

Arkansas State Profile

Administrative Responses in Probation and Parole Supervision

The development of administrative responses to violations by probationers and parolees, in Arkansas, was part of a broad set of criminal sentencing reforms outlined in Act 570 of 2011. Act 570 established the *Public Safety Improvement Act* intended to reduce recidivism, hold offenders accountable, and contain correctional costs. The Act took effect in July 27, 2011 though many of its individual provisions did not become law until January 1, 2012. The reforms were developed in response to a 2010 study by the Pew Center's Public Safety Performance Project that found that the state's prison population had doubled in the past 20 years to more than 16,000 inmates and, if left unchecked, would increase by another 43 percent in the next 10 years. The cost of operating state prison units grew proportionately and is now more than \$300 million per year. The Pew Center estimated that the cost of projected growth in prison population would be an additional \$1.1 billion to the taxpayer. The Pew study also showed that Arkansas was 23 percent below the national average in their use of probation, while at the same time non-violent offenders were serving long prison sentences.

The Public Safety Improvement Act was designed to counter the unchecked growth of prison populations in Arkansas by implementing several reforms including a requirement that the Director of the Department of Community Correction (DCC), with the advice of the Board of Corrections, develop an intermediate sanctions grid and procedure to guide probation/parole officers in determining appropriate responses to violations of conditions of supervision. Pew estimated that the reforms mandated by the Public Safety improvement Act could save Arkansas about \$875 million over the next decade.

LEGISLATIVE AUTHORITY

As noted above, the enabling legislation that authorizes the use of both administrative sanctions and incentives is Act 570 of 2011 (A.C.A. § 16-93-306). The sanctions component applies to technical violations committed by either probationers or parolees, convicted of either misdemeanors or felonies. The legislation does not authorize a specific range of administrative sanctions and incentives, but instead directs the Director of DCC to develop a sanctioning grid. Neither an individual order from the court or the parole board is needed to authorize the use of sanctions or incentives.

AGENCY POLICY AND PROCEDURE

In Arkansas, probation and parole are administered by the Department of Community Correction (DCC), an executive branch agency subject to oversight by the Arkansas Board of Corrections. Supervision officers have arrest powers, specialized peace officer status, and the authority to issue parole warrants. Several entities have the authority to administratively issue sanctions: supervision officers, parole/probation supervisors, parole board, judges and senior administrators. The Director of DCC has the ultimate authority to guide the operations of the

agency and approve the administrative sanctions and incentives in use. The range of sanctions that an approved authority can unilaterally grant include: jail (up to seven days at a time; used no more than ten times; and no more than 30 days accumulated before revocation is recommended); electronic monitoring; increased supervision; community service; day reporting center; written warning; and random drug testing. The range of incentives that an approved authority can unilaterally grant includes: less frequent reporting to officer; reduced supervision level; reduced drug and alcohol testing; waiver of supervision fees; extended curfew; travel permits; verbal recognition by supervision officer; certificate of compliance; earned compliance credits; and early discharge from supervision.

As mandated by the Public Safety Improvement Act, the DCC has developed and implemented statewide formal structures to determine an appropriate administrative response approach, including both sanctions and incentives. In the case of sanctions, the DCC has developed the Arkansas Interventions Accountability Matrix (ArAIM), which classifies violations according to three levels of seriousness (Low, Medium, and High) with potential responses from the supervising officer being specified for each type of violation within each level of seriousness. The structure for incentives is similar, specifying specific achievements and potential incentives in response. The agency is required to use the formal structures, but deviations from the structures are permitted upon authorization by appropriate authorities. Decisions to deviate from the formal structures are authorized when the probationer/parolees' compliance with the terms of supervision are such that the formal decision matrices are inadequate or unavailable. Any probationer/parolee under the supervision of the Department of Community Correction is subject to administrative sanctions and incentives, as specified by department policy and by statute.

LEGAL PROCEDURE

In Arkansas, the sentencing judge, prosecutor, or parole board is involved in the administrative response procedure. The probationer/parolee is not entitled to an administrative hearing on the fact of the violation and the appropriateness of the administrative sanction. Written notification of the alleged violation is not required. If the probationer/parolee does not admit the violation subject to an administrative sanction, the matter does not necessarily proceed to a revocation hearing. Participation in the administrative responses procedure by other external parties is not explicitly authorized.

IMPLEMENTATION ISSUES

Both ArAIM and the incentives grid have been implemented statewide. Supervising officers in Arkansas have undergone statewide training in the use of administrative responses. Data are collected by the DCC to support the evaluation of the outcome process, which include: type of violation; number and type of sanctions imposed; average number of jail days imposed; recidivism rate of probationers/parolees participating in administrative responses and average amount of time on supervision.

Georgia State Profile

Administrative Responses in Probation and Parole Supervision

Like many states, in recent years, Georgia has employed data-driven strategies and implemented evidence-based practices to address its overburdened corrections system. Felony probation is one area that has received significant changes in both policy and practice. Specifically, in 2004, the Georgia General Assembly enacted the Probation Management Act (HB 1161/O.C.G.A 42-8-150-159), which authorized the Department of Corrections (DOC) to establish an administrative response process to sanction felony-level probation violators. This system, more commonly known as Probation Options Management (POM), serves as an alternative to judicial modification or revocation of probation cases. POM was initially piloted at multiple jurisdictions before it was implemented statewide in 2009. While preliminary research on POM has provided promising findings, Georgia continued to face unsustainable costs and a rising felony probation population. Thus, further legislative reform was undertaken to address these issues, among others. In the 2011 legislative session, the Georgia General Assembly created the bipartisan, inter-branch Special Council on Criminal Justice Reform for Georgians (the Council). The Council, with assistance from Public Safety Performance Project of the Pew Center on the States and its partners, conducted an investigation of the state's sentencing and corrections structure and developed a report with recommendations to the legislature. In result, HB 1176 was passed in the 2012 legislative session. While HB 1176 is comprehensive, one component of the legislation authorized DOC to use graduated sanctions in felony probation supervision in conjunction with POM. The graduated sanctions are meant to provide DOC with more options to effectively deal with technical violations by probationers.

LEGISLATIVE AUTHORITY

As noted above, the enabling legislation that originally authorized the use of administrative sanctions in probation (felony-level) supervision was HB 1161. In 2009, SB 24 was introduced, passed, and enacted into law taking POM out of pilot status to be implemented statewide. Most recently, HB 1176 was enacted and it authorized DOC to implement graduated sanctions to administratively address probation violations. The legislation authorizes DOC to issue a range of sanctions to address various types of violations and low-level misdemeanors, which include: electronic monitoring; increased supervision; community work service; day reporting center; written warning; victim impact statement; random drug testing; and mandatory drug treatment. Per the legislation, the Court must invoke its authority to authorized DOC staff and set the sanction cap for DOC to administratively issue sanctions via POM. Administrative incentives are not currently authorized by the legislation.

AGENCY POLICY AND PROCEDURE

In Georgia, DOC oversees felony-level probation supervision. Several entities have the authority administratively issue sanctions, including the Probation Officer III, Hearing Officer (independent from local DOC operations), and Chief Probation Officer (CPO). While approval

from an authority is not needed to administratively issue sanctions, the Court may decline to delegate authority to DOC for administrative sanctions. The range of sanctions include: electronic monitoring; increased supervision; community work service; day reporting center; written warning; victim impact statement; random drug testing; and mandatory drug treatment. Only the Court can grant incentives to probationers for compliance.

DOC does have a formal structure to determine the administrative sanctions approach, known as the Consistent Sanctions Response Matrix (the matrix). It was originally developed for use at about the same time POM was implemented; however, it has been adapted for administrative sanctions as well. DOC is required to use the matrix to address violations through administrative sanctions, and departures are permitted if approved by the CPO, Hearing Officer, or Senior Hearing Officer. DOC probation officers may use their discretion to recommend a departure from the matrix based on aggravating and mitigating factors. As defined by both policy and statute, all probationers are eligible to be supervised under POM and the matrix, but they must be sentenced by the Court. The Court retains final authority in probation cases.

LEGAL PROCEDURE

Probationers are given the opportunity to request the appointment of counsel at any time during sanctioning process. As defined in the legislation, probationers supervised under POM are entitled to a hearing on the fact of a violation and the appropriateness of the administrative sanction. This hearing is distinguished from a revocation hearing by the Court, and, instead, may be conducted as an administrative hearing involving the CPO. In practice, however, most CPOs refer to hearing officers to process the hearing. By law, CPOs can only hear community sanctions, while an Impartial Hearing Officer is required to hear violations when the supervision officer recommends a secure option (e.g., probation detention center, residential substance abuse treatment center, and /or boot camp). Hearing officers must sign off on all waivers to secure options. Several elements are included at the hearing: written notice of claimed violation(s); disclosure to the probationer of the evidenced against him/her; opportunity to appear in person to present witnesses and documentary evidence; opportunity to confront and cross-examine adverse witnesses; a neutral and detached hearing body other than the supervision officer reporting the violation; and a written statement of the evidence relied upon and the reason for imposing the sanction.

Moreover, DOC probation officers must submit a formal written notification of the alleged violation, and probationers are provided an admission statement and waiver of hearing form as part of the administrative sanctioning process. If probationers admit to the violation for an administrative sanction and waive the specified rights, the matter is deemed resolved and does not have to be addressed by the Court. Finally, in Georgia, while prosecutors are not involved in the administrative response procedure, other interested parties are allowed to participate, such as: treatment providers, victim advocates, family members, and others per a subpoena.

IMPLEMENTATION ISSUES

Since 2010, DOC has undergone statewide implementation for POM. The graduated sanctions component of HB 1176 is currently being adopted as well. In fact, DOC is currently in a maintenance stage with respect to implementation. DOC conducts training and educational sessions as new judges are elected and DOC staff members are hired. Data are collected by the agency to support the evaluation of the outcome process, which, at this time, include the following data: type of violation (new offense vs. technical violation); average number of jail days imposed on probationers; number of sanctions imposed; number of each type of sanction imposed; recidivism rate for probationers involved in administrative sanctions; average amount of time on supervision; and control groups have been established. The data are collected by DOC, but they are compiled and analyzed by an independent agency.

An outcome evaluation of POM pilot study was conducted in 2007.¹ The evaluation had promising findings, including: (a) reductions in time spent in jail between violation and final disposition/sanction; (b) reductions in time spent in court on technical violations; (c) reductions in time between violations and imposed sanctions; (d) sanctions that were proportionate to probation violations; and (e) reductions in costs associated with jail incarceration. This evaluation informed the statewide implementation of POM and administrative sanctions. Moving forward, Applied Research Services, Inc., the independent agency that conducted the pilot study, will conduct an outcome evaluation for data collected through November 2012. This evaluation is expected to be completed in late spring 2013.

¹ Speir, J., Meredith, T., Baldwin, K., Johnson, S., Hull, H., & Bucher, J. (2007). *An evaluation of Georgia's probation options management act*. Atlanta, GA: Applied Research Services. Retrieved from http://www.ars-corp.com/_view/PDF_Files/AnEvaluationofGeorgiasProbationOptionsManagementAct_FinalReport2007.pdf.

Louisiana State Profile

Administrative Responses in Probation and Parole Supervision

Similar to other states in recent years, the use of administrative responses to violations in probation and parole has been an area of criminal justice reform that Louisiana has undergone to address unsustainable costs and imprisonment rates. In 2009, Governor Bobby Jindal directed the Louisiana Sentencing Commission, a 22-member body representing law and the justice system, to conduct a comprehensive review of the state's sentencing structure and corrections policy, with the focus to seek viable alternatives to imprisonment and reduce state spending on corrections without compromising public safety. The Commission then sought assistance from the Vera Institute and the Public Safety Performance Project of the Pew Center on the States to analyze sentencing and corrections trends and generate policy options for the state. Through those efforts, in 2011, Louisiana enacted a series of legislation to address sentencing and corrections issues. Specifically, partly in response to persistently high numbers of prison admissions due to probation or parole revocations, and to incorporate best practices of addressing violations in a swift, timely and consistent manner, Act 104 authorized the use of administrative sanctions for violations of probation and parole.

LEGISLATIVE AUTHORITY

As noted above, the enabling legislation that authorizes the use of administrative sanctions in probation and parole supervision is Act 104, enacted in the 2011 Regular Session of the Louisiana State Legislature. The legislation applies to both probationers (felony-level) and parolees for technical violations, traffic violations, and violations of local ordinances. For probationers, the legislation indicates that the sentencing court must authorize the probation agency, the Department of Public Safety and Corrections (DPSC), to invoke this authority. For parolees, authorization must be granted by the Board of Parole. The legislation, however, does not specify the range of administrative sanctions authorized for violations of either probation or parole, but it does give examples of the types of sanctions that can be imposed. There are a maximum number of days per year a probationer/parolee can spend in jail as an administrative sanction.

AGENCY POLICY AND PROCEDURE

In Louisiana, DPSC oversees felony-level probation and parole supervision. Several entities have the authority to administratively issue sanctions: supervision officer, field supervisor, hearing officer, and chief/director. This authority, however, is based on a graduated response approach. In other words, the range of the authority depends on the severity of the violation incurred and whether it is a probation or parole case. The range of sanctions include: jail; electronic monitoring; increased supervision; community work service; day reporting center; written warning; victim impact statement; random drug testing; and non-custodial treatment for substance abuse issues. While DPSC does not have agency regulations to stipulate the process for and range of incentives as part of administrative responses, it does encourage supervision

officers to recognize and reward probationers and parolees for positive behavior changes, compliance with the conditions of supervision, and progress made towards achievement of goals. This may include the reduction of supervision levels and early termination of supervision.

DPSC does have a formal structure to determine the administrative sanctions approach, known as the Performance Grid (see Department Regulation E-02-008). It is required to use the Performance Grid to address violations through administrative sanctions, and departures are not permitted on the procedure of administrative sanctions. All probationers, as approved by the sentencing court, and parolees, as approved by the Board of Parole, are eligible to undergo the Performance Grid for administrative sanctions. When supervision officers impose administrative sanctions as part of the Performance Grid, however, several factors must be taken into consideration: severity of the violation; prior violation history; severity of the underlying criminal conviction; any special circumstances, characteristics, or resources of the individual; protection of the community; deterrence; and availability of local sanctions. It is also noted there are different grids for different types of offenses (e.g., violent offenses and sex offenses).

LEGAL PROCEDURE

The Notification of Administrative Sanctions (“notice,” hereafter) (see Form E-02-008-B) details the legal rights afforded to the probationer/parolee as part of the administrative sanctioning process. As the notice indicates, the probationer/parolee is entitled to an administrative hearing on the fact of a violation and the appropriateness of the administrative sanction. As part of this procedure, the probationer/parolee is entitled to the assistance of counsel, a written notification of the alleged violation is required, and there is an admission statement and waiver of hearing form for the probationer/parolee. The probationer/parolee must also agree to the sanction. If the probationer/parolee does not admit the violation and waives the specified rights, the matter then proceeds to a revocation hearing before the sentencing court or Board of Parole.

IMPLEMENTATION ISSUES

DPSC has undergone statewide implementation with respect to administrative sanctions. It has also conducted numerous informational sessions to members of the judiciary across the state. Moving forward, DPSC would like to implement a formal structure to administratively grant incentives to supplement the administrative sanctions. Data are collected by the agency to support the evaluation of the outcome process, which include average number of jail days imposed. Due to the limitations of the current data management system, however, DPSC is not able to collect data at this time on specific use of each action taken using the Performance Grid. A new system is currently being developed to address these issues.

Missouri State Profile

Administrative Responses in Probation and Parole Supervision

In early 2011, Missouri received technical assistance from the Public Safety Performance Project of the Pew Center on the States to develop data-driven strategies in order to reform community supervision to address unsustainable costs and high failure rates among individuals on probation and parole supervision. Soon thereafter, the Missouri Working Group on Sentencing and Corrections was formed to analyze sentencing and corrections data, research evidence-based practices in community supervision, and make recommendations to address the failure rates among probationers and parolees. The Working Group made five overarching policy recommendations: (1) target high-risk offenders; (2) frontload supervision resources; (3) respond to violations with swift, certain and proportional sanctions; (4) incorporate incentives; and (5) balance surveillance with treatment¹. These recommendations were well received by state legislators and the Justice Reinvestment Act of 2012 (JRA, hereafter) was passed as a result. The use of administrative responses, including both sanctions and incentives, to address violations and promote compliance among probationers and parolees was authorized as part of this legislation.

LEGISLATIVE AUTHORITY

As noted above, the enabling legislation that authorizes the use of administrative sanctions and incentives in probation and parole supervision is the JRA, also known as HB 1525. The legislation applies to both probationers (felony-level) and parolees. More specifically, with respect to sanctions, JRA authorizes supervision officers to order a short stay in jail or detention for violations of probation or parole, among other existing sanctions including: electronic monitoring; increased supervision; day reporting center; written warning; victim impact statement; and random drug testing. For incentives, JRA authorizes the probation and parole agency, the Department of Corrections (DOC), to award earned compliance credits to individuals who are eligible as defined by statute, among other existing incentives including: reduced supervision level; reduced drug and alcohol testing; extended curfew; travel permits; verbal recognition by supervision officer; and certificate of compliance. Neither the Court nor Parole Board has to invoke their authority to DOC for supervision officers to administratively issue sanctions or grant incentives.

AGENCY POLICY AND PROCEDURE

In Missouri, DOC oversees felony-level probation and parole supervision. The supervision officer and field supervisor have the authority to administratively issue sanctions and grant incentives. While approval from an authority is not needed to administratively issue sanctions or grant incentives, the Court or Parole Board may decline to delegate authority to DOC for

¹ Missouri Working Group on Sentencing and Corrections, "Consensus Report," December 2011; available at <http://www.senate.mo.gov/12info/comm/special/MWSC-Report.pdf>.

administrative sanctions. The range of sanctions include: electronic monitoring; increased supervision; day reporting center; written warning; victim impact statement; and random drug testing. The range of incentives include: reduced supervision level; reduced drug and alcohol testing; extended curfew; travel permits; verbal recognition by supervision officer; certificate of compliance; and earned compliance credits.

DOC does have a formal structure to determine the administrative sanctions approach, known as the Violation Response Grid. It is required to use the Grid to address violations through administrative sanctions, and departures are permitted if approved by the Chief Administrator Officer. Both aggravating and mitigating factors may be considered for allowing departures from the Grid, such as if the probationer or parolee presents a threat to public safety or the length of compliance the individual had prior to the violation. As defined by both policy and statute, all probationers and parolees are eligible to undergo the Grid for administrative sanctions. Supervision officers must investigate and submit documentation to validate each violation allegation. Responses are based on the severity and type of violation incurred.

LEGAL PROCEDURE

As defined in DOC policy and procedure, supervision officers must submit written notification of the alleged violation to his/her supervisor, and it is processed according to the Grid as described above. With respect to other issues pertaining to the legal procedure, the probationer/parolee is not: (a) entitled to a hearing before the Court or Parole Board on the fact of the violation and the appropriateness of the administrative sanction; (b) given the opportunity to request the appointment of counsel at any time during the sanctioning process; and (c) provided an admission statement and waiver of hearing form as part of the administrative sanctioning process. Furthermore, regardless of whether the probationer/parolee admits to the violation for an administrative sanction and waives the specified rights, the matter does not proceed to a revocation hearing. Finally, in Missouri, prosecutors are not involved in the administrative response procedure, nor are other interested parties allowed to participate.

IMPLEMENTATION ISSUES

DOC has undergone statewide implementation with respect to administrative sanctions and incentives. For the sanctions component, DOC has had the ability to impose some administrative sanctions prior to the enactment of the enabling legislation as described above, and agency staff members have received training on the options in this area. DOC has not, however, implemented the recent legislative components that authorize administrative jail sanctions. In fact, DOC is still in the process of determining budget allocations and implementation issues for the short jail stay sanction. Data are collected by the agency to support the evaluation of the outcome process, which, at this time, include the type of violation (new offense vs. technical violation) and the recidivism rate for the probationers/parolees involved in administrative responses.

New Hampshire State Profile

Administrative Responses in Probation and Parole Supervision

Despite New Hampshire's low and stable crime rate, an increasing prison population largely due to probation and parole revocations and associated costs, led policymakers and stakeholders to form the Justice Reinvestment Work Group. Together with the Council of State Governments Justice Center, Bureau of Justice Assistance, New Hampshire Charitable Foundation, and The Pew Center on the States, the team used an evidenced-based approach to develop strategies to decrease spending on corrections and reinvest in treatment and sanction programs aimed at reducing recidivism and increasing public safety. In 2010, the Justice Reinvestment Initiative was passed allowing greater focus to be given to individuals under community supervision assessed at high-risk, delegating administrative authority to corrections staff. Probation and parole officers, with permission from the court, are now able to use short jail stays as sanctions for felony probationers, as well as implement an intermediate sanctions program instead of revocation hearings for parolees. The corrections reform legislation also addresses terms of release, mandating non-violent offenders to be released after serving no more than 120% of the minimum term required. Also, mandatory supervision was added for parolees who would likely serve their entire sentence in prison. In 2011, Senate Bill 52 was passed that amended the Justice Reinvestment Initiative, giving more discretion to the Parole Board regarding terms of release and recommitment.

LEGISLATIVE AUTHORITY

Passed in 2010, the enabling legislation that authorizes the use of administrative responses is Senate Bill 500, known as the Justice Reinvestment Initiative (JRI). Specifically, RSA 504-A: 4 III allows for the use of short jail stays (up to five days total for the duration of supervision) to be used as sanctions for felony probationers. However, this sanction must be included in the original sentence. RSA 651-A: 16a also allows for use of an Intermediate Sanctions Program, a 7-day residential program, to be used as an alternative to revocation hearings for parolees and may be used as many times as deemed appropriate. This sanction does not require court approval, however notification is sent to the Parole Board. Prior to and after JRI, the Department of Corrections supervisors could also administer alternative sanctions for technical violations, traffic violations, and some new offenses. These alternative sanctions can be used without court or Parole Board approval; however notification to the Board is sent.

AGENCY POLICY AND PROCEDURE

In New Hampshire, the Department of Corrections (DOC) oversees the supervision of misdemeanor and felony probationers and parolees. DOC supervision officers do have arrest powers; however, they are not able to issue warrants, nor do they have sworn peace officer status. Both the supervision officer and the field supervisor have the authority to administer sanctions and incentives. They do not need further approval to administer alternative sanctions or the Intermediate Sanction Program. For short jail stays, the sanction must be part of the

probationer sentence order. A variety of alternative sanctions are available to supervision officers including: electronic monitoring, increased supervision, community work service, written warning, random drug testing, review hearings, additional supervision conditions, curfew, and treatment referral, and jail. As mentioned above, the use of jail as a sanction is limited to probationers for up to five days. For parolees, an additional sanction of a 7-day program (residential) may be used after other sanctions have failed. Incentives can be administered by the same officers without approval. The range of incentives include: less frequent reporting to officer, reduced supervision level, reduced drug and alcohol testing, extended curfew, travel permits, verbal recognition, and early discharge from supervision.

Sanctions and incentives are not administered with a formal structure, but instead individual offender risk and needs are considered and decisions made on a case-by-case basis. As part of the Justice Reinvestment Initiative, all individuals are assessed using a risk assessment tool and then determined to be low, medium, or high risk for reoffending. An alternative sanction matrix, developed under the JRI is available for consultation that takes into consideration risk level and number of violations.

LEGAL PROCEDURE

In New Hampshire, if an individual has violated terms of probation or parole supervision, the DOC supervision officer may first use alternative sanctions unless otherwise ordered by the Court or Parole Board. A short jail stay may be used if the probationer has been advised of and waived his or her right to counsel and preliminary hearing. The probationer must also be informed in writing of the alleged violation, date of violation, and the number of jail days sanctioned. A probation revocation hearing will be held if the probationer is not in agreement. The same waiver of rights is required for parolees given the 7-day residential sanction. The prosecutor is not involved in administrative responses to violations, nor is the probationer/parolee entitled to a court hearing on the fact of the violation and the appropriateness of the administrative sanction.

IMPLEMENTATION ISSUES

Statewide implementation of administrative sanctions and incentives is currently in place in New Hampshire. DOC supervision officers have had training to support their use and understanding of administrative responses. A formal evaluation of the outcome of the Justice Reinvestment Initiative has not occurred and currently no data are being collected to support future evaluation efforts.

North Carolina State Profile

Administrative Responses in Probation and Parole Supervision

In December of 2011, North Carolina began to implement the Justice Reinvestment Act. This major sentencing and corrections reform allows for the use of administrative responses for violations of probation. Justice Reinvestment in North Carolina was developed through a bipartisan, data-driven approach, with assistance from the Justice Center of the Council of State Governments and the Public Safety Performance Project of the Pew Center on the States. The goals were to address budgetary concerns related to spending on corrections and the growing number of prison admissions for technical probation violations, and to reinvest in strategies to increase public safety. The new law delegates authority to probation officers to impose new conditions of probation, including jail confinement, when a felony or misdemeanor probationer fails to comply with one or more of the conditions imposed by the court. Administrative responses do not apply in DWI, interstate compact, and parole or post release cases. Additionally, the law limits judicial authority to revoke probation (activate the entirety of a suspended sentence) to defendants who abscond or commit a new criminal offense.¹

LEGISLATIVE AUTHORITY

The enabling legislation that authorizes the use of administrative sanctions for technical probation violations in North Carolina is the Justice Reinvestment Act of 2011 (NCGSA § 15A-1343.2). The legislation delegates the authority to impose sanctions to probation officers, unless the court determines the delegation is inappropriate. Sanctions include: community service, increased supervision, random drug testing, substance abuse assessment and treatment, house arrest with electronic monitoring, educational or vocational skills development, and brief periods of confinement in jail in response to a violation. Probation has the discretion to sanction probation violators to ‘quick dips’—two to three-day increments in jail, for a total of no more than six days per month during any three separate months during the period of probation.

For more serious or repeated violations (except for absconding or commitment of a new offense) a judge may sanction probation violators to longer terms of incarceration that fall short of revocation. For felons, the confinement in response to a violation (CRV) is 90 days (90 days or less for misdemeanants) for up to two separate periods of confinement.² A defendant may only receive two CRV periods in a particular case. Under the current statutes the court is never required to order CRV.

The legislation does not authorize or prohibit the use of incentives as part of the administrative response approach. To date, there have been no legal challenges to the law.

¹ Markham, Jamie. June 30, 2011. “The Justice Reinvestment Act: An Overview.” <http://nccriminallaw.sog.unc.edu/?p=2628>.

² Confinement in response to a violation (CRV) is also referred to as a ‘dunk.’

AGENCY POLICY AND PROCEDURE

In North Carolina, probation resides in the executive branch and falls under Community Corrections within The Division of Adult Correction of the Department of Public Safety. Within probation, supervision officers have arrest powers and the authority to issue warrants. Supervising officers and field supervisors have the authority to administratively issue sanctions, with final approval needed from the field supervisor. The Justice Reinvestment Act delegates authority directly to probation to administer administrative responses. However, the sentencing judge can decline to authorize the delegation of this authority and retain sanctioning authority.

In addition to the use of administrative sanctions (see above) probation can unilaterally issue a range of incentives. Incentives include: less frequent reporting to officer, reduced supervision level, reduced drug and alcohol testing, extended curfew, travel permits, verbal recognition, certificate of compliance, or early discharge from supervision.

Misdemeanor and felony structured sentencing offenders are subject to use of administrative sanctions. A formal structure exists, and is required, to determine administrative responses. A non-compliance grid with five supervision levels and five severity types of non-compliance (public safety; new crime/conviction; multiple recurring technicals; non-recurring technicals; and non-willful) is utilized to determine eligibility for probationers to undergo the administrative response approach and a recommended sanction (see Appendix). These criteria are identified in policy. Departures from the structure are permitted with approval from front line supervisors and Judicial District Managers.

LEGAL PROCEDURE

In North Carolina, when a probationer fails to comply with one or more of the conditions of probations imposed by the court, the probation officer may impose administrative responses after administrative review and approval by a supervisor. The probationer may file a motion with the court to review the action taken by the probation officer and shall be given notice of the right to seek such a court review. However, no right to review exists if the probationer has signed a written wavier of rights.³

For 'quick dips' there are additional procedural requirements. Prior to imposing confinement, the probationer must first be presented with a violation report that contains the alleged violations. The report includes:

- An advisement to the right to a hearing before the court on the alleged violation, with the right to present relevant and written evidence.
- To have counsel at the hearing. Counsel will be appointed if the probationer is indigent.
- Request witnesses who have relevant information concerning the alleged violations and examine any witnesses or evidence.

³ See NCGSA § 15A-1343.2.

A probationer may be confined for the period designated on the violation report upon the signing the waiver of rights, with two probation officers acting as witnesses.⁴

The prosecutor is not involved in the administrative response procedure. However, several parties may participate in the legal procedure: treatment providers, victim advocates, family members, and witnesses.

IMPLEMENTATION ISSUES

Administrative sanctions have been implemented statewide in North Carolina. Multiple training sessions have been held for probation officers, judges, clerks of court, and district attorneys. Despite the initial trainings there are still some concerns on the Bench about the constitutionality surrounding the use of 'quick dips'. The result is that a subset of judges is not allowing authority to be delegated to probation officers, while others are allowing the delegation of authority with the exception of the 'quick dip' jail confinement. Additionally, there are concerns about public safety and the potential for increased workload of court staff and judges related to CRV hearings in the court. Stakeholder trainings continue to be held throughout North Carolina.

Given that the program was recently implemented, no formal evaluation of administrative sanctions in North Carolina has been conducted. Community Corrections is collecting data that will support a future evaluation of the outcome process. Data are being collected for the types of violations, the average number of jail days imposed, the number and type of sanctions imposed, the recidivism rate for probationers involved in administrative responses, and the average amount of time on supervision.

⁴ See NCGSA § 15A-1343.2.

Oregon State Profile

Administrative Responses in Probation and Parole Supervision

Oregon first implemented administrative responses to violations of probation and parolees in 1993. This provided a shift in organizational culture and subsequent policy and practice. The original motivation to move toward administrative responses was to expedite the court process, reduce court costs, and provide immediacy to the sanctioning process for technical violations. The purpose of this initiative was to establish a uniform system of administrative sanctions to address violation behavior of offenders under supervision while on probation, parole or post-prison supervision that could be imposed directly by the Department of Corrections (DOC) or a county-level community corrections agency. The current statewide plan only impacts felony offenders.

LEGISLATIVE AUTHORITY

In 1993, the Oregon State Legislature first passed a statute authorizing the use of administrative sanctions, which were defined as local, structured intermediate sanctions for violations of the conditions of supervision. ORS 137.595 gives community corrections the authority to impose administrative structured sanctions while ORS 144.106 addresses post-prison offenders. Administrative sanctions are defined as less than a revocation action and include, but are not limited to: local confinement in jails, restitution centers, treatment facilities, or similar facilities of community service work, work crew or house arrest. The legislation authorized the creation of the Administrative Sanctions Sanctioning Grid, which established an offender's presumptive sanction for various violations and circumstances of the violation behavior. Over the years, several amendments have been made to the original legislation. There are no state statutes that address the utilization of incentives as part of administrative responses.

AGENCY POLICY AND PROCEDURE

The provisions of the Oregon Administrative Sanctions program apply to all felony-level probationers. The sentencing judge orders the probation offender to be subject to the structured, intermediate sanctions sanctioning process and the offender consents in writing or on the record to be subject to the structured, intermediate sanctions sanctioning process. Offenders on parole or post-prison supervision are also included.

Each probationer begins the term of supervision with a "bank" of violation units (post-prison supervisees and parolees have an unlimited bank). Some violations will only draw a small amount from this "bank" while more serious or repeated violations will produce a more significant drawdown from this "bank" according to the placement on the grid. The officer must determine the appropriate number of units and the specific sanction to be imposed from the grid. If there is not a sufficient unit balance to cover the sanction, the matter is referred to a hearing for additional action. If the administrative sanction falls within the available

sanctioning units, the officer seeks supervisory approval to impose the sanction. The officer may order local sanctions, including local confinement, for up to 30 days.

The officer does have an option to impose an administrative sanction in response to a violation. If the officer feels it is more appropriate, an intervention may be imposed as an alternative. Interventions include: verbal reprimands, written reprimand, job search programming, increased reporting requirement, curfew, day reporting, modifications to conditions, and outpatient treatment. Intervention responses are not counted as units and may be imposed along with sanctions.

LEGAL PROCEDURE

At the time of an alleged violation, all offenders covered under the provisions of this structured, intermediate sanctions statute must be given a Notice of Rights form and a copy of the Violation Report/Sanction Reporting form, prepared by the supervising officer, which describes the alleged violation behavior and a description of the sanctions to be imposed under the administrative sanctioning process. These rights include the right to a violation hearing and the right to counsel. At that time, he/she may waive the right to a hearing and elect to proceed with the administrative sanctioning process. If the offender admits to the alleged violation behavior or does not contest the information regarding the alleged violation behavior and accepts the administrative sanction/s to be imposed, then the supervising officer will impose the sanction. If anything is contested, the matter is set for a hearing rather than the administrative sanction process.

The supervision officer is required to notify the court and prosecuting attorney whenever administrative sanction(s) are imposed (for probationers). Upon a motion of the prosecuting attorney or its own motion, the offender may be brought before the court for a hearing to consider revocation or impose other or additional sanction or modify the conditions of probation at some point before completion of the administrative sanction.

IMPLEMENTATION ISSUES

This is a statewide process and all officers have been trained in its implementation. There are 36 jurisdictions in the State of Oregon and there were some initial challenges with implementation. Both the courts and their staff and probation and parole officers had to be prepared for this advancement.

DOC and local jurisdictions that have implemented the administrative sanctions process are collecting data to enable them to complete outcome evaluation. Data collected include: type of violation- new offense vs. technical violations; average number of jail days imposed; number of sanctions imposed; number of each type of sanctions imposed; average amount of time on supervision; and recidivism rate for probationer/parolees involved in the administrative response process.

South Carolina State Profile

Administrative Responses in Probation and Parole Supervision

The implementation of administrative responses to violations in probation and parole has been one area of criminal justice reform that South Carolina has undergone in recent years to address unsustainable costs and imprisonment rates. In 2008, the state legislature established the Sentencing Reform Commission, which was comprised of representatives from the state legislature, judiciary, and corrections. The Commission then sought assistance from the Public Safety Performance Project of the Pew Center on the States, along with its partners (Crime and Justice Institute and Applied Research Services, Inc.), to analyze sentencing and corrections trends and generate policy options for the state. Through those efforts, in 2010, South Carolina enacted comprehensive legislation, the Omnibus Crime Reduction and Sentencing Reform Act of 2010, and part of that legislation included the authorization of administrative responses, both sanctions and incentives, in the community supervision of probationers and parolees.

LEGISLATIVE AUTHORITY

As noted above, the enabling legislation that authorizes the use of both administrative sanctions and incentives is the Omnibus Crime Reduction and Sentencing Reform Act of 2010. The sanctions component applies to both probationers and parolees, including both misdemeanors and felonies for technical violations and violations of local ordinances. While the legislation does indicate that an individual court is needed to invoke this authority if special conditions apply, it does not specify the range of administrative sanctions authorized. Additionally, the State Supreme Court has ruled in *State v. Stevens*, S.C. (2007) that the Department of Probation, Parole, and Pardon Services (DPPPS) is not authorized to impose new probation conditions that are not ordered by the sentencing court; it is not clear whether this ruling would apply to administrative sanctions under the new legislation. Finally, the incentives component of administrative responses legislation applies to probationers only. The legislation, however, does not indicate that an individual court order is needed to grant incentives, nor does it specify the range of incentives authorized.

AGENCY POLICY AND PROCEDURE

In South Carolina, DPPPS oversees felony-level probation and parole supervision. Several entities have the authority to administratively issue sanctions: supervision officer, field supervisor, hearing officer, and chief/director. This authority, however, is based on a graduated response approach. In other words, the range and approval of the authority depends on the severity of the violation incurred and whether it is a probation or parole case. For probation cases, for example, the judge may require that sanctions be approved by the court for special conditions set at time of sentencing. The range of sanctions include: jail; electronic monitoring; increased supervision; community work service; day reporting center; written warning; victim impact statement; and random drug testing. The supervision officer, however, has the authority to administratively grant incentives to probationers, and an approval is not needed. The range

of incentive includes: less frequent reporting to officer; travel permits; verbal recognition by supervision officer; earned compliance credits; and early discharge from supervision, which is required by judicial approval.

DPPPS does have a formal structure to determine the administrative response approach, and this structure applies to both sanctions and incentives. It is required to use the formal structure, but departures from the structure are permitted by appropriate authorities. Decisions to depart from the formal structure are based on aggravating and mitigating factors, such as the nature and seriousness of the conviction offense(s) and any pending charges. The eligibility criteria for probationers/parolees to undergo the formal structure of the administrative response approach vary for sanctions and incentives. For sanctions, all probationers/parolees are eligible. Probationers must remain in compliance with all supervision conditions to be eligible for the incentives, however.

LEGAL PROCEDURE

In South Carolina, the prosecutor is not involved in the administrative response procedure. The probationer/parolee is entitled to an administrative hearing on the fact of the violation and the appropriateness of the administrative sanction, which include the following elements: written notice of claimed violation(s); disclosure to the probationer/parolee of the evidence against him/her; opportunity to appear in person to present witnesses and documentary evidence; opportunity to confront and cross-examine adverse witnesses; a neutral and detached hearing body other than the supervision officer reporting the violation; and a written statement of the evidence relied upon and the reasons for imposing the sanction. As part of the administrative sanctioning process, the probationer/parolee is given the opportunity to request the appointment of counsel at any time, a written notification of the alleged violation is required, and there is an admission statement and waiver of hearing form for the probationer/parolee. If the probationer/parolee does not admit the violation and waives the specified rights, the matter then proceeds to a revocation hearing. Several parties may participate in the legal procedure: treatment providers, victim advocates, family members, and employers.

IMPLEMENTATION ISSUES

DPPPS has undergone statewide implementation with respect to both administrative sanctions and incentives. It has also conducted numerous informational sessions to members of the judiciary across the state. Moving forward, DPPPS is in the process of enhancing the administrative sanctions to applicable violations and to do a better job of tracking those sanctions for purposes of outcome evaluation. It is also in the process of enhancing a continuum of incentives for probation supervision. Data are collected by the agency to support the evaluation of the outcome process, which include: type of violation; number of sanctions imposed; number of each type of sanctions imposed; and average amount of time on supervision. In December 2011, DPPPS implemented a model, the Data Analyses to Reduce Recidivism (DARR), to track data in order to reduce compliance revocations, citations, and warrants in probation and parole supervision.

Washington State Profile

Administrative Responses in Probation and Parole Supervision

The State of Washington has been involved in a continuing process to reduce caseloads and reduce costs by the implementation of evidence-based practices in their probation and parole delivery system. From 2003 to 2010, legislative actions led to a dramatic decrease in the population under the community supervision of the Department of Corrections (DOC). Even with the population being smaller in size, DOC continued to experience high violation rates among probationers and parolees who were assessed at high-risk to reoffend. Violation sanctions were identified as a target for change and improvement. In the 2012 Session of the Legislature, DOC requested enabling legislation to continue the shift toward the implementation of evidence-based supervision models that promote behavioral change among probationers and parolees. Although DOC already had policy and procedure in place to respond to violations with administrative sanctions, this legislation, the Second Engrossed Second Substitute Senate Bill 6204 (SB 6204), included a modification to the procedure for responding to low-level violations. SB 6204 passed with overwhelming support and signed into law by the Governor. One section of the legislation dealt with “swift and certain” behavioral interventions. It provides modest, but “swift and certain” jail sanctions for violations of conditions of supervision by probationers and parolees.

LEGISLATIVE AUTHORITY

SB 6204 pertains to both probationers (felony-level) and parolees for both misdemeanors and felonies. Only technical violations are included under this authority. The legislation does specify the types of sanctions authorized and includes but is not limited to: brief jail time; electronic monitoring; and community work service;. An additional individual court order is not needed to implement the administrative sanctions. There are limitations established by the Legislature. The provisions of this bill only apply to individuals sentenced under the Offender Accountability Act. High-level violations, low-level violations with aggravating factors, and probationers and parolees with a number of violations are still heard through the previously established hearing process and may receive sanctions up to 30 days in jail. The violation hearings process for other probationers and parolees under the jurisdiction of the Indeterminate Sentencing Review Board, or those sentenced by the Court under sentencing alternatives, remains the same, although this act reduced the maximum period of confinement that could be imposed from 60 days to the current 30 day cap. At this time, there have been no formal legal challenges to this procedure. This enabling legislation does not address and, therefore, does not specifically authorize the use of incentives.

AGENCY POLICY AND PROCEDURE

DOC probation and parole officers may respond to violations for those individuals covered by the provisions under SB 6204. Officers have the authority to impose those sanctions without

the utilization of a formal hearing. Any probationer or parolee who has been sanctioned under SB 6204 five or more times will have all subsequent violation allegations processed through the existing DOC Hearing process. As identified above, all of the operational procedures that have been in place to address alleged violations for probationers or parolees not covered by SB 6204 remain the same utilizing the Department Hearing procedures.

Departures from the Interim Behavioral Accountability Guide (Guide, hereafter) are allowed but must be approved by Hearing Officers or Field Supervisors. Aggravating and mitigating circumstances can be considered when granting a departure. For probationers, the sentencing judge cannot decline to delegate the authority to DOC for the imposition of administrative sanctions. In fact, the sentencing judge may not overrule administrative sanctions imposed under the provisions of SB 6204.

LEGAL PROCEDURE

Several safeguards are in place to ensure that the due process rights of probationers and parolees are protected. Each probationer/parolee is oriented to an orientation with his/her supervision officer. At a minimum, this orientation includes a detailed discussion of DOC's violation process and expectations of the probationer/parolee while under community supervision. Initial low-level violations usually result in the application of non-custodial sanctions. For subsequent violations, however, the probationer/parolee may only be confined for a maximum of three days. During this process, he/she has the opportunity to formally respond to the alleged violation and to have mitigating circumstances considered by the court or parole board. The probationer/parolee is also afforded rights to an appeal if the administrative sanction is not accepted for the alleged violation.

IMPLEMENTATION ISSUES

DOC supervision officers across the state have all been trained regarding the implementation of administrative sanctions. This new sanctioning procedure has been implemented on a statewide basis. Beginning on April 19, 2012, three sites began the process and it was gradually introduced to all other DOC sites and was fully implemented on August 13, 2012. While incentive initiatives have not yet been implemented through statute or statewide policy, Washington is currently piloting the utilization of incentives as a component of community supervision in several local jurisdictions.

Data are collected by DOC to support the evaluation of the outcomes, including: type of violation; average number of jail days imposed; number of sanctions imposed; number of each type of sanctions imposed; average amount of time on supervision; and a control group has been established. In 2011, Seattle collaborated with DOC to conduct a one-year pilot program called the Washington Intensive Supervision Program (WISP). The preliminary outcome evaluation for this pilot has been extremely promising. The results of this pilot program established the basis for the "swift and certain" sanctioning provisions of Senate Bill 6204.