
Problem

In many states, probationers and parolees who violate the conditions of their community supervision are a major driver of prison populations and corrections spending. In some states, violators account for as many as two-thirds of prison admissions. About half the time, these violators are revoked to prison not for new crimes, but for breaking the rules of their supervision, such as not reporting to a probation officer or failing a drug test. In 2006, 35 percent of all state prison admissions were offenders returned to prison as a result of parole violations, not for new convictions.

Research indicates that swift, certain and proportionate sanctions for these “technical violations” can improve compliance with the rules and reduce the number of violators sent to costly prison cells. Yet probation and parole officers face high caseloads, a lack of community-based sanctions and a cumbersome court process for holding violators accountable. This frequently means that probation and parole officers will not go back to the court or parole board until an offender has committed a number of violations, at which point revocation to prison becomes the likely penalty. Delayed responses to violations can give offenders the sense that they don’t really have to play by the rules, in effect encouraging more violations, while holding supervision violators in jail and prison cells takes up space that should be used for more dangerous inmates.

Solution

For states to deliver swift, certain and proportionate responses to violations of probation and parole, they need an array of institutional and community-based sanctions as well as the authority to assign—and reassign—offenders to those sanctions. Many states are developing a continuum of sanctions, from community service programs to day reporting centers, to more restrictive responses such as secure residential facilities. To maximize the certainty and swiftness of sanctions, several states provide parole and probation agencies the authority to place violators in these sanction programs, including imposing short stays in jail, without having to go back to court. As part of a system of administrative sanctions for violations, states also should incorporate positive reinforcements that supervised individuals can receive when they comply with their conditions.

This provision:

- Requires community corrections agencies to adopt a set of graduated sanctions and rewards to respond to violations and compliance with the conditions of supervision.
- Establishes authority for agencies to impose graduated sanctions and rewards through an administrative process.

Suggested Language

Section 101. Short Title.

This Act may be cited as the “Swift and Certain Sanctions Act.”

Section 102. Definitions.

In this title:

(1) “Agency” means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by a court or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) “Chief supervision officer” means [the highest ranking field probation or parole administrator in each judicial circuit].

(3) “Court” means a court of record having original criminal jurisdiction.

(4) “Community supervision” means

(A) The placement of a defendant under a continuum of programs and sanctions, with conditions imposed by a court for a specified period during which:

(i) criminal proceedings are deferred without an adjudication of guilt;

(ii) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

(B) The placement of an individual under a continuum of programs and sanctions after release from prison or jail, with conditions imposed by the releasing authority for a specified period.

(5) “Supervision officer” means a person appointed or employed by the Agency to supervise individuals placed on community supervision.

(6) “Supervised individual” means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(7) “Graduated sanction” means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; forfeiture

of earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to supervision officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration.

(8) “Positive reinforcement” means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, awarding earned compliance credits, removing supervision conditions such as home detention or curfew, or asking the offender to be a mentor to others.

Section 103. Policy on Community Supervision.

It is the policy of this state that supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

Section 104. System of Graduated Sanctions.

(1) The Agency shall, by [January 1, 2010], adopt a single system of graduated sanctions for violations of conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual’s previous criminal record, the number and severity of any previous supervision violations, the supervised individual’s assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system also shall define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision.

(2) The Agency shall establish by rules and regulations an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.

(3) The Agency shall establish by rules and regulations an administrative process to review graduated sanctions contested by supervised individuals under Section 106 of this Act. The review shall be conducted by an impartial Agency employee or representative who has been selected, appointed and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

Section 105. Conditions of Community Supervision.

For individuals placed on probation, the judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may impose as a condition of community supervision that the Agency supervising the individual may, in accordance with Section 106 of this Act, impose graduated sanctions adopted by the Agency for violations of the conditions of community supervision.

Section 106. Authority to Impose Graduated Sanctions.

(1) Notwithstanding any rule or law to the contrary, the Agency may:

- (A) Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and
- (B) Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than [five] days consecutively, and not more than [30] days in any one calendar year.

(2) A supervision officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(3) The imposition of a graduated sanction or sanctions by a community supervision officer must comport with the system of graduated sanctions adopted by the Agency under Section 104 of this title. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole or post release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, the individual is entitled to an administrative review to be conducted by the Agency within five days of the issuance of the notice. If the Agency affirms the recommendation contained in the notice, then the sanction or sanctions shall become effective immediately.

(4) If the graduated sanction involves confinement in a correctional or detention facility, confinement must be approved by the chief supervision officer, but the supervised individual may be taken into custody for up to [four] hours while such approval is obtained. If the

supervised individual is employed, the supervision officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.

(5) A sanction that confines a supervised individual in a correctional or detention facility for a period of more than [five] consecutive days, or extends the term of community supervision, may not be imposed as a graduated sanction, except pursuant to an order of the court or the releasing authority.

(6) A notice of a graduated sanction may not be issued for any violation of probation, parole or post-release supervision which could warrant an additional, separate felony charge. Notwithstanding this, a notice of a graduated sanction may be issued for a positive drug test.

(7) Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.

(8) If a supervision officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:

- (A) Deliver a copy of the modified conditions to the supervised individual;
- (B) File a copy of the modified conditions with the sentencing court or releasing authority; and
- (C) Note the date of delivery of the copy in the supervised individual's file.

Section 107. Monitoring Graduated Sanctions.

The chief supervision officer shall review confinement sanctions recommended by supervision officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the Agency's number and type of revocations for violations of the conditions of supervision.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant correctional agency or agencies.

- Section 102 (graduated sanctions definition): This section lists the most common community-based sanctions for offenders. Policy makers may want to customize this list with specific sanctions available or anticipated in their states.
- Section 104 (system of graduated sanctions): This section recommends that community supervision agencies in either the executive or judicial branches adopt a single set of guidelines for responding to violations. The guidelines can be written to accommodate the fact that different areas of states will have access to different sanctions. Ranges of responses to various violations should be sufficiently narrow that it is clear to offenders what the sanctions will be. This certainty and transparency lets offenders know that they are in control of what happens to them, that the penalties are not the random and arbitrary whims of a supervision officer or judge.
- Section 104 (administrative process): This provision leaves to the Agency decisions regarding what level of administrative process is necessary for imposing sanctions for violations. Some states allow parole and probation officers to impose low level sanctions directly, while requiring a supervisor's approval for more serious sanctions. The administrative process that would apply if a supervised individual contests the sanction may also differ depending on the severity of the sanction.
- Section 105 (selection of offender for graduated sanctions): This provision allows the court to select certain offenders to be subject to the graduated sanctions system, in which sanctions would be imposed administratively by the community corrections agency rather than the court itself. Courts may wish to place a check-box on their sentencing order forms to indicate that particular offenders have been sentenced in this fashion. Alternatively, states may wish to apply graduated sanctions to all supervised individuals or to all supervised individuals except those exempted by the court. In those cases, this section may be eliminated or altered to indicate the state's preference.
- Section 106 (administrative authority to incarcerate): Granting corrections agencies the authority to incarcerate violators without a judicial proceeding raises issues of due process. While sanctions that restrict an offender's liberty may require a due process hearing several states have legislated administrative authority to confine violators for limited periods of time (see State Examples below). Based on the model used in some of these states, this section recommends an administrative review process involving a neutral Agency employee when the sanction involves confinement. The time limits on individual and cumulative periods of incarceration are intended to prevent the Agency from abusing this authority.
- Section 106 (jail reimbursement): Other statutes govern the relationship between the state and local jurisdictions regarding reimbursement for state inmates in local facilities. This provision does not address these pre-existing arrangements. However, graduated

sanctions are designed to reduce the length of time violators spend in jail awaiting hearings. This should reduce local jail crowding and state reimbursement expenditures.

Rationale

Research shows that swift, certain and incremental (or graduated) responses to rule-breaking are key components of an effective strategy to change behavior.¹ Graduated sanctions are being used in more jurisdictions across the country, and implementation is the focus of a significant national effort by the National Institute of Corrections.

Allowing corrections agencies to hold offenders accountable for breaking the rules of supervision, rather than having to take them back to court, can substantially boost the immediacy and certainty of responses. Supervising officers often are in the best position to impose meaningful and proportionate consequences to offender noncompliance, while the court violation process is often too cumbersome to accommodate the need for swift and certain consequences. Whether imposed by courts or by supervision agencies, swift and certain sanctions clearly outperform business-as-usual.² In one case – Hawaii’s Opportunity Probation with Enforcement – swift and certain but graduated judicial sanctioning has proven in a randomized controlled trial to reduce positive drug screens by 91 percent and cut both revocations and new arrests by two-thirds.³

Several states allow supervising officers to respond to noncompliance within a certain range of sanctions, including limited jail terms, without initiating a revocation process (see below). This administrative structure enhances the likelihood and timeliness, and thus the effectiveness, of the sanction. It also should increase uniformity in offender sanctions.

There are important other benefits to the criminal justice system, including reduced use of local jail space by state probation and parole violators, and greater time for probation officers to focus on high-risk offenders. Evaluation of the administrative sanctions program in Georgia⁴ found:

- Reductions of 70 percent or more in the average number of days that violators spent in local jails awaiting disposition of their violation cases. One county reported the average fell from 34 days to 6 days.
- Significant reductions in the amount of time probation officers spent waiting in courthouses for violation cases to be heard. Timesheets kept by the officers indicated that 77 percent of their time in courthouses was spent waiting, compared to just 23 percent actually engaged in hearings. The administrative process saves this time, allowing officers to spend it supervising their caseloads.

These provisions do not limit sanctions or supervision to a detention or correctional facility or to the use of electronic monitoring, but simply provides the legislative authority for such measures. Other graduated sanctions and supervision measures can and should be used depending on the supervision circumstances.

Research also indicates that positive reinforcement, incentives and rewards are powerful tools in the supervision process.⁵ By employing them for progress, along with sanctions for violations, parole and probation officers can enhance offender motivation, support positive behavior change and reduce recidivism. Focusing on the gains that offenders have made can promote adherence to supervision conditions and encourage positive responses. Examples of incentives and rewards include awarding certificates of achievement, reducing reporting requirements, deferring a monthly payment, removing conditions (such as home detention or curfew), or asking the offender to be a “mentor” to others. Just as with sanctions, incentives and rewards should be provided with certainty and in a timely fashion to have the greatest impact on behavior change.

State Examples

States that have adopted administrative sanction as an alternative to revocation include:

- **Delaware:** 11§4334 (Probation Reform Act, SB 50) authorizes the Department of Corrections to move offenders between levels of supervision, including a financial/restitution-only status, and to impose administrative sanctions for minor or technical probation violations, including up to 5 days in jail, not to exceed 10 days annually.
- **Florida:** §948 allows the Parole Commission to return the parolee to prison or place the parolee in a community control program. This program can include intensive supervision and surveillance, confinement to a residence outside of employment and public service hours, mandatory public service, electronic monitoring, and standard conditions of probation.
- **Georgia:** §42-8-34.1 (HB 1161) authorizes a sentencing judge to set a cap below which chief probation officers or Department of Corrections hearing officers may impose administrative sanctions, including placement in secure state residential facilities.
- **Illinois:** 730 ILCS 5/5-6-4 authorizes intermediate sanctions, including a term of home confinement.
- **Maine:** §17-A MRSA §1208 authorizes the probation officer to impose administrative sanctions up to 90 days in a residential prerelease center.
- **Montana:** §46-23-1015 authorizes a hearing officer to impose up to a 30 day sanction in local jail for probation violations.
- **Oregon:** §137.595 and §144.106 authorize supervising agency personnel to administratively sanction according to a statutory sanctions guideline, including imposition of limited jail sanctions.
- **Oklahoma:** §57-502 establishes an Intermediate Sanctions Matrix that addresses technical violations. A hearing judge can determine whether a technical violation occurred and, if so, consult the matrix for the appropriate intermediate sanction.
- **Wisconsin:** §302.113 establishes a short term sanction program for offenders under Extended Supervision through the Wisconsin Truth-in-Sentencing statute. This program

allows the Department of Corrections to impose as a sanction for a condition violation confinement in a regional detention facility or local jail for up to 90 days, as opposed to revocation. In addition, the Department of Corrections has adopted regulations for “functional responses” to conditions violations that establish an administrative system for graduated sanctions.

- **Wyoming:** §7-13-1107 authorized the DOC to develop administrative sanctions as an alternative to probation or parole violations, not to exceed 30 days in jail or 60 days in community corrections center.

¹ The relative effectiveness of swiftness, certainty and severity of sanctions is explored in Nagin, Daniel and Greg Pogarsky, “Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence,” *Criminology*, 39 (4) (2001). See also Taxman, Faye, David Soule and Adam Gelb, “Graduated Sanctions: Stepping Into Accountable Systems and Offenders,” *Prison Journal*, 79 (2), pp. 182-204 (1999); Kleiman, Mark, and Angela Hawken, “Fixing the Parole System,” *Issues in Science and Technology* (June, 2007) (available online at <http://www.issues.org/24.4/kleiman.html#>).

² See Harrell, Adele, Ojmarrh Mitchell, Jeffrey Merrill and Douglas Marlowe, “Evaluation of Breaking the Cycle” (Washington, D.C.: The Urban Institute, April 2004); Reedy, Darin C., Faye S. Taxman, Theodore Klem and Rebecca Silverman, *Does BTC Deter Drug Use? Lessons Learned from Three Years of Implementation* (University of Maryland Center for Applied Policy Studies, Bureau of Governmental Research, July 2002); Harrell, Adele, Shannon Cavanagh and John Roman, “Evaluation of the DC Superior Court Drug Intervention Programs,” *NIJ: Research in Brief* (April 2000) (available online at <http://www.ncjrs.gov/pdffiles1/nij/178941.pdf>).

³ For related materials, see http://www.pewcenteronthestates.org/news_room_detail.aspx?id=41950.

⁴ Speir, John and Tammy Meredith, *An Evaluation of Georgia’s Probation Options Management Act* (Atlanta: Applied Research Services, October 2007) (available online at http://ars-corp.com/view/PDF_Files/AnEvaluationofGeorgiasProbationOptionsManagementAct_FinalReport2007.pdf).

⁵ Petersilia, Joan, “Employ Behavioral Contracting for ‘Earned Discharge’ Parole,” *Criminology and Public Policy*, 6 (4), 807-814 (2007).