



Conditions Workgroup Report Out

Montana CJOC

May 2024

About the Crime & Justice Institute

- CJI bridges the gap between research and practice with data-driven solutions that drive bold, transformative improvements in adult and youth justice systems
- CJI provides non-partisan analysis, research, technical assistance, program evaluation, and training to jurisdictions throughout the country



The CJJ Team



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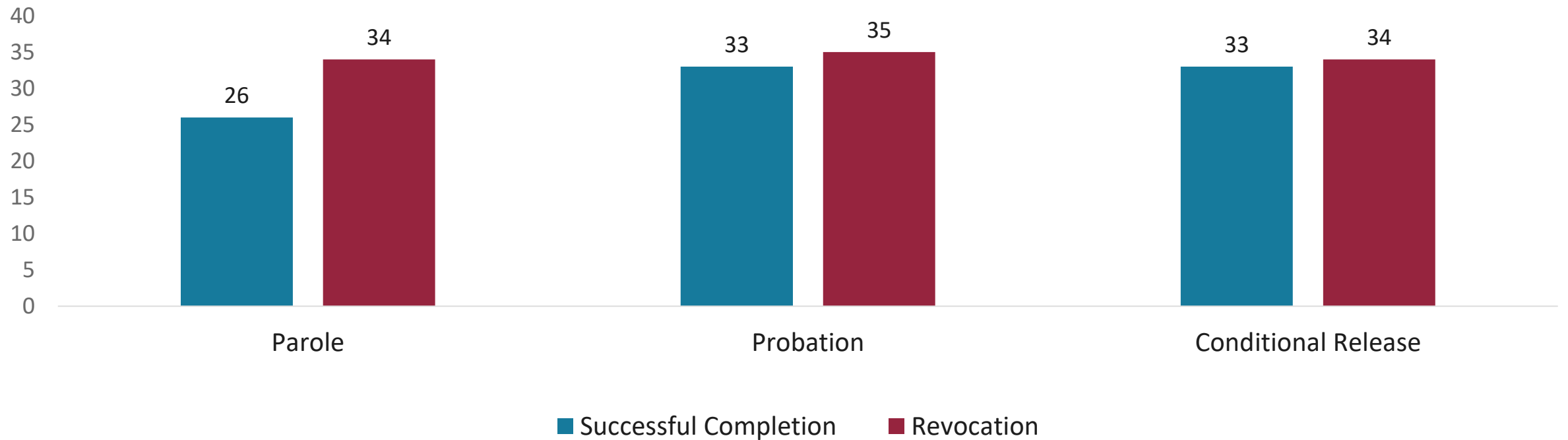
Presentation Overview

- Context for Conditions Workgroup
 - MT Conditions Data
 - Summary of Listening Sessions
- Who makes up the workgroup?
- Workgroup goal
- Process
- Feedback from Conditions Workgroup
 - Standard conditions
 - Specialized conditions
 - Conditions modification process

Conditions Data and Listening Sessions

Nearly 30% Increase in Median Number of Conditions for those Revoked from 2012 to 2019

Number of Total Supervision Conditions by Supervision and Termination Type, 2019



Research on Evidence-based Conditions

Studies show that ordering too many conditions, especially those not linked to public safety, can negatively impact an individual's ability to maintain compliance and achieve success on supervision.



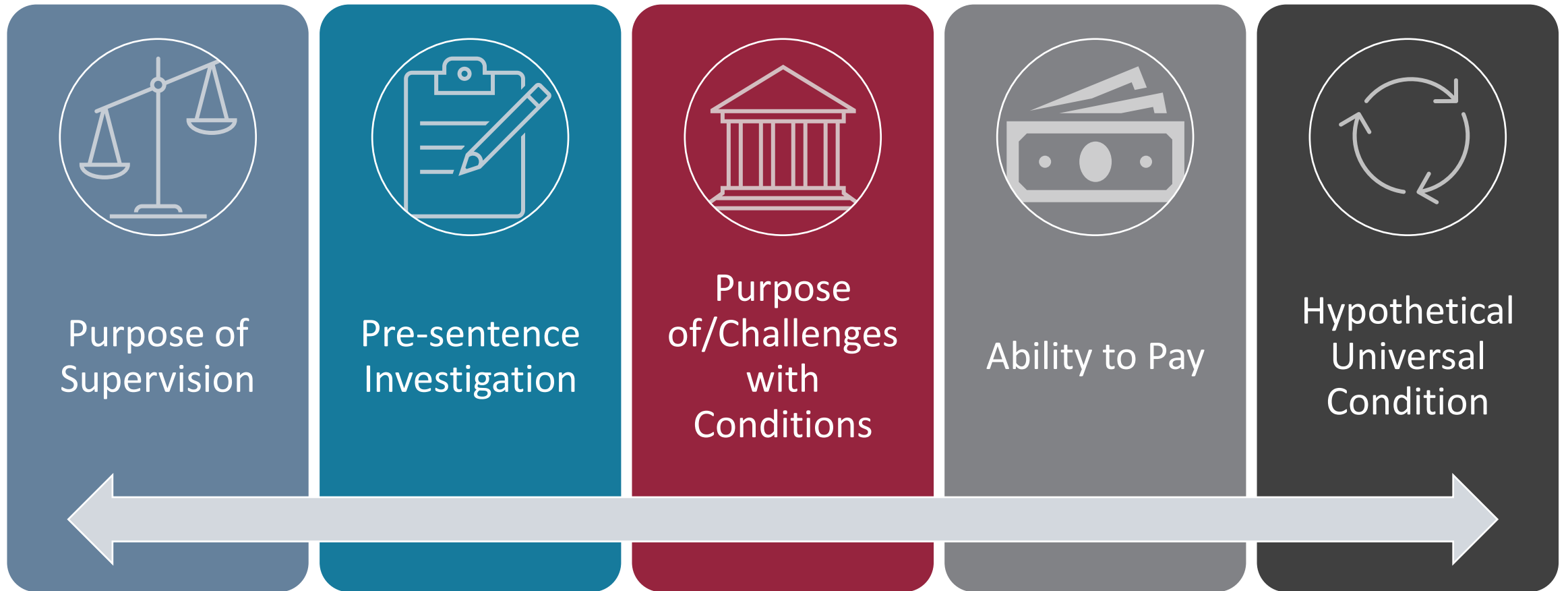
DOC Revocations Implementation Support

- Presented Revocations Analysis findings and recommendations to DOC staff and stakeholders
- Met with DOC leadership to prioritize recommendations for implementation; created an implementation plan
 - To support a Conditions Workgroup, developed a Conditions Survey and Staff/Stakeholder Listening Sessions

Conditions Listening Sessions Inform Workgroup Planning

- Sought to learn more about the condition-setting processes from DOC staff and court practitioners
- CJI traveled to 7 P&P offices across the state
- Observed sign-up process for individuals placed on probation
- Held virtual meetings with Judges, Defense Attorneys, and County Attorneys

Listening Session Question Categories



Listening Session Takeaways: Purpose of Conditions

Public Defenders

- Conditions are used to support the rehabilitation and reintegration of individuals into society

County Attorneys

- Conditions hold supervisees accountable for their actions
- Public Safety

Judges

- Deterrence to criminal behavior
- Accountability



Workgroup Members

Workgroup Members

Judges

Hon. Luke Berger

Hon. Peter Ohman

Hon. Kaydee Snipes Ruiz

Hon. Katherine Bidegaray

County Attorneys

Scott Twito

Ingrid Rosenquist

Public Defenders

Hailey Forcella

Eldena Bear Don't Walk

Parole

Michael Buckley

Joe McElroy

Citizens Advisory Council

Bryan German

John Lytle

DOC

Sue Podruzny

Jim Anderson

Shaun Pisk

Lynn Bierwagen

Bruce Barstad

Katie Weston

Katherine Janus

Sean Goeddel

John Schaffer



Workgroup Goals

Conditions Workgroup Areas of Focus

Goal of Conditions Workgroup: Identify conditions and practices within the condition-setting process that advance public safety and individual rehabilitation; address and recommend improvements to the condition-setting practices creating obstacles for supervisees and practitioners.

Objectives:

1. Align the PSI writing and condition-setting process with “nexus” requirements
2. Check ARM Standard Conditions against statutory basis/other legal or behavior-change justifications
3. Clarify whether standard, statutory, and specialized conditions are furthering rehabilitation or serve as punishment?



Workgroup Process

Workgroup Process

Meetings

- The workgroup met in person and virtually

Conditions Review

- Every standard and specialized condition reviewed individually and as a whole

Consensus

- Achieved through collaborative discussion and noting areas of disagreement

Conditions Reviewed



Standard ARM Conditions

Which conditions further public safety or rehabilitation in every single case?



Specialized Conditions

Which conditions are most appropriate in light of individualized circumstances?



Statutory Conditions

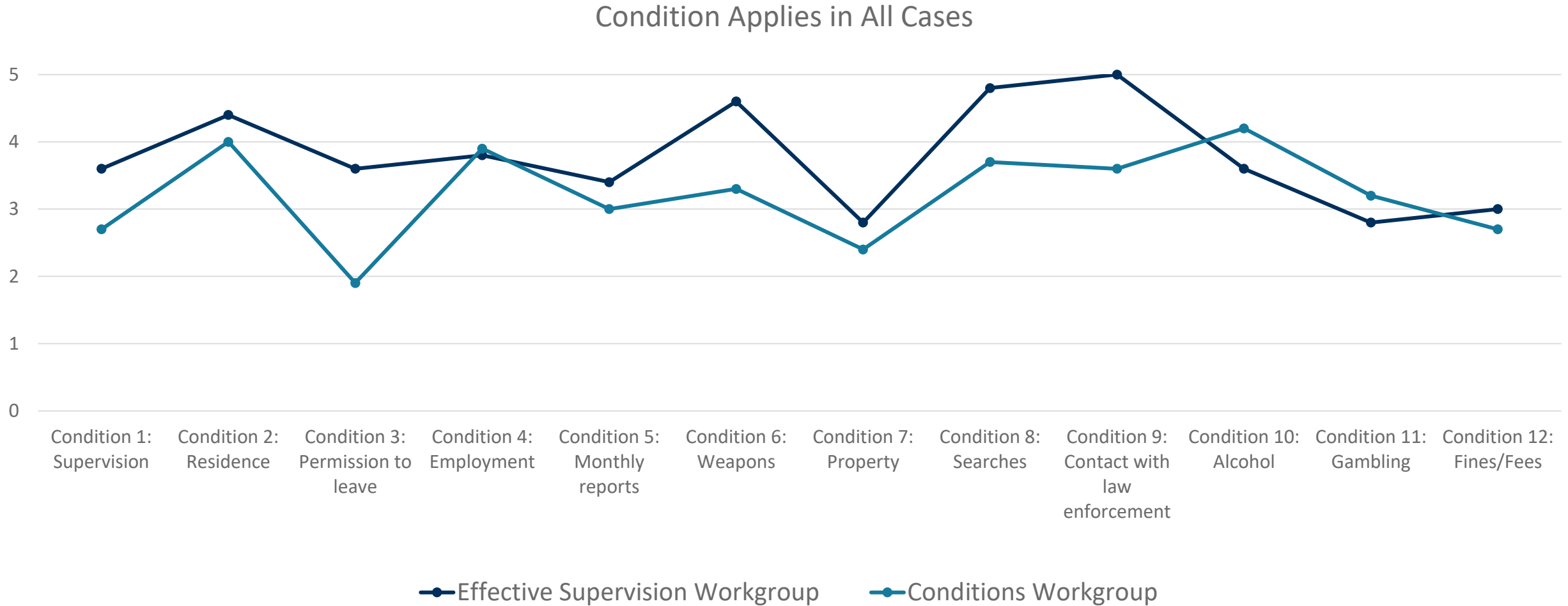
No immediate changes; still under discussion.

Feedback from Conditions Workgroup



Standard ARM Conditions: Suggested Changes

Feedback on Standard ARM Conditions' Applicability Across all Cases



Proposed Reduction in Number of Standard Conditions

Workgroup proposed revisions to Standard Conditions by:

- Striking some ARM conditions entirely or moving to Specialized
- Editing language
- Combining conditions that have a similar purpose
- Highlights from meetings
 - All Standard conditions are imposed almost all the time
 - There is often not a strong nexus analysis and rather judges adopt what PSI writers propose
 - The litmus test for whether to keep a condition in Standard ARM conditions list was “Does this condition apply in almost every case?”

Proposed Revisions to Standard Conditions

Revised Language for Condition 3:

Before

(3)

The offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.



After

(3)

The offender must obtain permission when leaving the state of Montana; otherwise follow the travel permit policy

Proposed Revisions to Standard Conditions

Combined Conditions 4 & 9:

Before

(4)

The offender must seek and maintain employment or maintain a program approved by the Board of Pardons & Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status of probation, parole or other community supervision.

(9)

The offender must comply with all municipal, county, state and federal laws and ordinances and shall conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation or parole officer and with any law enforcement agency.



After

(4 & 9)

The supervisee must update his/her officer when there is a change in employment (or alternative approved programming) or notify that there has been any contact with law enforcement within 72 hours of the updated information.

Proposed Revisions to Standard Conditions

Revised Language for Condition 5:

Before

(5)

*Unless otherwise directed, the offender must submit **written monthly reports** to his/her supervising officer on forms provided by the probation and parole bureau. The offender must personally contact his/her supervising officer or designee when directed by the officer.*



After

(5)

The offender must personally contact his/her supervising officer or designee when directed by the officer.

Proposed Revisions to Standard Conditions

Moved Standard Conditions 7, 10 & 11 to Specialized:

(7)

The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real estate or personal property, purchasing an automobile or incurring a debt.

(10)

The offender is prohibited from using or possessing alcoholic beverages and all intoxicants or mind altering chemicals. The offender is required to submit to bodily fluid testing for intoxicants or mind altering chemicals on a random or routine basis and without reasonable suspicion.

(11)

The offender is prohibited from gambling.

*Moved to
Specialized*

Proposed Revisions to Standard Conditions

(1) The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole, including any sanctions.

(2) The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

(3) The offender must obtain permission when leaving the state of Montana; otherwise follow the travel permit policy.

(5) The offender must personally contact his/her supervising officer or designee when directed by the officer.

(6) The offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

(8) Upon reasonable suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

(*) The supervisee must update his/her officer when there is a change in employment (or alternative approved programming), or there has been any contact with law enforcement within 72 hours of the updated information.

Keep Standards

Combined Conditions

4,9

Specialized Conditions: Suggested Changes

Specialized Condition Observations

Workgroup Takeaways:



Focus on nexus



Rehabilitation conditions
included in MIIG



Enforcement
challenges



Reconsideration of
financial conditions

Moving Conditions from Standard to Specialized

(7)

Financial Transaction
Permission

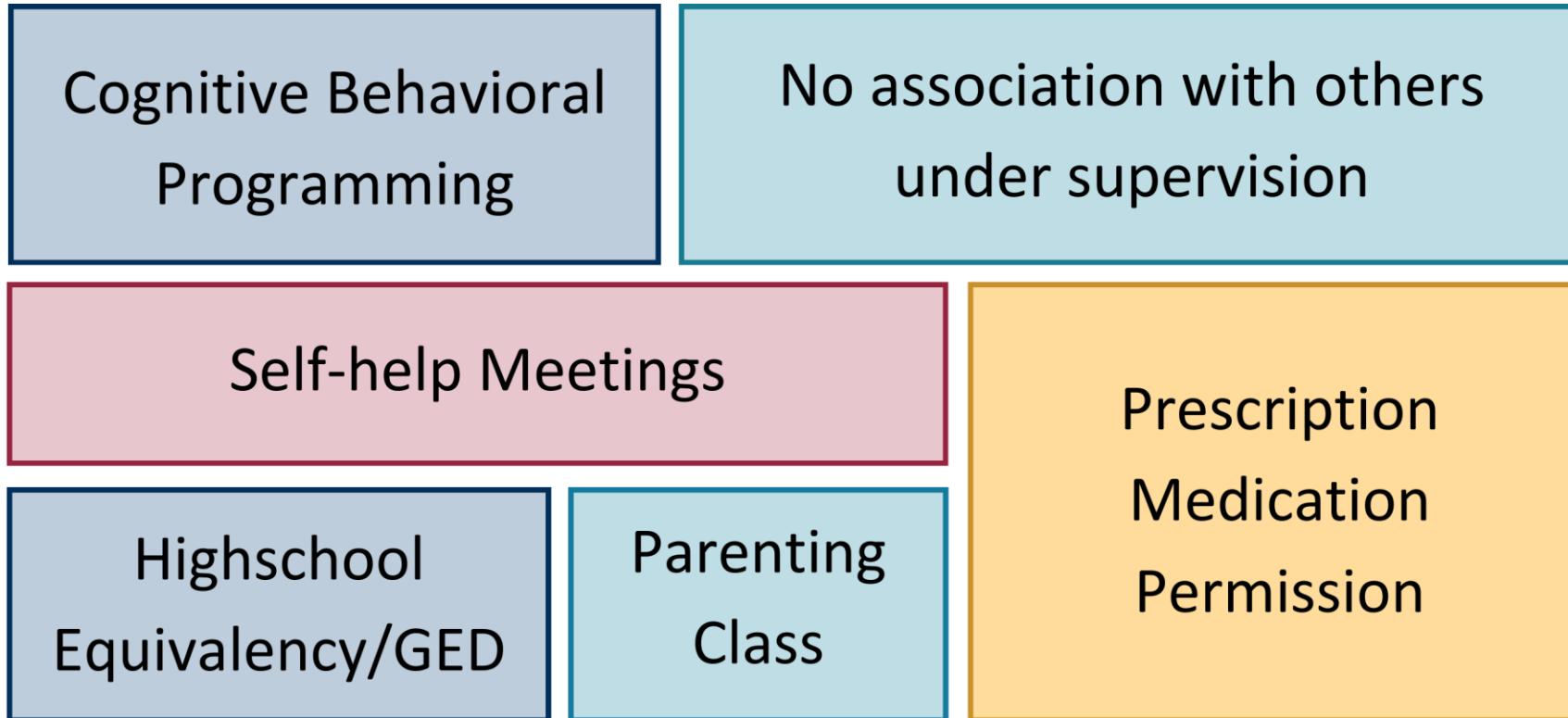
(10)

Substance Use

(11)

Gambling

Specialized Conditions as Case Management Responses



Enforceability of Association Condition

- “The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.”

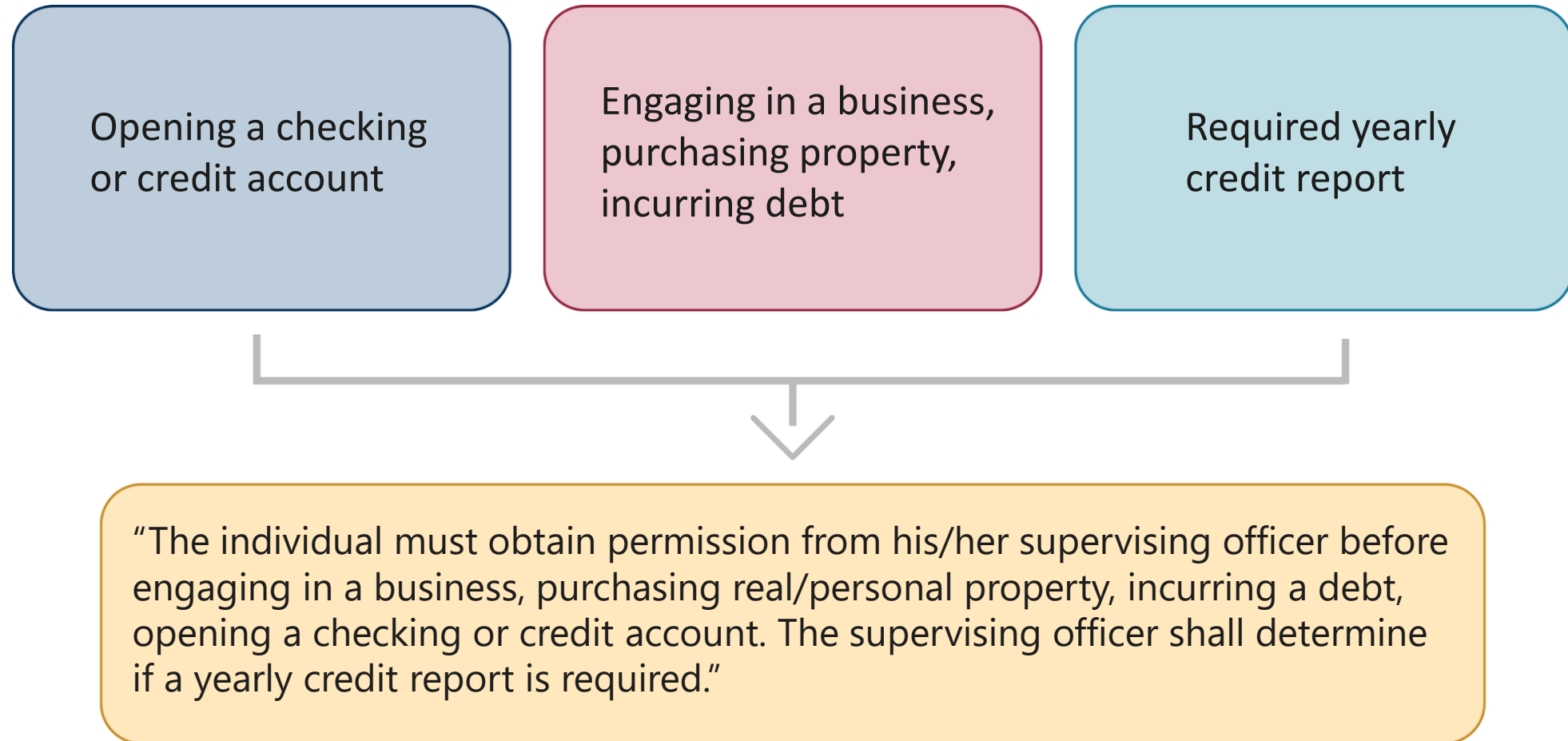
Recommendation: Where this condition is imposed, P&P should identify specific people the individual should not associate with and this should be more easily modifiable

Adjustment to “No Bars” Condition

“The Defendant shall not enter any bars.”

Recommendation: Language should be changed to “The Defendant shall not enter **businesses where the primary item for sale is alcohol, except when there are approved employment opportunities.**”

Revised Specialized Financial Condition



Conditions with Financial Obligation

- Fines and Fees
 - Monthly supervision fees (\$10 - \$30 per month)
 - Misdemeanor (\$15) and felony (\$20 or 10% of the fine) surcharges
 - Victim and witness advocate programs surcharge (\$50)
 - Court IT fee (\$10)
 - Public defender fees if pled (\$250 for misdemeanors, \$800 for felonies)
 - PSI fee (\$50)
 - Court-ordered restitution (plus 10% administrative fee)
 - Costs of legal fees and expenses plus costs of jury service, prosecution, and pretrial, probation, or community service (or \$100 per felony case or \$50 per misdemeanor)
 - DUI fine between \$5,000 and \$10,000 (if applicable)

Conditions with a Financial Obligation (cont'd)

- Bodily fluid testing / drug and alcohol testing
- Sexual or violent offender registration
- Counseling assessment focusing on violent and controlling behavior (if applicable)
- Chemical dependency and/or mental health evaluations
- State-approved high school equivalency assessment
- 24/7 Sobriety and Drug Monitoring Program
- Restorative justice program
- Psychosexual evaluation
- HIV testing
- Satellite-based monitoring
- Cost of imprisonment, probation, and/or alcohol treatment

Workgroup Feedback on Financial Conditions

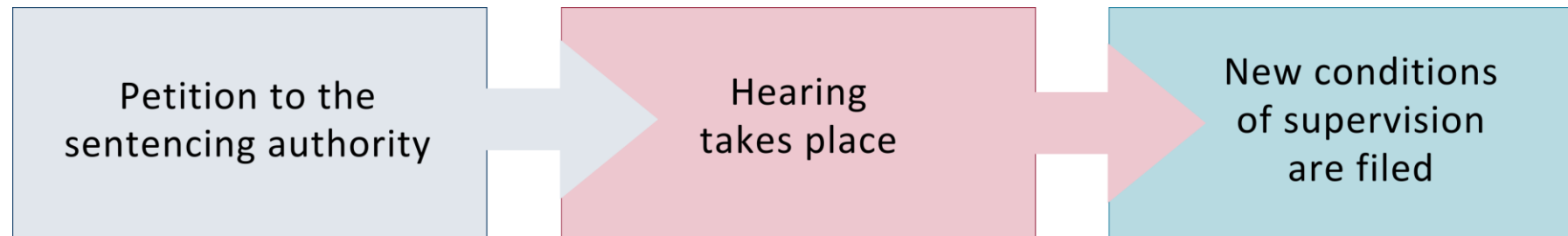
- Requiring supervisee payments of mental health evaluations is arduous
 - **Recommendation:** strike requirement to pay from condition
- P&P could work with OPD to get more information on the individual's financial situation related to "indigency" application
- Focus on "good faith efforts" made towards payments
- Discussed possibility of converting outstanding fines/fees to civil matter where other supervision requirements have been met
- All mandated programs have costs that can be prohibitive, especially when travelling to get to programming

Conditions Modification

Easing the process for adjusting conditions throughout supervision

Existing Conditions Modification Process

- Authorized under MCA 46-23-1011
 - (5) (c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.
 - (5) (d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of [46-18-203](#).



- **Issue:** Modifications are relatively **rare** and often involve only **adding** conditions, not adjusting them where a condition is no longer relevant or necessary

Potential Solutions

- Make the condition modification process faster, without requiring a court hearing in every instance
- Allow for streamlined notice to the court, with the opportunity for the court to ask for the parties to respond where the court takes issue with modification
- Allow for better adjustment to conditions where particular therapeutic programs are not available based on geographic area/resource allocations

Where is there guidance for courts setting rehabilitation-related conditions?

Basis for Rehabilitation-related Conditions

- MCA 46-18-201(4)(p)
- MCA 46-18-202 (g)
- ARM 20.25.702 (3): parole board imposing conditions

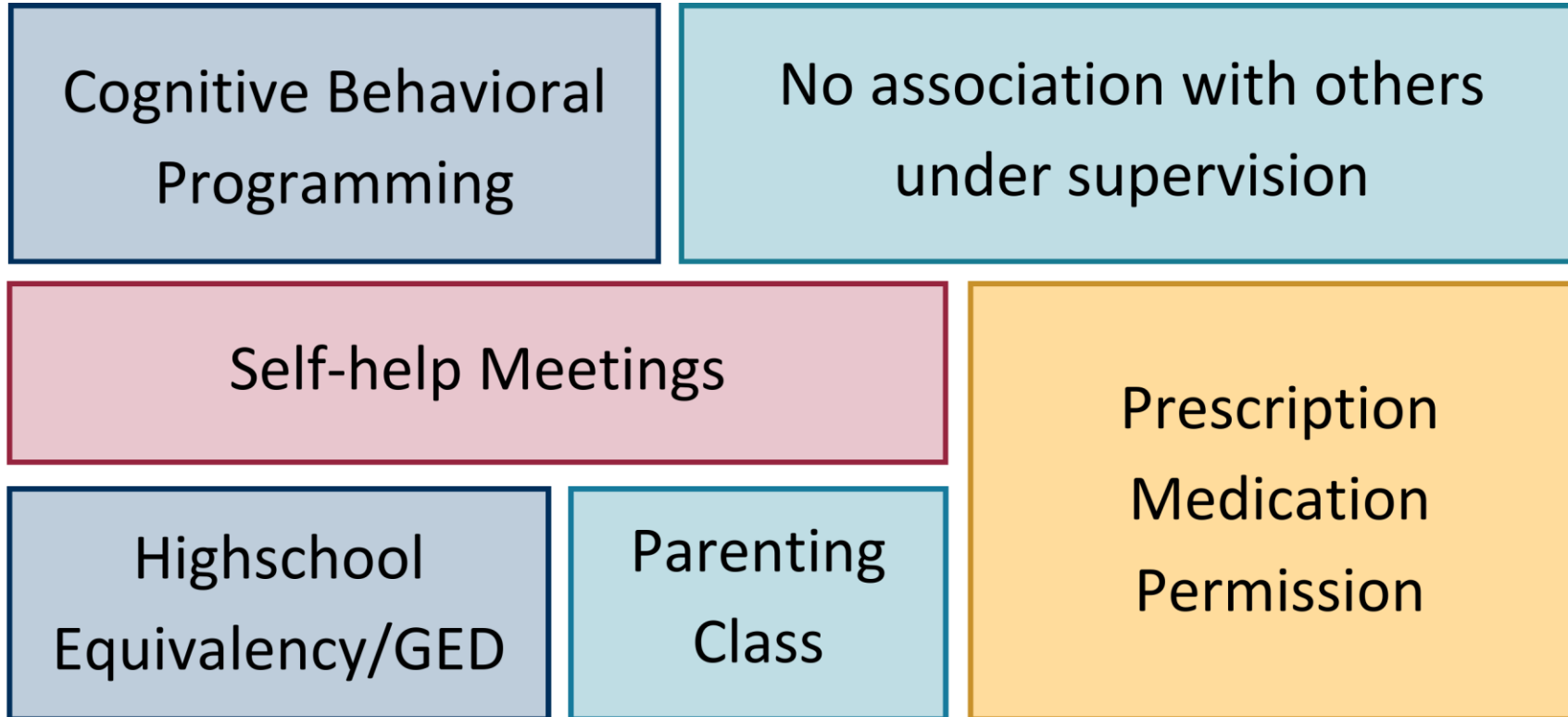
Statutory Basis for Rehabilitation-related Conditions

- 46-18-201(4)(p): (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:
 - (p) any other **reasonable restrictions or conditions considered necessary for rehabilitation** or for the protection of the victim or society

Additional Statutory Basis for Rehabilitative Conditions

- **46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in [46-18-201](#) that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:
 - (g) any other limitation **reasonably related to the objectives of rehabilitation** and the protection of the victim and society.

Proposed Conditions Subject to Officer Modification



Conditions Modification Recommendations

- Possible solution: Legislative language
 - “For conditions of a rehabilitative nature imposed under 46-18-201(4)(p) or 46-18-202 (1)(g), the sentencing judge shall empower the supervising officer from the department of corrections to adjust those conditions, subject to the approval of their supervisor, during the supervision period. The officer must give 14 days notice of their intent to make an adjustment of conditions to the sentencing court before making said adjustment.”
- **Mechanism:** Request to Modify Conditions form serves as notice to the court

Next Steps

- Conditions workgroup will continue meeting to confirm some specifics and address any questions that come from CJOC presentation
- Potential collaboration between workgroup and CJOC if there is interest in:
 - Reviewing Standard ARM condition edits
 - Addressing conditions modification process
- Condition-setting as part of the broader PSI process
 - Working with CJOC to potential brainstorm legislative changes
 - Working with DOC and local stakeholders on administrative changes

Questions?

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Thank you!

