use disorder and mental health disorder treatment from group to individual delivery. For pretrial services, the system realized a 35 percent decrease in group substance use disorder treatment and a 39 percent increase in individual treatment. Similarly, there was a 52 percent decrease in mental health group treatment and a 60 percent increase in individual treatment. For post-conviction populations, the system experienced a 45 percent decrease in group substance use disorder treatment and a 2 percent increase in individual treatment. Similarly, mental health group services declined by 41 percent and the system experienced a 24 percent increase in individual mental health treatment at the post-conviction stage. Residential treatment also declined by 47 percent at the post-conviction stage and 47 percent at the pretrial stage. (See Figures 1–5, following pages.)

## **Substance Use Testing**

Monitoring individuals for the use of alcohol and illicit substances is a critical component of federal supervision. Due to statutory requirements, the drug testing program is predominately urine-based testing and requires observed specimen collection. The risk of exposure to COVID-19 created another unique challenge to traditional testing methods. Protecting human life and property requires detecting use and deterring relapse; thus, many chief probation or pretrial services officers deemed urinalysis testing to be an

essential component of supervision that must continue to be implemented. Various tactics were used to limit any potential exposure, such as unobserved urine specimen collection and alternative testing methods.

Some districts used the PharmChem Sweat Patch, which is a device that detects the presence of drugs in perspiration. Although it does not produce the immediate results of on-site urinalysis, the methodology provides a means of continuous detection and is less intrusive for officers and persons under supervision. The sweat patch was a particularly useful testing adjunct to minimize risk of exposure in this situation. For example, in some instances, officers delivered sweat patches to persons under supervision in a non-contact manner where individuals self-applied the patch under virtual observation by the officer. The officer would then have the person under supervision remove the sweat patch and place it in its sealed collection envelope in a similar manner under virtual observation by the officer. The officer would then have the person under supervision leave the sealed envelope outside their residence for the officer to collect in a non-contact manner using proper safety precautions. Use of sweat patch testing as an alternative method to urine collection allowed officers to safely maintain monitoring and support individuals on supervision in their sobriety while addressing risk for relapse.

Yet another alternative means of testing used was oral fluid testing during the pandemic. Again, the test kits would be delivered to the persons under supervision in a non-contact manner to have them “self-swab” their mouth under virtual observation by the officer. The officer would then tell the person under supervision to place the swab in its sealed container in a similar manner under virtual observation by the officer. The officer would then tell the person under supervision to leave the sealed container outside their residence for the officer to collect in a non-contact manner using proper safety precautions. Due to issues related to the chain of custody and statutory requirements, oral fluid tests conducted in a non-contact manner would not be admissible in court proceedings; however, again, it was a means to adjust supervision strategies and provide meaningful information for assessing risk and relapse.

Even with the use of alternative means of testing, COVID-19 resulted in a substantial decline in the number of drug tests performed and a dip in the number of positive

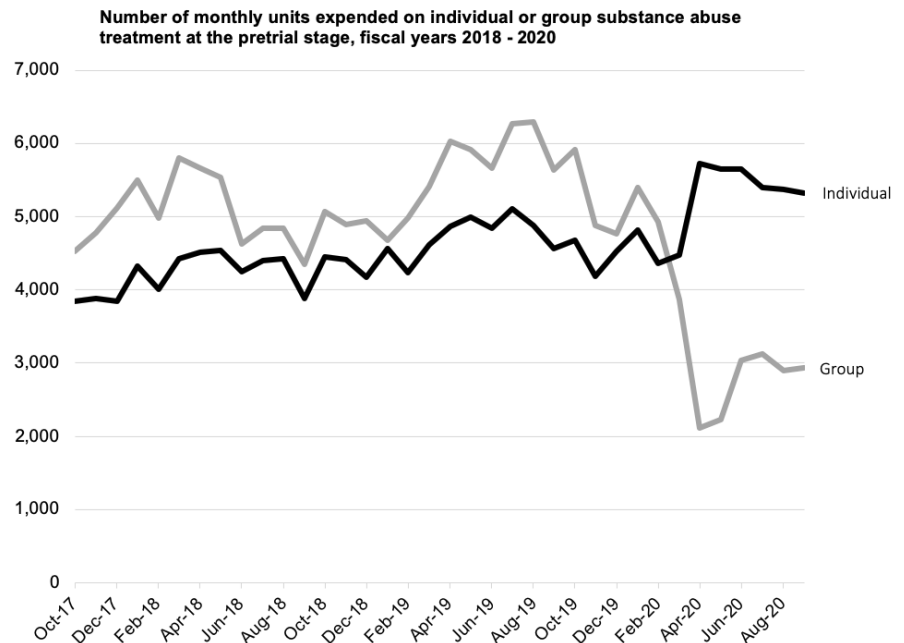
tests received. The number of persons tested dropped by 37 percent, and the number of positive tests fell by 25 percent. (See Figure 6, page 61.)

### Treatment Services Post COVID-19

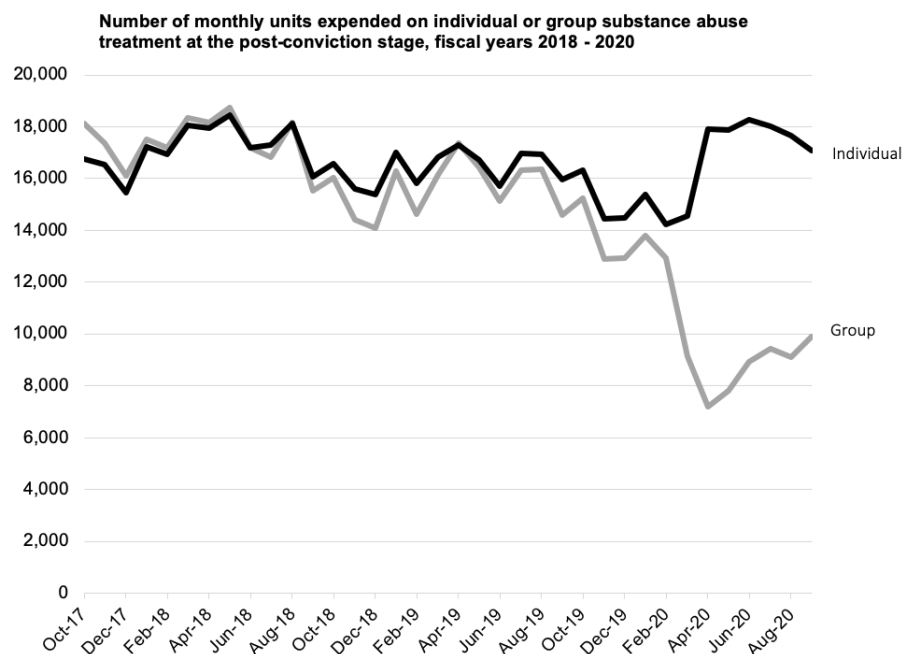
Early on it became apparent that there would be a demand for the continued use

of telemedicine post COVID-19. However, along with the benefits of increased access and attendance in treatment sessions, there were some challenges. Technological obstacles and difficulty verifying services are obstacles to overcome in the future of telemedicine. PPSO formed a focus group comprising probation and pretrial services staff from each of the Eleven Circuits, the Federal Probation and

**FIGURE 1**  
Units of individual or group substance abuse treatment pretrial



**FIGURE 2**  
Units of individual or group substance abuse treatment post-conviction



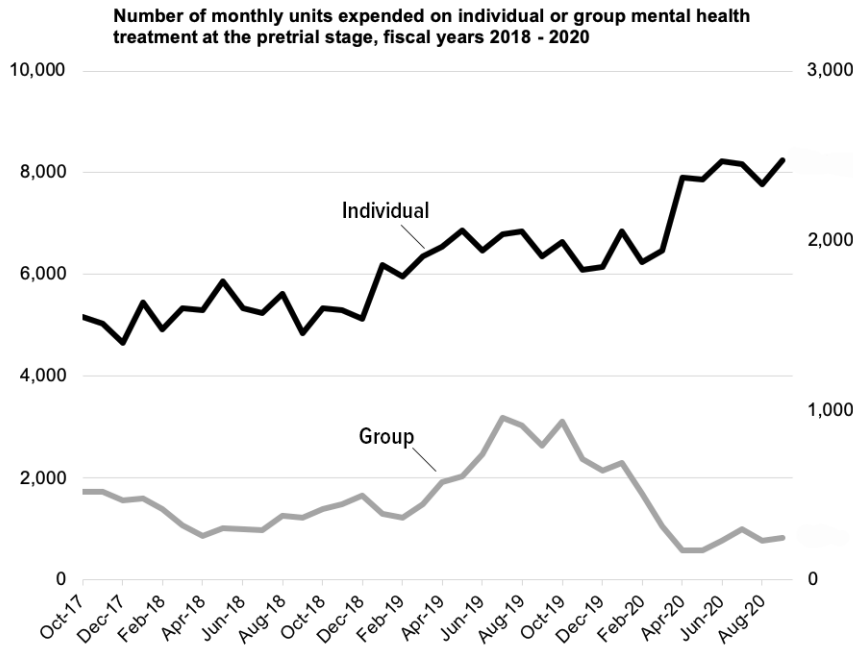
Pretrial Academy, and the Federal Judicial Center in the fall of 2020. The purpose of the group was twofold: to explore supervision procedures and best practices related to telemedicine for individuals under federal supervision, and to do the same for required procurement procedures. The group met virtually to share real-life experiences using telemedicine during the pandemic and

to formulate recommendations for the role of telemedicine post-pandemic. There was a consensus among the focus group that telemedicine could be beneficial for certain populations and certain services (for example, telemedicine would not be appropriate for the Intensive Outpatient Program, and there were concerns about “Zoom fatigue”), but it is not intended to replace in-person services

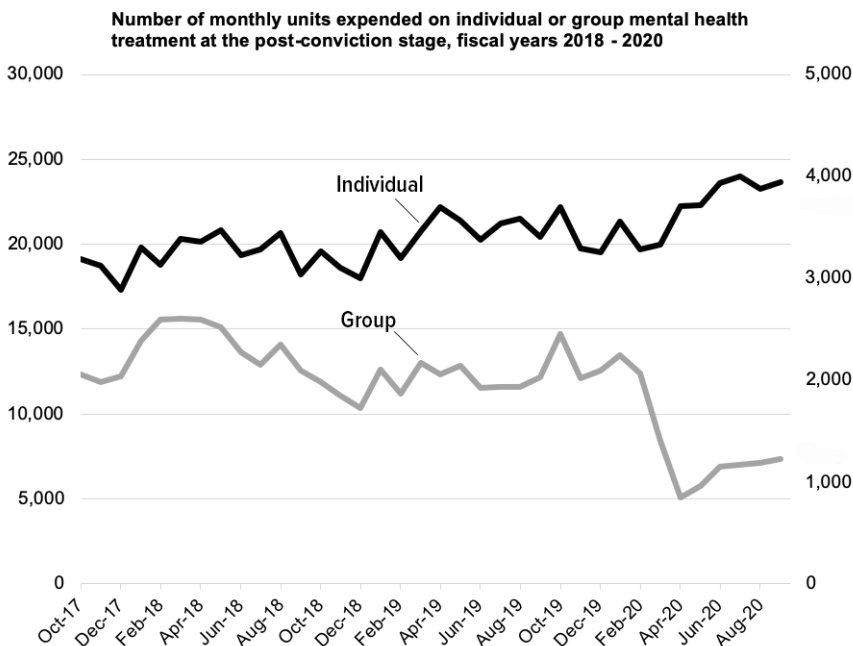
where available and may not be appropriate for certain populations. The focus group discussed that, although attendance may have increased with the use of telemedicine, participation may not have increased, and providers experienced challenges related to homework and engagement. Finally, the focus group discussed best approaches to conduct Post-Award Monitoring, efficiencies related to attendance verification, and best approaches for accountability.

Given the varied impact of the COVID-19 pandemic on local districts, PPSO has granted authority to each district’s management and court to make the decision locally to define “the duration of the COVID-19 crisis ... to continue the use of telemedicine.” PPSO will apply information gained from focus groups to establish the future of telemedicine in the U.S. Probation and Pretrial Services System post-pandemic.

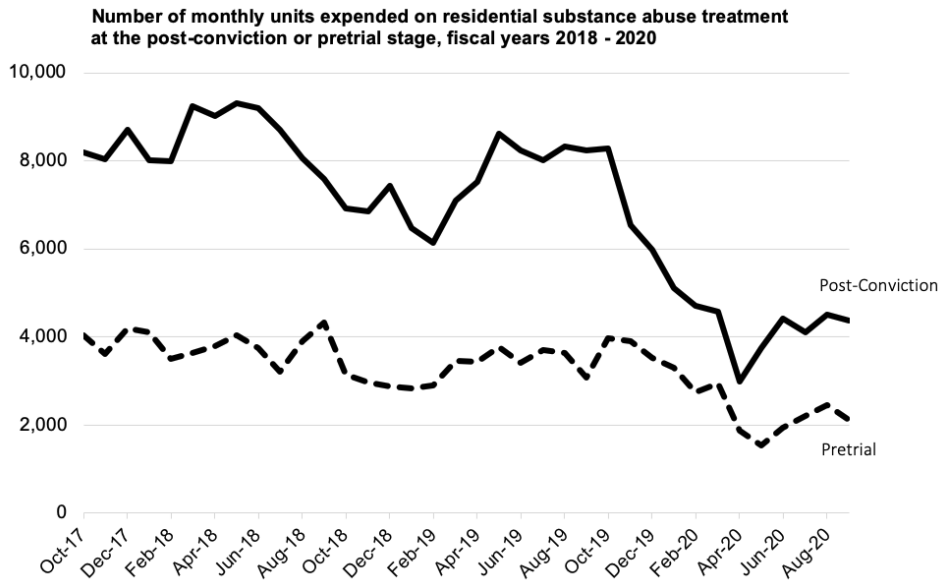
**FIGURE 3**  
Units of individual or group mental health treatment pretrial



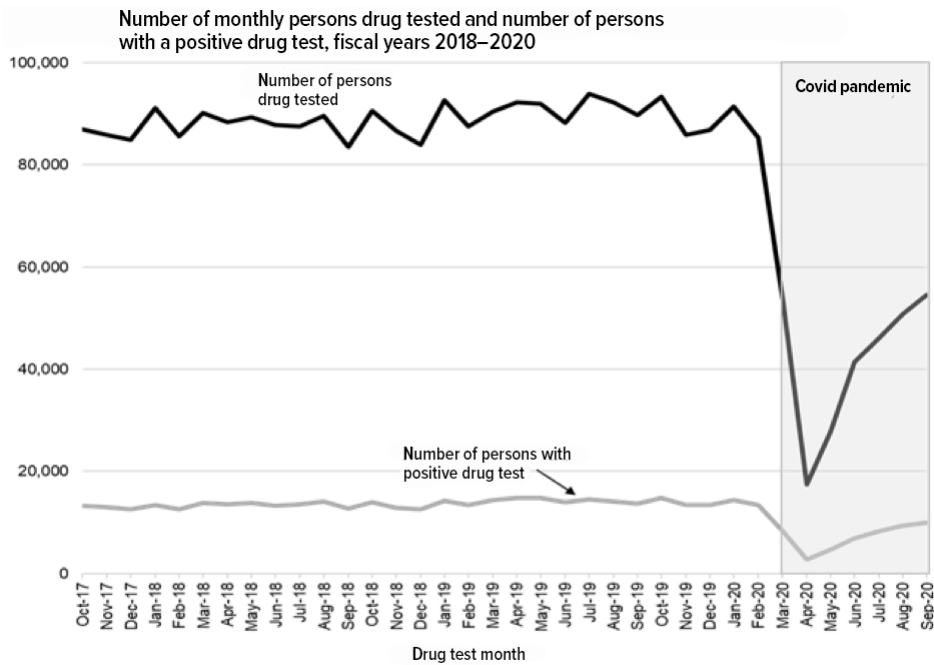
**FIGURE 4**  
Units of individual or group mental health treatment post-conviction



**FIGURE 5**  
Units of residential substance abuse treatment pretrial or post-conviction



**FIGURE 6**  
Persons drug tested and persons with a positive test



# Training During a Pandemic: The Federal Probation and Pretrial Academy's Journey Into a Virtual World

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*Administrative Office of the U.S. Courts*

**SINCE ITS INCEPTION** in January 2005, the Federal Probation and Pretrial Academy (FPPA; formerly known as the National Training Academy) has been the training home for U.S. probation and pretrial services officers. In its infancy, the FPPA, located at the Federal Law Enforcement Training Center (FLETC) in Charleston, South Carolina, provided a three-week basic training program for new officers along with firearms instructor training. Since then, it has developed curricula, resources, and staff to provide a six-week training program to new officers in addition to advanced firearms, safety, and search and seizure training programs. In 2012, the FPPA also assumed the role of facilitating Post-Conviction Risk Assessment (PCRA) training and hosting regular iterations of training for the federal system's evidence-based risk-needs-responsivity program for supervision: Staff Training Aimed at Reducing Re-arrest (STARR). Today, the FPPA supports nine training programs provided primarily by the Training and Safety Division of the Probation and Pretrial Services Office: Initial Probation and Pretrial Training (IPPT), Initial Firearms Instructor Certification (IFIC), Firearms Instructor Recertification

(FIR), Initial Safety Instructor Certification (ISIC), Safety Instructor Recertification (SIR), Search and Seizure Training Program (SSTP), Officer Skill Enhancement Training (OFSET), PCRA, and STARR. The FPPA has trained over 13,000 students—approximately 1,200 to 1,300 per year since 2015—across these programs, including nearly 4,500 new officers in IPPT alone.

In November 2018, the Federal Law Enforcement Training Accreditation (FLETA) Board awarded accreditation to the IPPT program. The FLETA Board is the accrediting body for all federal law enforcement training and support programs in the United States. To achieve accreditation, agencies must undergo a rigorous assessment to ensure compliance with FLETA standards and procedures in the following areas: administration, training staff, training development, training delivery, and distance learning. This is a momentous achievement in the history of the FPPA.

When the COVID-19 pandemic began to grip the United States in March 2020, the FPPA and the FLETC realized it was simply a matter of time before training would be impacted. The unknown nature of the global health crisis at the time made it difficult to determine the appropriate course of action. Training initially continued as usual, with staff implementing precautionary measures such as

adding more hand sanitizer and disinfecting products to training venues. Shortly thereafter, however, the FPPA decided to indefinitely suspend in-person training, including IPPT classes 2004 and 2005, on March 13, 2020. Students in these classes, who had completed half of the six-week program, were directed to return to their duty stations, and FPPA staff worked swiftly to arrange transportation for students to return to their respective districts. (Students in IPPT classes 2004 and 2005 completed the IPPT program virtually in December 2020. IFIC class 2003 graduated and traveled home on March 13, 2020.) The fiscal year 2020 total reflected in Figure 1 (next page) illustrates the total number of students trained both in person and in the virtual environment.

After suspending training, FPPA staff began working remotely to reduce exposure to COVID-19. In the weeks that followed, the FLETC held several meetings with partner organizations, including the FPPA, to discuss a plan to continue training. The FLETC determined it would enact a 14-day restriction-of-movement (ROM) period for all new students coming onto campus to mitigate the risk of asymptomatic students spreading COVID-19 after arriving at the FLETC. (The ROM period was later reduced to 10 days.) During the ROM period, students could

<sup>1</sup> For questions or further information, contact Training and Safety Division Chief Stephanie Denton at [Stephanie\\_Denton@ao.uscourts.gov](mailto:Stephanie_Denton@ao.uscourts.gov).



attend classes virtually from their individual dormitory rooms, thus eliminating all physical firearms and safety training from the first two weeks and requiring all classroom training to be conducted by FPPA instructors, most of whom had no experience in virtual instruction. Furthermore, for the duration of training, each partner organization was given a specific, staggered time period for its students to enter the campus cafeteria for meals, as opposed to the general open time frames previously used for all students. Students would only be allowed to enter certain FLETC facilities, such as the gyms, at certain times of the day and would not be allowed to leave campus until after graduation, with the exception of emergency situations.

In an effort to reconstitute in-person training, the FPPA created class schedules to accommodate the ROM period and specified meal times. These schedules featured virtual classes for the first two training weeks, followed by four weeks of socially distanced traditional classroom and firearms and safety classes. The FPPA was prepared to resume its previously established fiscal year 2020 training schedule, but ultimately decided against allowing students to return to campus due to the rising number of COVID-19 cases around the country and growing concerns about student and staff health and safety. As the number of new probation and pretrial services officers needing training grew, the FPPA eventually determined it would resume training in a 100 percent virtual environment. Following this virtual model, students would attend, and staff would facilitate, training from their homes or offices through the Microsoft Skype platform, subsequently replaced by Microsoft Teams.

### Initial Response

During the initial response to the pandemic, the FPPA staff had several meetings with district staff to provide guidance on how to continue training during the pandemic. They also took several steps to keep the FPPA staff engaged and active. There were virtual skill enhancement sessions, dry fire challenges, wellness challenges, virtual happy hours, and more.

The FPPA staff treated the time away from campus as an opportunity to update curricula, develop new curricula, conduct research, and complete unfinished projects. The FPPA Information Technology (IT) and program specialists trained the entire staff on Skype and Microsoft Teams, and they began to make

plans for what was appearing to be a much longer work-from-home period than initially anticipated.

### Liaison Program

Once the reality of the pandemic began to set in, FPPA staff reached out to districts to see what they could do to serve them in the best way possible while the FPPA was unable to provide live training. The Firearms and Safety Liaison Program was born out of those conversations. The FPPA assigned staff members to each circuit, and those liaisons were to serve as the point of contact for any firearms, safety, or training-related questions. Though the FPPA has always been responsive to questions from the field, the new circumstances justified a more proactive approach to communication.

The liaison program was announced in a variety of ways, and the FPPA held two virtual training sessions to educate the field on the liaison program and to answer any questions about training operations during the pandemic. In addition to launching the liaison program, these informative sessions introduced a series of documents designed to assist districts as they began to run their own initial firearms and safety trainings.

The FPPA Firearms and Safety Branch staff created three main documents. The first was an overall checklist that could be used as a quick reference guide to make sure officers received training in all the required and recommended areas of firearms and safety. The other two documents provided information about particular methods of instruction in each of the firearms and safety areas, including a recommended order of instruction, drills, and ways to modify the curriculum based upon resources available in the districts.

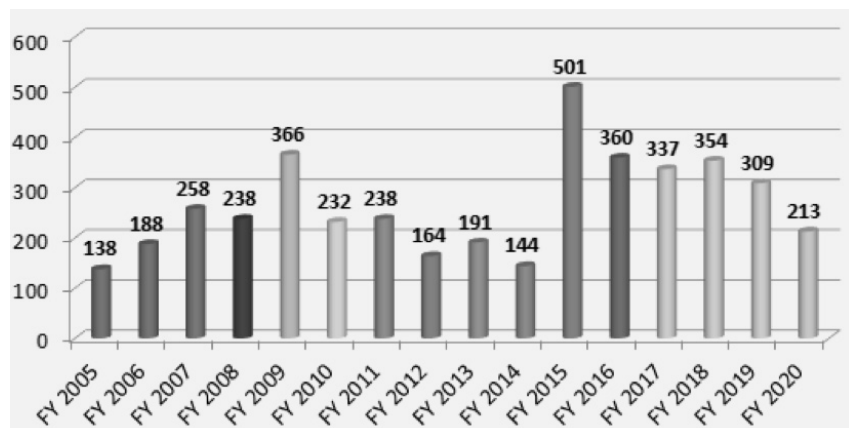
### Contact Safety

Not long after it became clear that the academy might be working from home for an extended period, the FPPA management team started brainstorming ideas to keep staff engaged in the mission. As mentioned previously, one idea was to conduct skill enhancements virtually. The first staff skill enhancement conducted was for the Contact Safety curriculum, which was in the process of being updated after a staff member attended a de-escalation course conducted by Force Science. The new curriculum focused on preparing staff to successfully manage a potential use-of-force incident, and provided information on de-escalation, tactical decision making, situational awareness, mental and physical responses to stress, and considerations following a use-of-force incident.

This skill enhancement was conducted via Skype for the FPPA staff, who determined that the presentation needed improvement. Essentially, they discovered that teaching virtually required a different skillset to get audience participation and engagement. As time passed, the academy liaisons started to receive more and more correspondences from districts inquiring if the academy would be conducting any virtual training. District instructors began indicating that they were starting to have concerns about completing sufficient training hours. The FPPA wanted to help, and it was therefore an easy decision to begin providing districts with virtual training during the pandemic.

Once the decision was made to provide the training, Contact Safety seemed to be the logical choice for the first class. The curriculum was an appropriate length to present virtually, it was recently updated, and the

**FIGURE 1**  
New officers trained by fiscal year, 2005–present



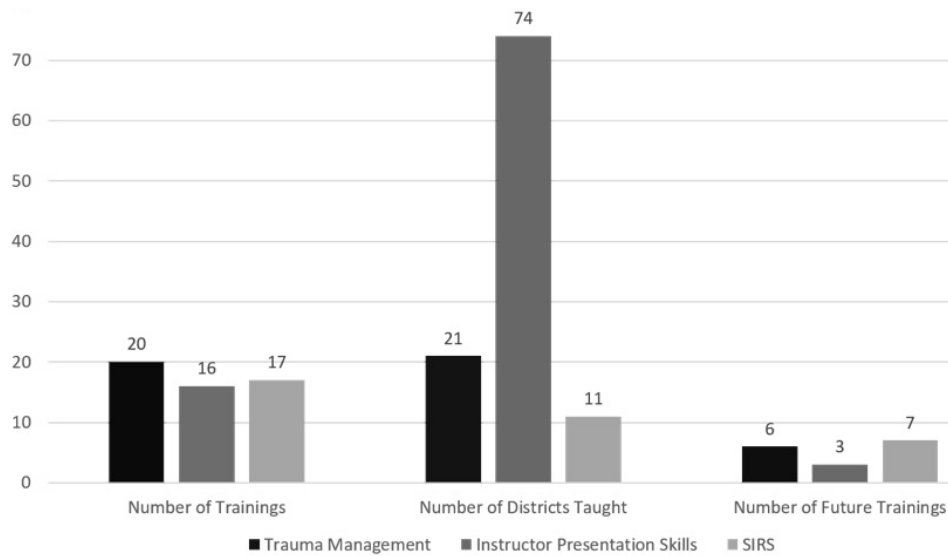
FPPA had already had one attempt at presenting the class via Skype, complete with lessons learned. Staff spent a great deal of time and effort researching components of a successful virtual presentation. They needed to learn how to hold an audience’s attention and drive engagement in a virtual setting. The curriculum was revised with this in mind, and instructors found various ways to drive participation and engagement using the chat bar, online polls, videos and audio files, online quizzes, Microsoft Forms, the Teams “raise hand” feature, and various other methods. The class was advertised to districts through the Probation and Pretrial Services Office chief’s update, emails to the lead firearms and safety instructors in each district, and the FPPA’s

firearms and safety instructor bulletin. On June 10, 2020, the FPPA presented the first iteration of the Contact Safety virtual training. The program has continued to evolve and has become the template for subsequent virtual trainings. The class is now taught through Microsoft Teams, and student engagement is driven through videos, audio recordings, interactive polls, and discussions in the chat bar. At the time of this writing, the FPPA staff has presented the class 45 times, to 58 districts, and has reached 2,679 officers, while receiving overwhelmingly positive feedback. The class has been so successful that there are plans to continue to offer the class to interested districts for the foreseeable future, possibly even beyond the pandemic.

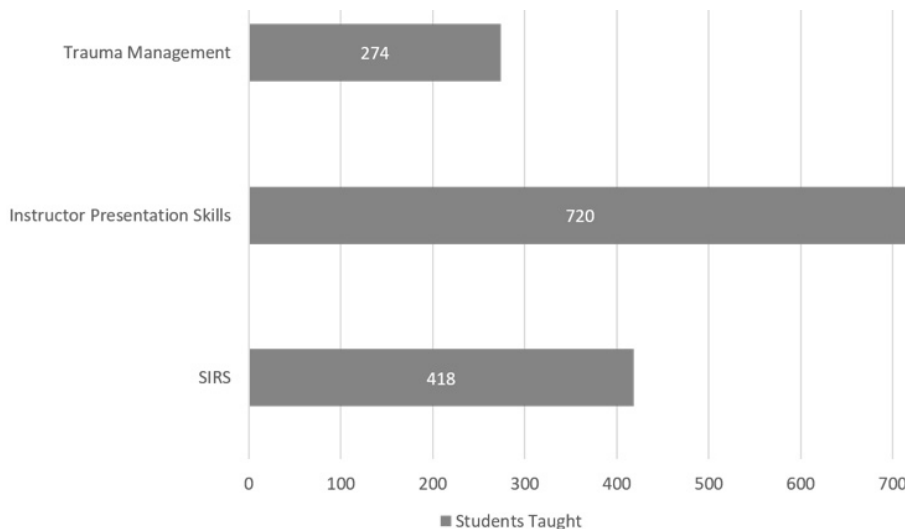
### Other Advanced Programs

As the country continued to be affected by the COVID-19 pandemic, the FPPA liaisons continued to receive correspondence from the field, and the Contact Safety virtual class continued to receive positive reviews, the FPPA started looking into the possibility of offering other trainings to districts. Not long after conducting the first Contact Safety virtual class, there was a request from the field for the academy to provide training on Search and Seizure for Court Unit Executives. FPPA staff then developed a two-hour search and seizure class based on the Legal Principles lesson plan that is taught in the Search and Seizure Training program at the FPPA. The class is similar to Contact Safety in that it is taught via Teams, and instructors attempt to generate student engagement as much as possible. The presentation received positive feedback, and the FPPA decided to attempt to offer this class as a refresher training for the field as needed. The class was advertised in the same manner as Contact Safety, with an additional email being sent to district search and seizure instructors. The class has continued to evolve, and some feedback has indicated that districts may benefit from more information on use of force-related policy along with information on the seizing, storing, and destruction of evidence and contraband seized during searches. With that in mind, the FPPA now holds pre-briefings with districts before conducting this training and attempts to tailor the training to the district’s needs. The FPPA has now provided Search and Seizure, Evidence, and Use of Force-related trainings more than 47 times, covering over 45 districts and reaching over 1,937 students. The success of these classes and further conversations with the districts then led to the development of other virtual trainings offered by the FPPA in Trauma Management, Instructor Skills Refresher (a class offered to certified safety, firearms, and search instructors), and the Safety and Information Reporting System (SIRS). The statistics for these classes can be seen in Figures 2 and 3.

**FIGURE 2**  
FPPA virtual presentations conducted, September 2020–April 2021



**FIGURE 3**  
Officers taught in virtual classes, September 2020–April 2021



### Virtual FIR

One of the unintended consequences of suspending in-person training was that firearms instructors’ certifications nationwide began to expire without their having the opportunity to take the training needed to renew them. The Administrative Office’s Director authorized extensions to firearm certifications in the *Guide to Judiciary Policy*, and subsequently

made temporary modifications to the *PPSO Firearms and Safety Procedures Manual*, which helped alleviate this issue. However, after almost a year of suspended training, it became clear that further action was needed. The team at the FPPA began exploring the possibility of a virtual Firearms Instructor Recertification (VFIR) program.

The question was simple: Could a VFIR be created that would provide value to firearms instructors beyond the recertification itself? A “check the box” class would not meet the mark, and for a VFIR to work it had to do something to improve the instructors in the class. The team got to work. Ideas came together about how the virtual environment could be treated as an asset to the training instead of a hindrance. For the first time ever, instructors were able to use videos to show real-world applications of the techniques discussed. Animations were created to illustrate movement principles inside buildings, images were available to show what an officer could and could not see in a specific moment in time, and interactive activities were able to challenge an officer’s understanding of the principles taught.

The first VFIR was launched on February 1, 2021, and concluded with 15 students graduating on February 5, 2021. FPPA instructors introduced re-certifying instructors not only to new ways of presenting information but also to training on new materials. VFIR 2101 was the pilot class for a Pistol Mounted Optics familiarization course along with a newly revised Tactical Movement lesson plan and the updated Trauma Management lesson plan.

## PCRA and STARR

Since 2012, the FPPA has hosted and facilitated stand-alone PCRA trainings several times per year. The training is offered to officers, including management, and officer assistants who need access to the PCRA tool or are simply interested in learning more about it. Traditionally, the PCRA training is done in two days, with eight hours of instruction per day. However, when the FPPA transitioned to virtual courses, this changed to three training days of four to five hours per day and was offered more often. As of April 19, 2021, 58 students completed the virtual PCRA training.

The FPPA began hosting STARR training in 2012. Although students receive the training at the FPPA, the course is traditionally facilitated by permanent and temporary-duty probation administrators from PPSO’s National Program

Development Division as well as officers qualified as national trainers. During the pandemic, STARR trainers created and facilitated trainings virtually reaching 91 students.

## IPPT

The IPPT program, the FPPA’s flagship course, expanded in January 2006 from three to five weeks, then in January 2007 to six weeks, where it has generally remained. In 2015, the FPPA temporarily reduced the program to four weeks to address a backlog of new officers in need of training. In rare instances, some IPPT iterations have been shortened due to unforeseen circumstances surrounding inclement weather and government shutdowns. In the years leading up to 2020, the FPPA facilitated two simultaneous IPPT classes of 24 students for approximately seven or eight iterations each year, with over 300 officers graduating annually since 2015. The FPPA facilitated all classes face-to-face with students at the FLETC, where officers trained eight hours per day on a variety of topics in a classroom setting, as well as firearms, officer response tactics, and driver training. Students were also required to complete designated electronic learning modules (ELMs) and participate in various scenario-based practical exercises during the program. Although this was not required for graduation, most students achieved Pretrial Risk Assessment (PTRA) and PCRA certifications and met the criteria to carry a firearm as provided in the *Director’s Firearms Regulations* and the *PPSO Firearms and Safety Procedures Manual*.

When the decision to move to 100 percent virtual training was made, the accredited IPPT program was placed on hiatus. Doing so allowed us to provide virtual IPPT training without any negative impact on accreditation. Prior to the pandemic, the IPPT program syllabus consisted of four main components: General Curriculum, Firearms and Safety Training, Driver Training, and ELMs, with three written exams. Students participating in the IPPT program would complete a total of 221 curriculum hours prior to graduation. To develop a virtual program, numerous meetings and discussions were held to determine the best training approach and to finalize a virtual curriculum that would meet the growing needs of new officer training in our system.

The FPPA’s program specialist used her extensive knowledge of designing, developing, delivering, and implementing distance learning to offer best practices and lead the implementation. With a short time allotted

to implementation, FPPA staff leveraged the e-learning practices with which they were already comfortable (Blackboard and webinars) and grew those to expedite implementation.

Curriculum decisions were made on what would remain, be modified, or removed from the virtual program, and two new ELMs were created to replace instructor-led classes, freeing up more time for other topics. These ELMs were delivered on Blackboard with the other ELMs used in IPPT. The FPPA also expanded their Blackboard use to incorporate online exams.

Emphasis was placed on preparing students and instructors for the new virtual environment. Students were provided with checklists and a tutorial on the virtual training platforms, as well as an assignment to meet with an FPPA staff member to demonstrate their ability to connect and participate in a virtual class.

The FPPA program specialist first provided classes to staff on exploring the best practices to be used when training at a distance, how to mitigate technology failures, and how to convert their classroom training to optimize student engagement, collaboration, and communication in a virtual environment. That was followed by training on Skype and Teams, focusing on how to encourage interaction and use the tools available in each program. Next was an in-depth training on the educational technology programs like Microsoft Forms, Poll Everywhere, Blackboard, Adobe Acrobat, and Teams collaboration tools. Instructors adapted their curriculum and put in numerous hours to become proficient at using distance learning technology.

We established a backup plan to continue class in case of technology issues: Instructors and students are instructed to download and keep a backup copy of the digital class materials on their computer and provided with an audio line call-in number for each class session. Additionally, each class is staffed with a “facilitator” who can assist students with technical issues and check on students who are not responding in class. This helps to prevent class disruptions due to an individual student’s technical issues. Staff and students are set up in the FPPA Mobile application so they can use the student roster and staff directory to communicate using cell phones and messaging during technology failures.

The first Virtual IPPT (VIPPT) program began on August 3, 2020, with VIPPT classes 2010 and 2011. With physical and driving training being eliminated from the curriculum—districts assumed the responsibility of

training their own officers in these areas during the pandemic—the program was reduced to approximately three weeks. To accommodate the eight time zones spanning the 94 judicial districts, training was reduced to six hours per day, from 10:30 a.m. to 5:30 p.m. Eastern Time (ET), with a one-hour break, beginning at 12:30 p.m. ET. As the FPPA was acting independently of the FLETC in providing virtual training, students graduating from VIPPT received only a certificate from the FPPA, not from the Department of Homeland Security. All training, labs, practical exercises, and exams were facilitated by FPPA staff and adjuncts only, with no third-party role players.

While some courses were converted to ELMs for students to complete on their own time before or during the training program, all other classes were converted to a “virtual-friendly” format. This format includes modified or new methods of instruction and class activities (interactive polls, games, surveys, student presentations, etc.) to keep students engaged. The first VIPPT iteration consisted of a total of 97 curriculum hours and two written exams.

Following the first VIPPT, instructors and students provided valuable feedback on their experiences with the virtual program, which helped the FPPA make additional modifications to further enhance the training program. Some classes were given more hours, and additional ELMs were added. The current VIPPT consists of 78 general curriculum hours, 9 Firearms & Safety Training classroom hours, 15 hours of ELMs, and two written exams. Student evaluations remain a fundamental step in the success of the program, and students are asked to provide feedback weekly on each class they attend.

Another change was adding three 2-hour periods of time within the schedule to allow students time to complete ELMs, prepare for classes, complete assignments, and study for their upcoming exams. Some of the feedback received from students was the inability to disconnect from district work obligations while attending VIPPT. By adding the additional blocks of time into the schedule, the hope was to alleviate some of the after-hours work being completed by students and promote a healthy work/life balance.

Instructor training and buy-in was a key element in making the VIPPT program a success. Instructors from both branches (Training & Skills and Firearms & Safety) have spent countless hours learning how to teach in a virtual environment. As of June 2, 2021, 408 students have completed the VIPPT program.

### Looking Forward

The academy has learned many lessons during the pandemic. The virtual trainings would not have been possible without the hard work of the entire staff. The contributions have been significant from everyone at the academy, including the management team, probation administrators, detailed staff, IT staff, and support staff. They have all put in extra hours, shown great flexibility, solved difficult problems, and continued to rise to the occasion time and time again. There have been many challenges associated with conducting training in a virtual format, and they have tried to address these challenges in the best way possible. The entire staff shares the goal of continuing to improve their virtual content.

The FPPA understands that attending virtual training has required the sacrifice of

students and their coworkers and families. They would like to extend their appreciation of the patience, support, and feedback from officers and management teams as they have worked through various obstacles to develop and improve the virtual training programs.

At the start of this process, the FPPA did not foresee all the benefits they would receive from teaching in a virtual setting. They have been able to provide instruction and ongoing education to thousands of officers on varying topics. The staff has become more familiar with and knowledgeable about Skype, Teams, and other technology platforms. The FPPA has had the time and opportunity to update existing curriculum and to develop new curriculum. The academy is hopeful they will be able to continue to implement virtual trainings in some capacity after the pandemic in order to best serve the needs of districts. Like everyone, the academy is hopeful that the reconstitution process will begin sometime soon. As beneficial and far-reaching as virtual training has been, they still believe there is no substitute for in-person training. The goal is to resume in-person training when they can do so safely and effectively.

The FLETC has implemented many safety protocols such as face-covering requirements, health screening before entering the campus, installing plexiglass at numerous locations around campus, and the ROM period for students upon arrival on campus. Additionally, the FPPA have personal protective equipment available for staff and are considering protocols of their own for when they resume in-person training. The FPPA remains dedicated to their mission and to assisting the districts in every way possible, and they strive to continue to provide quality training, virtually for now and in person in the future.

# Innovations from the U.S. Probation and Pretrial Services Wellness Committee During the Pandemic

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*Probation and Pretrial Services Office*

*Administrative Office of the U.S. Courts*

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Chair, U.S. Probation and Pretrial Services Wellness Committee*

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Secretary, U.S. Probation and Pretrial Services Wellness Committee*

**IN SEPTEMBER 2007**, the Chiefs Advisory Group (CAG) supported a plan, proposed by then Assistant Director John Hughes of the former Office of Probation and Pretrial Services (OPPS), to start a wellness program for the federal probation and pretrial services workforce as a legacy to OPPS Probation Administrator Migdalia “Miggie” Baerga-Bufler, who died by suicide on August 22, 2007. The office created a six-member Wellness Steering Committee, which commenced work in October 2007.

As U.S. Probation and Pretrial Services officers began to show greater interest in their own mental health and desire to share their knowledge and experience with other officers, and because of the number of proposed wellness projects, it became apparent that more committee members were needed. Officer wellness was becoming not only a focal point for officers but a priority for our system.<sup>1</sup>

Today, the newly named U.S. Probation and Pretrial Services Wellness Committee

focuses on all staff in the U.S. Probation and Pretrial Services agency. Together the committee:

- Increases awareness of wellness services that are available for all staff.
- Promotes the use of the committee’s electronic learning modules (ELMs) on wellness.
- Makes curriculum recommendations regarding wellness to the Federal Probation and Pretrial Academy and the Probation and Pretrial Services Office.
- Hosts national wellness conferences (in person and virtual).
- Assists districts in creating internal wellness committees and Critical Incident Stress Management (CISM) teams.
- Released a Casualty Assistance Guide to assist chiefs and managers during a critical incident or following a death.
- Maintains a wellness website accessible to all employees.
- Provides wellness training to districts.

From 2014 through 2016, the committee developed and launched six wellness-related ELMs customized for probation and

pretrial services staff. Topics include Stress and Resiliency Training, Suicide Prevention and Awareness, Fitness and Nutrition, Secondary Trauma, Recognizing Burnout, and Wellness for Managers. These ELMs are interactive, thought provoking, and take approximately one hour to complete. They can be accessed on a computer, phone, or iPad at the user’s pace. A training certificate is awarded at the end of each course.

The Casualty Assistance Guide was created by the Committee in 2017. This document is designed to assist chiefs and managers during a critical incident or following a death. Its purpose is to help guide administration through what would be an intense and potentially tragic situation. The guide covers every step of the process from notification of a death/serious injury to loved ones to how to deal with and manage their staff. The document is easily accessible through the Probation and Pretrial Services Wellness Website.

The year 2018 was marked by the Probation and Pretrial Services Wellness Conference, Combating Risk Through Wellness, the first of its kind in the U.S. Probation and Pretrial

<sup>1</sup> *News and Views* Special Issue Article VOL. XXXIII, NO. 10 May 12, 2008.

Services system. The three-day conference in St. Louis, Missouri, offered a wide range of topics and presenters that covered various dimensions of wellness. Conference attendees could also participate in such physical fitness demonstrations as kickboxing, yoga, a run/walk, and meditation. Impactful keynote speakers presented each day before participants went into smaller breakout sessions. The conference was well received and attended by over 350 U.S. Probation and Pretrial Services employees throughout the country, with overwhelming appreciation expressed for it. The committee has received multiple requests to host more such conferences and plans to do so.

In December 2018, the Federal Judicial Center (FJC) formed a planning committee to develop a curriculum on Resilience and Workload Management. The committee consists of U.S. Probation and Pretrial Services support staff, officers, supervisors, assistant deputy chiefs, and PPSO and FJC staff. The U.S. Probation and Pretrial Services Wellness Committee also has a representative on this planning committee to collaborate on efforts in the area of wellness.

Resilience and Workload Management are 2 of the 10 competencies identified for experienced probation and pretrial services officers.<sup>2</sup> These competencies are areas of proficiency essential for successful performance on the job. Resilience is wellness. The FJC defines resilience as the ability to maintain purpose, effectiveness, and mission-focus in challenging situations. It is desirable that officers be able to recognize maladaptive coping behaviors and signs of chronic stress, secondary trauma, burnout, and compassion fatigue in themselves and others. Acknowledging resiliency as a core competency is a tremendous achievement for the agency. In connection with resilience, the planning committee is developing a curriculum around the workload management competency. Officers who demonstrate Workload Management preserve their longevity in the field by taking advantage of wellness resources and using healthy coping strategies to manage work-related stress.

The Probation and Pretrial Services Wellness website was launched in June 2020, during the COVID-19 pandemic. The members of the Probation and Pretrial Services Wellness Committee had already been already discussing plans to launch the

website. However, due to the pandemic, it was launched sooner than planned. Committee members worked hard during this time to bring ideas, resources, and creativity to the development of the site. The website is housed on the JNet,<sup>3</sup> the federal judiciary intranet site maintained by the AO, and is inclusive to all Probation and Pretrial Services employees. Since the launch of the website, it has been viewed by 2,163 employees. The website is frequently updated with current resources.

Also in 2020, the Committee created the Wellness Wisdom Newsletter, which highlights districts' wellness practices within the probation and pretrial services community. The newsletter is published quarterly and made available by email subscription delivery to employees. Prior newsletter issues can also be found on the Probation and Pretrial Services Wellness website. This provided another opportunity to have a sense of community with peers across the nation during the pandemic. Currently, there are 531 subscribers to the newsletter.

In a further collaboration with the Federal Judicial Center, a few committee members were guests on the FJC podcast "Off Paper" in 2021, discussing wellness challenges facing the system and the work of the Committee. Supervisory U.S. Probation Officer Melinda Torres Felix (Illinois Northern), chair of the committee, discussed what it means to be physically and mentally well, the journey of the wellness committee, and the resources available to employees. Other speakers included Supervisory U.S. Probation Officer Monica Mannino (Missouri Eastern), vice chair of the committee; Chief Probation Officer Wade Warren (North Dakota), committee member; Chief Melissa Alexander (North Carolina Middle); and U.S. Probation Officers Tiffany Vega (Illinois Northern) and Johnny Alexander (Kentucky Western), who also shared their perspectives on wellness.

The success of the 2018 wellness conference sparked the Committee to make plans to deliver a conference biennially. Originally scheduled for July 2020 in Atlanta, the second conference had to be canceled due to the pandemic. However, the committee searched for a way to deliver training and resources remotely, resulting in another milestone for the agency—our first-ever virtual conference. The Winter Wellness Conference, "Coping Is Hoping," was delivered in February 2021 over four days across a two-week span to

account for employees' busy schedules during this unprecedented time. All sessions were recorded for future viewing. A variety of wellness topics were presented, including Changes and Considerations to the SF-86, Stress First Aid, When Inclusion Impacts Wellness: Pronouns Matter, Assessing Yourself Through the 8 Dimensions of Wellness, Sleep and Dreams, Suicide Prevention and Awareness, and Depression and Adjustment Disorders. Approximately 250 participants attended each session. The virtual conference was an overwhelming success. Of those who completed the survey, 94.63 percent were either "very satisfied" or "satisfied" with the overall conference. A common theme from the survey was the idea of getting back to an in-person conference. In-person conferences provide a lot of value: a safe place to share ideas, comments, and concerns in breakout sessions; direct dialog with presenters; and networking through interpersonal contacts. The Committee plans to deliver another in-person conference as soon as it is safe to do so.

Committee members continue to assist districts with wellness resources; however, this assistance has moved to a virtual platform. The Committee has provided virtual consultations on starting district wellness programs and conducted virtual presentations to individual districts on a variety of wellness topics. Many districts have hosted virtual conferences locally for their staff, and committee members have presented on an array of topics in these virtual conferences.

As previously mentioned, the Committee was formed due to a tragedy in the system where a suicide took the life of an employee. This was not the first suicide in the system, and unfortunately it has not been the last. The goal of the Committee has always been to shine a light on the public health challenges of suicide and make the topic a part of everyday conversations in the workplace. In 2019, suicide was the tenth leading cause of death in the United States and the fourth leading cause of death in those between ages 35–54.<sup>4</sup> Suicide affects law enforcement officers, including probation and pretrial services staff, at an even higher rate. In fact, law enforcement officers are more likely to die by suicide than in the line of duty. There were 228 identified deaths

<sup>4</sup> Suicide Statistics (N.D) <https://afsp.org/suicide-statistics/>

<sup>5</sup> Record number of LEO's dies by suicide in 2019 (2020, January 3) [www.police1.com/police-heroes/articles/record-number-of-leos-died-by-suicide-in-2019-ezeG0dSGdKz7pc39/](http://www.police1.com/police-heroes/articles/record-number-of-leos-died-by-suicide-in-2019-ezeG0dSGdKz7pc39/)

<sup>2</sup> Federal Judicial Center (June 2018) Competencies for Experienced U.S. Probation and Pretrial Services Officers.

<sup>3</sup> The JNet is the intranet for the Federal Courts.

by suicide among law enforcement officers in 2019.<sup>5</sup> The Committee believes suicide prevention and awareness is a critical part of staff wellness. Therefore, the Committee provides tools and resources to assist in suicide prevention and awareness. The Committee has:

- Developed a suicide prevention and awareness ELM. The module was developed to educate staff on recognizing the warning signs of suicide and the steps to take when faced with crisis situations.
- During the “Combating Risk Through Wellness” Conference, geared four breakout sessions toward suicide prevention and awareness.
- Ensured recognition is given to National Suicide Prevention Month in September.
- Placed multiple resources on the Probation and Pretrial Services Wellness Website regarding suicide prevention and awareness.
- Sent special announcements chief U.S. probation and pretrial services officers regarding suicide prevention and

awareness resources.

- Provided for publication in *News and Views*, PPSO’s newsletter for probation and pretrial services staff, Information regarding risk factors and warning signs .
- Continued to work diligently to identify resources, trainings, webinars, and other tools to help build awareness and take action to prevent suicide within your community.
- Included a certified Question Persuade Respond (QPR) facilitator as a member. This member has provided QPR training to district probation and pretrial services staff throughout the country as well as during the virtual Winter Wellness Conference in February 2021. Interested Committee members will be certified in QPR in the near future.

Due to the increased rate of suicide in the system, in 2020 the Committee drafted a form letter template for district chiefs and their designees to distribute to employees and their families. The letter provides information

on WorkLife4You, the Employee Assistance Program (EAP), and suicide prevention resources. There is also a section with information regarding the district’s local wellness committee. The Committee recommends that the letter be mailed to the employees’ home address so that it can be used and viewed by both the staff member and their families.

We all play a vital role in preventing suicide and saving lives. If you, or someone you know, is struggling, help is available.

#### **National Suicide Prevention Lifeline**

1-800-273-(TALK) 8255

#### **Crisis Text Line**

Text HOME or HELLO to 741741

#### **Institute on Aging’s Friendship Line**

(for people 60+)

1-800-971-0016

#### **BlueHelp.org**

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