

Probation

Performing Pretrial Services: A Challenge in the Federal
Criminal Justice System *James R. Marsh*

A Sanction Program for Noncompliant Offenders
in the District of Nevada *John Allan Gonska*

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—What Works With Juvenile Offenders: A
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This Issue in Brief

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System.—Contending that “the Federal release and detention process is far from routine and mundane,” author James R. Marsh explains in depth the challenges Federal pretrial services officers face daily. He discusses the responsibilities inherent in pretrial services—to assess the risks defendants pose, to complete investigations and prepare reports for the court, and to supervise defendants released pending disposition of their cases—and the challenges that accompany such responsibilities.

A Sanction Program for Noncompliant Offenders in the District of Nevada.—When probationers do not comply with the terms and conditions of supervision, probation officers must report the noncompliant behavior and take steps to correct it. Author John Allan Gonska describes how the U.S. probation office in the District of Nevada addressed the issue of noncompliance by creating a sanction program. The author explains how the program was developed and how it works, giving examples of violations and appropriate sanctions for them under the program.

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections Conference.—With a changing workforce and a changing work environment, how do community corrections agencies recruit and retain qualified employees? The National Institute of Corrections sponsored a conference to explore this issue with a group of community corrections managers from around the country. This article reports on the group’s discussion—which focused on probation and parole image, the recruiting market, qualifications, training, and motivation—and offers the group’s recommendations.

Pretrial Diversion: A Solution to California’s Drunk-Driving Problem.—Author Lea L. Fields explains how California currently has an array of pretrial diversion programs to address offenses ranging from drug abuse to domestic violence to sexual molestation but has no such program for drunk driving. The author examines drunk-driving diversion programs in

Oregon and Monroe County, New York, explains the benefits of these types of programs, and tells how a diversion program for drunk drivers could be set up in California.

The Continuum of Force in Community Supervision.—In these times of increased emphasis on offender control, some community corrections agencies may be providing their officers with lethal weapons such as revolvers and less-than-lethal weapons such as stun guns and personal defense sprays with little or no guidance as to when their use is appropriate. Author Paul W. Brown stresses the importance of proper training and describes the “continuum of force,” the primary tool for providing guidance to officers in the use of force. He explains how the continuum of force works, focusing

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A Sanction Program for Noncompliant Offenders in the District of Nevada*

BY JOHN ALLAN GONSKA

Senior United States Probation Officer, District of Nevada

HISTORICALLY, U.S. probation officers have had tremendous freedom to choose and implement supervision plans and to identify offenders' noncompliant behavior and enforce sanctions for such behavior. Officers have had considerable discretion regarding whether or not to consult with their supervisors or report the noncompliant behavior to the court or to the U.S. Parole Commission. Most probation officers exercise sound judgment and engineer creative, meaningful approaches to address noncomplaint behavior. A few, unfortunately, do not.

The officer's responsibility, expressed simply, is to have the offender comply with all of the terms and conditions of supervision. The officer's principal tool in evaluating the effectiveness of supervision is the case review and supervisor's case audit. Through such reviews, officers attempt to identify potential problems by reexamining supervision plans and to correct noncompliant behavior. When the supervision process works properly, officers monitor offenders and hold them accountable. Officers are in a position to detect problems and deter violations.

Supervision of offenders is not just a concern for probation officers—it is a big concern of the public, of Congress, and of the courts. These entities rely on probation to do its job, to supervise offenders effectively and to protect society from known "criminals."

This article describes a project to create a sanction program for noncompliant behavior for Federal offenders under the supervision of the U.S. probation office in the District of Nevada. As the probation office states in its policy for imposing sanctions:

A core mission in the District of Nevada is to provide responsible and efficacious supervision for federal offenders consistent with the mandate of the Federal Criminal Code and Rules, the United States Sentencing Commission, the United States Parole Commission, and the Administrative Office of the U.S. Courts. The United States Probation Office is committed to enforcing the terms and conditions of supervision; holding the offender responsible for his or her behavior; and ensuring community protection through sound and effective supervision practices.

The sanction program designed by the probation office serves not only to fulfill the mandate to report and correct noncompliant behavior but to establish consis-

tency in doing so from offender to offender, from officer to officer, and from supervisor to supervisor. A program which promotes consistency can prevent the inequity which results when one officer in one situation ignores a violation, while another officer in an identical situation requests a warrant.

Identifying Noncompliant Behavior and Appropriate Sanctions

In designing a sanction program, the goal was to identify most, if not all, noncompliant behavior and to provide a choice of sanctions in response to each type of behavior. First the probation office identified and formulated 23 separate categories of noncompliant conduct, as follow:

1) Drug/substance abuse-related behavior - Each of the commonly abused illicit and prescription drugs was listed, as was alcohol. The category denoted frequency of use for each drug (for example, one positive drug test for cocaine, two to three positive tests for cocaine, and four or more positive tests for cocaine). The category also covered urinalysis stalls; failure to report for urinalysis; excessive alcohol use; failure to attend drug counseling sessions; association with drug activities; violation of rules and regulations of the drug aftercare contractor; possession of narcotic paraphernalia; and possession of a controlled substance.

2) Violation of standard condition of supervision - This category included unauthorized travel; failure to return within a certain period after travel is authorized; delinquent, late, or incomplete monthly supervision reports or failure to report to the probation officer; false statement to the probation officer or insubordination; failure to make child support payments; failure to maintain lawful employment, schooling, or training; failure to notify the probation officer of change in residence or employment; failure to allow the probation officer to visit residence or place of employment; and failure to allow the probation officer to confiscate contraband.

3) Arrest/conviction of offender including allegations of criminal misconduct - Included in this category were serious traffic violations; failure to notify the probation officer of arrest; arrest or citation for minor traffic offenses; conviction of a felony; conviction of a misdemeanor; conviction of a petty offense; allegations of criminal behavior, without an arrest, that the probation officer was able to corroborate; a DUI (Driving

*This article is based on the author's in-district project report prepared as part of the Federal Judicial Center's Leadership Development Program. For information about the program, contact Michael Siegel at (202)273-4100.

Under the Influence) offense; and subsequent DUI offenses.

- 4) Informant activity
- 5) Third-party risk
- 6) Absconding/failure to report
- 7) Violation of community service order
- 8) Violation of community corrections center order or regulation
- 9) Electronic monitoring/home detention/curfew violation
- 10) Criminal association
- 11) Delinquent fine/restitution payments - This category addressed failure to make financial payments on 2 or 3 occasions, on 4 to 6 occasions, on 7 to 10 occasions, and on 10 or more occasions.
- 12) Failure to report police contact
- 13) Possession of weapon
- 14) Internal Revenue Service violation
- 15) Financial/debt obligation violation - This category involved failure to pay credit obligations such as credit card debts and failure to provide the probation officer with financial information.
- 16) Miscellaneous - This catchall category included violations involving notoriety; any special condition of supervision; any behavior that constituted a physical or financial danger to the community; or situations in which previously imposed supervision options/sanctions failed, short of revocation.
- 17) Mental Health
- 18) Employment
- 19) Gambling
- 20) Immigration and Naturalization Service (INS) violation - This category involved violation of INS laws.
- 21) Condition related to DUI convictions - This category dealt with conditions related to DUI convictions on Government reservations, such as the Lake Mead National Recreational Area, or military installations.
- 22) Incident directed at U.S. probation officer
- 23) Serious incident involving offender - Incidents covered in this category included the offender violating a restraining order; spousal or child abuse unreported to police but corroborated by the probation officer; and the offender threatening suicide.

The next step was to identify sanction choices. The probation office decided upon 10 categories of sanctions. The first involved the probation officer taking no action. The second called for the probation officer to handle the problem informally without involving the supervisor, the court, the U.S. Parole Commission, or the offender. The third involved the officer handling the problem through oral or written reprimand of the offender or other similar action. The officer could consult with the supervisor but was not required to do so.

Court or U.S. Parole Commission action was not necessary.

The fourth category required the officer to conduct a formal in-office admonishment of the offender, giving the offender limits or ultimatums. Again, action by the court or U.S. Parole Commission was not necessary. The fifth category was identical to the third category except that the officer was required to notify the court or the U.S. Parole Commission.

The sixth category involved a mandatory "*noncompliant staffing*" between the supervisor, the officer, and the offender. Noncompliant staffing is a formal meeting involving the officer, the supervisor, and the offender in which the offender is given an official admonishment or sanction that represents a last chance for the offender to come into compliance so as to avoid revocation action. The officer was not required to notify the court or the U.S. Parole Commission. The seventh category was identical to the sixth except that the officer was required to notify the court or the U.S. Parole Commission. The eighth category called for court or U.S. Parole Commission intervention that might include modification of the conditions of supervision or a request for a warrant/citation for revocation/modification.

The ninth category involved a mandatory request to the court or the U.S. Parole Commission for warrant/revocation with no officer or supervisor discretion, that is, revocation is mandatory. The tenth category, which involved the officer arresting the offender (excluding parolees), was indicative of the most punitive measure on the officer's list of options.

Developing the Program

The next step was to introduce the study to the staff. Each staff member, from the newly appointed officer to the chief, was required to complete a questionnaire. In the questionnaire each officer was given the sanction choices, as well as a list of the 23 categories of noncompliant conduct, and instructed to indicate by number which sanction the officer thought was appropriate for each noncompliant behavior. The instructions specifically asked officers to indicate their *minimum* response to each incident, emphasizing the need for the study to establish a baseline of the least action officers need to take for a given violation. Officers also were encouraged to list any additional noncompliant actions they could think of, as well as any additional general categories of sanctions.

The scores for each of the questions were tallied. Based on the results, some of the noncompliant behaviors were combined. For example, under the "drug/substance abuse-related" category, all of the illicit drugs were combined under a controlled substance category because generally the sanction chosen

was the same regardless of the controlled substance the offender used. Based on the questionnaire results, the sanction the respondents chose most often for each behavior was assigned to the behavior. The study successfully identified most, if not all, noncompliant behavior encountered by the officers in the district and assigned a specific sanction for each behavior.

Although the study gave a good indication as to how officers felt they should deal with certain noncompliant behavior, the probation office thought the 23 categories of behavior and the 10 categories of sanctions were too cumbersome to be the basis of the sanction program. It wanted a comprehensive, yet simple, sanction program for identifying noncompliant behavior and choosing an appropriate sanction. Therefore, the probation office used an inductive process to arrive at three generic categories of violations and sanctions which would allow officers to use their discretion in selecting sanctions, yet would comply with specific guidelines for addressing noncompliant conduct. It developed its sanction program based on these three categories. Table 1 gives examples of violations in each of the three categories and indicates appropriate sanctions for each under the sanction program.

All the officer must do is identify and document the violation or noncompliant conduct and refer to the sanction program manual. The officer determines whether the violation or noncompliant conduct falls under category 1, 2, or 3 and then reviews the sanctions recommended for the particular category. If the violation or noncompliant conduct is in category 2, the offender consults with his or her supervisor to determine the appropriate sanction. If it is a category 3 violation, the officer issues a petition for revocation, unless the officer or supervisor feels the matter should be submitted to the sanction committee for an alternative solution.

A category 1 violation calls for the officer to initiate a sanction within 3 weeks (15 working days) from the time the officer is made aware of an incident. The officer may, but is not required to, consult with the supervisor. Notifying the court or the U.S. Parole Commission also is optional. Category 1 violations are defined as all nonrecurring technical violations; minor traffic infractions (unless they are a violation of a special condition of supervision); and petty offense conduct (punishable by 6 months or less in jail), unless an actual arrest occurs or such behavior is part of a continuing pattern of noncompliance.

The recommended sanctions for a category 1 violation are admonishing the offender orally, through correspondence, or at an in-office meeting; confronting the offender with ultimatums, setting limits, assigning minor restrictions, increasing reporting requirements, or taking any other similar action; initiating

more intensive supervision; and initiating "noncompliant staffing" with the supervisor or the supervisor's designee. In drug cases, sanctions include increased testing; modification of services; increased frequency of counseling; referral to a community support group; or anything similar. The recommendations also allow for any action by the officer, short of court or U.S. Parole Commission intervention, that addresses the problem by the least restrictive appropriate means. The recommendations give the officer a tremendous amount of discretion in responding to offender non-compliance.

A category 2 violation calls for the officer to initiate a sanction within 2 weeks (10 working days) from the time the officer is made aware of an incident. The officer must consult with the supervisor and must notify the court or the U.S. Parole Commission. If investigating and sanctioning the misconduct within 2 weeks is not feasible or practical, the officer must notify the proper authority of the incident and devise a plan to follow up within that timeframe.

The category 2 violations include an arrest other than for minor traffic violations; misdemeanor conduct (punishable by up to 1 year in jail), whether arrested or not; recurring technical violations; failure to pay a financial sanction by a specific date; any positive urine specimen not justified by a prescription; one refusal to produce a specimen, two or more stalls, or four or more failures to comply with a treatment obligation or services; serious traffic violations; non-compliance with the special conditions of supervision that do not fall under category 3; behavior that puts public safety at risk; behavior which generates public notoriety; violation of electronic monitoring, first occasion; and recurring noncompliance regarding payment of fines or restitution.

The recommended sanctions for a category 2 violation are admonishing the offender orally, through correspondence, or at an in-office meeting; confronting the offender with ultimatums, setting limits, assigning minor restrictions, increasing reporting requirements, or taking any similar action; initiating "noncompliant staffing" with the supervisor or the supervisor's designee; in drug cases, increasing services; extending supervision; obtaining a letter of reprimand from the U.S. Parole Commission; initiating more intensive supervision; imposing a curfew; requiring 2 to 6 months of home detention (as an alternative to confinement); placing the offender in a community corrections center; placing the offender in drug treatment; placing the offender in residential drug treatment; having the offender sign an agreement regarding payment of fines and restitution; referring the matter to another investigative agency; notifying the Government if the offender has defaulted in paying

TABLE 1. SAMPLE CATEGORY 1, 2, AND 3 VIOLATIONS AND APPROPRIATE SANCTIONS

Violations	Sanctions
Category 1	
1. Offender under supervision for Mail Fraud. No prior criminal record. Court orders drug testing for cocaine abuse. Offender misses one urinalysis (UA) and three counseling sessions in 3-month period.	Officer admonishes offender during in-office meeting. Issues ultimatum that further noncompliance will result in adverse action that may include notice to court.
2. Offender under supervision for DUI at Lake Mead. Criminal history consists of numerous traffic infractions and several misdemeanor arrests. Court orders DUI school and community service. After 2 months, offender has not begun community service.	Officer sends letter to offender with an ultimatum that if offender does not begin community service by specific date and does not complete specified number of hours per week, officer will report matter to court.
3. Offender under supervision for Bank Embezzling. Has prior fraud convictions. Offender fails to submit monthly supervision report for 1 month.	Officer admonishes offender by telephone.
3a. Offender fails to submit second monthly supervision report.	Officer admonishes offender in writing.
3b. Offender fails to submit third monthly supervision report.	Officer refers to category 2 options.
4. Offender under supervision for Wire Fraud. Has previous conviction for Wire Fraud. Court orders offender to pay \$8,000 in restitution. During case review, officer learns offender has missed one payment and has made only partial payment on another occasion.	Officer schedules in-office meeting to discuss reasons for nonpayment and offender's financial status.
Category 2	
1. Offender under supervision for Distribution of Cocaine. Has no prior record but does have history of cocaine abuse. Offender tests positive for cocaine after 7 months on supervision.	Officer staffs case with supervisor and reports to court that they have admonished offender and have required offender to attend counseling sessions four times a month.
2. Offender under supervision for Bank Robbery and is career criminal with history of heroin addiction. Offender is unemployed and misses UA test and tests positive for morphine after only 3 months on supervision.	Officer staffs case with supervisor and either informs court that they placed offender in community corrections center for 4 months (through legal procedure) or recommends revocation, depending upon offender's history.
3. Offender under supervision for Aiding and Abetting in the Distribution of a Controlled Substance. Has prior conviction for DUI. Court orders UA testing because offender admitted to experimentation with marijuana and cocaine in the past. Offender denies any addiction or abuse and is medically sound. Offender reports for UA test and is unable to produce specimen (stall). Two weeks later, offender is again unable to produce specimen.	Officer staffs case with supervisor and reports to court that they have had "noncompliant staffing" with offender, have conducted a skin check which had negative results, and have increased the frequency of UA testing.
4. Offender under supervision for Possession of Counterfeit Currency. Has no prior record. Court orders electronic monitoring for 4 months. After 1 month, offender violates electronic monitoring policy.	Officer staffs with supervisor and reports violation to court. Court orders more intensive supervision.
5. Offender under supervision for DUI at Lake Mead. Has two prior misdemeanor convictions. Offender is unemployed and is arrested for Petty Theft, but case is dismissed. Officer proves through preponderance of evidence that offender did, in fact, commit Petty Theft.	Officer staffs with supervisor and reports investigation to court. Officer informs court that officer has provided more intensive supervision, has placed offender on a curfew for next 3 months, and has required offender to search for job 8 hours a day and provide verification.
6. Offender under supervision for Bank Embezzlement. Has no prior record. Court orders offender to pay \$2,000 fine. During first 16 months on supervision, offender misses five payments, three in last 3 months. Offender is on welfare and has no other source of income or assets.	Officer consults with supervisor and reports to court. Officer advises court that officer has notified U.S. Clerk's Office/U.S. Attorney's Office of problems with delinquent/default payments with offender and has referred offender to vocational training.
Category 3	
1. Offender under supervision for Possession of a Controlled Substance. Has two prior arrests for possession of drugs. Offender is arrested by police for possession of 12 grams of cocaine. Preponderance of evidence shows offender did, in fact, possess cocaine.	Officer petitions for revocation of supervision.
2. Offender under supervision for Wire Fraud. Has two misdemeanor and one felony conviction. Court orders offender to submit to drug testing because offender has history of using controlled substances. During offender's first 2 years on supervision, offender has four positive UA's for cocaine.	Officer thinks offender's supervision should not be revoked. Instead, offender should be placed in residential drug treatment (providing funds are available). Matter is referred to sanction committee, which agrees with officer. Officer notifies court, and offender is placed in residential drug treatment.
3. Offender under supervision for Unarmed Bank Robbery. Has lengthy prior record. However, the last arrest before the current one was more than 10 years ago. Court orders search and seizure. Officer receives information that offender is in possession of a firearm. Offender's residence is searched and a firearm is confiscated.	Officer petitions for revocation of supervision.
4. Offender under supervision for Income Tax Evasion. Court orders drug testing because offender admits abusing marijuana and PCP. Offender has shown a belligerent and negative attitude towards supervision. During one office meeting, offender becomes very agitated and aggressive. Offender lunges at officer and has to be restrained.	Officer petitions for revocation of supervision.

a fine; requesting a court hearing for formal admonishment by the court; issuing a summons for a probation revocation, if appropriate; issuing a summons for a preliminary interview, if appropriate; and obtaining a court or U.S. Parole Commission warrant, if appropriate.

Category 3 violations call for a mandatory petition for a warrant or summons for revocation of supervision within 1 week (5 working days) after the officer is made aware of the incident. If the officer believes that a less severe sanction should be pursued, then the officer must refer the matter to the sanction committee. The sanction committee is composed of the officer, the officer's supervisor, and a designated member of management, normally the chief or the deputy chief. If an officer, for example, has an offender with a category 3 violation, but the officer does not want to revoke supervision and has a feasible alternative plan of intervention, the situation is a matter for the sanction committee. The committee discusses the problem and possible solutions. The committee's final recommendations are based on majority opinion.

Category 3 violations are any felonious conduct (whether the offender is arrested or not) that the officer can clearly establish by a preponderance of the evidence; chronic violations of category 1 and recurring violations of category 2 where intermediate sanctions were ineffective; recurring noncompliance with any special condition where intermediate sanctions were ineffective; possession of a controlled substance; possession of a firearm or dangerous weapon; second or subsequent electronic monitoring violations; second or subsequent DUI; four or more positive urinalyses; six or more failures to comply with treatment obligations or services; conduct posing imminent threat of serious physical or financial harm to others; actual threats made against the public welfare; actual threats made against probation or court personnel.

In addition to establishing the categories of violations, the study also produced additional policy guidelines for some types of noncompliant behavior. These include factors for the officer to consider when dealing with drug/substance abuse-related behavior and arrests/convictions of offenders, including allegations of criminal misconduct. Also included are instructions for handling high profile offenders and sealed and sensitive cases.

Assessing the Program's Effects

The probation office has used its sanction program since March 1993 and reviews the program semiannually. It encourages all officers, through their supervisors, to make suggestions to improve the program. Initially, the biggest problem in instituting the program was getting the officers to refer to it when they deal with noncompliant offenders. Some forget to use it. However, management made every effort to remind officers of the sanction program, especially during case reviews and preparation of violation reports. The probation office also uses caseload reviews (in which an officer's entire caseload is reviewed by a management team) to ascertain whether the officer is using the sanction program, among other things. To date, probation staff members have reported intermittent difficulties complying with some of the time restraints, but no program changes have been made.

The probation office in the District of Nevada has created sanction guidelines to help officers respond responsibly and consistently to noncompliance incidents. As the probation office's policy states,

... consistent and predictable consequences in response to offender violations will serve to protect the community, promote respect for the Judiciary, and encourage compliance and positive change in our offender population. This policy will serve to solidify our philosophy that a balanced approach to supervision will assure enforcement of Court orders, minimize risk, and provide for correctional treatment.