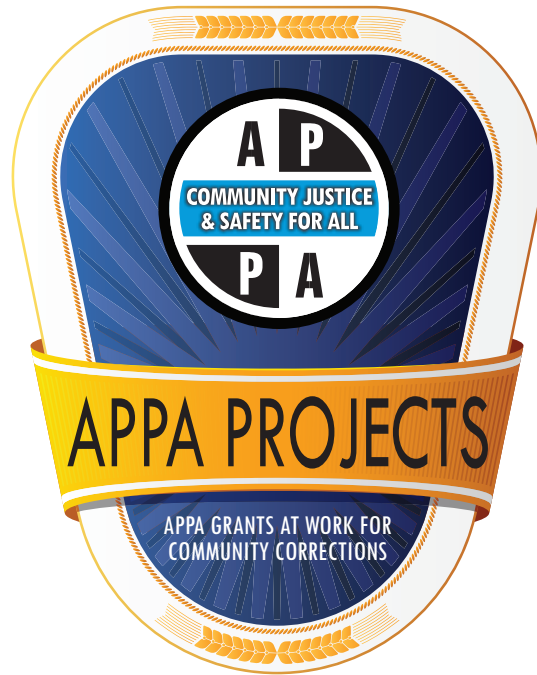


EFFECTIVE
RESPONSES TO
OFFENDER
BEHAVIOR:

LESSONS
LEARNED FOR
PROBATION
AND PAROLE
SUPERVISION





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ABOUT THE ORGANIZATIONS

AMERICAN PROBATION AND PAROLE ASSOCIATION (APPA)



APPA is an international association composed of individuals actively involved with probation, parole and community-based corrections, in both adult and juvenile sectors. Over the years, APPA has grown to become a strong, unified voice for thousands of probation and parole practitioners, as well as educators, volunteers and concerned citizens with an interest in criminal and juvenile justice. APPA provides a wide range of services to its constituency, including training, technical assistance, and research on the most pressing issues facing the community corrections field.

NATIONAL CENTER FOR STATE COURTS (NCSC)



NCSC, headquartered in Williamsburg, Virginia, is an independent, nonprofit court improvement organization. All of NCSC's services — research, information services, education, consulting — are designed to help courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision-making.

PUBLIC SAFETY PERFORMANCE PROJECT (PSPP), THE PEW CHARITABLE TRUSTS

The PSPP works with states to advance data-driven, fiscally sound policies and practices in the criminal and juvenile justice systems that protect public safety, hold offenders accountable, and control corrections costs.

“We cannot assume that what is punishing for one is equally punishing for another; nor can we assume that what is rewarding for one is equally rewarding for another.”

– Dr. Eric Wodahl, University of Wyoming

INTRODUCTION

Using effective strategies to keep probationers and parolees crime- and drug-free and curb their revocation rates is among the most important issues facing our community corrections supervision system. From the early 1980s through 2005, there was a sharp decline in the percentage of adult probationers (from 79% to 59%) and parolees (from 60% to 45%) who successfully completed supervision (Bureau of Justice Statistics, 1984; Glaze & Bonczar, 2006). While there has been a period of stabilization in more recent years, probation and parole agencies continue to seek alternatives to “business as usual” in community supervision. This is mainly due to the fact that high revocation rates have had a detrimental impact on the criminal justice system, including extensive prison growth (see Pew Center on the States, 2008) and significant increases in costs for both corrections and the judiciary (see Kyckelhahn, 2012). The community corrections field has a responsibility to implement a more effective supervision process that enhances compliance and accountability among probationers and parolees, thereby improving public safety in a cost-effective way.

Given these challenges, community corrections agencies are increasingly taking a more comprehensive approach in responding to certain violations and reinforcing compliance among probationers and parolees. Decades of learning in the field and a growing research base has led to a consensus among many corrections professionals about what needs to be done to achieve better results and increase public safety. These strategies include, but are not limited to, assessing criminal risk and need factors, focusing resources on higher risk offenders, tailoring conditions of supervision to the risk and needs most likely to result in new criminal behavior, and balancing surveillance requirements and treatment needs (Solomon, 2007).

Based on solid research, two key strategies that many agencies have begun to implement are the use of swift, certain, and proportionate sanctions to respond to violations, and the use of incentives to promote and reinforce compliance among probationers and parolees. These responses can be imposed by the courts, or they may be executed administratively, meaning that the authority to issue sanctions and reward compliance is given to the supervision agency, without returning to the court or releasing authority (e.g., parole board). This administrative response authority can be established by statute or can be delegated by the court. An administrative response strategy can strengthen community supervision services by providing agencies greater autonomy in responding to behaviors in more effective and cost-efficient ways, and thereby avoiding a reliance on the courts or releasing authorities to handle all violations, particularly those that include minor behavioral infractions.

In December 2012, The Pew Charitable Trusts' Public Safety Performance Project (Pew), the American Probation and Parole Association (APPA), and the National Center for State Courts (NCSC) jointly sponsored a convening of representatives from 14 states to address the use of effective administrative responses in probation and parole supervision. The conference was designed to assist the states by highlighting effective procedures and common performance measures in responses that involve both sanctions and incentives. In addition, it provided an excellent opportunity for individuals to interact with representatives from the legislative, executive and judicial branches in their respective states around this timely public safety issue, and to share their experiences and observations with other policymakers, practitioners and national experts.

Several documents were developed for the summit, including legal and research memos, and individual profiles of the states that summarized their policies and practices around effective administrative responses (see Appendix A). This report highlights key lessons learned around planning and implementation of sanctions and incentives, with particular attention to ways in which states and local jurisdictions can improve effective responses in probation and parole supervision. This report first provides an overview of the research and rationale supporting swift and certain sanctions and responses shown to be effective in community supervision. Second, the report provides key lessons learned based on the feedback received by attendees at the conference. Last, the report summarizes practical implications about the use of the effective administrative response approach in community supervision, including directions for future research.

RESEARCH AND RATIONALE

In considering responses to both negative and positive behavior among individuals under supervision, it is useful for policymakers and community supervision agencies to examine the theoretical framework underlying effective techniques to enhance supervision compliance among probationers and parolees. There has been significant research supporting swift and certain sanctions for violations and providing incentives and rewards for compliance in community supervision.

Wodahl and associates (2011) refer to the comprehensive practices used to effectively address violations and reward positive behaviors among individuals under community supervision as “behavioral strategies.” Such strategies are based on the scientific theory that behaviors are learned and reinforced by psychological and environmental factors. In particular, operant learning theory (Skinner, 1966) posits that while learning behavior, individuals will continue certain behaviors that are pleasurable to them and discontinue behaviors that have negative effects on them; and stimuli within one’s environment can manipulate this learning process, resulting in both intended and unintended consequences. Further, the stimuli can be in the form of reinforcements, both positive and negative, and punishments, all of which shape an individual’s behavior. Social learning theory (Bandura, 1977) also provides insight into better understanding the components of this learning process. It maintains that individuals learn through observations and modeling during interactions with others within the social environment. This is particularly relevant to the interactions between probationers and parolees and their corresponding supervision officers.

This theoretical framework leads to several key principles and components in identifying effective strategies in promoting compliance among individuals under community supervision. These principles are rooted in the classical work on deterrence in criminology, particularly “specific” deterrence where the purpose is to deter an individual from engaging in future unwanted behaviors, such as crime. Thus, while the principles themselves are not new to the justice system, the ways in which they have been applied to practice have evolved over the years (for a review, see Paternoster, 2010).

“Supervising parole and probation officers are most able to determine the best response to offender behavior. When they use sanctions and interventions appropriately, this will generally lead to fewer offenders facing revocation of supervision.”

– Scott Taylor, Director of Multnomah County Department of Justice and President Emeritus of APPA

SWIFTNESS AND CERTAINTY

The first principle is swiftness, which means that responses by justice system agents to problematic behaviors among probationers and parolees must be prompt (see Paternoster, 2010). Take, for example, the issue of a positive drug test by a probationer who has been assessed as a substance abuser (i.e., someone without a clinical diagnosis of dependency). In the traditional community supervision model, the probationer could remain in the community for several days, weeks or even months, depending on the circumstances of the offense and the practices of the court, to await a formal hearing. In that time, the probationer may likely continue his or her drug use behaviors, and by the time a sanction is actually issued, its reason may not resonate with the probationer. Instead of such a delay, the response to the initial drug use should be done swiftly and the sanction processed within hours and days, not weeks and months. The sanction then acts as a type of nearly immediate stimuli that the probationer connects to the unwanted behavior.

Probationers and parolees also must clearly know the process for handling infractions from the outset, and this process must promote accountability and responsibility to achieve ideal outcomes. This is the certainty principle (see Paternoster, 2010). In using the example above, the probationer should understand and know the range of sanctions available to his or her supervision officer and the court to address the positive drug test, and the process by which those sanctions will be utilized. Again, the expected sanction issued to address the continued drug use acts as a type of stimuli that the probationer connects to the unwanted behavior. This may be likened to a child knowing about his parents' rules, knowing the consequences for breaking those rules prior to the occurrence of any infraction, and knowing that the consequences will for sure occur if the rules are broken.

Responses must be applied consistently in order for the swiftness and certainty principles to be most effective in deterring future unwanted behaviors (Hawken & Kleiman, 2009; also, see Grasmick & Bryjak, 1980; Paternoster, 1989). Every violation must be met with an anticipated sanction. This eliminates the perception by the probationer or parolee that some violations have been ignored or excused. Without consistency, a probationer or parolee may believe that future violations can be ignored, or that an imposed sanction is arbitrary because another probationer or parolee who engaged in the same kind of activity was not issued a sanction. Swift and certain responses applied consistently improve the perception among probationers and parolees that the anticipated sanction is fair and just, and that the process is neutral rather than arbitrary and inconsistent. Research suggests that such perceptions of procedural justice can enhance compliance and deter future criminal behavior as well (Paternoster, Brame, Bachman, & Sherman, 1997; Rhine, 1993).

PROPORTIONALITY

In addition to swiftness and certainty, responses must be proportionate to the infraction committed by the probationer or parolee in the form of a graduated approach to improve the perception that responses are fair and just and deter future unwanted behaviors (see Taxman, Soule, & Gelb, 1999). This associates the type of sanction with the severity of the violation. For example, a parolee who misses a scheduled appointment with his supervision officer for the first time should receive a sanction proportionate to this violation. In some cases, this may be a verbal reprimand or written warning, while a short jail term may be appropriate in other, more serious cases. Proportionality also considers the availability of resources to sanction a probationer or parolee for a behavioral infraction (Hawken & Kleiman, 2009). It is not in the best interest of the public to send every violator to jail or prison for a period of time. Such an approach not only would be costly, but is unnecessary to achieve the desired deterrent effect, and would be viewed by the probationers and parolees as excessive and unfair. Thus, the proportionality principle enhances the validity of the sanctioning process.

The concept that responses are proportionate also relates to the Risk-Need-Responsivity (RNR) model (Andrews & Bonta, 2010) for the assessment and treatment of criminal offenders. The risk principle indicates that the level of service should be matched to the individual's risk to reoffend. Similarly, the need principle maintains that the individual's criminogenic needs should be assessed and then targeted in treatment. The responsivity principle incorporates both risk and need with the purpose to maximize the individual's ability to learn from correctional intervention or response by tailoring it to suit the individual's learning style, abilities, and motivation to change his or her behavior. For probation and parole violators, these factors must be taken into account to ensure that sanctions are individualized, yet proportionate to the greatest extent possible. In other words, the appropriateness of a sanction may differ depending on the risk level of the probationer or parolee, and more intrusive and severe sanctions may be detrimental for individuals assessed at low-risk of reoffending.

Finally, to be most effective, responses should be a part of a larger, evidence-based supervision approach that takes into account the risk and needs profiles of the individuals being supervised. If violations, for example, indicate underlying problems that should be addressed, such as a substance dependency, supervising officers with appropriate training can use the violations as occasions to have interactions with those they supervise that are more effective in changing behavior in the long run. The appropriate response to a substance-dependent probationer or parolee who is missing treatment sessions or drug tests would be to increase treatment, attend more sessions, and undergo more frequent tests, but not to necessarily impose a punitive sanction (e.g., short jail stay). The primary focus, at least initially, should be treatment for such offenders (see Marlowe, 2012).

PROPORTIONALITY

Two offenders were sentenced to probation on similar offenses, yet they were assessed at different risk levels using the agency's validated risk assessment instrument.

Probationer A was assessed at low risk and this is his first time on any form of community supervision. He occasionally abuses drugs and alcohol. He tests positive for marijuana for the first time while on supervision. In response, his probation officer issues a formal violation form and continues with supervision.



Probationer B was assessed at moderate risk and this is his second time under probation supervision in the past three years. He has developed a serious substance abuse issue and the judge recommended treatment. While on supervision, he tests positive for marijuana and opiates. This is his second positive drug test in two months. His probation officer immediately reprimands him to a short jail stay, notifies his treatment counselor and the judge, and continues with supervision.



INCENTIVES AND REWARDS

The use of incentives is equally important (and often not sufficiently considered) in probation and parole supervision. Similar to how a sanction can act as stimuli to deter future unwanted behaviors, incentives ranging from verbal recognition to early discharge from supervision can act as stimuli to reinforce positive behavior among probationers and parolees. In fact, to be most effective, correctional interventions with individuals involved in the justice system should consist of positive reinforcements that outnumber sanctions or punishments (Andrews & Bonta, 2010; Gendreau, 1996; Lester, Braswell, & Van Voorhis, 2004).

In thinking about the rationale and key principles collectively, sanctions and incentives should be used in conjunction with one another to promote compliance and positive behavior among probationers and parolees. Research indicates this combined approach to be most effective in achieving successful supervision outcomes. For instance, Wodahl and associates (2011) found that while imposing sanctions with swiftness, consistency, and proportionality and granting incentives for desired behaviors among individuals under supervision may be effective independent of one another, they work best in concert. This finding is consistent with previous research (Arzin & Holz, 1966; Marlowe & Kirby, 1999).

REVIEW OF EMPIRICAL EVIDENCE

The community corrections field is increasingly taking advantage of empirical evidence to support the implementation of practices and policy. As it pertains to responses to violations, such evidence has come from studies that have examined programs and models incorporating the principles of swiftness, certainty, and proportionality, as well as the use of incentives and rewards. “Problem-solving” courts, most notably drug courts, are among the types of programs to apply these principles within the context of community supervision. The drug court model has proven to be effective in deterring new offenses and violations among program participants and reducing long-term costs for jurisdictions by using a model based on close judicial monitoring of participants combined with a graduated response approach, using both sanctions and incentives, to address relapse or behavioral problems (Anspach & Ferguson, 2003; Finigan, Carey, & Cox, 2007; Truitt et al., 2003; U.S. Government Accountability Office, 2005).

Another notable program is the Hawaii Opportunity Probation with Enforcement (HOPE). HOPE is based on a model to reinforce a strong and immediate relationship between probationers’ actions and their consequences, sending consistent messages to probationers about personal accountability

and responsibility, while directly involving the judge. HOPE conducts frequent and random drug tests for high-risk probationers, and responds to detected violations (including failed drug tests and missed appointments) with swift, certain and short stays in jail. HOPE also provides incentives for probationers for negative drug tests and other compliant behavior and mandates treatment upon request for probationers who do not abstain from drug use while in the program. Hawken and Kleiman (2009) conducted a rigorous evaluation of HOPE using a randomized control trial study design and found that HOPE probationers were 55 percent less likely to be re-arrested, 72 percent less likely to use drugs, 61 percent less likely to skip appointments, and 53 percent less likely to have their probation be revoked, as compared to the control group. HOPE provides evidence of the benefit in applying swift and certain graduated, proportional punishment to improve the outcomes of drug use and crime.

Similar to the HOPE model, South Dakota's 24/7 Sobriety Project (24/7) has achieved success in effectively dealing with individuals arrested for or convicted of alcohol-involved offenses by employing close monitoring strategies in the community, such as submission to alcohol breathalyzer tests twice per day or wearing continuous alcohol monitoring bracelets. Individuals who fail or skip tests are immediately subjected to short jail stays. Using a statewide database of all individuals assigned to 24/7 since its inception, an evaluation conducted by Kilmer and associates (2012) found reductions in subsequent arrests at the county level for driving while under the influence of alcohol (12% reduction)

HAWAII'S HOPE PROGRAM

<http://hopehawaii.net>

SOUTH DAKOTA'S 24/7 SOBRIETY PROGRAM

<http://apps.sd.gov/atg/dui247/index.htm>

GEORGIA DOC'S PROBATION OPTIONS MANAGEMENT PROGRAM

<http://www.dcor.state.ga.us/Divisions/Corrections/ProbationSupervision/ProbationOperations.html>

WYOMING DOC'S INTENSIVE SUPERVISION PROGRAM

<http://corrections.wy.gov/services/isp.html>

and domestic violence (9% reduction) as a result of 24/7. The authors concluded that the application of swift, certain, and modest sanctions for violations can effectively reduce problematic behaviors associated with alcohol misuse. Moreover, there is evidence to suggest that public health and safety outcomes have been improved through the implementation of 24/7, including decreases in the number of people killed in alcohol-impaired driving fatalities and in the number of days individuals spend in jail (Mabry, n.d.; Talpins, Voas, DuPont, & Shea, 2011).

Other jurisdictions have used a system of administrative responses, through agency action, to implement swift and certain sanctions and incentives. One example is the Probation Options Management (POM) program in Georgia. In 2004, the Georgia General Assembly enacted legislation that established an administrative response process (as opposed to a court process) to handle probation violators. Soon thereafter, POM was piloted in multiple jurisdictions across the state for a two-year period. The original legislation articulated the following goals of POM: (1) enhance public safety by applying swift, certain, and proportionate sanctions to probation violations; (2) reduce the amount of jail time between arrest and application of sanctions; (3) reduce the amount of time spent on hearings for technical violations of probation; and (4) expand alternatives to incarceration for technical violations. The pilot evaluation indicated reduced jail time, reduced amount of time spent on court hearings, and a substantial cost savings for the local jurisdictions involved in the study (Speir, Meredith, Baldwin, Johnson, Hull, & Bucher, 2007). Since this evaluation, the POM program has been implemented statewide in Georgia.

Another example is an Intensive Supervision Program (ISP) in Wyoming. The Department of Corrections implemented the ISP in an effort to improve the supervision outcomes of probationers and parolees. The ISP is designed to last approximately one year, during which time probationers and parolees progress through a series of supervision levels that vary in intensity. The ISP closely monitors individuals to detect violations, such as alcohol or drug use. What makes the ISP in Wyoming unique is its use of behavioral interventions in the supervision of probationers and parolees. Such interventions allow supervision officers to impose sanctions for certain types of violations and positive recognition and incentives to encourage compliant behavior. A study conducted by Wodahl and associates (2011) examined the outcomes of a random sample of probationers and parolees involved in the ISP from 2000 to 2003. The authors found that the use of these combined behavioral interventions, both sanctions and incentives, led to higher success rates among the sample than in models in which sanctions and incentives were applied independently. In fact, the authors found the highest rates of success when the ratio of incentives-to-sanctions was 4:1. This suggests that the greater use of incentives typically leads to better supervision outcomes.

LESSONS LEARNED

As described in the introduction of this report, information was gathered both prior to and during the December 2012 convening of state policymakers and national experts, with the intention to identify key lessons learned from agencies in planning and implementing effective responses in community supervision through both sanctions and incentives. The review of examples of state implementation of administrative responses also includes identifying and overcoming barriers along the way. For example, criminal justice officials are generally working with limited budgets in which resources have to be used wisely and to the best extent possible. In addition to funding, there is the issue of not having enough human capital to plan and implement programs as designed. The fact remains that the use of sanctions and incentives, particularly if issued through an administrative, agency-based delivery system, requires an investment of resources on behalf of probation and parole officers and other agency staff. While implementation of an administrative response system may help reduce court and jail staff time, it may initially lead to an increase in the workload of probation and parole officers. This is due to the necessity to document every response undertaken with a probationer and parolee in order to determine its effectiveness on promoting better compliance with supervision conditions. The bottom line is that it is critical for all parties involved to be cognizant of potential barriers from the outset at the planning stage in order to sufficiently overcome them if encountered during implementation.

Consider Legal and Constitutional Issues

States can take simple and practical steps to preserve due process of law and the separation of powers in the administrative sanctioning process. These steps may also help to enhance offenders' perceptions of procedural justice in the sanctioning process.



“Effective responses must be guided by basic principles of evidence-based practice, and must be administered through processes that incorporate essential elements of due process and procedural fairness and are perceived as fair and just by all participants and stakeholders.”

– Judge Roger Warren, President Emeritus of NCSC

The lessons learned discussed below examine a number of issues to consider when establishing an effective supervision responses system through policy and statute, and then when planning and implementing such responses, both sanctions to address problematic behaviors and incentives to reinforce compliant behavior. Five key lessons learned were identified: consider legal and constitutional issues; use incentives more than sanctions; collaborate with key stakeholders; develop structured response grids using key principles; and assess program fidelity and outcomes. Each of these lessons is described in detail, citing specific examples of how they translate into real world practice.

CONSIDER LEGAL AND CONSTITUTIONAL ISSUES

In designing an effective supervision response system, states should carefully consider any legal issues that may be associated with granting probation and parole officers the authority to impose sanctions via an administrative delivery process. There is little existing case law specifically addressing the use of such a process in response to violations. For guidance, states should look to both federal and state case law governing probation revocation hearings and the ability of probation officers to impose new conditions of probation. Case law governing parole revocation hearings will also be applicable. States can take simple and practical steps to preserve due process of law and the separation of powers in the administrative sanctioning process. These steps will vary according to the nature and severity of the sanction, with sanctions of incarceration requiring a higher level of procedural protections than non-custodial sanctions.

The right to due process of law encompasses the right to notice of the claimed violation and a hearing to determine whether the violation occurred. For sanctions of incarceration, the probationer must be provided with written notice of the claimed violation, the evidence of the violation, and the proposed sanction, along with the opportunity for an informal hearing on the fact of the violation and the appropriateness of the sanction. The hearing should be conducted by a neutral fact-finder, should

afford the probationer the opportunity to speak and present evidence, and should result in a written statement of the evidence relied upon and the reasons for the decision. The fact-finder should be a person other than the probationer's own supervising officer, but need not be a judge or an attorney (see *Morrissey v. Brewer*, 1972; *Gagnon v. Scarpelli*, 1973). However, the probationer may waive the right to a hearing.

In most jurisdictions that have implemented administrative sanctions, when a probation officer believes that a violation has occurred, the officer notifies the probationer of the alleged violation and the proposed sanction. The probationer may choose to admit the violation, accept the sanction, and waive the right to have the facts of the violation determined in a formal hearing. If the probationer denies the violation, refuses to accept the sanction, or does not wish to waive the right to a hearing, formal judicial or administrative proceedings are instituted. This may mean that the matter proceeds to a probation revocation hearing. For sanctions other than incarceration, a lower level of procedural protection would be required, although the probationer should still be provided with written notice and some opportunity for neutral review.

In criminal prosecutions, another aspect of due process of law is the right to counsel. Under the United States Constitution, the state will not ordinarily be required to provide counsel in administrative sanctions proceedings. The appointment of counsel may be required under a very rare set of circumstances in which an indigent probationer is at risk of incarceration, contests the fact of the violation or the appropriateness of revocation, has made a timely request for counsel, and is incapable of adequately representing his or her interests without counsel (*Gagnon v. Scarpelli*, 1973; see also *Argersinger v. Hamlin*, 1972). Many states provide a statutory or constitutional right to appointed counsel in probation violation or revocation hearings; in these states, if an administrative response process is to be used, the state may provide defendants the choice of waiving the right to counsel before an administrative sanction is imposed, or proceeding to the violations or revocation hearing.

Many administrative sanctions systems rely on the probationer's waiver of the right to a hearing. For such a waiver to be voluntary, the defendant must fully understand the proposed sanction and the consequences of the waiver, and the waiver must not be induced by threats or misrepresentation (see *Brady v. United States*, 1970). Practical precautions to ensure the voluntariness of the waiver might include providing the probationer with a written explanation of the proposed sanction and the consequences of the waiver, securing a written waiver, and requiring a person other than the probationer's supervising officer to explain the sanction and secure the waiver.

Another legal question is whether the imposition of sanctions by the probation department, rather than a court, might violate the separation of powers among the branches of the state government. This is a question of state constitutional law, as courts have found that administrative revocation of probation is not a federal separation of powers issue (*Ware v. Gagnon*, 1981). Jurisdictions will need to examine state law on this issue, which will vary from state to state (see *Dryer v. Illinois*, 1902). In practice, most separation of powers issues can be avoided by including in the program's enabling legislation a clear definition of administrative sanctions and an explicit delegation of sanctioning authority to the probation department.

In constructing an administrative sanctions program for probation violations, states have taken a variety of steps to address due process of law and other legal issues. Practical approaches include:

- The program's enabling legislation should clearly define the concept of an administrative sanction (including whether incarceration may be used as a sanction, as well as the maximum periods of incarceration that can be imposed) and delegate sanctioning authority to the probation department. In the absence of such legislation, the court's sentencing order should clearly authorize the supervising agency to impose administrative sanctions in response to violations of the conditions of probation.
- The probationer should be provided with written notice of the claimed violation, the supporting evidence, and the proposed sanction.
- Where a sanction of incarceration is proposed, the probationer should be provided with the opportunity to request a judicial or administrative hearing, or to waive the right to such a hearing. This hearing may be an informal hearing conducted by a supervisory employee of the probation department. The probationer should have the right to appear at the hearing and present evidence, and should be provided with a written statement of the decision that cites the evidence relied upon and the reasons for imposing the sanction. If a state does not wish to establish a separate administrative hearing procedure for administrative sanctions, the opportunity for a hearing may also be provided by allowing the probationer to choose whether to waive the right to a hearing and accept the administrative sanction, or to proceed to a judicial hearing following the standard procedures for probation violation or revocation proceedings.
- If the probationer contests the violation or the proposed sanction, and the proposed sanction does not include incarceration, the probationer should be accorded an opportunity for independent administrative review of the probation officer's decision by another agency employee serving at the supervisory level. The procedures for this review may be informal.

- If the right to counsel is required by state law, counsel should be provided unless the probationer waives his or her right to counsel. To comply with federal due process requirements, it may also be prudent for states to furnish counsel for indigent probationers in the exceptional case where a custodial sanction is at stake, the fact of the violation or the appropriateness of the sanction is contested, it is manifest that the probationer is unable to represent his or her own interests adequately, and the probationer has not waived the right to counsel.
- Steps should be taken to ensure that any waiver of the right to a hearing or the right to counsel is knowing and voluntary.
- A clear written explanation of the consequences of the waiver should be provided.
- The waiver should be in writing.
- For sanctions of incarceration, the waiver should be obtained by a person other than the probationer's supervising officer, preferably a probation department employee in a supervisory position.

In addition to preserving due process of law and the separation of powers, the availability of these procedures should increase probationers' perceptions of fairness in the sanctioning process. If probationers feel that they are treated fairly throughout the sanctioning process, research and experience suggest that the majority will voluntarily waive the hearing and accept the sanction, helping to realize the goals of swiftness, certainty, and proportionality and improving probation's effectiveness in rehabilitating individuals under supervision and deterring future crime.

APPLY PROPER RATIO OF INCENTIVES TO SANCTIONS

As discussed earlier, research indicates that the number of incentives provided to probationers and parolees should be larger than the number of sanctions imposed during the supervision process. While some research has established the practice of four incentives for every one sanction that is imposed for a violation of supervision (Andrews & Bonta, 2010; Gendreau, 1996; Lester, Braswell, & Van Voorhis, 2004; Wodahl et al., 2011), further experimental research is needed to validate such a ratio. In practice, the best rule of thumb is to use incentives at least as frequently as sanctions are used. What does this mean exactly? How can probation and parole agencies adopt this ratio in practice? Before answering these questions, it is important to first understand the range of sanctions and incentives available to probation and parole agencies.

With respect to sanctions that have been found to be effective in promoting compliance, they can range from verbal corrective action to short periods of jail incarceration. Commonly used sanctions also include community service, more frequent drug testing or supervision visits, and electronic monitoring. Verbal corrective action may be both informally or formally issued to probationers and parolees. Supervision officers may make remarks to probationers or parolees as a first step to intervene in the supervision process with the intent to correct non-compliant behaviors. Such verbal remarks also should be documented in the case notes that officers maintain in a case management database system or hard copy files.

Sanctions may progress to the level of a formal written violation report and request for a hearing, or even a written assignment. Violation reports are a more formal way for officers to document technical violations during the supervision process. On the other hand, written assignments may be used periodically as the circumstances allow. For

example, the probationer may be late to an appointment with his substance abuse treatment counselor. In response, his supervision officer asks the probationer to complete a writing assignment that challenges him to understand how his actions have had an impact on others. Such an exercise can be a learning moment for the probationer to gain perspective on how his problematic behaviors affect others. Another type of sanction that may be at the disposal of probation and parole agencies is a short term jail sanction in response to more serious violations, such as positive drug screens. This is a sanction that may be imposed either administratively by the supervision agency or judicially by the court.

There also should be a wide range of incentive options that supervision officers may use to promote compliance among probationers and parolees. Incentives are a less studied area in the field of community corrections and often trigger questions about what is considered an incentive and how they should be counted. As the field progresses, a dedicated effort in providing clear, concise and operational definitions would benefit practitioners and researchers to guide supervision practice, data collection and future evaluation efforts.



Ratio of Incentives to Sanctions

Research indicates that the number of incentives provided to probationers and parolees should be larger than the number of sanctions imposed during the supervision process.

One of the simplest types of positive reinforcement is verbal praise. This is similar to the verbal corrective action in that it can be an informal practice that is integrated into the supervision process. This type of incentive speaks to the skill sets and approaches of officers, and it has a significant impact on the daily interactions officers have with probationers and parolees. Such skill sets typically involve principles of acceptance, evocation, collaboration, empathy, and compassion, which are all generic to motivational interviewing (Miller & Rollnick, 2013) and other counseling-oriented approaches that enhance the quality of the interactions that officers have with probationers and parolees to increase positive supervision outcomes (see Wanberg & Milkman, 2010).

Other incentives may include tokens of appreciation (e.g., a written note of accomplishment or certificate of achievement), material goods, a more desirable housing or work assignment, reduced drug testing, reductions in supervision levels, and earned compliance credits. Some of these incentive options are contingent upon the availability of resources, while others are fairly straightforward once the mechanisms are put into place. Earned compliant credits, for example, is a type of community-based sentencing credit that provides credit to probationers or parolees for periods of time when they are in compliance with their supervision conditions. Those credits are then used to reduce the length of supervision for the probationer and parolee. While additional research is needed on earned credits to determine its impact on probationer and parolee behavior and on the justice system, it is in line with the rationale for positive responses.

The best way for community corrections agencies to achieve an appropriate balance between the use of incentives and sanctions in practice is to conduct training sessions with supervision officers and field supervisors on how to use the wide range of incentives and sanctions in responding to the behaviors of probationers and parolees. Officers and supervisors need to first understand the range of incentives and sanctions they may legally use during the supervision process. This may require face-to-face training sessions where officers and supervisors complete exhaustive lists of their options, and then they discuss how they may apply the various responses during supervision. The development of structured response grids, as discussed below, will assist with the delivery process.

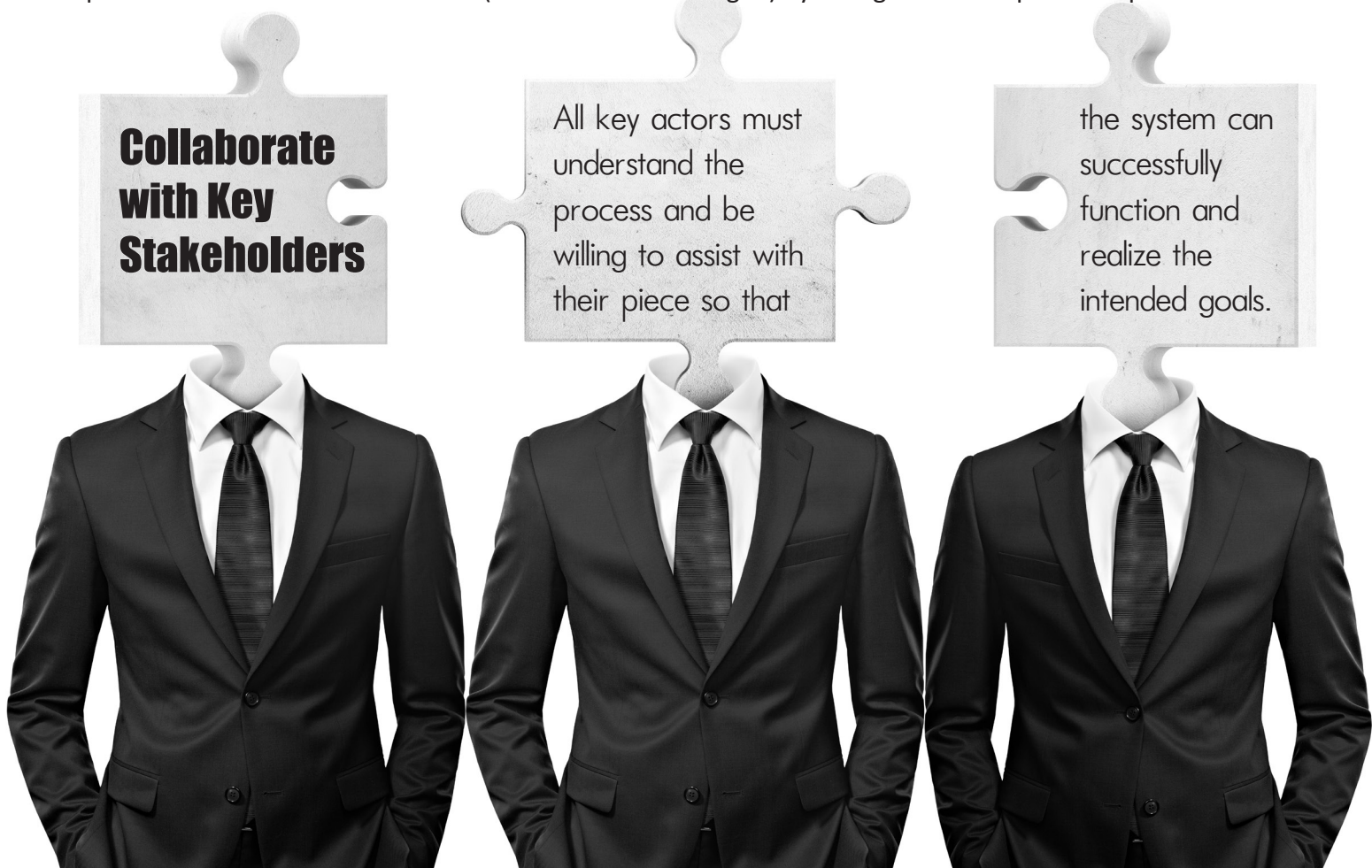
COLLABORATE WITH KEY STAKEHOLDERS

As with any undertaking in community corrections, it is critical to engage key stakeholders throughout the planning, development and implementation process, to instill confidence in and support for the new or revised supervision protocol. When considering incentives and sanctions, stakeholder buy-in is crucial because these practices have consequences on the criminal justice system as a whole.

Judicial support, for example, is essential for any shift of authority from the judiciary to probation and parole. In addition, if probation or parole officers have the authority to impose a short jail sanction on a probationer or parolee for a technical violation, imposing those sanctions will have a direct impact on the jail and local law enforcement. All key actors must understand the process and be willing to assist with their piece so that the system can successfully function and realize the intended goals.

One vehicle used by many jurisdictions around the country to gain system-wide consensus on criminal justice policies and practices is the establishment and convening of a Criminal Justice Coordinating Committee (CJCC). The committee is often made up of criminal justice stakeholders including judges, court administrators, defense counsel, prosecutors, law enforcement, and probation and parole. A CJCC can provide an effective forum for the discussion of system-wide goals and challenges, and can be an effective venue for educating stakeholders about the use of administrative responses.

To best facilitate the collaboration among key stakeholders, it is recommended that the agency that conducts probation and parole supervision in the jurisdiction initiate the planning and implementation processes. While buy-in from all parties is important, changes in the supervision process will have the most significant impact on probation and parole. Thus, it is important to involve line supervision officers and field supervisors at the outset. Line officers and field supervisors will know which protocols, policies and forms will be affected (and need to be changed) by changes in the supervision process.



Given this, forms and protocols should be reviewed by line supervision officers and field supervisors during the planning stage and prior to implementation of the program. There also will be an impact on judges, who will be either delegating or transferring their authority to issue certain sanctions to probation, and on prosecutors, who will be surrendering a courtroom voice in sanctioning for technical violations.

In addition to criminal justice personnel, it is important to review the changes in the supervision process from the perspectives of the probationers and parolees. In order to promote compliance from probationers and parolees under supervision, it is essential that responses be perceived by probationers and parolees as just and fair. This is particularly important in terms of determining the types of incentives most likely to elicit positive behavioral change among probationers and parolees.

DEVELOP STRUCTURED RESPONSE GRIDS USING KEY PRINCIPLES

The justice system has traditionally focused on responding to negative behaviors by persons under supervision, rather than rewarding positive behaviors. To facilitate the response process, several states (e.g., Arkansas, Louisiana, Missouri and New Hampshire) have developed structured response grids, either through state statute or through agency policy and procedure. These grids provide supervision officers with guidance in formulating consistent and proportionate responses to specific infractions. In developing response grids, states should include responses to both positive and negative behaviors, and allow for variation in response based on both the level and frequency of the behaviors.

Agencies will need to determine the type of violations and positive behaviors that will be a part of the response grid. First and foremost, any response grid should consider the risk level and service needs of a probationer or parolee, as both of these factors will affect how both sanctions and incentives are imposed by officers. Violations should be ordered by level of severity and correspond with appropriate types of sanctions. Categorization of sanctions by their severity level is useful in assisting officers to determine the most appropriate response to a violation and to consider the financial resources necessary to apply a response. In addition, agencies should incorporate the frequency of violations into the grid, such that the first instance of a negative behavior or violation would incur a different—and likely less severe—response than a repeated instance of the same behavior. Similarly, incentives should be graduated according to the nature and frequency of the positive behaviors. Another important aspect of both the violations and positive behaviors, and the sanctions and incentives that correspond with them, is to make sure they are meaningful to individual probationers and parolees. Responses must be meaningful to the extent that they have the capacity to affect the behavior of probationers and parolees. The perspective of probationers and parolees in regard to the sanctions and incentives they receive is often overlooked by practitioners.

“To be effective, formal response systems should be implemented in a way that allows for adjustments, such as collecting and integrating feedback from staff members and stakeholders, identifying and addressing loopholes, and utilizing interim policies. Such an implementation approach has worked well for us.”

– Bernard Warner, Secretary of Washington State Department of Corrections

Research on drug courts suggests that the use of a structured response grid that specifies proportional responses for both positive and negative behaviors, while at the same time allowing supervisors and line officers some degree of flexibility to tailor the sanction to individual circumstances, may enhance probationers’ compliance with court-imposed conditions. Drug courts have been found to achieve better outcomes when they clearly specify their policies and procedures regarding incentives and sanctions in a written program handbook or manual, allowing participants to better understand the link between their behavior and the court’s response (Carey, Finigan, & Pukstas, 2008; Carey, Mackin, & Finigan, 2012).

Such a practice is applicable to the traditional community supervision model as well. Line supervision officers and field supervisors must collaborate, at times, to address case management issues as they relate to the response grid. The supervision team should also reserve a reasonable degree of discretion and flexibility to modify responses based on extenuating circumstances of individual cases (Zweig, Lindquist, Downey, Roman, & Rossman, 2012). For example, a line supervision officer is notified that a probationer on her caseload was absent from his drug treatment program session. She immediately contacts the probationer and discovers that he had a family emergency, which was the reason for his absence. The officer confirmed that the probationer’s spouse had to be taken to the hospital for a medical emergency. The agency’s response grid indicates that a probationer who misses an appointment with a treatment provider should receive a minor sanction. The officer consults with her supervisor and they decide not to impose a sanction, however, due to the circumstances. Appendix B provides a template of a response grid.

EVALUATE PROGRAM FIDELITY AND OUTCOMES

Agencies should include an evaluation plan from the outset to assess fidelity to the model. The plan should also determine the impact of the response process on program outcomes. Having evidence that agency staff are adhering to the program design (fidelity), and that the implementation of the model is having the desired effect (outcomes) is essential to gain support from stakeholders, increase public trust and confidence, and secure financial resources.

Fidelity refers to the adherence to the specific design of the implemented program; for example, are the probation or parole officers imposing the appropriate sanctions set forth in response grid for the particular negative behaviors, and are they doing so in a timely manner. As noted, a carefully designed response grid and training for both line staff and supervisors are two strategies likely to facilitate consistent and reliable program adherence. When evaluating fidelity, researchers are looking for divergence from the proposed model and any decay in adherence that may affect study outcomes (see Rossi, Lipsey & Freeman, 2004). While it is likely that supervision officers may comply with certain elements of the response grid, other elements may experience fewer adherences. Also, while personnel often follow procedures early on in the implementation of new policies and practices, with time, they may stray from the model and return to past practices. Information about when and why staff members do not follow protocol is helpful in understanding the feasibility and success of the new program. Noncompliance provides important feedback for program revisions and also may inform future training efforts.

Evaluate Program Fidelity and Outcomes

When assessing outcomes, it is important to know the short term and long term goals of the program. These goals will frame the outcome assessment and what key performance measures or data should be collected.



“If you don’t measure for fidelity you don’t know what you’re implementing. If you don’t know what you’ve implemented, you can’t determine what’s impacting the results.”

– Becki Ney, Principal of Center for Effective Public Policy

In evaluating program fidelity, the number of and reasons for deviations or exceptions from the response grid should be tracked. Some discretion is important when working in community corrections, so deviation is not always problematic. Field supervisors could easily oversee this process to ensure line officers are following the response grid and documenting the reasons for when they deviate from the grid. However, data about diversion from the response grid may reveal how well the model was designed from the outset. Qualitative evaluation methods can also be used to assess fidelity. Focus groups and interviews with staff, as well as observation of probation or parole meetings will provide valuable information.

Assessing outcomes is essential in understanding if the response system is having the desired effects. When assessing outcomes, it is important to know the short term and long term goals of the program. These goals will frame the outcome assessment and what key performance measures or data should be collected. Short-term goals may include administering more incentives than sanctions and increasing the rate of successful program completion. Long-term goals may include reducing recidivism and decreasing the use of jail beds, which is a measure of cost-savings.

Collecting program data on the use of responses over the course of implementation is critical to link their use to changes in outcomes. The type of data collected and the methods used for collection will vary widely depending on program goals and technology available. However, every effort should be made to collect the key data elements about responses listed below:

- Precipitating event (negative behavior, e.g., missed appointment)
- Date of precipitating event
- Response (describe sanction)
- Date of response
- Nature of response (e.g., verbal warning).

For a list of possible data elements to collect for program evaluation, see Appendix C.

When feasible, evaluation plans should give priority to research designs that use random selection and assignment of participants to experimental and control conditions. Ideally, comparing probationers/parolees whose cases have been managed using the revised response process with similar probationers/parolees exposed to the “business-as-usual” treatment is the gold standard for evaluation. This type of evaluation would contribute to the growing support for new models of probation and parole supervision. In the case that an experimental design is not feasible, an appropriate quasi-experimental design should be employed, using, for example, propensity score matching to enhance the comparability of the treatment (administrative sanctions) and comparison (business-as-usual) group. A comparison group could be located in a nearby, similar jurisdiction or by going back in time to select probationers/parolees that completed supervision prior to the implementation of administrative responses.

Planning and conducting fidelity and outcome assessments provide valuable information on new supervision response initiatives. Although evaluation methods will vary, having objective data will prove invaluable when defending or proposing changes or new policies. This data can be used to revise grids, inform training, and garner support as agencies work to meet project goals and objectives.

MOVING FORWARD

Probation and parole agencies should work with key stakeholders in their respective jurisdictions to adhere to the lessons and principles outlined in this report when planning and implementing new sanctions and incentives to the supervision process. From a practice standpoint, agencies should develop policy and procedure around the transference of authority from the court to probation, development of a response grid, and the design and implementation of a training program. Agencies may also need to seek a revision in statute to accompany these procedural changes. In the case of parole, agencies would need to develop and enact enabling policy and procedures to facilitate the most effective response process.

In regard to recommendations for policy, state and local government officials should enact legislation that would establish a more efficient justice system for purposes of community supervision. This may include providing supervision agencies with greater autonomy in imposing sanctions and incentives to probationers and parolees, rather than having the court handle all violations or formal recognitions of compliant behavior. This could mean legislation around the development and use of a structured response grid. Moreover, this could mean legislation around how a particular sanction or incentive may be imposed by the supervision agency or the court while keeping the key principles discussed above in mind. Similarly, agencies should adopt policy and procedure around the use of sanctions and incentives. For example, agencies may need to modify their response processes, which

may include the revision of forms and other technical issues. Agencies may also need to incorporate mandatory training for personnel that relates to the implementation of any new program or change in the supervision process.

There are areas of the research that need further investigation. For example, the research is not conclusive on the types of sanctions that are most effective in promoting compliance and whether these sanctions are applicable to all supervisees, regardless of risk-level, gender, cultural nuances or convicting offenses. Moreover, the research is limited on the manner in which sanctions should be imposed administratively. For instance, how much authority should be given to frontline supervision officers to issue sanctions for certain violations? Are there some sanctions imposed administratively that are more effective in responding to violations than by the court or releasing authority? Are there others that are more effective if issued by the court? With respect to incentives, the research is quite scarce on the types that prove to be most effective in promoting compliance among probationers and parolees. Finally, the research is limited on exactly how sanctions and incentives can work in tandem to improve supervision outcomes. These are areas which future research should address.

These areas for future research are contingent upon the continuing adoption of administrative responses in States and local jurisdictions. Decisions for practice and policy in community corrections should remain informed by the empirical evidence. What is certain is that the use of the administrative responses holds great promise as an effective method for the community corrections field based on the available research to date. As compared to the traditional community supervision model, the use of more effective responses can enhance the efficiency of the supervision process, including the ability to promote greater accountability and successful outcomes among probationers and parolees, and reduce costs, while continuing to uphold public safety.

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APPENDIX A: SUMMIT MATERIALS

SUMMIT ON EFFECTIVE RESPONSES TO PROBATION AND PAROLE VIOLATIONS

On December 11-12, 2012, APPA and its partners, Pew and NCSC, jointly sponsored a convening of representatives from 14 states to address the use of administrative responses in probation and parole supervision. The conference was designed to assist the states by highlighting effective procedures and common performance measures in administrative responses. In addition, it provided an excellent opportunity for individuals to interact with representatives from the legislative, executive and judicial branches in their respective states and others around this timely public safety issue, and to share their experiences and observations with other participants and a faculty of national experts.

PRESENTATIONS

Garland & Wodahl – Research and Rationale for the Use of Administrative Responses

<http://www.appa-net.org/eWeb/Resources/SPSP/Research-Rationale.pdf>

Taylor – Lessons Learned in Successful Implementation, Part 1, Oregon

<http://www.appa-net.org/eWeb/Resources/SPSP/Research-Rationale.pdf>

Warner – Lessons Learned in Successful Implementation, Part 2, Washington

<http://www.appa-net.org/eWeb/Resources/SPSP/Lessons-Learned-P2.pdf>

Kinney & Ney – Key Performance Measures

<http://www.appa-net.org/eWeb/Resources/SPSP/Lessons-Learned-P2.pdf>

State Profile Comparison – Data were collected across four areas from nine states to gain a better understanding of the use of administrative responses in probation and parole supervision. While individual profiles were developed for each state, this document provides a comparison of the key elements across the states.

APPENDIX B: RESPONSE GRID TEMPLATE

INCENTIVE	COMPLIANCE	CONDITION	VIOLATION	SANCTION
<i>Type of incentive ordered by level of intensity</i>	<i>Exhibited/ completed positive behavior in relation to the condition</i>	<i>Behavioral area in terms of supervision</i>	<i>Exhibited/ participated negative behavior in relation to the condition</i>	<i>Type of sanction ordered by level of intensity</i>
EXAMPLES: Verbal praise Formal recognition Travel pass Earned compliance credit	EXAMPLES: Maintaining a job Being honest On time to meetings Negative drug screen	EXAMPLES: Drugs/alcohol Employment Living situation Restitution	EXAMPLES: Positive drug screen Missed appointments Late payment on fees Unauthorized travel	EXAMPLES: Written warning Increased reporting Flash incarceration House arrest

Factors to consider when determining responses using the grid:

- Risk level and criminogenic needs of the probationer/parolee
- Acceptance of and motivation to change problematic behaviors of the probationer/parolee
- Severity of behavior, specifically violations
- Number of occurrences of behavior
- Circumstances surrounding the behavior

APPENDIX C: DATA COLLECTION ELEMENTS

INPUT

PROBATIONER/PAROLEE

- ID (unique identifier)
- Risk-Needs assessment tool scores
- Demographics
 - » DOB
 - » Gender
 - » Education
 - » Race
 - » Ethnicity
 - » Employment
- Criminal History
 - » Prior arrests/convictions
 - » Date of prior criminal activity
 - » Type of crime
- Current Offense
 - » Date of current activity
 - » Nature of crime
 - » Time on probation/parole

PROBATION/PAROLE OFFICER

- Caseload (average?)
- Demographics
 - » DOB
 - » Gender
 - » Education
 - » Race
 - » Ethnicity
- Years of experience as PO
- Training attended?

PROGRAM DATA

PROBATIONER/PAROLEE

- Violations of Probation
 - » Date
 - » Nature of event (e.g.)
 - ◇ Missed office visit
 - ◇ Positive drug test
 - ◇ Missed service/treatment appointment
 - ◇ Arrests

PROBATION/PAROLE OFFICER

- Response
 - » Date
 - » Sanction/Rewards
 - » Nature of Response (e.g.)

SANCTIONS

- ◇ Days in jail
- ◇ Community service
- ◇ Increased frequency
 - * Drug tests
 - * Treatment

INCENTIVES

- ◇ Decrease frequency
 - * Drug tests
 - * Treatment
 - * Gift cards
 - * Verbal praise
 - * Written praise
- ◇ Deviations from grid
 - * Date
 - * Nature of response

OUTCOMES

PROBATIONER/PAROLEE

- Type of exit (e.g.)
 - » Successful
 - » Revocation
- New arrests (post-placement)
 - » Date
 - » Nature of crime
- Employment

