

DIVIDED WE FALL: PAROLE SUPERVISION CONDITIONS PROHIBITING “INTER-OFFENDER” ASSOCIATIONS

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In the United States, almost all criminal offenders who serve a term of imprisonment are subject to a period of post-incarceration supervision. Commonly known as parole, this form of supervision requires former inmates to comply with a variety of conditions. A nationwide survey of standard parole conditions reveals that a vast majority of jurisdictions categorically restrict parolees’ associations with other parolees, convicted criminals, and/or convicted felons. These blanket offender no-association conditions ostensibly presume that former offenders are irreparably flawed, homogenous, and that “inter-offender relationships”^{} are uniformly criminogenic. This article questions those presumptions, suggesting that offender no-association conditions endorse an untenable conceptualization of former offenders, a rejection of evidence-based parole practices, an uninformed view of inter-offender associations, and a superficial application of criminological theory. This article further argues that by categorically prohibiting all inter-offender associations, offender no-association conditions foreclose strengths-based approaches to reentry and inhibit mechanisms that can foster criminal desistance. In this way, such conditions unnecessarily subvert the rehabilitative goal of parole, likely making them impermissibly overbroad in their current form.*

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INTRODUCTION

America's jails and prisons currently hold over 2.2 million citizens,¹ and each year, roughly 500,000 of these citizens return to their communities under some form of supervision.² More than 840,000 former inmates now live supervised,³ a total that has climbed by 100,000 in the past decade.⁴

Though names for post-incarceration supervision vary considerably, most jurisdictions use "parole" to describe a term of supervision that follows a period of confinement.⁵ A form of

¹ See LAUREN E. GLAZE, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATION IN THE UNITED STATES, 2010, BUREAU OF JUSTICE STATISTICS BULLETIN, NCJ 236319 at 3, *Table 1: Estimated number of persons supervised by adult correctional systems, by correctional status, 2000 and 2005–2010* (Dec. 2011), <https://www.bjs.gov/content/pub/pdf/cpus10.pdf> (estimating the number of persons incarcerated in the United States as 2,266,800 – 1,518,104 (prisons) and 748,728 (jails)).

² See LAUREN E. GLAZE & THOMAS P. BONCZAR, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES 2010, BUREAU OF JUSTICE STATISTICS BULLETIN, NCJ 236019 at 7, *Figure 6: National estimates of parole entries and exits, and annual change in the parole population, 2000–2010* (Nov. 2011), <https://www.bjs.gov/content/pub/pdf/ppus10.pdf> (indicating that in 2000, just over 450,000 former inmates entered the United States parole system, while in 2010, 565,300 people entered the United States parole system).

³ *Id.* at 1 (reporting the year-end 2010 parolee population as 840,676 parolees).

⁴ GLAZE & BONCZAR, *supra* note 2, at 16, *Table 12: Estimated number of persons supervised by adult correctional systems, by correctional status, 2000 and 2005–2010* (showing that the number of parolees in the United States has grown by 115,149 parolees between 2000 (725,527) and 2010 (840,676)); see also PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2010, BUREAU OF JUSTICE STATISTICS BULLETIN, NCJ 236096 at 6, <https://www.bjs.gov/content/pub/pdf/p10.pdf> ("Most offenders are released in one of two ways. About three-quarters are released conditionally (i.e., released to parole or another form of supervised release. About a quarter are released unconditionally (e.g. expiration of sentence or commutation)").

⁵ Throughout this Article, I use the term "parole" to refer to all forms of supervision that follow a period of imposed confinement. Traditionally, parole followed an inmate's discretionary release from prison and was the only form of post-release supervision. See LOUIS P. CARNEY, PROBATION AND PAROLE: LEGAL AND SOCIAL DIMENSIONS 155 (1977) (defining parole as "a correctional device through which an offender, after serving less than his or her total sentence, is conditionally released from a penal facility, under active supervision, with social reintegration as the objective"); see also BLACK'S LAW DICTIONARY 1227 (Bryan A. Garner, ed., 9th ed. 2009) ("Parole: The conditional release of a prisoner from imprisonment before the full sentence has been served."). Yet, with the advent of sentencing guidelines, mandatory minimum sentences, and truth-in-sentencing laws, a number of jurisdictions began to employ an alternative form of post-release supervision. See NEIL P. COHEN, THE LAW OF PROBATION AND PAROLE 1-4 (2nd ed. 1999) ("Another variety of release, resembling parole in many ways, has been adopted in some jurisdictions."). Unlike traditional conceptualizations of parole, this alternative form of supervision follows a definite period of confinement and is usually part of a determinate sentence. See EDWARD E. RHINE, WILLIAM R. SMITH & RONALD W. JACKSON, PAROLING AUTHORITIES: RECENT HISTORY AND CURRENT PRACTICE 24-26, 61-67 (1991) (discussing the national trend away from indeterminate sentences

qualified liberty, parole demands that former inmates abide by a host of conditions established by paroling authorities or courts.⁶ Failure to comply with these conditions can result in re-imprisonment.⁷

Twenty-nine states, the District of Columbia, and the federal government impose a standard parole condition that prohibits supervisees from associating with other offenders.⁸ Parole authorities and courts allege that “offender no-association conditions”⁹ foster reintegration by preemptively eradicating criminogenic relationships.¹⁰ In this way, such measures purportedly serve the twin goals of parole: protecting the public and promoting rehabilitation.¹¹

and towards determinate sentences which mandate that an offender serve a fixed period of incarceration followed by a term of post-release supervision). Nevertheless, this type of supervision is similar to traditional conceptualizations of parole in virtually every other aspect; most notably, this form of supervision follows a period of incarceration. Accordingly, many jurisdictions use the term “parole” to reference this new form of post-release supervision. Yet, in other jurisdictions, this form of supervision takes on a host of names including post-release supervision (e.g. Kansas). Other names for post-release supervision include, but are not limited to: probation (e.g. Maine); post-extended supervision (e.g. Wisconsin); conditional release (e.g. Florida); post-prison supervision (e.g. Oregon); supervised release (e.g. Federal System); and other assorted names (e.g. Florida). *See* NEIL P. COHEN, *THE LAW OF PROBATION AND PAROLE* 1-4 (2nd ed. 1999).

⁶ *See* Lawrence Travis III & James Stacey, *A Half Century of Parole Rules: Conditions of Parole in the United States*, 2008, 38 J. OF CRIM. JUST. 604 (2010); *see also* COHEN, *supra* note 5, § 1.1, at 1-4, 1-5.

⁷ Travis and Stacey, *supra* note 6, at 604; COHEN, *supra* note 5, § 1.1, at 1-4, 1-5.

⁸ *See infra* Figure 1; *infra* Appendix (providing a jurisdictional breakdown of standard parole conditions that limit supervisees contact with other offenders).

⁹ Throughout this Article, I use the term “offender no-association condition” to describe a parole condition that prohibits supervisees from associating with other parolees, convicted criminals, and/or convicted felons. *See* David N. Adair, *Looking at the Law: Enforcing the “Association” Condition*, 59 DEC. FED. PROB. 76 (1995) (defining association conditions as “prohibit[ing] an offender from associating with certain other persons or classes of persons”); *see infra* Part II (describing the types of association restrictions at work in the United States); *see also* Sarah Turnbull & Kelly Hannah-Moffat, *Under These Conditions*, 49 BRIT. J. OF CRIMINOLOGY 532, 541 (2009) (examining the impact of parole conditions on female offenders in Canada and describing Canada’s association conditions as “require[ing] parolees to ‘refrain from meeting or communicating with any person whom [they] know to have a criminal record or for whom [they] have reason to believe that he/she has a criminal record,’ which may include friends, intimate partners and ‘criminally involved’ family members.”).

¹⁰ *See, e.g.*, COHEN, *supra* note 5, § 9.5, at 9-9 (“Irrespective of one’s views on the etiology of crime, virtually everyone would agree that some criminal activity may be fostered by an offender’s particular social milieu”); *see also* United States v. Albanese, 554 F.2d 543, 546 (1977) (discussing the rationale for offender no-association conditions in the probation context) (“Because permitting a probationer ‘association with hardened or veteran criminals’ would defeat probation’s underlying purpose (rehabilitation), it has for many years been one of the standard conditions of probation that such association is prohibited”) (citing United States v. Murray, 275 U.S. 347, 357 (1928)) (parenthetical added).

¹¹ *See* Comment, *The Parole System*, 120 U. PA. L. REV. 282, 307 (1971) (noting that parole “serve[s] two distinct purposes: facilitation of the rehabilitation and reintegration into society of the parolee, and protection of society”); *see also* JEREMY TRAVIS & CHRISTY VISHNER, *PRISONER REENTRY AND CRIME IN AMERICA* 7 (2005) (describing the “twin goals” of parole as “recidivism reduction” and “safety enhancement”). *But see* COHEN, *supra* note 5, § 7.3, fn. 1, at 7-6 (noting that fostering rehabilitation and protecting the public are very similar, but pointing out that these goals differ as “[t]he rehabilitative goal can be construed as preventing future violations of criminal law; the law-abiding standard arguably refers to the more inclusive goal of stopping potential violations of either criminal or civil laws” and “it is arguable that rehabilitation goes far beyond requiring law-abiding conduct, embracing purely moral matters”).

The Supreme Court has held that reintegration is the primary purpose of parole.¹² In turn, lower courts have reasoned that parole conditions promote reintegration if they protect the public and facilitate rehabilitation.¹³ Deducing that criminal behavior frustrates these twin goals of parole,¹⁴ courts generally uphold restrictions reasonably related to preventing a supervisee from engaging in criminal activities.¹⁵ When parole conditions implicate fundamental liberties, courts typically require that jurisdictions narrowly tailor such conditions.¹⁶ To date, courts have almost unanimously upheld offender conditions.¹⁷

Yet, the effectiveness of offender no-association conditions is speculative; they have never undergone empirical analysis.¹⁸ Moreover, the theoretical underpinnings of offender no-association conditions are tenuous. Categorically prohibiting contact with anyone who has, perhaps only once, deviated from recognized law, offender no-association conditions presume that offenders are perpetually prone to criminality, that parolees' needs are universal, and that inter-

¹² See *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972) (noting the primary aim of parole “is to help individuals reintegrate into society as constructive individuals as soon as they are able”); see also *Greenholtz v. Inmates of Nebraska Penal and Corr. Complex*, 442 U.S. 1, 13 (1979) (“It is important that we not overlook the ultimate purpose of parole which is a component of the long-range objective of rehabilitation.”).

¹³ See *Best v. Nurse*, No. 99-3727, 1999 WL 1243055, *3 (E.D.N.Y. Dec. 16, 1999) (“Two interests that have been found legitimate are rehabilitating parolees and ensuring the protection of the public.”). These are also the professed goals of probation. See, e.g., *Porth v. Templar*, 453 F.2d 330, 333 (1971) (“The object, of course, is to produce a law abiding citizen and at the same time to protect the public against continued criminal or antisocial behavior.”).

¹⁴ See, e.g., *Malone v. U.S.*, 502 F.2d 554, 556-57 (9th Cir. 1974) (“There is reasonable nexus between the probation conditions and the goals of probation. A convicted criminal may be reasonably restricted as part of his sentence with respect to his associations in order to prevent his future criminality.”) (probation context); *Birzon v. King*, 469 F.2d 1241, 1243 (2d Cir. 1972) (“[W]hen a convict is conditionally released on parole, the Government retains a substantial interest in insuring that its rehabilitative goal is not frustrated and that the public is protected from further criminal acts by the parolee.” (citing *Hyser v. Reed*, 318 F.2d 225, 239 (D.C. Cir. 1963))) (parole context).

¹⁵ See *United States v. Napulou*, 593 F.3d 1041, 1045 (9th Cir. 2010) (“When we have upheld such restrictions, the barred activity bore a reasonable relationship to the risk that the defendant would return to his criminal behavior.”) (probation context); see also *State v. Allen*, 634 S.E.2d 653, 659 (S.C. 2006) (discussing a condition that forbid a parolee from associating with persons with a criminal record and stating, “[t]he condition is reasonably related to the crime for which Appellant was convicted, is intended to prevent future criminal conduct, and should aid in Appellant’s rehabilitation”) (parole context).

¹⁶ See *Bostic v. Jackson*, No. 9:04-CV-676 (NAM/GJD), 2008 WL 1882696, at *2 (N.D.N.Y. Apr. 24, 2008) (“Restrictions upon the First Amendment rights of parolees are valid as long as ‘the restrictions are reasonably and necessarily related to the advancement of some justifiable purpose of [parole].’” (quoting *Birzon*, 469 F.2d at 1243 (cited in *Farrell v. Burke*, 449 F.3d 470, 497 (2d Cir. 2006)))); see also *United States v. Crandon*, 173 F.3d 122, 128 (3d Cir. 1999) (“[T]he restrictions on . . . First Amendment freedoms are permissible because the . . . condition is narrowly tailored and is directly related to deterring [the Appellant] and protecting the public.”) (federal probation); *United States v. Consuelo-Gonzalez*, 521 F.2d 259, 265 (9th Cir. 1975) (“Conditions that unquestionably restrict otherwise inviolable constitutional rights may properly be subject to special scrutiny to determine whether the limitation does in fact serve the dual objectives of rehabilitation and public safety.”) (federal probation); *Best*, 1999 WL 1243055, at *3 (“[R]estrictions on the First Amendment rights of parolees are permitted in limited circumstances, when the restrictions serve to further a legitimate interest of the parole regime.”).

¹⁷ See *infra* Part II.

¹⁸ See COHEN, *supra* note 5, at 9-34 (“An evaluation of no-association probation and parole conditions is difficult. Although it is possible that some offenders will profit from them, it is also likely that others will not.”).

offender relationships are uniformly, or at least consistently, criminogenic.¹⁹ These presumptions reflect an untenable conceptualization of offenders, belie evidence-based practices, overlook evidence of pro-social inter-offender relationships, and promote a superficial application of criminological theory.²⁰

Perhaps more troubling, offender no-association conditions may actively inhibit the reentry process. Studies suggest that incarceration often leads to reclusion and social withdrawal, reactions that can hinder an offender's reintegration.²¹ Offender no-association conditions further isolate former inmates by curtailing their contacts with those who perhaps best understand the pains of imprisonment and the pitfalls of reentry. Empirical research and experiential evidence on strengths-based approaches to reentry tend to demonstrate that former offenders benefit from interactions with other former offenders.²² In particular, data demonstrate that former offenders can cultivate pro-social relationships, help one another through struggles, and make valuable societal contributions.²³ Thus, by curtailing inter-offender contacts, offender no-association conditions seemingly undermine the rehabilitative goal of parole, calling into question the nexus between the professed purposes of such conditions and their actual impact.

Part II chronicles the history of offender no-association conditions and presents the results of the first nationwide survey focused solely on those conditions. Part III describes the justifications for offender no-association conditions and details prior legal challenges to their imposition. Part IV highlights the antiquated conceptualizations of prohibited associates and parolees that drive offender no-association conditions, noting their inconsistency with evidence-based parole practices. Part V questions the theoretical flaws underpinning offender no-association conditions, flaws that overlook social science research and endorse a misapplication of criminological theory. Part VI outlines the implications of offender no-association conditions, suggesting that such restrictions foreclose strength-based approaches to reentry and fail to serve the rehabilitative goal of parole, making them vulnerable to legal attack in their current form. Part VII concludes by highlighting the value of individualized parole conditions and proposing a more tailored, less burdensome form of offender no-association condition that promotes rehabilitation and strengthens the nexus between the restriction and the rehabilitative goal of parole.

I. THE WORLD OF OFFENDER NO-ASSOCIATION CONDITIONS: PAST AND PRESENT

Parole generally takes two forms: discretionary and mandatory.²⁴ Indeterminate

¹⁹ See, e.g., COHEN, *supra* note 5, at 9-9 (“Irrespective of one’s views on the etiology of crime, virtually everyone would agree that some criminal activity may be fostered by an offender’s particular social milieu.”).

²⁰ See *infra* Parts IV and V.

²¹ See CURT R. BARTOL & ANNE M. BARTOL, *PSYCHOLOGY AND LAW* 326-36 (3d ed. 2004); see also Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* 9, 15-16 (Dec. 2001), <https://aspe.hhs.gov/system/files/pdf/75001/Haney.pdf>. [<https://perma.cc/3RTA-JE44>].

²² See generally Thomas P. LeBel, *An Examination of the Impact of Formerly Incarcerated Persons Helping Others*, 46 J. OFFENDER REHAB. 1 (2007); Thomas P. LeBel et al., *Helping Others as a Response to Reconcile a Criminal Past*, 42 CRIM. JUST. AND BEHAV. 108 (2015).

²³ See *infra* Part IV.

²⁴ See COHEN, *supra* note 5, at 1-4 n.8; see also Travis III & Stacey, *supra* note 6, at 604 (“Whether release is the result of a discretionary decision by a paroling authority, or after serving a definite sentence, a period of supervision typically follows.”); GLAZE & BONCZAR, *supra* note 2, at 2 (“Parole is a period of conditional supervised release in the

sentences make inmates eligible for discretionary parole after serving part of an imposed term of incarceration.²⁵ For inmates subject to parole as part of a determinate sentence, supervision begins only after the completion of a mandatory prison sentence.²⁶ In each instance, an offender's freedom is contingent upon his or her compliance with supervision conditions.²⁷ Supervisory agencies or commissions set the conditions of discretionary parole, while mandatory parole involves conditions normally established by the sentencing judge.²⁸

Courts have held that parole authorities and sentencing judges have broad discretion when developing supervision conditions.²⁹ Yet, that discretion is theoretically limited. Legislation governing supervision conditions affords varying degrees of latitude.³⁰ Some statutes effectively grant *carte blanche* to parole authorities and sentencing judges in determining supervision conditions,³¹ while other statutes prescribe a number of required conditions.³² Nevertheless, many

community following a prison term. It includes parolees released through discretionary or mandatory supervised release from prison, those released through other types of post-custody conditional supervision, and those sentenced to a term of supervised release.”).

²⁵ See *Parole*, BLACK'S LAW DICTIONARY (Bryan A. Garner, ed., 9th ed. 2009) (“The conditional release of a prisoner from imprisonment before the full sentence has been served. Although not available under some sentences, parole is usually granted for good behavior on the condition that the parolee regularly report to a supervising officer for a specified period.”); COHEN, *supra* note 5, at 1-4 (“Parole, unlike probation, begins after an offender has completed service of part of a prison term”); Melinda K. Blatt, Comment, *State Liability for Injuries Inflicted by Parolees*, 56 U. CIN. L. REV. 615, 615 (1987) (“The classic definition of parole describes parole as the ‘release of an offender from a penal or correctional institution, after he has served a portion of his sentence, under the continued custody of the state and under conditions that permit his reincarceration in the event of misbehavior.’” (citing CARNEY, *supra* note 5, at 154)).

²⁶ For example, in the federal criminal justice system, offenders sentenced after November 1, 1987, are subject to a form of post-incarceration described as “supervised release.” The sentencing judge, in accordance with statute and the United States Sentencing Guidelines, imposes the conditions of supervised release. See 18 U.S.C. § 3583, U.S.S.G. § 5D1.3.

²⁷ See *infra* Figure 1; *infra* Appendix; see also COHEN, *supra* note 5, at 4 (“If a parole condition is breached, the offender can be returned to prison for the remaining part of the original term.”).

²⁸ See text *supra* notes 25, 26.

²⁹ See *e.g.*, United States v. Nestor, 461 F. App'x 177, No. 11-2238, 2012 WL 402015, at *2 (3d Cir. Feb. 9, 2012) (“A District Court has broad discretion to impose conditions of supervised release.”) (federal supervised release following imprisonment); Malarik v. Pennsylvania Bd. of Probation and Parole, 25 A.3d 468, 470 (Commw. Ct. Pa. 2011) (“The Board has broad discretion to administer the parole laws, and the Court will defer to the Board’s interpretation of its regulations if it is consistent with statutory authority and is not clearly erroneous.”) (parole); see also COHEN, *supra* note 5, at 7-11 (“Courts and parole authorities . . . normally are given wide discretion to determine under what conditions a parolee or probationer is to be released and returned to society.”).

³⁰ COHEN, *supra* note 5, at 7-21 (“Statutory limits on probation and parole conditions are based on the principle that both are legislative creations, and accordingly, such conditions must be authorized by statute.”) (citations omitted).

³¹ *Id.* at 7-22 (noting that such statutes are “the most general, namely, authorizing the court or board to impose appropriate probation or parole conditions; few, if any, specific conditions are suggested.”);

³² *Id.* at 7-22 to -23 (describing these types of statutes stating, “The second category of probation and parole statutes is more specific, dictating a few mandatory conditions and authorizing the decision maker to impose others as appropriate. . . . The third type of statute . . . lists as many as 15 specific conditions which a court may, but is not required to, impose.”); see *e.g.*, MICH. ADMIN. CODE r. 791.7730 (1996) (listing only 4 mandatory conditions of parole and stating at (4), “A paroled prisoner shall comply with the conditions of parole contained in the parole order and with all subsequent conditions approved by the chairperson of the parole board.”); see also W. VA. CODE § 90-2-2 (2.12) (2007) (listing 18

statutes permit parole authorities and field agents to impose additional restrictions.³³ In this way, legislation theoretically meant to curb variation sometimes leads to discrepancy.³⁴

In practice, jurisdictions usually adhere to a set of “standard” conditions that apply to all parolees.³⁵ This collection of conditions includes those required by statute and those uniformly imposed by parole agents.³⁶ Across, and sometimes within jurisdictions, the number and type of standard supervision conditions vary considerably.³⁷ Some of the most common conditions include: obey all laws, seek and maintain employment, report any change of address or occupation, notify parole officer prior to travel, comply with all parole officer instructions, and submit to warrantless searches of home and person.³⁸

No-association conditions are popular standard parole conditions,³⁹ generally restricting associations with either individuals or classes.⁴⁰ Conditions that limit contact with individuals typically prohibit supervisees from associating with co-defendants or victims.⁴¹ Conditions that limit parolees’ contacts with classes can take many forms. In the past, no-association conditions have prohibited contact with motorcycle clubs,⁴² Irish groups,⁴³ homosexuals,⁴⁴ and protestors.⁴⁵

supervision conditions and stating, “A parolee or probationer must abide by any special written requirements imposed by his or her parole officer.”)

³³ COHEN, *supra* note 5, at 7-23 (“To give the decisionmaker discretion to set terms other than those specifically noted, these statutes may also include a catchall provision which authorizes the imposition of other reasonable conditions.”).

³⁴ *See id.* at 7-22 n.2; 7-24 n.9. Two New Jersey cases on the validity of conditioning probation on the payment of restitution also illustrate this point: *compare* State v. Newman, 623 A.2d 1355, 1364 (N.J. 1993) (“absent specific statutory authorization, restitution may not be imposed as a sanction . . .”), *with* State v. Bausch, 416 A.2d 833 (N.J. 1980) (catchall applied to permit restitution in a probation case).

³⁵ *See* COHEN, *supra* note 5, at 7-34 (“Many courts and parole boards have adopted a list of standard conditions which, unless specifically modified, are applicable in every case.”).

³⁶ *See id.* at 7-24 – 7-27.

³⁷ *See* Travis III & Stacey, *supra* note 6, at 606.

³⁸ *See id.*; *see also* JOAN PETERSILIA, WHEN PRISONERS COME HOME 82 (2003) (listing as common parole conditions: “reporting to the parole agent within 24 hours of release, not carrying weapons, reporting changes of address and employment, not traveling more than 50 miles from home or not leaving the county for more than 48 hours without prior approval from the parole agent, obeying all parole agent instructions, seeking and maintaining employment or participating in education/work training, not committing crimes, and submitting to search by the police and parole officers”).

³⁹ *See* Travis III & Stacey, *supra* note 6, at 606 (highlighting that 60% of U.S. jurisdictions impose a standard offender no-association condition as part of parole).

⁴⁰ *See* COHEN, *supra* note 5, at 9-15 – 9-18.

⁴¹ *See* United States v. Roberts, 229 F. App’x 172, No. 07-1371, 2007 WL 210402 (3d Cir. Jul. 9, 2007) (codefendant); Erickson v. State, 824 P.2d 725 (Alaska Ct. App. 1991) (victim); People v. Brockelman, 933 P.2d 1315 (Colo. 1997) (victim); Allen v. State, 645 So. 2d 579 (Fla. Dist. Ct. App. 1994) (codefendant); Matthews v. State, 506 App. S.E.2d 225 (Ga. Ct. App. 1998) (victim); State v. Pease, 758 P.2d 764 (Mont. 1988) (victim); People *ex rel.* Lee v. New York State Bd. of Parole, 561 N.Y.S.2d 930 (N.Y. App. Div. 1990) (victim); State v. Quackenbush, 841 P.2d 671 (Or. Ct. 1992) (codefendant); Barlip v. Pa. Bd. of Prob. & Parole, 405 A.2d 1338, 1339 (Pa. Commw. Ct. 1979) (victim).

⁴² *See* LoFranco v. United States Parole Comm’n, 986 F. Supp. 796, 798 (S.D. N.Y. 1997).

⁴³ *See* Malone v. United States, 502 F.2d 554, 556 (9th Cir. 1974).

⁴⁴ *See* U.S. v. Kohlberg, 472 F.2d 1189, 1190 (9th Cir. 1973).

Offender no-association conditions are class-based restrictions, normally prohibiting parolees' associations with one or more of the following groups: 1) other parolees, 2) convicted criminals, and/or 3) convicted felons.⁴⁶

A. Isolating Parolees: A Long History

Parole is a descendant of the “ticket of leave” system established by the English Penal Servitude Act of 1853.⁴⁷ Developed by Britain as a tool for managing its Australian penal settlements, the ticket of leave system made inmates eligible for conditional release on a “license to be at large.”⁴⁸ This license required former prisoners to abide by nine conditions, and the third read: “[h]e shall not habitually associate with notoriously bad characters, such as reported thieves and prostitutes.”⁴⁹ The license further stipulated that “if [the license holder] associates with notoriously bad characters . . . it will be assumed that he is about to relapse into crime, and he will be at once apprehended and recommitted to prison under his original sentence.”⁵⁰

In the United States, the origins of parole link to the “emergence of indeterminate sentencing” schemes in the late 1800s.⁵¹ Initially used to relieve prison overcrowding and manage inmates, parole—as a form of early release—spread to all U.S. jurisdictions by 1930.⁵² Initially, post-release supervision was not an integral part of the parole process.⁵³ Yet, with the emergence of the rehabilitative ideal,⁵⁴ parole supervision gained popularity and U.S. parole conditions were born.⁵⁵

To date, there have been five published surveys of standard parole conditions in the United States.⁵⁶ In 1956, Nat R. Arluke conducted the first.⁵⁷ In that study, he identified twenty-

⁴⁵ See U.S. v. Smith, 414 F.2d 630, 636 (5th Cir. 1969); U.S. v. Smith, 618 F.2d 280, 282 (5th Cir. 1980).

⁴⁶ See *infra* Figure 1; *infra* Appendix; see also *infra* Part II.A.

⁴⁷ A. Keith Bottomly, *Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990's*, 12 CRIME AND JUST. 319, 327 (1990); Nat R. Arluke, *A Summary of Parole Rules*, 2 CRIME & DELINQ. 6, 6 (1956).

⁴⁸ Arluke, *supra* note 47, at 6.

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 6.

⁵¹ See Bottomly, *supra* note 47 at 321.

⁵² DAVID J. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA (1980).

⁵³ Sheldon L. Messinger, John E. Berecochea, David Rauma, and Richard A. Berk, *The Foundations of Parole in California*, 19(1) L. & SOC'Y REV. 69, 69 (1985).

⁵⁴ See generally FRANCIS A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY AND SOCIAL PURPOSE (1981).

⁵⁵ See Messinger et. al, *supra* note 53.

⁵⁶ See Arluke, *supra* note 47; see also Nat R. Arluke, *A Summary of Parole Rules – Thirteen Years Later*, 15 CRIME & DELINQ. 267 (1969); Lawrence F. Travis III & Edward J. Latessa, “A Summary of Parole Rules – Thirteen Years Later”: *Revisited Thirteen Years Later*, 12 J. OF CRIM. JUST. 591 (1984); Jennifer L. Hartman, Lawrence F. Travis III, and Edward J. Latessa, *Thirty-Nine Years of Parole Rules*, Paper Presented at Annual Meeting of Academy of Criminal Justice Sciences (1996); Lawrence F. Travis III and James Stacey, *A Half Century of Parole Rules: Conditions of Parole in the United States, 2008*, 38 J. OF CRIM. JUST. 604 (2010) (surveys were conducted at 13-year intervals beginning in 1956 with the last in 2008).

four separate parole conditions, many of which mirrored those enforced as part of a “license at large” nearly one hundred years prior.⁵⁸ Notably, Arluke’s study reveals that forty-two jurisdictions imposed an early form of offender no-association conditions, restricting “association or correspondence with ‘undesirables’” or “persons with poor reputation.”⁵⁹

Thirteen years later, Arluke again surveyed standard parole conditions.⁶⁰ His results showed an increase in the number, severity, and inconsistency of parole conditions at work in the United States.⁶¹ Offender no-association conditions were no exception. In 1969, forty-eight jurisdictions imposed some form of offender no-association conditions.⁶² The Chief of the New Jersey Bureau of Parole, Arluke lamented the more punitive, controlling trend he uncovered and suggested a reduction of conditions, offering England’s Criminal Justice Act (1967) and its five parole rules as a model.⁶³

In 1982, Lawrence F. Travis III and Edward J. Latessa recreated Arluke’s survey (1984).⁶⁴ Their study again highlighted the inconsistency of jurisdictional parole conditions. Jurisdictions averaged seventeen standard conditions, ranging from a high of twenty-three to a low of six.⁶⁵ Overall, however, Travis and Latessa’s research revealed a trend reversal, showing that a greater number of jurisdictions had limited rather than increased the number and variety of imposed parole conditions.⁶⁶ Offender no-association conditions reflected this trend, as only twenty-six jurisdictions restricted offenders’ associations with convicted offenders in 1982.⁶⁷

Researchers surveyed parole conditions again in 1996⁶⁸ and 2008.⁶⁹ In 1996, Hartman et al. found that the variety and number of parole conditions continued to drop.⁷⁰ In keeping with this trend, the number of jurisdictions imposing offender no-association conditions decreased from twenty-six to twenty jurisdictions. Yet, Travis & Stacey’s 2008 survey demonstrated a return to more control-oriented parole supervision.⁷¹ In that study, they found that conditions of parole had once again increased in variety and number.⁷² Not surprisingly, offender no-association

⁵⁷ See Arluke, *supra* note 47 (initial study included only the forty-eight continental states and 48 jurisdictions total).

⁵⁸ *Id.* at 8.

⁵⁹ *Id.* at 8, 10 (“Persons of poor reputation’ are specified generally as other parolees, ex-convicts, inmates of any penal institution, persons having a criminal or police record, etc.”).

⁶⁰ See Arluke, *Thirteen Years Later*, *supra* note 56 (study including Hawaii, Alaska, and the federal system (51 jurisdictions total)).

⁶¹ *Id.*

⁶² *Thirteen Year Later*, *supra* note 56, at 270.

⁶³ *Id.* at 274.

⁶⁴ See Travis and Latessa, *supra* note 56. Travis and Latessa’s study included the District of Columbia (52 jurisdictions total).

⁶⁵ *Id.* at 593.

⁶⁶ *Id.* at 594-595.

⁶⁷ *Id.*

⁶⁸ See Hartman et al., *supra* note 56.

⁶⁹ See Travis and Latessa, *supra* note 56. See also Travis and Stacey, *supra* note 6.

⁷⁰ See Hartman et al., *supra* note 56.

⁷¹ See Travis and Latessa, *supra* note 56, at 608.

⁷² *Id.* *supra* note 56, at 606.

conditions followed suit. In 2008, 60% of jurisdictions (thirty-one) imposed some form of offender no-association condition.⁷³

B. The Pervasiveness of Offender No-association Conditions – 2016-2017

In 2016-2017, I conducted a nationwide survey of standard offender no-association conditions. That survey reveals that the number of states imposing such conditions has remained relatively constant since 2008.⁷⁴

Drawing on Travis and Latessa's methodology,⁷⁵ I began by conducting an Internet search of parole department websites for all fifty states, the District of Columbia, and the federal system. For those jurisdictions that did not publish standard parole conditions, I emailed the departmental website's designated contact. In all instances, if an email to a parole official went unanswered for two weeks, I sent a follow-up email. After one month, I placed phone calls to officials who had not responded to email inquiries.

When categorizing offender no-association conditions, I diverged from prior research on standard parole conditions. In prior parole conditions studies, researchers collapsed uniquely worded offender no-association conditions into a broader category that included all offender no-association conditions. In the present survey, I was able to preserve distinctions, dividing offender no-association conditions into three categories.

Category 1 lists jurisdictions that restrict parolees' associations with convicted offenders. A jurisdiction is included in Category 1 if it restricts parolees' associations with one or all of the following groups: 1) other parolees, 2) convicted criminals, and/or 3) convicted felons.⁷⁶ For jurisdictions that use obscure language to describe prohibited associates (e.g. "those of disreputable character"), I contacted departmental representatives to clarify their interpretation of that language.⁷⁷ When they indicated that the restriction applied to either other parolees, convicted criminals, or convicted felons, I included that jurisdiction in Category 1.

Category 2 includes a related but distinct group of no-association conditions that restrict parolees' interactions with those actively engaged in criminal activities, gang members, and/or inmates. These restrictions differ from those in Category 1 in important ways. Many members of a gang are not convicted offenders. Moreover, while almost all inmates are convicted offenders, the principal justification for such restrictions is seemingly prison security, not issues of criminogenic

⁷³ *Id.*

⁷⁴ *See infra* Appendix; *infra* Figure 1.

⁷⁵ *Id.*

⁷⁶ Unlike Arluke, Hartman et al., and Travis and Latessa, I did not distinguish between jurisdictions that per se prohibited contact with other convicted offenders and those that required a parolee to seek out and obtain prior approval from a field agent. I did not make this distinction because of the practical application of such a restriction. Many times, parolees have very little contact with supervising agents or are shifted agents several times. This can hinder the parolee agent relationship. Moreover, parole supervision is now less about counseling and more about surveillance, this places the parolee and the parole officer at odds. For these reasons, I treated per se bans on associations and permissive associations as functional equivalents.

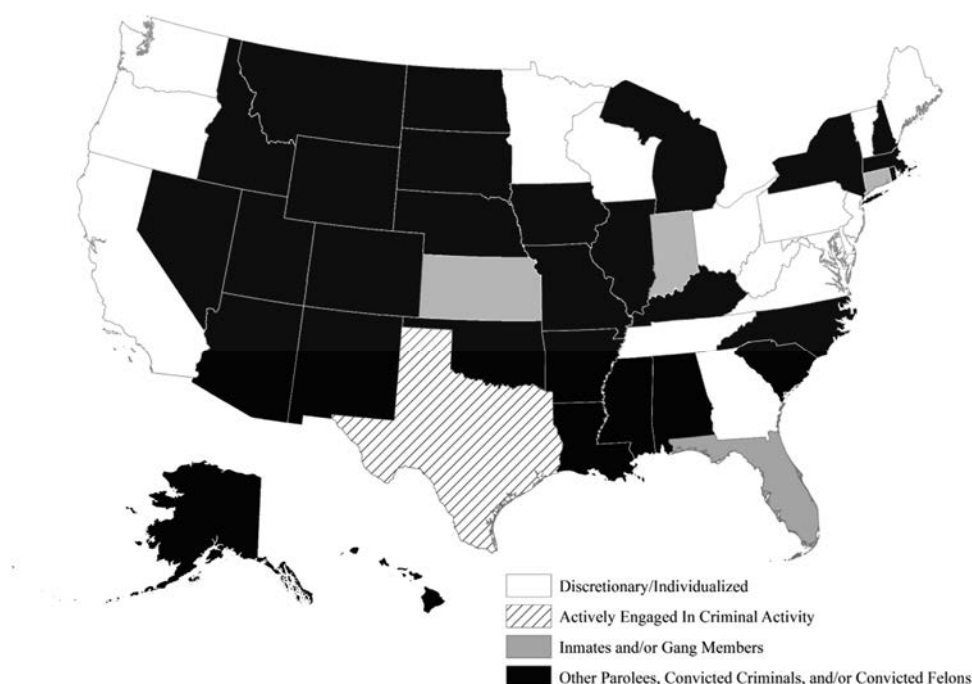
⁷⁷ For example, South Dakota forbids contact with "companions with criminal influences" while Texas prohibits associations with "persons of disreputable character." South Dakota interprets their restriction to include convicted felons and other parolees. Conversely, Texas interprets their restriction to include only those actively engaged in criminal activity. *See infra* note 314.

influence.

Category 3 includes only Texas, the sole jurisdiction that imposes a standard offender no-association condition that prohibits only associations with those actively engaged in criminal activity.

Category 4 is comprised only of jurisdictions that do not impose a standard no-association condition of any type, but do list a catchall provision allowing a field agent to impose no-association restrictions. For jurisdictions this situation presented, I again contacted parole officials for clarification. If a jurisdiction indicated that they uniformly impose an offender no-association condition restricting parolees' contact with other parolees, convicted criminals, or convicted felons, that jurisdiction is part of Category 1. Category 3 includes only jurisdictions in which offender no-association conditions are truly imposed on a case-by-case basis.

Figure 1: Offender No-Association Conditions by Jurisdiction



II. JUSTIFYING AND CHALLENGING OFFENDER NO-ASSOCIATION CONDITIONS

Parole represents a strange purgatory between incarceration and freedom.⁷⁸ As the Supreme Court explains, parolees do not enjoy “the absolute liberty to which every citizen is

⁷⁸ See *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972) (“Rather than being an ad hoc exercise of clemency, parole is an established variation on imprisonment of convicted criminals.”).

entitled.”⁷⁹ Rather, a parolee’s liberty is “conditional . . . dependent on observance of special parole restrictions.”⁸⁰ Thus, while physically unconfined, parolees are bound by their legal status.⁸¹

In the past, when upholding supervision conditions that impinge on a parolee’s freedoms, courts cited the grace, contract-consent, and custody theories of parole.⁸² Both the grace and contract-consent theories of parole rest, in part, on the presumption that the state has the unfettered choice to hold an inmate until the completion of his or her sentence.⁸³ Under the grace theory, in granting an inmate parole supervision, “the state has acted *ex gratia* and has conferred no legally protected right to remain at liberty.”⁸⁴ Similarly, the contract-consent theory of parole posits that, “the state theoretically surrenders its power to retain the convict and grants him liberty *in consideration of* the convict’s consent to be bound by any conditions the state may impose.”⁸⁵

Differing slightly from the grace theory and contract-consent theory, the custody theory of parole does not justify the diminution of a parolee’s freedoms by characterizing the state’s motivation for paroling an inmate (i.e. an act of grace or adherence to a contract). Rather, the custody theory of parole defines the contours of a parolee’s rights theorizing that parole “is in legal effect imprisonment,”⁸⁶ and holding that parolees are akin to prisoners while parole supervision “is the administrative exercise of the prison discipline authority.”⁸⁷ Hence, under the custody theory, “though parole does have the effect of restoring liberty, that effect will be ignored when the [state] deems the parolee’s liberty a threat to public safety.”⁸⁸

In 1972, in *Morrissey v. Brewer*, the Supreme Court held that the state cannot deny

⁷⁹ *Id.* at 480.

⁸⁰ *Id.*

⁸¹ See Comment, *The Parole System*, 120 U. PENN. L. REV. 220, 288 (1971) (citing *People v. Hernandez*, 229 Cal. App. 2d 143, 149 (1965)) (describing a parolee as “constructively a prisoner . . . fettered by the conditions and restrictions of his parole”).

⁸² See Steven Monteforte, *Admissibility of Evidence in Probation/Parole Revocation Proceedings and in Criminal Prosecutions: Applying a Single Standard*, 50 FORDHAM L. REV. 936, 942-43 (1982) (discussing the theories of parole and their role in the limitation of parolees’ Fourth Amendment protections).

⁸³ Note, *Parole: A Critique of Its Legal Foundations and Conditions*, 38 N.Y.U. L. REV. 702, 704 (1963) (noting that the grace theory and the contract-consent theory, “as developed by the courts, rest[] upon a dual foundation. First, that the parolee has been convicted and sentenced for crime and thus has been deprived of his liberty in accordance with due process of law. Second, that the state has the uncontrolled option to require those convicted of crime to remain imprisoned for the full length of their sentences.”) (citing *Fuller v. State*, 122 Ala. 32 (1899); *In re Varner*, 166 Ohio St. 340 (1957)); see also *Escoe v. Zerbst*, 295 U.S. 490 (1935) (dictum) (discussing the act of grace theory in the probation context).

⁸⁴ Note, *supra* note 83; see also Comment, *supra* note 11, at 286 (“Under the grace theory, both the establishment of a parole system and the release of an individual prisoner are gratuitous acts by a merciful executive.”).

⁸⁵ Note, *supra* note 83; see also Comment, *supra* note 11, at 287 (“When the parolee leaves the prison, he often signs a form setting forth the conditions of his release. This formality has given rise to the contract theory. The parolee accepts the conditions of his parole just as a party to a business contract agrees to be legally bound by its terms.”) (citing *Ex parte Edwards*, 78 Okla. Crim. 213, 219-20 (1944)).

⁸⁶ *Anderson v. Corall*, 263 U.S. 193, 196 (1923).

⁸⁷ Comment, *supra* note 11, at 288.

⁸⁸ Note, *supra* note 83, at 711.

parolees due process of law in the course of revoking a term of supervision.⁸⁹ In doing so, the Court implicitly rejected the grace, contract-consent, and custody theories of parole, refusing to adhere to conceptualizations of parole that had previously served as the basis for unequivocally ignoring parolees' constitutional protections.⁹⁰ In this way, the Court recognized that parolees' retain some, albeit few, liberties.⁹¹

Yet, while defining parolees' due process protections, the Court also explained that parolees enjoy fewer liberties than do their non-parolee counterparts.⁹² The Court indicates that when establishing conditions of parole, authorities can permissibly infringe upon certain protected liberties.⁹³ Specifically, the Court states "[t]o accomplish the purpose of parole, those who are allowed to leave prison . . . are subjected to specified conditions. . . . These conditions restrict their activities substantially beyond the ordinary restrictions imposed by law on an individual citizen."⁹⁴

In *Morrissey*, the Court also points out that authorities have great latitude when establishing and imposing parole conditions.⁹⁵ Yet, the Court suggests that a permissible parole condition must facilitate parole's reintegration ideal, noting that the ultimate goal of parole "is to help individuals reintegrate into society as constructive individuals as soon as they are able."⁹⁶

⁸⁹ *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) ("We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a 'right' or a 'privilege.' By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal.").

⁹⁰ *United States v. Consuelo-Gonzalez* 521 F.2d 259, 265 n.15 (1975) ("Implicit in *Morrissey* is a rejection of the custody and contract theories as justifications for summary revocations of parole."); *see also* *Gagnon v. Scarpelli*, 411 U.S. 778, 782 n.4 (1973) ("It is clear at least after *Morrissey v. Brewer*, that a probationer can no longer be denied due process, in reliance on the dictum in *Escoe v. Zebst*, that probation is an 'act of grace.'") (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Escoe v. Zebst*, 295 U.S. 490, 492 (1935)). In *Morrissey*, the Court's denunciation of the custody theory of parole is explicit. *Morrissey*, 408 U.S. at 483 ("Although the parolee is often formally described as being 'in custody,' the argument cannot even be made here that summary treatment is necessary as it may be with respect to controlling a large group of potentially disruptive prisoners in actual custody.").

⁹¹ *See Morrissey*, 408 U.S. at 482 ("We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty. . . ."); *see also id.* at 496 (Douglas J., dissenting in part) ("A parolee, like a prisoner, is a person entitled to constitutional protection, including procedural due process.").

⁹² *See id.* at 480, 475 (noting that parolees do not enjoy the "full panoply of rights" afforded everyday citizens).

⁹³ *Id.* at 483 ("The State has found the parolee guilty of a crime against the people. That finding justifies imposing extensive restrictions on the individual's liberty.").

⁹⁴ *Id.* at 478.

⁹⁵ *See id.* at 496 (Douglas J., dissenting in part) ("Parole, while originally conceived as a judicial function, has become largely an administrative matter. The parole boards have broad discretion in formulating and imposing parole conditions. 'Often vague and moralistic, parole conditions may seem oppressive and unfair to the parolee.' They are drawn 'to cover any contingency that might occur,' and are designed to maximize 'control over the parolee by his parole officer.'") (citing R. DAWSON, SENTENCING: THE DECISIONS AS TO TYPE, LENGTH AND CONDITIONS OF SENTENCE 306-307 (1969)).

⁹⁶ *Id.* at 477; *see also* *Greenholtz v. Inmates of Nebraska Pen. and Corr. Complex*, 422 U.S. 1, 13 (1979) ("It is important that we not overlook the ultimate purpose of parole which is a component of the long-range objective of rehabilitation.").

The Court reiterated this standard in subsequent opinions,⁹⁷ as have lower courts.⁹⁸

Though the *Morrissey* Court recognized parolees' due process protections in revocation proceedings, it also ostensibly authorized the imposition of parole conditions that significantly burden parolees' freedoms. Contemplating the state's interests at stake in *Morrissey*, the Court tacitly approved of offender no-association conditions limiting interaction with other offenders, noting "[t]ypically, parolees are forbidden to . . . have associations or correspondence with certain categories of undesirable persons."⁹⁹ The Court went on to list other conditions that seemingly won its approval.¹⁰⁰

A. How and Why We Separate

Offender no-association conditions are almost always categorical, forbidding a parolee from contact with other parolees, convicted criminals, and/or convicted felons.¹⁰¹ As a standard condition of parole, offender no-association conditions apply to all parolees and all potential offender associates, failing to distinguish charge type, prior criminal history, or length of prison stay for either the parolee or potential offender associates.¹⁰²

Justifying offender no-association conditions, courts and commentators cite a need to separate supervisees from those who may promote criminal activity thereby threatening the reintegration process. As one commentator explains, "[i]rrespective of one's views on the etiology of crime, virtually everyone would agree that some criminal activity may be fostered by an offender's particular social milieu."¹⁰³ Other convicted offenders are allegedly detrimental to the success of supervisees.¹⁰⁴

⁹⁷ See *Greenholtz* 422 U.S. at 7-8 ("[T]o insure that the state-created parole system serves the public-interest purposes of rehabilitation and deterrence, the state may be specific or general in defining the conditions for release. . . .").

⁹⁸ See, e.g., *Roman v. State*, 570 P.2d 1235, 1242 n.20 (1977) ("It is only the dual mandate of correctional officers to rehabilitate their clients and to protect society that justifies an intrusion into the privacy of the released offender."); *Felce v. Fielder*, 974 F.2d 1484, 1500 (1992) ("[T]he state's interest is substantial: the protection of the public—including a parolee's family and community—from antisocial acts of a parolee, as well as the parolee's re-assimilation and rehabilitation.").

⁹⁹ *Morrissey*, 408 U.S. at 478.

¹⁰⁰ *Id.* (citing Nat R. Arluke, *A Summary of Parole Rules – Thirteen Years Later*, 15 CRIME & DELINQ. 267, 272-73 (1969)) (noting "[t]ypically, also they must seek permission from their parole officers before engaging in specified activities, such as changing employment or living quarters, marrying, acquiring or operating a motor vehicle, traveling [sic] outside the community, and incurring substantial indebtedness. Additionally, parolees must regularly report to the parole officer to whom they are assigned and sometimes they must make periodic written reports of their activities.").

¹⁰¹ See *infra* Figure 1; Appendix; see also, e.g., SOUTH CAROLINA BOARD OF PAROLES AND PARDONS, POLICY AND PROCEDURE MANUAL 32 (2017) ("I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid."), <https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf>.

¹⁰² See SOUTH CAROLINA BOARD OF PAROLES AND PARDONS, POLICY AND PROCEDURE MANUAL 32 (2017), <https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf>.

¹⁰³ COHEN, *supra* note 5 at § 9.5, p. 9.9.

¹⁰⁴ See *Jones v. State*, 41 P.3d 1247, 1259 (2002) (noting "[i]t has long been recognized that criminal activity may be fostered by an offender's association with certain individuals who encourage criminality."); see also *United States v. Crea*, 968 F. Supp. 826, 829 (1997) (noting that conditions forbidding contact with former offenders are

For example, a standard condition of federal supervised release states:

You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.¹⁰⁵

In support of this condition, the government states:

The purpose of this condition is to prevent antisocial relationships and to encourage prosocial relationships. It provides defendants with a justification to avoid associating with persons convicted of felonies and may deter future criminal conduct that may be jointly undertaken with those persons.¹⁰⁶

The government's justification suggests that inter-offender relationships are incompatible with the prosocial relationships supervised release endorses. The condition also tends to infantilize supervisees, intimating that they do not have the requisite skills to determine the difference between pro and anti-social relationships, however defined. Moreover, the purpose of the condition suggests an equivalency between 'criminally involved' and 'convicted felon.'

The Supreme Court notes that offender no-association conditions—like all alternatives to incarceration generally—are meant to curb “the contaminating influence of association with hardened or veteran criminals.”¹⁰⁷ This argument further asserts that other offenders “may serve as cocriminals or teachers, or otherwise encourage the offender to violate the criminal law.”¹⁰⁸ In this way, offender no-association conditions seemingly endorse a decidedly sociological theory of crime, assuming that crime is, in part, learned and that one's peers can significantly impact criminality.

B. Legal Challenges to Offender No-association Conditions

Though usually upheld, since *Morrissey*, offender no-association conditions have frequently been the target of attack. The overwhelming majority of claims leveled at offender no-association conditions divide into two types. Most often, litigants claim that offender no-association conditions are impermissibly vague and violative of the Fifth and Fourteenth Amendments of the United States Constitution.¹⁰⁹ Less often, litigants allege that offender no-association conditions unduly burden their First Amendment freedom of association in that they are overbroad and fail to meet the professed goals of parole.

imposed “to prevent a convicted defendant from associating with those who would lead him back to a life of crime.”).

¹⁰⁵ ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, PROBATION AND PRETRIAL SERVICES OFFICES, OVERVIEW OF PROBATION AND SUPERVISED RELEASE CONDITIONS 32 (2016), http://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

¹⁰⁶ *Id.*

¹⁰⁷ *United States v. Murray*, 275 U.S. 347, 357 (1928) (discussing the original purpose of probation as an alternative to incarceration).

¹⁰⁸ COHEN, *supra* note 5, at § 9.5, p. 9.9.

¹⁰⁹ *See* COHEN, *supra* note 5, at 9:15-9:18.

1. Vagueness Challenges

Vagueness challenges to offender no-association conditions typically focus on two issues: 1) the meaning of “association” and 2) whether a supervisee must “know” that an individual falls within the class of prohibited associates.

Courts have held that supervision conditions may permissibly lack specificity: for example, the First Circuit has held that while a supervisee “is entitled to notice of what behavior will result in a violation, so that he may guide his actions accordingly . . . [c]onditions . . . do not have to be cast in letters six feet high, or to describe every possible permutation, or to spell out every last, self-evident detail.”¹¹⁰ In turn, supervision conditions “may afford fair warning even if they are not precise to the point of pedantry. In short, conditions . . . can be written—and must be read—in a commonsense way.”¹¹¹ Very rarely have offender no-association conditions failed to meet this rather loose standard.

In *Arciniega v. Freeman*, the Supreme Court took up—for the first and only time—the issue of an offender no-association condition.¹¹² The challenged condition prohibited a parolee from “associating” with ex-convicts.¹¹³ In that case, the petitioner was working in a kitchen with several employees who also had criminal records. The Court held that business-related contacts did not rise to the level of “association” contemplated by the no-association condition at issue. Instead, the Court noted that to uphold *Arciniega*’s violation “would be to render a parolee vulnerable to imprisonment whenever his employer, willing to hire ex-convicts, hires more than one.”¹¹⁴ Subsequent holdings by lower courts have firmly established the principle that systematic associations are required to support a finding that a parolee has breached a no-association condition.¹¹⁵

Parolees have also challenged offender no-association conditions on the grounds that such conditions are vague because they do not require that parolees know the status of prohibited acquaintances. For example, some statutes prohibit parolees from associating with other parolees or those with criminal records.¹¹⁶ Still other conditions forbid parolees from associating with those

¹¹⁰ *United States v. Gallo*, 20 F.3d 7, 12 (1993).

¹¹¹ *Id.*; see also *United States v. Dane*, 570 F.2d 840, 843 (1977); *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926) (first enunciating the “common intelligence” standard).

¹¹² *Arciniega v. Freeman*, 404 U.S. 4 (1971).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See *United States v. Lovelace*, No. 07–50098, 2007 WL 4354443 at *775-76 (W.D. Tex. Dec. 11, 2007) (expanding the requisite level of contact that will support a violation of parole, stating “‘associate’ encompasses types of contact less formal than face-to-face meetings with explicit agreement to join together in a common purpose”); *United States v. Ferruccio*, Nos. 95-4281, 96-3612, 1997 WL 137374 at *2 (N.D. Ohio Mar 27, 1997) (upholding the parole violation and noting “Ferruccio’s concession that the meetings took place, coupled with the additional evidence regarding the meetings, clearly shows that Ferruccio was engaged in prohibited association with convicted felons. The meetings were more than ‘incidental contacts’ and they were not a mere ‘occupational association’ for Ferruccio to work on a ‘legitimate job.’”); *Alessi v. Thomas*, 620 F.Supp. 589, 593 (1985) (holding that contacts must be “sustained and extensive”); *United States v. Bonanno*, 452 F.Supp. 743, 752 (1978) (quoting *United States v. Albanese*, 554 F.2d 543, 546 n.5 (1977)) (stating “[a]n ‘association’ within the context of parole or probation conditions must be more than an incidental contact.”); see also *Birzon v. King*, 469 F.2d 1241, 1243 (1972).

¹¹⁶ See *infra* Figure 1; *infra* Appendix.

of “disreputable character.”¹¹⁷ These conditions often lack a scienter requirement,¹¹⁸ offering parolees little guidance when attempting to abide by imposed supervision conditions. Addressing this issue, courts have held that a constitutionally valid violation of supervised release requires that a supervisee “knowingly” associate with members of a discernable prohibited class.¹¹⁹

2. Overbreadth Challenges

A second variety of challenges to offender no-association conditions argue that such conditions unduly burden a parolee’s First Amendment freedom of association as they are overbroad and unrelated to the twin goals of parole—the protection of the public and the promotion of successful reintegration. Though such challenges rarely succeed, a recent Ninth Circuit decision suggests that courts have begun to demand a stronger nexus between offender no-association conditions and the purposes of parole.¹²⁰ Most courts faced with challenges to offender no-association conditions have adopted a version of the federal standard for assessing the constitutionality of supervision conditions. Under 18 U.S.C. § 3583 (d), a condition of Federal supervised release must “(1) be reasonably related to the goals of deterrence, protection of the public, and/or defendant rehabilitation; [and] (2) involve no greater deprivation of liberty than is reasonably necessary to achieve those goals.”¹²¹ To achieve these goals, courts have also held that

¹¹⁷ See, e.g., TEXAS DEPARTMENT OF CRIMINAL JUSTICE – PAROLE DIVISION, PAROLE IN TEXAS 18 (2017) http://www.tdcj.state.tx.us/bpp/publications/PIT_2017_Eng.pdf.

(“Rules of release may include . . . avoid[ing] persons or places of disreputable or harmful character. . .”).

¹¹⁸ See, e.g., MO. CODE. STATE REGS. TIT. 14, § 80-3.010(5) (“Association: I will obtain advance permission from my probation and parole officer before I associate with any person convicted of a felony or misdemeanor, or with anyone currently under the supervision of the Board of Probation and Parole. It is my responsibility to know whom I am associating.”); STATE OF MONTANA DEPARTMENT OF CORRECTIONS, PROBATION AND PAROLE BUREAU, CONDITIONS OF PROBATION AND PAROLE, SPECIAL CONDITIONS, CONDITION 21, <https://leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/February-2014/Exhibits/conditions-parole-doc-board.pdf>.

(“Association: I will not associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency. . .”); STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY, BOARD OF PAROLE COMMISSIONERS, PAROLE AGREEMENT 6, <http://parole.nv.gov/uploadedFiles/parolenvgov/content/Meetings/Proposed%20Parole%20Agreement%20-%20Draft.pdf> (“Associates: You shall not associate with convicted felons, persons who are engaged in criminal activity. . .”).

¹¹⁹ See *Bonanno*, 452 F.Supp. at 752 (holding that an association limiting contact to only “law abiding persons” did not encompass a person convicted more than 12 years); *People v. Garcia*, 19 Cal. App. 4th 97, 102-03 (1993) (holding unconstitutional a “condition that appellant not associate with any felons, ex-felons or sellers or users of narcotics,” and noting “[w]e know of no case, and respondent cites none, dealing with a probation condition prohibiting association with persons not known to be felons or ex-felons. A condition of probation that prohibits appellant from associating with persons who, unbeknownst to him, have criminal records or use narcotics, is . . . an unconstitutional restriction. . .”); *People v. Patel*, 196 Cal. App. 4th 956, 960 (2011) (stating “there is now a substantial uncontradicted body of case law establishing, as a matter of law, that a probationer cannot be punished for presence, possession, association, or other actions absent proof of scienter.”); *United States v. Thompson*, 777 F.3d 368, 377 (2015) (holding that a condition of release is vague when it bars a defendant from “associat[ing] with any person convicted of a felony, unless granted permission. . .”).

¹²⁰ See, e.g., *United States v. Napulou*, 593 F.3d 1041, 1044 (9th Cir. 2010) (holding that a probation condition forbidding association with all misdemeanants was impermissibly overbroad).

¹²¹ *Id.* (citing 18 U.S.C. § 3583 (d)).

supervision conditions must be reasonably related to the conduct for which the supervisee was convicted.¹²² Moreover, when a condition burdens a parolee's fundamental right to associate,¹²³ such conditions must be narrowly tailored to serve the protective and rehabilitative functions of parole.¹²⁴

In most instances, often without extensive explanation, courts have held that offender no-association conditions relate to the twin goals of parole. For instance, in a recent Seventh Circuit case, *United States v. Speed*, two cousins challenged an offender no-association condition on the grounds that it would prevent them from freely associating with one another and with members of their immediate family. As the Court explains:

Rico and Jermaine do not object to the ban on interacting with people who are actually committing crimes, but they appeal the prohibition on interacting with people convicted of felonies. This is not an abstract argument. The cousins, who will enter supervised release as felons themselves, urge that this condition will restrict their constitutional freedom of association with people in their family and community. For that matter, the condition prevents them from interacting with each other during their terms of supervised release, unless their probation officers grant permission.¹²⁵

The Seventh Circuit denied the appellant's request to invalidate the condition. Specifically, the court stated, "[t]he Speeds do not cite any cases on how this condition violates the Constitution, however, and we do not find any grounding for their argument . . . [o]n the contrary, prohibiting contact with felons is not an unusual federal condition of supervised release, particularly where probation officers can approve the requested contact."¹²⁶ Here, the Seventh Circuit focused on the tradition of offender no-association conditions and seemed to suggest that

¹²² See, e.g., *Jones v. State*, 41 P.3d 1247, 1258 (Wyo. 2002) (probation context) (stating "probation conditions must be reasonably related . . . to the criminal conduct for which the probationer was convicted . . .") (citing *Lansing v. State*, 669 P.2d 923, 927–28 (Wyo. 1983)).

¹²³ Courts are split as to whether no-association conditions of any kind implicate the supervisee's First Amendment freedom of association. See, e.g., *United States v. Lawson*, 670 F.2d 923 (10th Cir. 1982) (finding that restrictions prohibiting associations with the "Wyoming Patriots," an anti-tax organization, did implicate First Amendment freedom of association); but see *Albanese*, 554 F.2d 543 at 547 (noting "a probationer's freedom of association may be restricted in pursuit of legitimate probation objectives . . . and it is clear that a condition restricting association with persons with criminal records does not violate the First Amendment . . . thus, appellant's conduct was unprotected.") (citing *Malone*, 502 F.2d 554 (9th Cir. 1974); *Birzon*, 469 F.2d 1241, 1243 (2d Cir. 1972)).

¹²⁴ See *United States v. Consuelo-Gonzalez*, 521 F.2d 259, 265 (9th Cir. 1975) (in a challenge to a probation condition that implicated the Fourth Amendment, the court held "[w]hile it must be recognized that probationers, like parolees and prisoners, properly are subject to limitations from which ordinary persons are free, it is also true that these limitations in the aggregate must serve the ends of probation. Conditions that unquestionably restrict otherwise inviolable constitutional rights may properly be subject to special scrutiny to determine whether the limitation does, in fact, serve the dual objectives of rehabilitation and public safety. But this is not to say that there is any presumption, however weak, that such limitations are impermissible. Rather, it is necessary to recognize that when fundamental rights are curbed, it must be done sensitively and with a keen appreciation that the infringement must serve the broad purposes of the Probation Act.").

¹²⁵ *United States v. Speed*, 811 F.3d 854, 859 (7th Cir. 2016).

¹²⁶ *Id.* at 860.

because a probation/parole authority *can* allow inter-offender contact, that such a condition is constitutionally permissible.

III. FORMER OFFENDERS: IRREDEEMABLE AND HOMOGENOUS?

Calling into question their necessity and efficacy, standard offender no-association conditions are premised on two tenuous presumptions about former offenders. First, such restrictions presume that prohibited associates are immutable. Because such restrictions are categorical, barring supervisees from having contact with all other parolees, convicted criminals, and/or convicted felons, they ostensibly presume that prohibited associates are irreparably flawed, in that they are perpetually prone to encourage, commit, and justify criminal behavior. This view of prohibited associates reflects an untenable conceptualization of former offenders. Second, standard offender no-association conditions presume that all parolees share the dynamic criminogenic need of criminal associations, a need that increases risk level and demands an offender no-association condition. This view of supervisees and their professed needs belies individualized, evidence-based parole policies.

A. Prohibited Associates: The Criminal Others

Purportedly appealing to “practical logic and commonsense,”¹²⁷ categorical offender no-association conditions that bar contact with all other parolees, convicted criminals, and/or convicted felons, seemingly suggest that prohibited associates are unchanging, forever prone to engage in criminality.¹²⁸ Yet, research suggests that such a conception of criminal offenders is antiquated and unfounded.

The notion that criminal offenders are unchanging finds historical support in the work of Aristotle, who argued that, “criminals who break laws cannot govern themselves.”¹²⁹ Aristotle saw crime as a choice that reveals character, suggesting that one chooses good or bad character through autonomous actions.¹³⁰ Further, “[o]nce a person [chooses] their character . . . he or she [i]s not free to simply undo the choice.”¹³¹ In this way, crime is the result of a character flaw that is “an inelastic concept”¹³² or a “stable collection of traits.”¹³³

Echoing these sentiments in his 1974 study of prisoner rehabilitation efforts, Martinson famously exclaimed, “nothing works.”¹³⁴ Today, though they have been largely discredited,¹³⁵

¹²⁷ Turnbull & Hannah-Moffat, *supra* note 9, at 543.

¹²⁸ Ekow N. Yankah, *Good Guys and Bad Guys: Punishing Character, Equality and the Irrelevance of Moral Character to Criminal Punishment*, 25 CARDOZO L. REV. 1019, 1028 (2004) (“Current penal practices reflect the perception of criminals as a permanent caste of moral inferiors.”).

¹²⁹ Aristotle, *Nicomachean Ethics*, in THE BASIC WORKS OF ARISTOTLE, 935, 972-73 (Richard McKeon ed., 28th ed. 1941).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Yankah, *supra* note 128, at 1027.

¹³³ *Id.* at 1028.

¹³⁴ Ronald Martinson, *What Works: Questions and Answers About Prison Reform*, 35 THE PUB. INTEREST 22, 48 (1974).

¹³⁵ Paul Gendreau & Bob Ross, *Effective Correctional Treatment: Bibliotherapy for Cynics*, 25 CRIME &

Martinson's 'findings' still shape common conceptualizations of criminal offenders. Many view offenders as fundamentally distinct "boogeymen" without the capacity for positive change.¹³⁶ Taking this view, offenders are "not quite human."¹³⁷ Instead, convicted offenders *are* their criminal history.¹³⁸

Criminologist David Garland has termed this view of criminal offenders the "criminology of the other."¹³⁹ Accordingly, he argues, offenders are "opaquely monstrous creatures beyond or beneath our knowing."¹⁴⁰ Thus, the criminology of the other is seldom rational, built instead on generalizations and stereotypes about criminal offenders that demand their banishment and separation.¹⁴¹ Instead of data, the criminology of the other relies on "'natural' sentiments of retributive justice and the common sense of ordinary people,"¹⁴² at its core assuming once a criminal always a criminal.¹⁴³

Explaining the instinct to 'other' criminal offenders, Garland notes "to treat [offenders] as understandable . . . is to bring criminals into our domain, to humanize them, to see ourselves in them and them in ourselves."¹⁴⁴ Therefore, as criminologist Shadd Maruna points out, there are social purposes for conceiving of criminal offenders as evil, immutable entities.¹⁴⁵ By doing so, non-criminals create a common, consistent enemy that validates their status and gives them the ability to justify and minimize their own deviance.¹⁴⁶ Moreover, such a conception makes exclusion and isolation understandable and, more insidiously, desirable.

Public policies often reflect this conception of criminal offenders. In the vast world of record-based collateral sanctions, criminal offenders are seemingly irredeemable entities. For example, blanket civic restrictions banning convicted felons from voting,¹⁴⁷ serving on juries,¹⁴⁸

DELINQ. 463 (1979); Rick Sarre, *Beyond 'What Works?': A 25-year Jubilee Retrospective of Robert Martinson's Famous Article*, 34 AUSTL. & N.Z. J. CRIMINOLOGY 38 (2001).

¹³⁶ DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001).

¹³⁷ ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 5 (1963).

¹³⁸ HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963); JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1989).

¹³⁹ GARLAND, *supra* note 136, at 184.

¹⁴⁰ *Id.*

¹⁴¹ Simon Hallsworth, *Rethinking the Punitive Turn: Economies of Excess and the Criminology of the Other*, 2 PUNISHMENT & SOC'Y 145, 146 (2000).

¹⁴² GARLAND, *supra* note 136, at 184.

¹⁴³ See Shadd Maruna & Anna King, *Once a Criminal, Always a Criminal?: 'Redeemability' and the Psychology of Punitive Public Attitudes*, 15 EUR. J. CRIM. POLICY RES. 7, 7-24 (2009).

¹⁴⁴ GARLAND, *supra* note 136, at 184.

¹⁴⁵ SHADD MARUNA, *MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES* (2001).

¹⁴⁶ *Id.*

¹⁴⁷ See generally JEFF MANZA & CHRIS UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* (2006).

¹⁴⁸ See generally James M. Binnall, *Summoning Criminal Desistance: Convicted Felons' Perspectives on Jury Service*, 43 LAW & SOC. INQUIRY 4 (2017); James M. Binnall, *A Field Study of the Presumptively Biased: Is There Empirical Support for Excluding Convicted Felons from Jury Service?*, 36 U. DENV. LAW & POL'Y 1 (2014); See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65 (2003).

and running for office,¹⁴⁹ presume that convicted felons possess flaws that make them permanently unsuitable to take part in vital civic processes. Similarly, federal and state weapons laws assume that all convicted felons, regardless of offense type, lack the care and thoughtfulness to be responsible gun owners.¹⁵⁰ Restrictions on public housing,¹⁵¹ public benefits,¹⁵² and occupational licensing¹⁵³ also highlight the perceived immutability of those with a criminal history. In all instances, the proffered goal of these restrictions is to protect non-criminals from convicted offenders who will allegedly and inevitably, one day return to crime.

Likewise, offender no-association conditions promote the ‘othering’ of convicted offenders. In a majority of jurisdictions, offender no-association conditions restrict parolees’ contacts with *all* convicted criminals, convicted felons, and/or parolees, even those who have long since broken the law. This presumes that offenders never truly change and that convicted criminal, convicted felon, and parolee are somehow apt equivalents for “actively engaged in criminal activity.”

Yet, research suggests that most convicted offenders eventually stop offending and engage in a process of criminal desistance.¹⁵⁴ That process is often marked by life changes that can include marriage, schooling, children, and a measured change in self-concept, whereby a former offender reconciles a criminal past with a law-abiding present and future.¹⁵⁵ In this way, much like their non-criminal counterparts, convicted offenders evolve over time, frequently altering their behaviors. Blanket offender no-association conditions that make categorical presumptions about the immutability and criminality of convicted felons, convicted criminals, and other parolees fail to adequately account for these potential changes and run counter to rehabilitative evidence-based efforts.

B. Parolees’ Needs: Homogeneity Overcomes Individuality

In recent years, “evidence-based practices” have permeated the mission statements of

¹⁴⁹ See generally Andrea Steinacker, *Prisoner’s Campaign: Felony Disenfranchisement Laws and the Right to Hold Public Office*, 2003 BYU L. REV. 801 (2003).

¹⁵⁰ Alec C. Ewald, *Collateral Consequences in the American States*, 93 SOC. SCI. Q. 211 (2012).

¹⁵¹ See generally Meghan L. Schneider, *From Criminal Confinement to Social Confinement: Helping Ex-Offenders Obtain Public Housing with a Certificate of Rehabilitation*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 335 (2010).

¹⁵² See generally Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457 (2010); Naomi F. Sugie, *Punishment and Welfare: Paternal Incarceration and Families’ Receipt of Public Assistance*, 90 SOC. FORCES 1403 (2012).

¹⁵³ See generally Miriam J. Aukerman, *The Somewhat Suspect Class: Towards a Constitutional Framework for Evaluating Occupational Restrictions Affecting People with Criminal Records*, 7 J. L. SOC’Y 18 (2005).

¹⁵⁴ See generally SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES (2001); ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1995); Travis Hirschi & Michael Gottfredson, *Age and the Explanation of Crime*, 89 AM. J. SOC. 552 (1983); John H. Laub & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1 (2001).

¹⁵⁵ John H. Laub & Robert J. Sampson, *Turning Points in the Life Course: Why Change Matters to the Study of Crime*, 31 CRIMINOLOGY 301, 310 (1993); Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 CRIMINOLOGY 301 (2003); Mark Warr, *Life-Course Transitions and Desistance from Crime*, 36 CRIMINOLOGY 183, 187 (1998).

parole supervision regimes in the United States.¹⁵⁶ As part of this evidence-based approach, roughly seventy percent of parole agencies have implemented risk-need-response (RNR) principles.¹⁵⁷ Jurisdictions that employ RNR principles assess parolees' risk levels by identifying their criminogenic needs.¹⁵⁸ Criminogenic needs take two forms—static and dynamic.¹⁵⁹ Static needs are characteristics of an offender's history that are unchanging; while, dynamic needs are characteristics of an offender's present situation that are alterable.¹⁶⁰ To measure a parolee's needs, jurisdictions use risk assessment tools.¹⁶¹

In theory, once a risk assessment tool has identified the parolee's needs, jurisdictions then craft a tailored response to those needs, with the goal of decreasing a client's risk level.¹⁶² In this way, individualized responses to criminogenic needs ought to address a parolee's unique deficits.¹⁶³ Still, though RNR principles call for tailored parole supervision plans, many jurisdictions fail to adequately address a parolee's distinctive needs.¹⁶⁴ Instead, jurisdictions take a

¹⁵⁶ See generally JAMES Q. WILSON & JOAN PETERSILIA, CRIME AND PUBLIC POLICY (2011); FAYE S. TAXMAN & STEVEN R. BELENKO, IMPLEMENTING EVIDENCE-BASED PRACTICES IN COMMUNITY CORRECTIONS AND ADDICTION TREATMENT (2012); NANCY M. CAMPBELL, NATIONAL INSTITUTE OF CORRECTIONS, COMPREHENSIVE FRAMEWORK FOR PAROLING AUTHORITIES IN AN ERA OF EVIDENCE-BASED PRACTICE (2008).

¹⁵⁷ See Paul Gendreau et. al., *Intensive Rehabilitation Supervision: The Next Generation in Community Corrections?*, 58 FED. PROBATION 72 (1994); See also Dana A. Jones et. al., *Case Classification in Community Corrections: Preliminary Findings from a National Survey*, in Topics in Community Corrections 4-10 (1999); James R.P. Ogloff & Michael R. Davis, *Advances in Offender Assessment and Rehabilitation: Contributions of the Risk-Needs-Responsivity Approach*, 10 PSYCHOL., CRIME & L. 229 (2004); Don A. Andrews et. al., *Classification for Effective Rehabilitation: Rediscovering Psychology*, 17 CRIM. JUST. & BEHAV. 19 (1990); Don A. Andrews, *Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy*, 5 CRIMINOLOGY & PUB. POL'Y 595 (2006).

¹⁵⁸ See generally DON A. ANDREWS & JAMES BONTA, THE PSYCHOL. OF CRIM. CONDUCT 176 (Anderson Publishing 1994) (explaining the relationship between risks and needs: "Many offenders, especially high-risk offenders, have a variety of needs. They need places to live and work and/or they need to stop taking drugs. Some have poor self-esteem, chronic headaches or cavities in their teeth. These are all 'needs'. The need principle draws our attention to the distinction between criminogenic and non-criminogenic needs. Criminogenic needs are a subset of an offender's risk level. They are the dynamic attributes of an offender that, when changed, are associated with changes in the probability of recidivism."); DAVID THORNTON & D. RICHARD LEWIS, COGNITIVE APPROACHES TO THE ASSESSMENT OF SEXUAL INTEREST IN SEXUAL OFFENDERS (2009).

¹⁵⁹ See generally THORNTON & LEWIS, *supra* note 158.

¹⁶⁰ *Id.*

¹⁶¹ See, e.g., Don A. Andrews & James Bonta, *The Level of Service Inventory-Revised*, Multi Health Systems (1995), http://issuu.com/mhs-assessments/docs/lscmi.lsi-r.brochure_insequence?e=20431871/45044118 [<https://perma.cc/TWF7-26RA>] (describing the Level of Service Inventory – Revised (LSI-R) one of the first, most popular, and most validated risk assessment tools); see also Don A. Andrews, James L. Bonta, & J. Stephen Wormith, *Level of Service/Case Management Inventory (LS/CMI): An Offender Assessment System*, Multi Health Systems 2 (2004) (describing the Level of Service/Case Management Inventory, a revised version of the Level of Service Inventory – Revised (LSI-R)).

¹⁶² See generally Don A. Andrews & James Bonta, *Rehabilitating Criminal Justice Policy and Practice*, 16 PSYCHOL. PUB. POL'Y & L. 39 (2010).

¹⁶³ See *id.*; see also Tracey A. Vieira, Tracey A. Skilling, & Michele Peterson-Badali, *Matching Court-Ordered Services with Treatment Needs: Predicting Treatment Success with Young Offenders*, 36 CRIM. JUST. AND BEHAV. 385 (2009).

¹⁶⁴ See, e.g., Joan Petersilia & Robert Weisberg, "Parole in California: It's a Crime," L.A. TIMES (April 23, 2006), <http://articles.latimes.com/2006/apr/23/opinion/op-petersilia23> [<https://perma.cc/PMK6-LSSX>] ("But more

more generalized approach, imposing parole conditions that address what supervising authorities perceive as global needs of its client base.¹⁶⁵ Blanket offender no-association conditions contradict RNR's individualized approach to parole supervision.

Conversely, in a study of Canadian federal parole conditions, Turnbull and Hannah-Moffett note that Canadian parole authorities rigorously implement RNR principles and target specific offender needs by applying tailored conditions.¹⁶⁶ Parole officials then explain the nexus between those needs and imposed parole conditions.

You will not be allowed to communicate with any person who has a criminal record, who is involved in drug trafficking or part of organized crime because it has been determined that, in the past, you committed your crimes with such peoples or under their influence. In order not to commit a subsequent offence it is imperative that you have no contact with other delinquents.¹⁶⁷

Turnbull and Hannah-Moffett also note that, unlike blanket restrictions, “[t]his targeted approach . . . is premised on a logic of governance that is more rational, cost-efficient and modest in its efforts to address social problems.”¹⁶⁸ A large body of empirical research supports this contention, demonstrating the effectiveness of strict adherence to the individualized feature of RNR principles.¹⁶⁹

Yet, with respect to standard offender no-association conditions, most U.S. parole authorities seemingly disregard evidence validating the RNR approach. Standard offender no-association conditions suggest that parolees share a universal dynamic criminogenic need. While consistent with antiquated views of ‘criminal others,’ this presumption runs counter to RNR principles. As some researchers note, “the greatest obstacle to using rehabilitative treatment effectively to reduce criminal behavior is . . . a correctional system that does not use the research available and has no history of doing so.”¹⁷⁰

Like other blanket parole conditions, standard offender no-association conditions superficially serve the rehabilitative goal of parole. Assuredly, many parolees are susceptible to criminal influence. Yet, for many other parolees, criminal influence is not a dynamic risk factor. For such parolees, categorical offender no-association conditions are superfluous and potentially detrimental to their reintegration.

selective supervision of parolees also requires more effective rehabilitation programs. Studies show that for some prisoners, enrollment in drug- or alcohol-abuse treatment programs, education classes or job training will substantially lower their chances of committing new crimes. Unfortunately, California is woefully inadequate in providing such programs. Nearly two-thirds of its inmates are addicts, yet just 2% of them are professionally treated while in prison.”)

¹⁶⁵ See generally David J. Cooke & Christine Michie, *Limitations of Diagnostic Precision and Predictive Utility in the Individual Case: A Challenge for Forensic Practice* 34 LAW AND HUM. BEHAV. 259 (2010).

¹⁶⁶ See Turnbull & Hannah-Moffett, *supra* note 9, at 532.

¹⁶⁷ *Id.* at 542.

¹⁶⁸ *Id.* at 538.

¹⁶⁹ See Don A. Andrews et al., *Does Correctional Treatment Work: A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 CRIMINOLOGY 369, 369-387 (1990).

¹⁷⁰ Mark W. Lipsey & Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews*, 3 ANN. REV. OF L. AND SOC. SCI. 297, 315 (2007).

IV. INTER-OFFENDER ASSOCIATIONS: ANTI-SOCIAL AND CRIMINOGENIC?

Also implicit in categorical offender no-association conditions are two additional flawed presumptions about the nature of inter-offender relationships and predictors of criminality. First, in the face of evidence to the contrary, offender no-association restrictions presume that inter-offender relationships are uniformly anti-social. Such a presumption contradicts empirical and experiential data that makes clear that inter-offender relationships can be pro-social and reformative. Second, offender no-association conditions incorrectly presume that anti-social associations are dispositive predictors of criminal activity. This presumption misconstrues criminological theories of learned criminal behavior, demonstrating that in the face of strong pro-social associations, anti-social relationships will have a negligible impact on criminality.

A. Inter-Offender Associations: Ignoring Data

For decades, researchers have recognized the benefits of inter-offender relationships. In 1955, sociologist/criminologist Donald Cressey suggested that relationships between prisoners and former prisoners could aid in rehabilitation and reentry.¹⁷¹ Through a process he termed “reflexive reformation,” offenders, who are immersed in inter-offender rehabilitative efforts, feel compelled to conform their behavior to the pro-social group norm.¹⁷² Later studies in the substance abuse treatment context support these findings, demonstrating that the “professional ex-”¹⁷³ or “wounded healer”¹⁷⁴ paradigm benefits formerly addicted counselors and their clients by providing “a reference group whose moral and social standards are internalized.”¹⁷⁵

Though scant, empirical research on former offenders who take on the professional ex- or wounded healer role seems to point to similar benefits. For example, LeBel explored the helper/wounded healer orientation in a study of 228 former offenders involved in a prison reintegration program.¹⁷⁶ LeBel found that the majority of participants endorsed the characteristics of the helper/wounded healer, “sharing experiences, acting as a role model, mentoring others, and [expressing an] interest in pursuing a career helping others.”¹⁷⁷ He also found that a majority of former offenders who counseled other former offenders, those recently released from prison or otherwise less advanced in their reintegration, were more likely to express satisfaction with life

¹⁷¹ Donald R. Cressey, *Changing Criminals: The Application of the Theory of Differential Association*, 61 THE AM. J. OF SOC. 116, 119 (1955); see generally Donald R. Cressey, *Social Psychological Foundations for Using Criminals in the Rehabilitation of Criminals*, 2 J. OF RES. IN CRIME & DELINQ. 49 (1965).

¹⁷² Cressey, *Changing Criminals*, *supra* note 171, at 119; see generally Frank Reissman, *The Helper Therapy Principle*, 10 SOC. WORK 27 (1965) (identifying the “helper principle” in the field of social work, which refers to the benefits the “helper” receives when engaged in in a counselor/counselee or mentor/mentee relationship).

¹⁷³ See generally J. David Brown, *The Professional Ex-: The Alternative for Exiting the Deviant Career*, 32 SOC. Q. 219 (1991).

¹⁷⁴ See generally William L. White, *The History of Recovered People as Wounded Healers: II. The Era of Professionalization and Specialization*, 18 THE HIST. OF ALCOHOLISM TREATMENT Q. 1 (2000); see also MARUNA, *supra* note 139.

¹⁷⁵ Brown, *supra* note 173, at 227.

¹⁷⁶ See LeBel, *supra* note 22.

¹⁷⁷ *Id.* at 16-17.

and less likely to possess a criminal attitude.¹⁷⁸ As he notes, “becoming more involved in helping others appears to have a positive impact on the psychological well-being of formerly incarcerated persons and possibly acts as a sort of buffer against criminality as well.”¹⁷⁹

In a more recent study of former offenders and the wounded healer orientation, LeBel, Richie, and Maruna surveyed 258 participants (229 clients and 29 staff members) from six reentry service organizations in New York City and Upstate New York.¹⁸⁰ In that study, they found that former offenders who worked as staff members exhibited prosocial attitudes and beliefs, a sense of psychological well-being, and a general satisfaction with life.¹⁸¹ These findings have also been replicated in the context of female former offenders¹⁸² and former sex offenders.¹⁸³ In sum, limited empirical research on inter-offender self-help groups makes clear that former offenders who work to aid other formerly incarcerated citizens gain an increased sense of self-worth, express more prosocial attitudes, and are less likely to engage in criminal activity.

Along with empirical data on inter-offender relationships, experiential data supports the notion that offender associations can aid in the reentry process. For those who work in the reentry field, employing former offenders to facilitate the reentry of other former offenders is not a novel idea. A number of initiatives aimed at facilitating the successful reentry of former offenders employ former offenders as counselors and mentors.¹⁸⁴ Two of the oldest and most successful of these initiatives are Delancey Street Foundation in San Francisco, California and Homeboy Industries in Los Angeles, California.¹⁸⁵

Founded in 1971 in San Francisco by criminologist Mimi Silbert and former offender John Maher, Delancey Street Foundation is “the country’s leading residential self-help

¹⁷⁸ *Id.* at 18.

¹⁷⁹ *Id.*

¹⁸⁰ Thomas P. LeBel, Matt Richie, and Shadd Maruna, “Helping Others as a Response to Reconcile a Criminal Past,” 42(1) CRIM. JUST. AND BEHAV. 108-120 (2015).

¹⁸¹ *See id.* at 116.

¹⁸² Gretchen Heidemann, Julie A. Cederbaum, Sidney Martinez, and Thomas P. LeBel, *Wounded Healers: How Formerly Incarcerated Women Help Themselves by Helping Others*, 18(1) PUNISHMENT AND SOC’Y 3 (2016).

¹⁸³ *See generally* Christian Perrin, Nicholas Blagden, Belinda Winder, and Gayle Dillon, ‘It’s Sort of Reaffirmed to Me that I am not a Monster, I’m not a Terrible Person’: Sex Offenders Movements Towards Desistance Via Peer-Support Roles in Prison, 30(7) SEXUAL ABUSE: A J. OF RES. AND TREATMENT 759 (2017).

¹⁸⁴ *See, e.g.*, Offenders Anonymous, <http://www.offenders-anonymous.org.uk/index.html> [<https://perma.cc/7WEA-S2V7>]; Ride Home Program (referenced in Jon Mooallem, “You Just Got Out of Prison, Now What?” N.Y. TIMES (Jul 16, 2015), https://mobile.nytimes.com/2015/07/19/magazine/you-just-got-out-of-prison-now-what.html?referrer=&_r=0 [<https://perma.cc/CXZ9-ZF6D>]; Anti-Recidivism Coalition, <http://www.antirecidivism.org/mission-1/> [<https://perma.cc/J7HE-RC5A>]; Insight Prison Project, <http://www.insightprisonproject.org> [<https://perma.cc/M5NN-G98P>]; Project H.O.P.E. Reentry Initiative, <https://www.justice.gov/usao-sdal/programs/ex-offender-re-entry-initiative>; St. Vincent DePaul Reentry Initiative [<https://perma.cc/4WZ3-BHFS>]; available at: https://www.svdpcincinnati.org/About_Us/Our_Programs/Re-entry_Program/ [<https://perma.cc/E4PP-38M4>].

¹⁸⁵ *See* The Delancey Street Foundation, <http://www.delanceystreetfoundation.org/ourstory.php> [<https://perma.cc/Z3PM-7CVK>]; *see also* Homeboy Industries, https://www.homeboyindustries.org/?gclid=Cj0KCCQiAyNjRBRCpARIsAPDBnn29T2ZUESLsEJXw8VnwPUnegBSHC6Pb6CcvJtDUE5eIWh2y2M7s5GgaAiAcEALw_wcB [<https://perma.cc/74WS-VQC7>].

organization for former substance abusers, ex-convicts, homeless and others who have hit bottom.”¹⁸⁶ The Delancey Street Foundation is a self-described “extended family” that employs no experts or program administrators. Instead, at Delancey, clients serve as mentors and mentees, “[e]veryone is both a giver and a receiver in an ‘each-one-teach-one’ process.”¹⁸⁷

Delancey Street’s approach centers on the notion that residents, former offenders included, are fully capable of altering their behavior and living a law-abiding life. “First and foremost, we believe people can change. . . . [w]hen we make a mistake we need to admit it and then not run from it, but stay and work to fix the mistake.”¹⁸⁸ Delancey also prioritizes the strengths of its residents, rather than focusing on risks and needs. “We teach people to find and develop their strengths rather than only focusing on their problems.”¹⁸⁹ Through this strengths-based or restorative approach to reentry,¹⁹⁰ Delancey Street Foundation has achieved enormous success. To date, Delancey has served over 14,000 former offenders and recovering addicts.¹⁹¹ Of those who graduate, ninety percent never return to drugs or crime.¹⁹²

Like Delancey Street Foundation, Homeboy Industries also employs former offenders as counselors and mentees. Founded in 1988 by Father Greg Boyle and located in Los Angeles, California, Homeboy Industries offers wrap around services for at-risk youth, former gang members, and recently incarcerated men and women. They provide job training; mental health, substance abuse, and domestic violence services; educational opportunities; and even tattoo removal. An ongoing study by UCLA Professors Jorja Leap and Todd Franke found that of the 300 Homeboy alumni they began tracking in 2008, only 1 in 3 have been re-incarcerated, a marked improvement over the statewide recidivism rate of approximately 67 percent.¹⁹³

The success of the Delancey Street Foundation and Homeboy Industries has not immunized them from the impact of offender no-association conditions. While California does not impose a standard offender no-association condition, field agents are permitted to make association determinations on a case-by-case basis.¹⁹⁴ In April 2012, California probation officers reportedly forbid a number of probationers from participating in activities at Homeboy Industries. Probation officers cited restrictions limiting contact with former gang members and convicted offenders.¹⁹⁵ In response to this informal policy, Father Greg Boyle stated, “[t]hat’s akin to telling

¹⁸⁶ Delancey Street Foundation, *Who We Are* (2007), <http://www.delanceystreetfoundation.org/www.php> [https://perma.cc/PFH3-S5KY].

¹⁸⁷ Delancey Street Foundation, *What We Believe* (2007), <http://www.delanceystreetfoundation.org/www.php> [https://perma.cc/T9WC-VPNQ].

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See Maruna Shadd, and Thomas P. LeBel, *Welcome Home: Examining the ‘Reentry Court’ Concept from a Strengths-Based Perspective*, 4(2) WESTERN CRIMINOLOGY REV. 91 (2003); see also *infra* Section IV.

¹⁹¹ Kerry Patterson, Joseph Grenny, David Maxfield, Ron McMillan, and Al Switzler, *You’re an Influencer* in INFLUENCER: THE POWER TO CHANGE ANYTHING (2008).

¹⁹² *Id.*

¹⁹³ Molly Selvin, “Homeboy Industries: A History of Violence. A Hope for the Future,” UCLA Blue Print (Fall 2017), <http://blueprint.ucla.edu/feature/homeboy-industries-a-history-of-violence-a-hope-for-the-future/> [https://perma.cc/R6G8-NAFP].

¹⁹⁴ See *infra* Appendix; *infra* Figure 1.

¹⁹⁵ Celeste Fremon, “LA Probation Officers Stop Jobless Kids from Working at Homeboy Industries,”

an alcoholic he's not allowed to go to AA because there will be other alcoholics there . . . [i]t makes zero sense."¹⁹⁶

In this case, the restrictions at issue were not the result of a top down directive, but rather an informal policy of a handful of probations officers.¹⁹⁷ Nevertheless, Father Boyle's point is salient. Homeboy relies on former offenders and former gang members to mentor and counsel those just beginning their reentry journey. Taking away this resource harms the men and women who look to the employees of Homeboy Industries to show them the way.

Though scant, empirical and experiential data strongly suggest that mutual-help models of former offender reentry work, helping to maintain successful reentry for counselors and for initiating the successful reentry process for the counselees. Offender no-association conditions make efforts by organizations like Delancey Street and Homeboy exceedingly more difficult, as former offenders are less likely to seek out help from other former offenders in the face of a restriction that, if violated, can lead to re-imprisonment.

B. Misconstruing Criminological Theory

A final flaw inherent in categorical offender no-association conditions is that they ostensibly presume that anti-social associations are dispositive predictors of crime. While some criminological theories demonstrate that one's social milieu plays a significant role in criminality, those same theories also make clear that anti-social associations alone are not necessarily predictive of criminality.¹⁹⁸

By presuming that anti-social associations impact criminality, offender no-association conditions seemingly promote learning theories of crime. Social process theories of crime "examine how individuals interact with other individuals and groups and how the learning that takes place in these interactions leads to a propensity for criminal activity."¹⁹⁹ One strain of social process theory is learning theory.²⁰⁰ Learning theories of crime explore how and why anti-social associations lead to crime.²⁰¹ The two oldest and most empirically validated learning theories are differential association theory and social learning theory.²⁰²

Derived from symbolic interactionist principles,²⁰³ Sutherland's differential association theory is the foundation for social learning theory. Premised on nine principles, differential

WITNESS L.A. (April 18, 2012), <http://witnessla.com/la-county-juvenile-p-o-s-wont-let-kids-at-work-homeboy-industries/> [<https://perma.cc/B5UR-CD4K>].

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See e.g., EDWIN H. SUTHERLAND, PRINCIPLES OF CRIMINOLOGY (4th ed. 1947) (for the most complete version of Sutherland's differential association theory of crime); Robert L. Burgess and Ronald L. Akers, *A Differential Association-Reinforcement Theory of Criminal Behavior*, 14 SOC. PROBLEMS 128 (1966).

¹⁹⁹ STEPHEN G. TIBBETTS AND CRAIG HEMMENS, CRIMINOLOGICAL THEORY 297 (2nd ed. 2015).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See SUTHERLAND, *supra* note 198.

²⁰³ GEORGE H. MEAD, MIND, SELF AND SOCIETY: FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST (Charles W. Mooris, ed., 1934); CHARLES HORTON COOLEY, HUMAN NATURE AND THE SOCIAL ORDER (1902).

association theory holds that crime is learned through interactions with others.²⁰⁴ In particular differential association states, “[a] person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.”²⁰⁵ In short, differential association holds that interactions with others, in particular intimate associations with close relatives and friends, can influence criminality. Thus, criminality can be averted when pro-social relationships outweigh anti-social associations.

Importantly, differential association does not identify or address the exact mechanisms for how criminal behavior is learned, except to acknowledge that criminal behavior is learned through the same mechanisms that humans learn all other behavior.²⁰⁶ Responding to such criticisms, Burgess and Akers proposed social learning theory, a modification of differential association theory that incorporates behavioral psychology principles of operant conditioning, modeling, and imitation.²⁰⁷ Social learning theory proposes that criminal behavior is learned through processes of “differential reinforcement,”²⁰⁸ whereby one balances the benefits and costs, both real and anticipated, of any given behavior and through imitation, modeling one’s behavior after another.²⁰⁹

Superficial interpretation of social learning theory mistakenly overlooks its complexities and nuances.²¹⁰ Social learning theory is “deeply rooted in a sociological, symbolic-interactionist framework that situates humans within social contexts through their associations with a variety of social groups.”²¹¹ The theory examines how an individual’s behaviors are shaped by his or her exposure to multiple, often competing, social groups. It accounts for cognitive learning mechanisms, and factors influencing learning. In this way, the theory is a holistic theory of crime.

Though arguably the most empirically validated criminological theory, social learning is often oversimplified. Ronald Akers, one of the authors of social learning theory, points out that social learning is sometimes reduced to a “peer-influence” theory of crime, “reducing the entirety of the social learning model to *only* a peer-influence theory is . . . problematic.”²¹² Akers goes on to explain the holistic quality of social learning theory and the importance of accounting for all facets of the theory:

In addition to peer association, the theory clearly refers to various primary and secondary group influences, especially the family. . . . The family provides

²⁰⁴ See SUTHERLAND, *supra* note 198.

²⁰⁵ EDWIN H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* 78 (5th ed. 1955) (describing Sutherland’s sixth principle of differential association theory).

²⁰⁶ See C. Ray Jeffery, *Criminal Behavior and Learning Theory*, 56 *J. OF CRIM. L., CRIMINOLOGY, AND POLICE SCI.* 294 (1965).

²⁰⁷ See Burgess and Akers, *supra* note 198.

²⁰⁸ *Id.*

²⁰⁹ See *id.*; see also BURRHUS FREDERIC SKINNER, *SCIENCE AND HUMAN BEHAVIOR* (1953); ALBERT BANDURA, *AGGRESSION: A SOCIAL LEARNING ANALYSIS* (1973); ALBERT BANDURA, *SOCIAL LEARNING THEORY* (1977).

²¹⁰ See Christine S. Sellers & Ronald L. Akers, *Social Learning Theory: Correcting Misconceptions*, in *THE ESSENTIAL CRIMINOLOGY READER* 97 (Stuart Henry and Mark Lanier, eds., 2005) (highlighting that criticisms of social learning theory “have been based on misconceptions about the theory” and that “[t]hese misconceptions can be traced in large part to a failure to see the theory in its entirety”).

²¹¹ *Id.* at 97.

²¹² *Id.* at 95.

exposure to normative values, behavioral models, and differential reinforcement. Variables such as parental control, discipline, and management are clearly also measures of differential social reinforcement (rewards and punishments) for conforming or disobedient behavior.²¹³

Offender no-association conditions endorse learning theories of crime, yet this endorsement is tepid. Such restrictions consider only one half of one facet of learning theories – anti-social peer associations—ignoring many other aspects of learning theories that can exacerbate or mitigate anti-social peer associations, and are, in turn, determinative of criminality. As Akers warns, incorporating and relying on social learning theory, focusing only on peer associations, “is as if this one variable operationalized the entire theoretical model.”²¹⁴ To accurately predict the criminality of parolees, jurisdictions ought to alter how they conceive of social learning theory, crafting parole supervision plans that address not only possible anti-social associations, but also pro-social associations, the strength of those associations, and the mechanisms through which behavior is learned. Only then will social learning theory truly inform parole policy.

To curb anti-social, criminogenic relationships among parolees, a vast majority of jurisdictions impose standard offender no-association conditions. The effectiveness of such conditions is speculative, as they lack empirical support. Instead, such conditions are premised on unsubstantiated, inaccurate presumptions about former offenders and their relationships. These flawed bases on which offender no-association conditions rest call into question the policy implications and legality of categorically prohibiting parolees’ associations with other parolees, convicted criminals, and/or convicted felons.

V. OFFENDER NO-ASSOCIATION CONDITIONS: BAD POLICY AND QUESTIONABLE LAW

Categorical offender no-association conditions foreclose the cultivation of pro-social, inter-offender associations. In turn, such conditions curtail a jurisdiction’s ability to fully invest in strengths-based approaches to reentry and may undermine former offenders’ efforts to desist from criminal activity. In this way, standard offender no-association conditions fail to serve the rehabilitative goal of parole, likely making them impermissibly overbroad in their current form.

A. Defeating Strengths-Based Reentry

Parole suffers from fundamental, philosophical inconsistencies that limit its successes.²¹⁵ The twin goals of parole, as enunciated by the Supreme Court and interpreted by lower courts, are themselves somewhat incongruous.²¹⁶ Protecting the public and promoting reintegration are often in conflict.²¹⁷ Likewise, so too are the central tenets of the RNR model, a model employed by the

²¹³ *Id.* at 95-96.

²¹⁴ *Id.* at 96.

²¹⁵ See Maruna and LeBel, *supra* note 190.

²¹⁶ See *Morrissey v. Brewer*, 408 U.S. 471 (1972); see also *Birzon v. King*, 469 F.2d 1241 (1972).

²¹⁷ See Maruna and LeBel, *supra* note 190, at 96 (quoting DAVID FOGEL, *Foreword*, in DANGEROUS MEN: THE SOCIOLOGY OF PAROLE 10,10-11 (1978)). (“A parole officer can be seen going off to his/her appointed rounds with Freud in one hand and a .38 Smith and Wesson in the other Is Freud a backup to the .38? Or is the .38 carried to ‘support’ Freud?”).

overwhelming majority of parole agencies in the United States.²¹⁸ Criminogenic risks implicate what Shadd Maruna has termed a “control narrative,”²¹⁹ while criminogenic needs suggest a “support narrative.”²²⁰ The coexistence of these dueling narratives, in theory and in application, often results in inefficiency, confusion, and failure.²²¹

Describing the current state of parole, one author suggests:

The underlying problems that exist within the parole system are theoretical in nature. The combination of currently often incompatible supervision styles of casework and surveillance and an overwhelming societal concern for public safety, possibly compounded by fears of legal liability, have created an anomic state of parole in the United States.²²²

Accordingly, some scholars have questioned the continued use of RNR principles in the reentry context.²²³ In particular, scholars suggest that along with their somewhat contradictory aims, RNR principles do little to recognize former offenders qualities and positive attributes.²²⁴ Instead, RNR principles seem to focus solely on the deficiencies of former offenders and their risk of reoffending.²²⁵ By ignoring, or at least failing to emphasize former offenders’ strengths, parole regimes that employ RNR principles tend to overlook the reformative power of exploiting such strengths through generative commitments.²²⁶

Conversely, a strengths-based approach to reentry acknowledges former offenders’

²¹⁸ See *id.*

²¹⁹ *Id.* at 93.

²²⁰ *Id.* at 95.

²²¹ *Id.*

²²² Joel M. Caplan, *Parole System Anomie: Conflicting Models of Casework and Surveillance*, 70(3) FED. PROB. 32, 35 (2006) (citing A.W. Cohn, *Weapons and Probation and Parole Officers: Do They Mix?*, 10(3) J. OF OFFENDER MONITORING 1 (1997); EMILE DURKHEIM, *SUICIDE: A STUDY IN SOCIOLOGY* (The Free Press, 8th ed. 1979) (1955)).

²²³ See Holly A. Miller, *A Dynamic Assessment of Offender Risk, Needs, and Strengths in a Sample of Pre-Release General Offenders*, 24(6) BEHAV. SCI. & THE LAW 767 (2006); see also LaKeesha N. Woods, A. Stephen Lanza, William Dyson, and Eric M. Gordon, *The Role of Prevention in Promoting Continuity of Healthcare in Prisoner Reentry Initiatives*, 103(5) AM. J. OF PUB. HEALTH 830 (2013); Patricia O’Brien, *Just Like Baking a Cake’: Women Describe the Necessary Ingredients for Successful Reentry After Incarceration*, 82(3) FAM. IN SOC’Y: THE J. OF CONTEMP. SOC. SERV. 287 (2001).

²²⁴ See Tony Ward and Claire Stewart, *Criminogenic Needs and Human Needs: A Theoretical Model*, 9(2) PSYCHOL., CRIME & L. 125 (2003); see also Maruna and LeBel, *supra* note 190.

²²⁵ See Bronwyn A. Hunter, A. Stephen Lanza, Mike Lawlor, William Dyson, Eric M. Gordon, *A Strengths-Based Approach to Offender Reentry: The Fresh Start Prisoner Reentry Program*, 60(11) INT’L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 1298, 1300 (2016) (citing Andrews D. A., Bonta J., Wormith J. S., *The Risk-Need-Responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention*, 38 CRIM. JUST. AND BEHAV., 735, 735-755 (2011) “Although the theoretical foundation for the RNR framework does include strengths, these strengths are conceptualized as the absence of risks or needs and, therefore, are not explicit.”).

²²⁶ See SHADD MARUNA AND THOMAS P. LEBEL, *STRENGTHS-BASED RESTORATIVE APPROACHES TO REENTRY: THE EVOLUTION OF CREATIVE RESTITUTION, REINTEGRATION, AND DESTIGMATIZATION IN POSITIVE CRIMINOLOGY* (Natti Ronel and Dana Segev, eds., 2015).

talents and abilities, rather than their risks and needs.²²⁷ A strengths-based approach to reentry and parole treats criminal offenders as “assets to be managed, rather than merely liabilities to be supervised.”²²⁸ Strengths-based reentry practices differ from traditional RNR or ‘what works’ principles in that they identify parolee’s positive attributes, utilize those attributes, and then recognize how those attributes contribute to the community.²²⁹ Proponents of strengths-based approaches argue that they are more in line with research on successful criminal desistance.²³⁰

Drawing from Edwin Lemert’s theory of deviance,²³¹ Maruna et al. propose that criminal desistance divides into two phases: primary desistance and secondary desistance.²³² Under this framework, primary desistance refers to a “lull or crime-free gap in the course of a criminal career,”²³³ while secondary desistance is the cessation of criminal activity coupled with a prosocial change in a former offender’s self-concept.²³⁴ Thus, the key distinction between primary and secondary desistance are “identifiable and measurable changes at the level of personal identity or the ‘me’ of the individual.”²³⁵

The impetus of such changes, however, has been the topic of some debate.²³⁶ Structure-centric views of criminal desistance suggest that life-course “turning points,”²³⁷ such as marriage²³⁸ and employment,²³⁹ serve as “triggering events”²⁴⁰ that prompt identity shifts by

²²⁷ Hunter et al., *supra* note 225, at 1300 (“In contrast to traditional deficit-driven approaches to disease and illness in which individuals are viewed as lacking appropriate skills or abilities needed to address and overcome challenges, strengths-based models focus on identifying assets and building on those assets to promote positive change.”).

²²⁸ Jeremy Travis, *But They All Come Back: Rethinking Prisoner Reentry*, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY (National Institute of Justice, U.S. Department of Justice), May 2000, at 7.

²²⁹ See MARUNA AND LEBEL, *supra* note 226; see also Gordon Bazemore and Rachel Boba, “‘Doing Good’ to ‘Make Good’: Community Theory for Practice in a Restorative Justice Civic Engagement Reentry Model,” 46(1/2) J. OF OFFENDER REHABILITATION 25 (2007); MICHAEL D. CLARK, THE STRENGTHS PERSPECTIVE IN CRIMINAL JUSTICE IN THE STRENGTHS PERSPECTIVE IN SOCIAL WORK PRACTICE 122-146 (Ed. D. Saleebey) (Longman, 5th Ed 2009).

²³⁰ See MARUNA AND LEBEL, *supra* note 190; see also MARUNA AND LEBEL, *supra* note 226.

²³¹ EDWIN M. LEMERT, SOCIAL PATHOLOGY: A SYSTEMATIC APPROACH TO THE THEORY OF SOCIOPATHIC BEHAVIOR (1951).

²³² Shadd Maruna, Russ Immarigeon, and Thomas P. LeBel, *Ex-Offender Reintegration: Theory and Practice*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 17 (Shadd Maruna and Russ Immarigeon, eds., 2004).

²³³ *Id.* at 19.

²³⁴ See *id.*; see also NEAL SHOVER, GREAT PRETENDERS: PURSUITS AND CAREERS OF PERSISTENT THIEVES (1996); SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES (2001); Peggy C. Giordano, Stephen, A. Cernkovich, and Jennifer L. Rudolph, Gender, *Crime and Desistance: Toward a Theory of Cognitive Transformation*, 107(4) AM. J. OF SOC. 990 (2002); Barry Vaughan, *The Internal Narrative of Desistance*, 47(3) BRIT. J. OF CRIMINOLOGY 390 (2007).

²³⁵ Maruna et al. *supra* note 232, at 19.

²³⁶ See Thomas P. LeBel, Ros Burnett, Shadd Maruna, and Shawn Bushway, ‘Chicken and Egg’ of Subjective and Social Factors in Desistance from Crime, 5(2) EUR. J. OF CRIMINOLOGY 131, 132 (2008); see also Vaughan, *supra* note 234.

²³⁷ John H. Laub & Robert J. Sampson, *Turning Point in the Life Course: Why Change Matters to the Study of Crime*, 31(3) CRIMINOLOGY 301 (1993); ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1993); Robert J. Sampson & John H. Laub, *A Life-Course View of the Development of Crime*, 602(1) ANNALS AM. ACAD. POL. & SOC. SCI. 12 (2005).

²³⁸ See generally John H. Laub, Daniel S. Nagin & Robert J. Sampson, *Trajectories of Change in Criminal*

thrusting former offenders into conventional adult roles.²⁴¹ Exposed to prosocial interactions, former offenders who commit to conventional roles undergo a change in their sense of self. Role commitment also gives rise to informal social controls, isolating former offenders and discouraging criminal activity.²⁴² In these ways, conventional role commitment facilitates identity transformations by providing former offenders a template for individualized change,²⁴³ while “knifing them off” from criminogenic situations and influences.²⁴⁴

Yet, some scholars question structure-centric views of identity change and criminal desistance, arguing that such perspectives undervalue the role of agency, conceiving of former offenders as passive, malleable entities shaped by the world around them and desistance as a somewhat random occurrence.²⁴⁵ Critics contend that former offenders are active participants in their own reform, contemplating their future and often devising a plan to achieve their goals.²⁴⁶ Taking this view, turning points and conventional roles are merely “structural supports”²⁴⁷ or “hooks for change”²⁴⁸ that are effectual only when a former offender has done the “upfront work”²⁴⁹ of personal transformation.²⁵⁰

Emphasizing the former offender’s part in the desistance process, a number of scholars

Offending: Good Marriages and the Desistance Process, 63(2) AM. SOC. REV. 225 (1998).

²³⁹ See generally Robert J. Sampson & John H. Laub, *Crime and Deviance Over the Life Course: The Salience of Adult Social Bonds*, 55(5) AM. SOC. REV. 609, 614 (1990).

²⁴⁰ John H. Laub, Daniel S. Nagin, and Robert J. Sampson, *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63(2) AM. SOC. REV. 225 (1998).

²⁴¹ See Ross L. Matsueda, *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*, 97 AM. J. SOC. 577 (1992); Ross L. Matsueda & Karen Heimer, *A Symbolic Interactionist Theory of Role Transitions, Role Commitments, and Delinquency*, in DEVELOPMENTAL THEORIES OF CRIME AND DELINQUENCY 196-205 (1997); SAMPSON & LAUB, *CRIME IN THE MAKING*, *supra* note 237; JOHN H. LAUB & ROBERT J. SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70* (2003).

²⁴² See John H. Laub & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1, 19-20

(2001); see also SAMPSON & LAUB, *CRIME IN THE MAKING*, *supra* note 237.

²⁴³ Scholars refer to this template by a variety of names. See Judith Rumgay, *Scripts for Safer Survival: Pathways Out of Female Crime*, 43(4) HOWARD J. CRIM. JUST. 405, 409 (2004) (using the term “skeleton scripts”); see also Giordano et al. *supra* note 234 at 1035 (using the term “cognitive blueprint”);

²⁴⁴ See Laub & Sampson, *supra* note 242; but see Shadd Maruna & Kevin Roy, *Amputation or Reconstruction: Notes on the Concept of “Knifing Off” and the Desistance from Crime*, 23(1) J. CONTEMP. CRIM. JUST. 104 (2007).

²⁴⁵ See Ray Paternoster & Shawn Bushway, *Desistance and the “Feared Self”: Toward an Identity Theory of Criminal Desistance*, 99(4) J. CRIM. L. AND CRIMINOLOGY 1103 (2009); see also Vaughan, *supra* note 234 at 1035; MARUNA, *supra* note 145.

²⁴⁶ See generally Paternoster & Bushway, *supra* note 240; Giordano et al., *supra* note 234; MARUNA, *supra* note 145.

²⁴⁷ Jill K. Kiecolt, *Stress and the Decision to Change Oneself: A Theoretical Model*, 57(1) SOC. PSYCHOL. Q. 49, 51 (1994).

²⁴⁸ Giordano et al., *supra* note 234 at 992.

²⁴⁹ Paternoster & Bushway, *supra* note 240, at 1107.

²⁵⁰ See generally Sam King, *Transformative Agency and Desistance from Crime*, 13(3) CRIMINOLOGY AND CRIM. JUST. 317 (2013); see also LeBel et al. *supra* note 236.

note the importance of a desistance “narrative.”²⁵¹ As King explains, “it is the building of a desistance narrative which underpins the development of new identities.”²⁵² For example, Maruna’s research tends to show that former offenders alter their self-images through the use of “redemption scripts.”²⁵³ These scripts give former offenders “a believable story of why they are going straight to convince *themselves* that this is a real change.”²⁵⁴ Engaging narratives to re-conceptualize their criminal pasts, former offenders are able to account for prior criminality while emphasizing a new, reformed identity. Similarly, Paternoster and Bushway suggest that a shift in self-image requires an offender to actively cast-off a criminal identity and embrace a new, law-abiding persona.²⁵⁵ In both instances, the “agentic moves”²⁵⁶ of the former offender are crucial to the construction of the narrative and the formation of a new self-concept.

Though the “structure-agency” debate colors criminal desistance research, most scholars agree that desistance does not result from simply social forces or intrinsic motivations.²⁵⁷ Rather, the criminal desistance process is reflexive, combining environmental and individual elements of varying intensities at various times.²⁵⁸ A strengths-based approach to reentry that champions inter-offender associations does just that, giving former offender mentors a platform to build a coherent desistance narrative, using a deviant past as a resource when assisting less adjusted former offender mentees. For the mentees, they are provided a roadmap from those who have successfully navigated reentry obstacles. In these ways, inter-offender associations and a strengths-based approach to parole and reentry facilitate the processes and mechanisms associated with successful criminal desistance.

Though data on the link between inter-offender associations and criminal desistance is admittedly scarce, the research that exists on the topic makes clear that inter-offender relationships can be pro-social and mutually beneficial. Still, most jurisdictions do not utilize these beneficial relationships in parole supervision. Under a strengths-based regime, such relationships are exploited, for the good of the offender and for the good of the community. Instead, through categorical offender no-association conditions, the vast majority of jurisdictions preemptively destroy inter-offender mutual-help initiatives and undermine strength-based reentry possibilities.²⁵⁹

²⁵¹ See MARUNA, *supra* note 139; Giordano et al., *supra* note 229; Vaughan, *supra* note 229; Paternoster & Bushway, *supra* note 240; Sam King, *Early Desistance Narratives: A Qualitative Analysis of Probationers’ Transitions Towards Desistance*, 15(2) PUNISHMENT AND SOC’Y 147 (2013).

²⁵² King, *supra* note 250, at 152.

²⁵³ MARUNA, *supra* note 145, at 87.

²⁵⁴ *Id.* at 86.

²⁵⁵ Paternoster & Bushway, *supra* note 245, at 1107-08.

²⁵⁶ Giordano et al., *supra* note 234, at 992.

²⁵⁷ Vaughan, *supra* note 234, at 390; see also Stephen Farrall, *Rethinking What Works with Offenders: Probation*, SOC. CONTEXT & DESISTANCE FROM CRIME 223, (2002); Maruna et al. *supra* note 232; LeBel et al. *supra* note 236; Stephen Farrall, Gilly Sharpe, Ben Hunter, and Adam Calverly, *Theorizing Individual and Structural Level Processes in Desistance and Persistence: Outlining an Integrated Perspective*, 44(2) AUST. & N.Z. J. CRIMINOLOGY 218, 218- 234 (2011).

²⁵⁸ See Beth Weaver, *The Relational Context of Desistance: Some Implications and Opportunities for Social Policy*, 46(4) SOC. POL’Y & ADMIN. 395 (2012); LeBel et al. *supra* note 236.

²⁵⁹ Other scholars have noted the negative aspects of offender no-association conditions. See LeBel, *supra* note 22a, at 17 (noting that former offenders who are still under correctional supervision including parole or another form

B. No Nexus: The Legal Vulnerability of Standard Offender No-Association Conditions

Offender no-association conditions implicate supervisees' First Amendment right to freedom of association.²⁶⁰ Accordingly, such conditions must be narrowly drawn to serve the twin goals of parole.²⁶¹ The flawed bases for blanket offender no-association conditions and their potentially negative impact on an offender's reintegration suggest an anemic nexus between the professed purposes of parole and measures that prohibit offender interaction.

In the context of offender no-association conditions that prohibit contact with all misdemeanants, courts have demanded a more significant nexus between offender no-association conditions and the purposes of supervised release. For example, in *Napulou v. United States*, a federal supervisee violated a special condition of supervised release that prohibited contact with convicted misdemeanants.²⁶² *Napulou* challenged the condition on the basis that it was overbroad and did not relate to the twin goals of federal supervised release.

In their analysis, the Ninth Circuit suggested that no-association conditions—even those targeting convicted felons—might be vulnerable to such an attack. The Court noted, “[a] person disobeying the law today and hence not being law-abiding may as yet have no criminal record, and a person with a past record may be entirely law-abiding today.”²⁶³ The Ninth Circuit went on to conclude that a person with a misdemeanor conviction “may not pose any threat to *Napulou*'s rehabilitation or to public safety.”²⁶⁴ Thus, an offender no-association condition barring all contact with misdemeanants is overbroad, unduly burdening *Napulou*'s freedom of association.²⁶⁵

While no-association conditions barring contact with other parolees, convicted criminals, and/or convicted felons are almost always upheld, *Napulou* provides the framework for a potentially successful challenge. Such restrictions significantly burden supervisees' First Amendment freedom of association. Yet, such restrictions are far from precise. As the Second Circuit Court noted in *Albanese*, a parolee, a convicted criminal, and/or a convicted felon may have broken the law in the past, but may be entirely law abiding currently. In this way, such a restriction has virtually no nexus to the rehabilitative goal of parole. Instead, categorical offender no-association conditions rest on blanket presumptions about the homogeneity and unchanging criminality of former offenders, the nature of inter-offender relationships, and assumed results of anti-social relationships.

VI. CONCLUSION

For many parolees, readjusting to a world from which they were plucked, sometimes for a number of years, makes succeeding on the outside exceedingly difficult. As a former offender, I

of post-incarceration supervision were less likely to take on the role of a helper or wounded-healer).

²⁶⁰ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) (recognizing the right to associate for the purposes of engaging in activities protected by under the First Amendment); *see also* U.S. Const. amend I, XIV.

²⁶¹ *See text supra* note 19.

²⁶² *See United States v. Napulou*, 593 F.3d 1041, 1045 (9th Cir. 2010).

²⁶³ *Id.* (citing *United States v. Furukawa*, 596 F.2d 921, 922-23 (9th Cir.1979) (quoting *United States v. Albanese*, 554 F.2d 543, 546 (2d Cir.1977))).

²⁶⁴ *Id.*

²⁶⁵ *See id.*

understand the struggles of those who have suffered a period of incarceration. Since my own release, I have made efforts to help those citizens recently returning from a period of incarceration. Unfortunately, offender no-association conditions have made those efforts difficult, and in some cases, impossible.

Perhaps recognizing the flaws inherent in categorical offender no-association conditions, several jurisdictions have chosen to enforce far more tailored standard parole conditions that target anti-social, inter-offender associations. In those jurisdictions, prohibited associates include only “those actively engaged in criminal activity.”²⁶⁶

By altering standard offender no-association conditions in this way, jurisdictions avoid ‘othering’ former offenders, honor individualized evidence-based practices, acknowledge the existence of pro-social inter-offender relationships, and accurately employ social learning theory. Moreover, by prohibiting parolees from associating with those who are ‘actively engaged in criminal activity,’ jurisdictions stop infantilizing former offenders and genuinely prioritize rehabilitation, at last creating a nexus between ‘criminally involved’ no-association conditions and the twin goals of parole. Such an approach genuinely promotes criminal desistance and saves no-association conditions from possible constitutional infirmity.

²⁶⁶ See *infra* Appendix (Florida, Kansas, North Dakota, and Texas all restrict parolees from associating with those “actively engaged in criminal activity”).

APPENDIX:

OFFENDER NO-ASSOCIATION RESTRICTIONS BY JURISDICTION

Federal: Convicted Felons²⁶⁷Alabama: Convicted Criminals²⁶⁸Alaska: Convicted Felons²⁶⁹Arizona: Other Supervisees²⁷⁰

²⁶⁷ The federal criminal justice system abolished federal parole for offenders sentenced before November 1, 1987. For offenders sentenced after that date, the only form of post-release supervision is “supervised release.” See UNITED STATES COURTS, FEDERAL COURTS, PROBATION AND PRETRIAL SERVICES, COMMONLY USED TERMS (Apr. 22, 2015),

<https://web.archive.org/web/20150422073310/http://www.uscourts.gov:80/FederalCourts/ProbationPretrialServices/CommonlyUsedTerms.aspx> [<https://perma.cc/793H-QZ3V>] (defining supervised release as “a term of supervision served after a person is released from prison. The court imposes supervised release during sentencing in addition to the sentence of imprisonment. Unlike parole, supervised release does not replace a portion of the sentence of imprisonment but is in addition to the time spent in prison. U.S. probation officers supervise persons on supervised release.”). The mandatory conditions of federal supervised release are statutory and do not include a required association condition. See 18 U.S.C. § 3583(d) (2018) (making no mention of a mandatory association condition but stating “the court may order, as a further condition of supervised release . . . any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate”); 18 U.S.C. § 3563 (b)(6) (2018) (“The court may provide, as further conditions of a sentence of probation . . . that the defendant . . . refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons.”). Yet, the United States Sentencing Guidelines lists several “standard conditions” recommended as additional conditions of supervised release. U.S. SENTENCING COMM’N, FEDERAL OFFENDERS SENTENCED TO SUPERVISED RELEASE 10 (2010) (“To implement fully the statutorily required conditions of supervised release and provide useful guidance on reasonable discretionary conditions of supervision that will facilitate an offender’s successful reentry, the *Guidelines Manual* [United States Sentencing Guidelines] sets forth required and suggested conditions of supervised release.”), http://www.ussc.gov/Research/Research_Publications/Supervised_Release/20100722_Supervised_Release.pdf. The Sentencing Guidelines lists an association condition as a “standard condition” of supervised release. U.S. SENTENCING GUIDELINES MANUAL, § 5D1.3(c)(8) (U.S. SENTENCING COMM’N) (approved Sep. 21, 2018) (listing, as a standard condition of federal supervised release, “the defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer”).

²⁶⁸ ALA. CODE, § 15-22-29 (b)(4) (1975) (“The Board of Pardons and Paroles shall adopt general rules with regard to conditions of parole and their violation and may make special rules to govern particular cases. Such rules, both general and special, shall include, among other things, a requirement that . . . [h]e shall abandon evil associates and ways”). In a follow-up email, a representative clarified the meaning of the condition, explaining, “evil associates” is construed as “convicted criminals.”

²⁶⁹ ALASKA STAT. ANN. § 33.16.150 (a)(10) (2018) (“As a condition of parole, a prisoner released on special medical, discretionary, or mandatory parole . . . may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee”).

²⁷⁰ ARIZ. DEP’T OF CORR., CONDITIONS OF SUPERVISION AND RELEASE (“I will not knowingly associate with any person engaged in criminal activity, codefendants, or anyone under the jurisdiction of ADC [Arizona Department of Corrections] or Probation or in the custody of any law enforcement agency without prior authorization or permission from my Supervising Officer.”) (on file with the author). See also ARIZ. REV. STAT. ANN. § 31-411 (E) (2018) (“The board may also impose any conditions of parole it deems appropriate in order to ensure that the best interests of the

Arkansas: Convicted Felons²⁷¹

California: Discretionary²⁷²

Colorado: Convicted Criminals²⁷³

Connecticut: Gang Members²⁷⁴

Delaware: Discretionary²⁷⁵

prisoner and the citizens of this state are served.”); ARIZ. REV. STAT. ANN. § 31-411.01 (D) (2018) (“The board of executive clemency may revoke the prisoner’s release if the prisoner violates the conditions of supervision that are imposed by the board or the state department of corrections.”).

²⁷¹ ARK. PAROLE BD., POLICY MANUAL, ARKANSAS BOARD OF PAROLE CONDITIONS OF RELEASE at 25 (2015) (“You must not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate. (Association with convicted felons at work, in counseling programs, in church, or in other locations and circumstances specifically approved by the Parole Board or your supervising officer is not prohibited”). *See also* ARK. CODE ANN. § 16-93-712 (a)(1) (2018) (“The Parole Board shall establish written policies and procedures governing the supervision of parolees designed to enhance public safety and to assist the parolees in reintegrating into society.”); ARK. PAROLE BD., POLICY MANUAL, SUPERVISION OF PAROLEES 16 (2015) (“Every parolee, while on release, shall be subject to the orders of the Board. Failure to abide by any of the conditions as instructed may result in revocation of his/her conditional release.”). ARK. PAROLE BD., POLICY MANUAL, ARKANSAS BOARD OF PAROLE CONDITIONS OF RELEASE at 25 (“You must not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate. (Association with convicted felons at work, in counseling programs, in church, or in other locations and circumstances specifically approved by the Parole Board or your supervising officer is not prohibited)”) (Amended Dec. 3, 2015); *also available at*: <http://www.sos.arkansas.gov/rulesRegs/Arkansas%20Register/2010/Oct10Reg/158.00.10-001.pdf>.

²⁷² STATE OF CAL., DEP’T OF CORR. AND REHAB., NOTICE AND CONDITIONS OF PAROLE 3 (makes no mention of a standard association condition but provides a blank area in which authorities can list the special conditions of parole). *See also* STATE OF CAL., DEP’T OF CORR. AND REHAB., DIV. OF ADULT PAROLE OPERATIONS, SPECIAL CONDITIONS OF PAROLE, 2-3 (listing several possible special conditions that prohibit parolees from having contact with sex offenders, co-defendants, or a “member or associate of a prison gang, disruptive group, or street gang.” The Special Conditions of Parole Addendum also contains several blank boxes that allow the supervising agent to add unlisted special conditions.)

²⁷³ COLO. CRIM. JUST. REFORM COALITION, GETTING ON AFTER GETTING OUT – A REENTRY GUIDE FOR COLORADO, UNDERSTANDING PAROLE at 49 (“You may not associate with anyone with a criminal record without the permission of your parole officer.”). *See also* COLO. REV. STAT. ANN. § 17-22.5-404 (1) (a) (2018) (“The risk of reoffense shall be the central consideration by the state board of parole in making decisions related to the timing and conditions of release on parole or revocation of parole”). *See also* COLO. DEP’T. OF CORR., PAROLE IN COLORADO, https://web.archive.org/web/20130529204156/http://www.state.co.us/gov_dir/correct.html (“common conditions of parole are that an offender must maintain a certain residence, and attend certain treatment programs. If an offender violates condition of parole, the supervising parole officer may bring the offender in front of the parole board, and the board may revoke the offender’s parole, sending him/her back to prison”).

²⁷⁴ STATE OF CONN. BD. OF PARDONS AND PAROLES, STATEMENT OF UNDERSTANDING AND AGREEMENT, CONDITIONS OF PAROLE, CONDITION at12 (“Gang Affiliation. You will not associate or affiliate with any street gang, criminal organization or any individual members thereof”). *See also* STATE OF CONN. BD. OF PARDONS AND PAROLES, STATEMENT OF UNDERSTANDING AND AGREEMENT, CONDITIONS OF PAROLE, ADDITIONAL CONDITIONS (“You also must abide by the following individual conditions”). *See also* STATE OF CONN., CONN. DEP’T OF CORR., CONNECTICUT BOARD OF PARDONS AND PAROLES STANDARD CONDITIONS OF PAROLE, NUMBER 11, <http://www.ct.gov/doc/lib/doc/pdf/paroleconditions.pdf> (listing standard parole restrictions which include, “I will not at any time have contact or affiliation with any street gangs or with any members thereof.”)

²⁷⁵ DEL. DEP’T OF CORR., BUREAU OF COMMUNITY CUSTODY & SUPERVISION, OFFICE OF PROBATION AND PAROLE, CONDITIONS OF SUPERVISION (Makes no mention of a standard association restriction but lists as Condition 20

District of Columbia: Convicted Criminals²⁷⁶

Florida: Individuals Actively Engaged in Criminal Activity and Gang Members²⁷⁷

Georgia: Discretionary²⁷⁸

Hawaii: Convicted Criminals²⁷⁹

Idaho: Convicted Criminals²⁸⁰

“The Board of Parole may, at any time, add special conditions to an offender’s release.”) Delaware now terms its post-release community supervision “probation.” The conditions of supervision are the same for parolees and probationers in Delaware. *See also* DEL. CODE ANN. tit. 11, § 4347(g) (Outlines rules of parole stating, “Every person while on parole shall remain in the legal custody of the Department but shall be subject to the orders of the Board of Parole.”). *See also* STATE OF DEL. BD. OF PAROLE, RULES OF THE DELAWARE BOARD OF PAROLE 20, <http://boardofparole.delaware.gov/rules.shtml> [<https://perma.cc/4V6H-AAU6>]. (“CONDITIONS OF SUPERVISION: The Board of Parole may, at any time, add special conditions to an offender’s release. Generally, special conditions relate to the offender’s offense pattern and the possibility of further serious law violations. The offender, through the supervising officer, may present his/her views to the Board with respect to these special conditions. Likewise, the offender, through the supervising officer, or the supervising officer may request that special conditions be amended”).

²⁷⁶ *Parole: General Conditions of Release*, COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA (2014) (on file with the author); (“You shall not associate with persons who have a criminal record without the permission of your Supervision Officer.”).

²⁷⁷ FLA. ADMIN. CODE r. 23-23.010(5)(a)(5) (2017) (“The standard conditions of conditional release shall be the following . . . [y]ou shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.”); *see also id.* r. 23-21.0165(1)(e) (“The following are the Standard Conditions of Parole . . . Condition 5 -- I shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.”); *see also* FLA. STAT. ANN. § 947.18 (West 2008) (“The commission shall determine the terms upon which such person shall be granted parole . . . If the person’s conviction was for a crime that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, one of the conditions must be that the person be prohibited from knowingly associating with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.”); *see also id.* § 947.20 (effective July 1, 1997) (“The commission shall adopt general rules on the terms and conditions of parole and what shall constitute the violation thereof and may make special rules to govern particular cases. Such rules, both general and special, may include . . . that the parolee shall not associate with persons engaged in criminal activity.”).

²⁷⁸ State Bd. of Pardons and Paroles, *Parole Conditions* GEORGIA.GOV, <https://pap.georgia.gov/parole-conditions> [<https://perma.cc/3EWP-K26T>] (making no mention of an association restriction in standard parole conditions but states, “the Board may impose special conditions appropriate to the individual’s case, such as drug or alcohol treatment, mental health counseling, prohibitions on travel or associations, bans on driving, or compliance with electronic monitoring procedures.”).

²⁷⁹ HAW. PAROLING AUTH., THE PAROLE HANDBOOK 19 (1991) (“You [a parolee] shall not, without prior approval of your parole officer, associate or be in the company of any person convicted of a criminal act, including anyone under the active supervision of the Hawaii Paroling Authority.”).

²⁸⁰ IDAHO ADMIN. CODE r. 50.01.01.250.04(a)-(b) (2018) (making no mention of a standard association restriction, but authorizing the imposition of special conditions.). *See also* E-mail from Admin. Assistant, Idaho Comm’n of Pardons and Parole, to author (on file with author) (stating, “As I explained to you on the telephone, among the special conditions of parole, we may list the following: The parolee will not associate with known felons (unless specifically allowed by the Commission or supervising personnel); persons involved with illegal activity, or other person as identified by supervising personnel. Additionally, if they have known gang affiliations, the Commission may choose to impose a condition such as: While on parole, have no gang affiliations.”). *See also id.* (claiming that in their tenure with the Idaho Commission of Pardons and Parole, they have never seen a release agreement without an association condition prohibiting

Illinois: Other Supervisees²⁸¹

Indiana: Inmates and Discretionary²⁸²

Iowa: Convicted Criminals²⁸³

Kansas: People Engaged in Criminal Activity, Inmates, and Discretionary²⁸⁴

Kentucky: Convicted Felons²⁸⁵

contact with felons and persons involved with illegal activity despite such conditions being labeled special.). *See also* IDAHO ADMIN. CODE r. 50.01.01.250.03(a)-04(b) (2018), (making no mention of an association restriction in general conditions of parole but stating, “In addition to general rules of parole, the Commission may add special conditions appropriate to the individual case . . . [t]he Commission delegates the authority to the executive director to add special conditions, before an offender has been released to parole or while on parole, after the offender has signed a statement acknowledging the special conditions.”).

²⁸¹ 730 ILL. COMP. STAT. 5/3-3-7 (a)(13) (2018) (“The conditions of every parole and mandatory supervised release are that the subject . . . not knowingly associate with other persons on parole or mandatory supervised release without prior written permission of his or her parole agent . . . and not associate with persons who are members of an organized gang as that term is defined in the Illinois Streetgang Terrorism Omnibus Prevention Act.”). *See also* ILL. ADMIN. CODE tit. 20, § 1610.80 (2018) (“Persons released under any form of supervision, mandatory release, mandatory supervised release, statutory parole or parole, are subject to rules of conduct prescribed by the Board and any special conditions deemed appropriate by the Board in individual cases.”).

²⁸² IND. DEP’T OF CORR., CONDITIONAL PAROLE RELEASE AGREEMENT (2017), <https://forms.in.gov/download.aspx?id=11273> (“Visiting jails, city lock-ups, or state or federal correctional facilities is permitted only after first obtaining written permission of the parolee’s supervising officer and of the chief administrative officer of the jail, city lock-up, or state or federal correctional facility to be visited. Such visits shall be limited to visiting those who are blood relatives or spouses, unless the supervising officer determines otherwise on a showing by me of a compelling reason.”) *See also* 220 IND. ADMIN. CODE 1.1-3-6 (2018) (“Visiting jails, city lock-ups, or state or federal correctional facilities is permitted only after first obtaining written permission of the parolee’s supervising officer and of the chief administrative officer of the jail, city lock-up, or state or federal correctional facility to be visited. Such visits shall be limited to visting [*sic*] those who are blood relatives or spouses, unless the supervising officer determines otherwise on a showing by the parolee of a compelling reason.”); *id.* 1.1-2-4 (“[T]he board may attach special conditions to the standard parole release agreement, compliance with which shall be a condition to remaining on parole. Such conditions shall be made a part of all allied records of each offender involved and shall be entered on the parole release agreement.”).

²⁸³ Telephone Interview with Iowa Parole Officers (on file with author) (refusing to provide their names or forward a copy of the standard parole restrictions provided to a parolee while stating that the standard parole agreement states, “I shall not associate with any person known to have a criminal record or known to be engaged in criminal activity.”). *See also* IOWA ADMIN. CODE, r. 205-10.3(906) (2018) (“A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay following the board’s issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the department of corrections, or the district department.”).

²⁸⁴ KAN. STAT. ANN. §§ 22-3717(m)-(v) (2018) (Making no mention of an association restriction as part of the standard parole conditions.). *See also* KAN. DEP’T OF CORR., DIV. OF CMTY. AND FIELD SERVICES, SUPERVISION HANDBOOK 8 (2008) (“I will: [n]ot associate with persons actively engaged in illegal activity” and “[o]btain written permission from the parole officer and institutional administrator to visit or correspond with inmates of any correctional institution . . . You are not allowed to associate with anyone participating in illegal activity. You are responsible for knowing and keeping yourself away from these types of situations. You must obtain written permission from your parole officer and Warden/Director of any county jail, state, federal or private correctional institution before visiting or writing to any inmate of these institutions.”); *id.* at 12 (“Special conditions can be imposed by the courts, the parole board, or by your parole officer. From time to time, special conditions are also imposed based upon your case needs.”).

Louisiana: Convicted Felons²⁸⁶

Maine: Discretionary²⁸⁷

Maryland: Discretionary²⁸⁸

Massachusetts: Convicted Criminals²⁸⁹

Michigan: Convicted Felons²⁹⁰

²⁸⁵ KY. PAROLE BD., POLICIES AND PROCEDURES, (2015) (“The parolee shall . . . [n]ot associate with a convicted felon except for a legitimate purpose, including family, residential, occupational, or treatment . . . [n]ot visit with an inmate of a penal institution without permission of his Parole Officer.”).

²⁸⁶ La. Dep’t of Corr., *Supervision Conditions*, LOUISIANA.GOV, <http://doc.louisiana.gov/supervision-conditions> [<https://perma.cc/C7GB-J6MK>] (“I will not engage in any criminal activity, nor will I associate with people who are known to be involved in criminal activity. I will avoid bars and casinos. I will refrain from the illegal use of drugs or alcohol.”).

²⁸⁷ Me. Dep’t of Corr., *Adult Community Corrections*, MAINE.GOV, <https://www.maine.gov/corrections/adult/index.htm> [<https://perma.cc/H827-JVTN>], (making no mention of a standard association restriction, but stating, “Probation is a court-ordered term of community supervision with specified conditions for a determinant period of time that cannot exceed the maximum sentence for the offense. It is imposed on an adjudicated offender who is placed under supervision in lieu of or subsequent to incarceration, with a requirement to comply with certain standards of conduct. The probationer is required to abide by all conditions ordered by the court.”).

²⁸⁸ MD. CODE REGS. 12.08.01.21(D)-(E) (2018) (containing no mention of a standard association restriction, but stating, “In addition to the general conditions, the Commission, in its discretion, may impose such special conditions as it deems appropriate to the individual.”). *See also* MD. PAROLE COMM’N, FISCAL YEAR 2007 ANNUAL REPORT 16 (2007) (containing no mention of a standard or special association condition, but stating, “Report as directed and follow your Parole Agent’s instructions.”).

²⁸⁹ MASS. PAROLE BD., 2009 ANNUAL STATISTICAL REPORT 10 (2009) (“Parole officers are responsible for assuring that parolees remain in compliance with the conditions of parole and with any special conditions imposed by the Parole Board. These conditions are designed to structure the parolee’s return to the community and to assure the protection of the public. Conditions of parole include maintaining employment and avoiding contact with people known to have criminal records.”). 120 MASS. CODE REGS. 359.01(IV) (2006) (“I will not associate with persons I know to have a criminal record, or who are known to be engaged in a violation of law. This prohibition does not apply where such association is INCIDENTAL to my place of residence or employment, or connected with activities of a bonafide political or social organization. However, the parole board retains authority to impose limits to these latter activities as a special condition of parole where such association is inconsistent with my approved parole plan.”).

²⁹⁰ Mich. Dep’t of Corr., *Parole Supervision*, STATE OF MICH., http://www.michigan.gov/corrections/0,4551,7-119-1435_1474---,00.html [<https://perma.cc/KK3C-8PM6>] (“Parolees must meet certain conditions to maintain their parole status. There are general conditions of parole which require the parolee to report regularly to the parole agent, prohibit travel out of state without the agent’s permission, require the parolee to maintain employment, to obey the law, to submit to drug and alcohol testing at the agent’s request, and to reside at an approved residence. The parolee must also avoid any unauthorized association with known criminals and cannot possess firearms.”). *See also* “Standard Parole Condition for Association,” which states “You must not have verbal, written, electronic, or physical contact with anyone you know to have a felony record without permission of the field agent. You must not have verbal, written, electronic, or physical contact with anyone you know to be engaged in any behavior that constitutes a violation of any criminal law of any unit of government” (email on file with author). *See also* MICH. ADMIN. CODE r. 791.7730(4)-(5) (making no mention of a standard association restriction, but stating, “A paroled prisoner shall comply with the conditions of parole contained in the parole order and with all subsequent conditions approved by the chairperson of the parole board. A subsequent condition of parole imposed by a parole agent is valid immediately subject to approval by the chairperson of the parole board within 60 days of notice to the paroled prisoner of the condition. . . . Except where the parole term is set by statute, the period of time set by the parole order during which a prisoner remains on parole may be altered by the chairperson of the parole board, upon a recommendation of the parole agent, for good cause.”).

Minnesota: Discretionary²⁹¹

Mississippi: Convicted Felons²⁹²

Missouri: Convicted Criminals²⁹³

Montana: Other Supervisees²⁹⁴

Nebraska: Convicted Criminals²⁹⁵

Nevada: Convicted Criminals²⁹⁶

New Hampshire: Convicted Felons²⁹⁷

New Jersey: Discretionary²⁹⁸

²⁹¹ MINN. DEP'T OF CORR., REVIEW OF GUIDELINES FOR REVOCATION OF PAROLE AND SUPERVISED RELEASE 30 (2009) (making no mention of a standard association condition, but stating, "The offender will at all times follow the instructions of the agent/designee."). *See also* MINN. R. 2940.2000 (2004) (making no mention of a standard association restrictions). Yet, Minnesota Administrative Rules allow the imposition of Special Conditions of Release notably listing an association condition as 1 of 3 statutorily permissible Special Conditions. *See* MINN. R. 2940.2100(A) (2004) ("Special conditions of release mean any conditions on the release form other than the standard conditions, setting forth individual specified requirements to be followed by a releasee. These special conditions include . . . special conditions which set forth limits regarding contact with specified persons, travel from or to specified locations or areas, or increased contact with the supervising agent beyond that which is considered standard.").

²⁹² 29-201 MISS. ADMIN. CODE R. § 2.5(G) (2013) ("I will not knowingly associate with any former inmate of a penal institution, any person who has been convicted of a felony, or any person of bad reputation.").

²⁹³ MO. CODE REGS. tit. 14, § 80-3.010(5) (1983) (amended 2011) ("Association: I will not associate with any person who has been convicted of a felony or misdemeanor.' As a probationer or parolee reviews his/her past life and thinks about how s/he got involved in difficulty with the law, many times the probationer or parolee will have to admit that his/her association with some other person who previously had been in difficulty, played a role in his/her situation. This condition is to help probationers and parolees avoid this mistake in the future." *See* MO. CODE REGS. tit. 14, § 80-3.010(5) (2011) ("I will obtain advance permission from my probation and parole officer before I associate with any person convicted of a felony or misdemeanor, or with anyone currently under the supervision of the Board of Probation and Parole. It is my responsibility to know with whom I am associating.").

²⁹⁴ STATE OF MONT., DEP'T OF CORR., CONDITIONS OF PROBATION AND PAROLE 1 (2010) (allowing the Board of Pardons and Parole or the Sentencing Court to apply the following condition: "Association: I will not associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from a Probation/Parole Officer."). *See also* MONT. ADMIN. R. 20.25.702(3) (2012) (making no mention of a standard association restriction, but stating, "A hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special conditions imposed by the department must be approved by a hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender.").

²⁹⁵ NEB. REV. STAT. § 83-1,116(g) (1995) ("Refrain from associating with persons known to him or her to be engaged in criminal activities or, without permission of his or her district parole officer, with persons known to him or her to have been convicted of a crime.").

²⁹⁶ STATE OF NEV., DEP'T OF MOTOR VEHICLES AND PUB. SAFETY, PAROLE AGREEMENT 1 (1999) ("Associates: You shall not associate with individuals who have criminal records or other individuals as deemed inappropriate by the Division. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by your supervising officer and the correctional institution.").

²⁹⁷ N.H. CODE ADMIN. R. PAR 401.02(b)(10) (2017) ("The following conditions shall be imposed for all parolees . . . [n]ot associating with criminal companions or such other individuals as shall be ordered by the court or parole board."). *See also* N.H. CODE ADMIN. R. PAR 102.02 (2017) ("'Criminal companion' means any person with whom a parolee is associating, who has been convicted of a felony crime in the state of New Hampshire or any crime in any other jurisdiction which would have been a felony if it had been committed in New Hampshire.").

New Mexico: Other Supervisees²⁹⁹
 New York: Convicted Criminals³⁰⁰
 North Carolina: Convicted Criminals³⁰¹
 North Dakota: People Engaged in Criminal Activity, Convicted Felons, and Other Supervisees³⁰²
 Ohio: Discretionary³⁰³
 Oklahoma: Convicted Criminals³⁰⁴
 Oregon: Discretionary³⁰⁵

²⁹⁸ N.J. ADMIN. CODE § 10A:71–6.4(h) (making no mention of a standard association restriction, but stating, “Nothing in this section shall prohibit the Board members from imposing as a specific condition of parole that the parolee notify an employer or intended employer of his or her parole status and criminal record where good cause exists to impose such a specific condition.”); *see also* N.J. STATE PAROLE BD., *THE PAROLE BOOK* 18-19 (5TH ed. 2012) (making no mention of a standard parole association condition, but stating, “The Board panel can change your conditions at any time for good reason. The Board also has given the power to the District Parole Supervisors, Assistant District Parole Supervisors and designated representatives of the District Parole Supervisors to impose and discharge special conditions of parole.”).

²⁹⁹ N.M. Corr. Dep’t, *Probation and Parole Division*, N.M. CORRECTIONS DEP’T, <http://cd.nm.gov/ppd/ppd.html> [<https://perma.cc/8TYP-LQ6G>] (making no mention of a standard association restriction, but stating, “Association: I will not associate with any person identified by my Probation/Parole Officer as being detrimental to my Probation supervision, which may include persons having a criminal record, other probationers and parolees, and victims or witnesses of my crime or crimes.”).

³⁰⁰ Dep’t of Corr. and Cmty. Supervision, *New York State Parole Handbook*, OFFICIAL WEBSITE N.Y. STATE, http://www.doccs.ny.gov/Parole_Handbook.html#top [<https://perma.cc/KKG8-P54M>] (“I will not be in the company of, or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a Youthful Offender, except for accidental encounters in public places, work, school, or in any other instance with the permission of my Parole Officer.”).

³⁰¹ N.C. GEN. STAT. § 15A-1368.4(e)(1) (2017) (“[N]ot knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances. . . .”).

³⁰² N.D. PAROLE BD., *CONDITIONS OF PAROLE 1* (2010) (“I will not associate with individuals who use illegal controlled substances, engage in illegal activities, and are known felons. Any association with a known felon or someone under parole/probation supervision must be approved, in writing, by Parole and Probation Services Program Manager.”). *See also* N.D. DEP’T OF CORR. AND REHAB., *INMATE HANDBOOK* 64 (2013) (making no mention of a standard association restriction, but noting, “DOCR staff will transcribe the order of the Parole Board and the conditions of parole established by the Parole Board.”).

³⁰³ OHIO DEP’T OF REHAB. AND CORR., *CONDITIONS OF SUPERVISION 1* (2013) (“I agree to . . . any other special conditions imposed by the Parole Board, Court, or Interstate Compact.”). *See also* OHIO ADMIN. CODE 5120:1-1-12(B)(3) (2018) (making no mention of a standard parole association condition, but stating, “The releasee shall comply with all lawful orders given to the releasee by the department of rehabilitation and correction, its authorized agencies, or its representatives, which shall include any sanctions that may be imposed in response to violent behavior at any time during supervision.”).

³⁰⁴ PARDON AND PAROLE BOARD, *POLICY AND PROCEDURES MANUAL* 25 (2007) (“Unless the parole officer gives prior permission because of work or for other good reason, parolee may not associate with persons on parole or probation or persons with criminal convictions, or communicate with inmates of any penal institution, except for members of parolee’s immediate family.”).

³⁰⁵ OR. REV. STAT. § 144.102(2)(a) (2018) (“The board or the supervisory authority shall determine, and may at any time modify, the conditions of post-prison supervision, which may include, among other conditions, that the person shall: . . . [c]omply with the conditions of post-prison supervision as specified by the board or supervisory

Pennsylvania: Discretionary³⁰⁶
 Rhode Island: Other Supervisees³⁰⁷
 South Carolina: Convicted Criminals³⁰⁸
 South Dakota: Convicted Criminals³⁰⁹
 Tennessee: Discretionary³¹⁰
 Texas: Individuals Actively Engaged in Criminal Activity³¹¹

authority.”); OR.REV.STAT. § 144.270(2)(a)–(b) (2018) (“(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the person paroled must: (a) Accept the parole granted subject to all terms and conditions specified by the board[, and] (b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.”). *See also* STATE OF OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION, ORDER OF SUPERVISION CONDITIONS, GENERAL SUPERVISION CONDITIONS, https://www.oregon.gov/BOPPPS/docs/order_of_supervision_sample.pdf (Making no mention of a standard association condition, but stating as Condition 13 “Report as required and abide by the direction of supervising officer.” The Order of Supervision Conditions also provides for special conditions stating “Special conditions will be noted in numerical order following this paragraph. The special conditions may be several pages in length. The Board’s authority to impose special conditions of supervision if the person is required to report as a sex offender is found in OR.REV.STAT. § 144.102(3)(a) for post-prison supervision cases and OR. REV. STAT. § 144.270(3)(a) for parole cases.”). *See id.*, (Making no mention of a general association condition, but stating “Parole/Post-Prison Supervision is subject to all listed General Conditions and the designated Special Conditions.” Listing as Special Condition 11 “Offender shall have no contact direct or indirect with those listed below”).

³⁰⁶ PENNSYLVANIA BOARD OF PROBATION AND PAROLE, PAROLE HANDBOOK: YOUR GUIDE TO SUCCESS IN PRISON AND IN THE COMMUNITY, GENERAL CONDITIONS OF PAROLE, 27 (2011), <http://www.pbpp.pa.gov/Information/Documents/Publications/Final%20Parole%20Handbook%20NOVEMBER%202016.pdf> (Making no mention of a standard association condition, but noting “Must maintain regular contact with the parole agent by . . . [r]eporting regularly as instructed and following written instructions of agent.”). *See also id.* at 14 (“What are special conditions of parole? . . . [s]pecial conditions of parole are the rules you need to live by the entire time you are under parole supervision. These rules are not the same for every parolee. They are tailored specifically to you and your risks.”).

³⁰⁷ STATE OF RHODE ISLAND DEPARTMENT OF CORRECTIONS, PROBATION AND PAROLE FAQ, WHAT ARE THE CONDITIONS OF PROBATION AND PAROLE SUPERVISION?, <http://www.doc.ri.gov/probation/faq.php> [<https://perma.cc/YN9A-826H>] (“Parolees cannot socialize with other parolees unless special permission is granted by the Parole Board.”).

³⁰⁸ S.C. CODE ANN. § 24-21-430(2)(3) (2010) (“The probationer shall: . . . avoid persons or places of disreputable or harmful character”). *See also* POLICY AND PROCEDURE: SOUTH CAROLINA BOARD OF PAROLES AND PARDONS, 34 (2015) <https://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual+April+2015.pdf> (“I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.”).

³⁰⁹ S.D. CODIFIED LAWS § 24-15A-24 (“The board and the department may place reasonable restrictions upon a parolee which are designed to continue the parolee’s rehabilitation, including limited areas of residence or community access. . . .”). SOUTH DAKOTA DEPARTMENT OF CORRECTIONS, BOARD OF PARDONS AND PAROLES, COMMUNITY SUPERVISION AGREEMENT, CONDITION 7 (“I will avoid those companions with criminal influences and keep the hours specified by my parole agent.”) (on file with author).

³¹⁰ STATE OF TENNESSEE BOARD OF PROBATION AND PAROLE, DIVISION OF BOARD OPERATIONS, PAROLE CERTIFICATE (Making no mention of a standard association restriction but states at Condition (7) “I will allow my Probation/Parole Officer to visit my home, employment site, or elsewhere, and will carry out all lawful instructions he/she gives and report to my Probation/Parole Officer as instructed, and will carry out all lawful instructions of the Administrative Case Review Committee. . . .”) (on file with author).

³¹¹ TEXAS DEPARTMENT OF CRIMINAL JUSTICE – PAROLE DIVISION, CERTIFICATE OF PAROLE, GENERAL

Utah: Convicted Felons³¹²
 Vermont: Discretionary³¹³
 Virginia: Discretionary³¹⁴
 Washington: Discretionary³¹⁵
 West Virginia: Discretionary³¹⁶

CONDITIONS OF PAROLE RELEASE, CONDITION 6 (“I shall avoid persons or places of disreputable character.”). *See also* TEXAS CODE OF CRIM. PROC. ART. 42.12 § 11(a)(3) (“Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall . . . [a]void persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang .”) (on file with author). TEXAS BOARD OF PARDONS AND PAROLES/TEXAS DEPARTMENT OF CRIMINAL JUSTICE PAROLE DIVISION, PAROLE IN TEXAS: ANSWERS TO COMMON QUESTIONS 55 (2008), http://www.tdcj.state.tx.us/bpp/publications/PIT_2017_Eng.pdf [<https://perma.cc/QR27-JTFN>] (“Rules of release may include, but are not limited, to the following . . . [a]void persons or places of disreputable or harmful character.”).

³¹² STATE OF UTAH BOARD OF PROBATION AND PAROLE, INFORMATION FOR VICTIMS, APPENDIX B – PAROLE AGREEMENT, CONDITION 8, <https://bop.utah.gov/images/pdf/victims.pdf> [<https://perma.cc/B2M8-LW55>] (“Association: I will not knowingly associate with any person who is involved in criminal activity or who has been convicted of a felony, without approval from my parole agent.”).

³¹³ VERMONT DEPARTMENT OF CORRECTIONS, AGENCY OF HUMAN SERVICES, PAROLE BOARD MANUAL, 23 (2017), <http://www.doc.state.vt.us/about/parole-board/vermont-parole-board-manual> [<https://perma.cc/7FY2-JHSL>] (“Your Parole Officer may restrict your associates. You shall not associate with any child under the age of 16 without permission from your Parole Officer . . . You will not associate with any person identified as being detrimental to my supervision, which may include persons with a criminal record, others on supervision or victims or witnesses of your crime(s) as designated by your Parole Officer.”).

³¹⁴ VIRGINIA DEPARTMENT OF CORRECTIONS, CONDITIONS OF PROBATION/POST RELEASE SUPERVISION (2005) (Making no mention of a standard association condition, but stating “I will follow my Probation and parole Officer’s instructions and be truthful, cooperative.”). *See also* VIRGINIA PAROLE BOARD, POLICY MANUAL, PAROLE CASE SUPERVISION POLICIES AND PRACTICES, 17, <https://vpb.virginia.gov/files/1107/vpb-policy-manual.pdf> [<https://perma.cc/F52J-ZUNH>] (“Special Conditions: The board may also impose special conditions of parole relating to travel, program participation, specialized treatment, or other conditions as determined by the board, which may be removed by the parole officer when deemed appropriate, however the board may specify that certain conditions be removed only with prior approval of the board”).

³¹⁵ WASH. ADMIN. CODE 381-40-110(1) (Listing the 5 general conditions of parole, but making no mention of a standard association condition. Yet, stating that authorities may impose additional conditions.). *See* WASH. ADMIN. CODE 381-40-110(1)(c) (“Obey all laws and abide by any special conditions imposed by the indeterminate sentence review board or any written instructions issued by a community corrections officer of the department of corrections.”). Washington State Department of Corrections Policies explicitly note that Community Corrections Officers have the authority to impose an association restriction. *See also* WASHINGTON STATE DEPARTMENT OF CORRECTIONS POLICIES, DOC 390.600 DIRECTIVE (I)(A)(2)(a), <http://www.doc.wa.gov/information/policies/files/390600.pdf> [<https://perma.cc/MTZ9-AG79>] (“The Department may impose appropriate conditions during supervision for offenders that: . . . [a]re on community custody that committed their crime(s) on or after June 6, 1996. Conditions will include but will not be limited to . . . [p]rohibiting contact with other specified individuals or specific class of individuals”).

³¹⁶ WEST VIRGINIA DIVISION OF CORRECTIONS, STANDARD CONDITIONS OF PAROLE, <https://dcr.wv.gov/aboutus/parole-services/Pages/conditions-of-parole.aspx> [<https://perma.cc/448V-NUHT>] (last visited Oct. 2, 2018)(Listing standard conditions but making no mention of a standard association condition but noting that “[a]dditional special conditions can be placed on offenders at the Parole Officers discretions. These vary from Officer to Officer.”). *See* WEST VIRGINIA DIVISION OF CORRECTIONS, STANDARD CONDITIONS OF PAROLE, SPECIAL CONDITIONS available at: <http://www.wvdoc.com/wvdoc/ParoleServicesResources/StandardConditionsofParole/tabid/143/Default.aspx>.

Wisconsin: Discretionary³¹⁷
Wyoming: Convicted Felons³¹⁸

³¹⁷ STATE OF WISCONSIN, DEPT. OF CORRECTIONS, STANDARD RULES OF SUPERVISION, CONDITION 18, <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx> [<https://perma.cc/ACK8-ZE8J>] (last visited Oct. 2, 2018) (Making no mention of an association restriction, but stating as Condition 18 “Comply with any court ordered conditions and/or any additional rules established by your agent. The additional rules established by your agent may be modified at any time as appropriate.”). *See also* WIS. ADMIN. CODE DEP’T OF HEALTH AND HUM. SERVICES § 98.04(3)(a)–(n) (Listing standard conditions, but making no mention of a standard association condition. Yet, Wisconsin does allow a parole officer to impose special conditions “When supervision begins, an agent shall meet with a client to review or *develop* written rules and specific conditions of the client’s supervision, or both.”) (emphasis added).

³¹⁸ WYOMING BOARD OF PAROLE, GENERAL CONDITIONS, CONDITION 6 (“Not associate with or have contact with felons or individuals determined to pose a negative influence by a Parole Agent, except as approved by a Parole Agent.”). *Available at*: <http://static.nicic.gov/Library/010665.pdf>.