

AN EVIDENCE-BASED APPROACH TO PROMOTING & ENFORCING COMPLIANCE WITH CONDITIONS OF PROBATION SUPERVISION

March 2017

1. What are the overall goals of effective probation supervision?

Some conditions of probation are established to achieve the accountability objectives of sentencing, e.g. with regard to the offense committed or restitution for a victim. Other conditions are prescribed in order to achieve the forward-looking sentencing objectives of effectively managing and reducing the risk of re-offense. With respect to the latter conditions, the short-term goal is to promote and enforce compliance with the terms and conditions of probation while the long-term goal is to reduce risk both during and beyond the current term of probation.

2. What works to promote compliance with the terms and conditions of probation?

Many violations, especially those committed by higher risk offenders, reflect long-standing, chronic, anti-social behaviors. Research indicates that the most effective supervision strategies to promote compliance and reduce risk recognize that fact. These strategies consist of a balanced approach combining a “social worker” orientation (seeking to promote compliance through use of incentives, rewards, motivation enhancement consistent with the offender’s current readiness to change, and skill-building exercises) with a “law enforcement” orientation (emphasizing accountability through the use of swift and certain sanctions in responding to violations). Research demonstrates that this balanced approach is more effective in reducing revocation and recidivism than either the “social worker” or “law enforcement” orientation alone.¹

Research also shows that to be most effective in changing offender behavior, the criminal justice system must not only sanction undesirable behaviors, but also reinforce positive or desirable behaviors. Carrots and sticks are much more effective than sticks alone. To effect behavioral change, experts recommend using at least as many rewards (to reinforce prosocial behaviors) as sanctions (in response to violations).²

Center for Sentencing Initiatives



The Center for Sentencing Initiatives (CSI) promotes sentencing practices that protect the public and reduce recidivism.

CSI is a project of the National Center for State Courts.

Visit CSI online at www.ncsc.org/csi.



3. What works in sanctioning violations?

Research indicates that the use of sanctions in responding to a violation is effective in deterring future violations when the sanction is swift, i.e., imposed promptly after the violation occurs, is viewed by the offender as certain to be imposed upon a violation in the future, and is considered fair, i.e., reasonably proportionate to the severity of the violation.³

4. What are administrative sanctions?

Administrative sanctions refer to sanctions imposed administratively by the supervising agency rather than by the court. In most jurisdictions lower-level violations (e.g., missed appointments, failed drug tests) are addressed administratively, while the highest-level violations (e.g., abscond, new arrest) are returned to court where sanctions may include incarceration or even revocation. To increase swiftness and certainty in the application of sanctions in response to the most serious technical violations not constituting a new crime, at least a dozen states now authorize probation agencies to impose sanctions up to and including short periods of incarceration (typically 2-10 days) administratively (i.e., without requiring a court hearing).⁴ Research studies indicate that imposing jail in response to technical violations increases the likelihood of later revocation, re-arrest, and reconviction.⁵ As a result, the use of incarceration as an administrative sanction is now typically capped at 2, 3, 5, 7, 10 or at most 30 days depending on the state involved and the seriousness of the violation. In most states, the administrative sanctions process consists of written notice of the violation and proposed sanction, and waiver forms through which the probationer can waive right to counsel and judicial hearing and accept the proposed sanction. If the probationer denies the violation, rejects the proposed sanction, or declines to sign the waiver of rights, the matter is referred to court for judicial hearing in accord with the state's standard violation of probation process.⁶

5. Is the availability of risk and needs assessment (RNA) information helpful in responding to violations?

Yes, RNA information can be especially helpful in responding to violations. The availability of RNA information is helpful in identifying the individual's specific risk factors that may have contributed to the violation. That allows the supervising agency to craft a sanction and/or treatment response that targets those specific risk factors. In response to a failure to obtain or maintain employment, for example, if employment was terminated for drug use and drug use was a previously identified risk factor, increased testing might be an appropriate response. Alternatively, if employment was terminated because the probationer couldn't get along with co-workers or was rude to customers and anti-social attitudes was a previously identified risk factor, an educational class or cognitive behavioral program like Thinking for a Change (T4C) might be a more appropriate response. The RNA information may also be helpful in determining whether more intensive supervision or controls might be warranted.

6. How do probation agencies ensure that the system of rewards and sanctions is administered with consistency, transparency, and fairness?

Probation agencies using evidence-based supervision practices have adopted administration policies and guidelines that set forth the ranges of specific responses (both rewards and sanctions) that are appropriate for each type of offender behavior, depending on the behavior involved, the offender's risk level and criminogenic needs, and the violation/compliance history. In addition, agencies have established a continuum of available rewards, services, controls, and sanctions. Increasingly, the appropriate response for each of the wide variety of compliant and non-compliant behaviors, depending on risk level and the risk factors involved, is set forth in comprehensive but easy to read grids. The policies, guidelines and/or grids are distributed to each probationer at the initial probation orientation and reviewed again with the probationer as appropriate during the probation term. These types of policies and practices contribute to the probationer's perception of a process that is procedurally fair i.e., that involves an impartial and trustworthy hearing officer, provides the probationer a full opportunity to participate, and treats the probationer with respect. Research shows that such practices increase the perception of a fair and legitimate system and thereby enhance individuals' willingness to follow system requirements.⁷

7. What are the specific factors that should be considered in determining an appropriate response to a violation in an individual case?

Typically, at least six factors should be considered in determining an appropriate response to a probation violation:

1. the nature and seriousness of the violation;
2. the probationer's criminal history;
3. the probationer's violation/compliance history;
4. the probationer's current assessed level of risk and responsivity factors (in particular, the probationer's level of motivation to change);⁸
5. the relationship of the violation to critical risk factors; and
6. the relationship of the violation to short-term and long-term supervision objectives.

The first three factors are more traditional backward-looking factors; the last three factors (risk and motivation levels, and the relationship of the violation to critical risk factors and supervision objectives) are more contemporary evidence-based considerations designed to facilitate more effective risk-reduction responses. High risk levels suggest stricter controls and more intensive interventions; motivation levels indicate the desirability of motivation enhancement therapies. The relationship of the violation to critical risk factors is discussed in #5 above. If the violation relates to a long-term supervision objective, the appropriate response may be quite different than where the same violation relates to a short-term supervision objective. The appropriate response to a positive drug test result for a probationer addicted to drugs and where abstinence is a long-term objective, for example, is quite different than the appropriate response to the same positive drug test result for the recreational user, where

abstinence is a short-term objective. Although substance abuse is a risk factor, a positive test result is a violation, and abstinence is a supervision objective in both instances, for the recreational user swift and certain sanctions are called for (e.g. HOPE) because the probationer can control his use and abstinence is a short-term objective. But for the addict who cannot control his short-term use sanctions are counter-productive. For this offender, abstinence is a long-term objective and maintaining the probationer in treatment is the critical short-term objective.

8. When is revocation an appropriate response to a violation?

Probation revocation is not therapeutic. Although short periods of incarceration may under some circumstances be an appropriate response to serious technical violations, as noted above, imposition of longer periods of incarceration tends to increase recidivism rates and is counter-productive. Lengthy incarceration interrupts the behavioral change process. Commission of multiple supervision violations is common in supervision and treatment addressing the chronic behaviors of medium and high risk offenders. As a result, several states now impose statutory limits on the length of incarceration that may be imposed by the court in response to technical violations.⁹

Thus, from a public safety and recidivism reduction perspective, in the absence of the commission of a significant new offense, lengthy incarceration or permanent revocation of probation is not an appropriate response unless (1) formal responses to a series of multiple technical violations have proven unsuccessful in gaining compliance or (2) a comprehensive judicial re-assessment of risk in light of all available information clearly concludes that the probationer can no longer be safely and effectively supervised in the community.

*This brief was prepared by CSI staff: Pamela Casey, Jennifer Elek, and Roger Warren.
Questions and comments should be directed to Jennifer Elek at jelek@ncsc.org.*

ENDNOTES

- 1 Manchak, S. M., Kennealy, P. J., & Skeem, J. L. (2014). Officer-offender relationship quality matters: Supervision process as evidence-based practice. *Perspectives*, 38, 56-70. Retrieved from <http://risk-resilience.berkeley.edu/publications-and-journals/perspectives-journal-american-probation-and-parole-association>. Paparozzi, M. A., & Gendreau, P. (2005). An intensive supervision program that worked: Service delivery, professional orientation, and organizational supportiveness. *The Prison Journal*, 85, 445-466. doi: 10.1177/0032885505281529.
- 2 See p. 14, American Probation and Parole Association, National Center for State Courts, & The Pew Charitable Trusts. (2013). *Effective responses to offender behavior: Lessons learned for probation and parole supervision*. Lexington, KY: American Probation and Parole Association. Retrieved from http://cdm16501.contentdm.oclc.org/cdm/ref/collection/criminal/id/239#img_view_container. Woodahl, E. J., Garland, B., Culhane, S. E., & McCarty, W. P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. *Criminal Justice and Behavior*, 38, 386-405. doi: 10.1177/0093854810397866. Abstract available from <http://cjb.sagepub.com/content/38/4/386.abstract>.

ENDNOTES cont.

- 3** See American Probation and Parole Association, National Center for State Courts, & The Pew Charitable Trusts (2013) at note 2, pp. 4-9. In addition, two evaluations of Hawaii's HOPE program (one in a Specialized Probation Unit and one in a General Probation Unit) found that short periods of incarceration, i.e. typically a few days, imposed promptly in response to technical violations committed by high risk drug offenders resulted in improvements on various outcome measures. The General Probation Unit study, for example, found significant statistical differences between the HOPE probationers and a probation as usual comparison group on measures of positive drug tests (13% v 46%), missed appointments (9% v. 23%), new arrests (21% v. 47%), and revocations (7% v. 15%). Hawken, A., & Kleiman, M. (2009). Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE (NCJRS Document No. 229023). Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>. A recent large-scale evaluation of the HOPE program (Lattimore, et al., 2016) did not find the same positive outcomes; however, critics of the evaluation argue that HOPE was implemented as a sanctions only program and failed to incorporate the original HOPE program's reliance on evidence-based probation practices which are critical to achieving successful outcomes. See Lattimore, P. K., Dawes, D., Tueller, S., MacKenzie, D. L., Zajac, G., & Arsenault, E. (2016, September). Summary findings from the national evaluation of the Honest Opportunity Probation with Enforcement demonstration field experiment: The HOPE DFE Evaluation. University Park, PA: The Justice Center for Research, Pennsylvania State University. Retrieved from <http://justicecenter.psu.edu/research/projects/files/HOPE%20DFE%20Findings%20Summary%202016%2009%2007.pdf>. Also see, Alm, S. S. (2016). HOPE Probation: Fair sanctions, evidence-based principles, and therapeutic alliances. *Criminology & Public Policy*, 15 (4), 1-20. doi:10.1111/1745-9133.12261.
- 4** Typical non-incarcerative sanctions imposed administratively in response to serious violations not constituting a new crime include electronic monitoring, curfew, home detention, community/day reporting center, and work crew. See, e.g., Tool 5--Graduated Responses and Sanctions, Utah Sentencing Commission, Adult Sentencing & Release Guidelines, p.38 (2016) (available at, <https://justice.utah.gov/Sentencing/Guidelines/Adult/2016%20Adult%20Sentencing%20Guidelines.pdf>).
- 5** Rengifo, A. F., & Scott-Hayward, C. S. (2008, June). Assessing the effectiveness of intermediate sanctions in Multnomah County, OR. New York: Vera Institute of Justice. Retrieved from http://archive.vera.org/sites/default/files/resources/downloads/Final_Multnomah_Report.pdf. See also, Drake, E. K., & Aos, S. (2012, July). Confinement for technical violation of community supervision: Is there an effect on felony recidivism? Olympia, WA: Washington State Institute for Public Policy. Retrieved from http://www.wsipp.wa.gov/ReportFile/1106/Wsipp_Confinement-for-Technical-Violations-of-Community-Supervision-Is-There-an-Effect-on-Felony-Recidivism_Full-Report.pdf.
- 6** See, National Center for State Courts. (2012). Administrative Responses to Probation Violations: Due Process and Separation of Powers Issues. Williamsburg, VA: Author. Retrieved from <http://www.ncsc.org/~media/Microsites/Files/CSI/Education/admin%20sanctions%20legal%20memo%2012-18.ashx>. Most probationers facing a short term of incarceration as an administrative sanction waive any hearing, admit the violation, and accept the proposed sanction as a fair response. Close to 95% of probationers in Multnomah County (Portland), Oregon, for example, waive their right to a judicial hearing and accept the sanction (S. Taylor, Director, Department of Community Justice, personal communication, November 15, 2016).
- 7** See, for example, Taxman, F. S., Soule, D., & Gelb, A. (1999). Graduated sanctions: Stepping into accountable systems and offenders. *Prison Journal*, 79, 182-204. doi: 10.1177/0032885599079002004. Tyler, T. R., & Huo, Y. J. (2002). Trust in the law: Encouraging public cooperation with the police and the courts. New York: Russell Sage Foundation.
- 8** Responsivity factors are the individual characteristics of the probationer that may affect the efficacy of treatment interventions. In addition to the probationer's level of motivation to change, responsivity factors may include information such as the offender's cognitive abilities, learning style, mental health status, and gender that would inform decisions about the appropriateness of specific treatment programs.
- 9** Recent legislation in Maryland and Utah, for example, limits judicial use of incarceration in response to technical violations to 15, 30, and 45 days, respectively, for the first, second, and third violation, while, even more recently, Alaska limited the maximum sentences to 3, 5, and 10 days respectively. Only upon the fourth or subsequent violation is revocation to prison to serve the balance of the suspended sentence permitted. See, Maryland SB 1005 (2016) Section 6-223 (available at, <http://mgaleg.maryland.gov/2016RS/bills/sb/sb1005e.pdf>); Utah Sentencing Commission, Adult Sentencing & Release Guidelines, pp.38-39 (2016) (available at, <https://justice.utah.gov/Sentencing/Guidelines/Adult/2016%20Adult%20Sentencing%20Guidelines.pdf>); Alaska SB 91 (2016) Section 12.55.110 (c) (available at, <http://www.akleg.gov/basis/Bill/Text/29?Hsid=SB0091D>