

A Brief Memo on Probation Conditions

By Roger K. Warren

The basic mission of probation is to improve public safety through effective supervision of those offenders whose crimes and criminal histories do not warrant a sentence of imprisonment. Probation agencies seek to accomplish that mission by monitoring offender behavior and enforcing conditions of probation that encourage pro-social offender behaviors while limiting opportunities for offenders to engage in further anti-social behaviors.

Many different types of conditions of probation are commonly imposed today in the state courts. Some of them are essential to the basic mission of probation. Others are tangential to the basic mission of probation but serve other legitimate criminal justice purposes. Essential conditions of probation include those that require the offender to obey the laws, provide for the proper “monitoring” of the offender, and the “treatment” and “control” conditions that target the offender’s specific dynamic risk factors (“criminogenic needs”) for the purposes, respectively, of either behavioral change or behavioral control.¹

Examples of common “monitoring” conditions include: report to the probation officer as directed; comply with the instructions and directives of your probation officer; notify the probation officer of your current address and immediately upon any change of address; participate in automated, electronic, GPS, or other monitoring program; do not leave the state or jurisdiction without the express permission of your probation officer; and, notify the probation officer immediately if you are arrested or convicted of any offense, or receive any summons to appear in any court.

Common “treatment “ conditions include: cooperate with a risk or clinical assessment as directed by your probation officer; successfully complete a treatment, education, vocational, employment, counseling or other human services program as directed by your probation officer.

Common “control” conditions include: do not associate with specified persons or groups of persons; requirements of home confinement during specified hours or for specified periods of time; mandated participation in intensive supervision, day reporting, night reporting, work release or a residential treatment program.

¹ At least five (5) other types of probation conditions are commonly imposed in the state courts to achieve other legitimate criminal justice purposes, but objectives that are tangential to the basic mission of probation supervision: 1. conditions imposing court-ordered sanctions based either upon the original offense(s) or subsequent violation(s). Such sanctions include, for example, fines, community service, incarceration, work release, and day or night reporting centers; 2. conditions to protect the safety of the victim(s), including, for example, that the defendant is not to contact the victim, or is ordered to remain a certain distance away from the victim, or from the victim’s residence or place of employment; 3. conditions to achieve victim (or community) restitution or restoration, including, for example, restitution payments, participation in victim-offender reconciliation programs, and community service; 4. conditions regarding payment of court-ordered, statutorily mandated, or program-assessed fees, including for probation supervision, program participation, jail costs, crime lab costs, automation, and peace officer training; and, 5. conditions serving other law enforcement purposes such as requiring that the defendant submit to search and/or seizure with or without a warrant at any time of day or night upon demand of any probation or peace officer. Some common probation conditions may fall into more than one of these categories.

These three types of essential conditions of probation constitute the legal framework that guides the probation agency in developing an appropriate supervision strategy or offender case management plan. Successful offender supervision requires that the court and probation agency “speak with one voice” regarding their expectations of the offender. It is also important that “treatment” and “control” conditions target the specific dynamic risk factors of the individual offender. Probation conditions that do not address the offender’s specific risk factors (and do not directly serve any other legitimate criminal justice objective) are not likely to be effective in reducing the risk of the offender’s re-offense, distract the offender’s attention from compliance with properly targeted conditions, and impose unnecessary enforcement burdens on the probation agency.

Furthermore, it is critical not only that the “treatment” and “control” conditions of probation accurately target the offender’s individual dynamic risk factors, but also that those conditions be realistically enforceable—both from the point of view of the offender and from the point of view of the probation officer. From the offender’s point of view, there are typically numerous dynamic risk factors and most offenders do not realistically have the immediate ability or motivation to simultaneously comply with numerous treatment conditions targeting multiple risk factors. In individual instances some of the risk factors are invariably more important than others, or must be addressed earlier than others, in reducing the risk of re-offense.² The offender and supervising agency must therefore be able to focus their attention and efforts on conditions that are of the highest priority and to shift their focus and priorities as changing circumstances warrant.

From the probation officer’s perspective, probation agencies rarely have sufficient resources to properly enforce a multitude of probation conditions. The probation officer should not be burdened with the expectation of enforcing conditions that are not essential to the offender’s successful completion of probation. Nor should the offender be led to expect that applicable conditions of probation will not be enforced. Again, the agency must be able to focus its enforcement efforts on conditions that are most critical to the probationer’s successful completion of probation.

In order to achieve these objectives, maintain the desired judicial involvement in setting the overall terms and conditions of probation, and avoid the necessity of voluminous requests for judicial modification of court-ordered probation conditions, the better practice in court imposition of “treatment” and many common “control” conditions of probation may be for the court to impose the conditions subject to the discretion and direction of the probation officer. This practice would provide the supervising agency with the flexibility to conduct periodic offender risk re-assessments, respond to changed circumstances, focus its treatment, control, and enforcement efforts on those conditions the agency assesses to be of highest priority, and provide offenders with fair notice of its expectations and enforcement priorities.

² In addition to “risk factors,” the research on risk reduction has identified specific offender “responsivity factors” that are not statistically associated with the likelihood of re-offense, but constitute offender needs or characteristics that often must be addressed before significant risk factors can be successfully addressed. Such “responsivity factors” include, for example, mental illness, illiteracy, and homelessness.