the journal of the American Probation and Parole Association

PERSPECTIVES

Volume 27 *Number 2* *Spring 2003*

Addressing Sexual Misconduct in Community Corrections

President's Message

As I write this message for the spring edition of *Perspectives*, we are at the beginning of another year. As I begin to reflect back on the things that have occurred over the past year, I realize my tenure as the President of APPA will be coming to a close very soon. Where has the past year or two gone? I want to share my thoughts and memories of what has transpired so far.

As I began my presidency, one of the key agenda items I listed as a high priority during my term was to review the mission and purpose, as well as the goals and objectives of the APPA Executive Committee. We have often talked about re-inventing and re-engineering along with "what works" and "broken windows" concepts, but had our organization really taken a hard look at what we are to be doing? Had we reviewed the roles of the Executive Committee and Board of Directors, which includes committee chairs and Regional Representatives, as well as the constitution and by-laws of the organization? Far more important, are we doing everything we are governed to do? Are the expectations clear, and does everyone know their roles and what the rules are? What changes need to be made to clarify policies and practices and memorialize the "that's the way it has always been done" agreements.

Kathy Waters

The Executive Committee, with the help of the APPA staff compiled all of the necessary information to be reviewed, and the work began. I believe we have accomplished the priority agenda item I mentioned earlier.

The Executive Committee has spent several meetings walking through the constitution, by-laws, and goals and objectives. Governance of the organization has been fine-tuned and documented. In addition, job descriptions or role description of each member of the Executive Committee have been written and will be reviewed and adopted.

At the 2003 Annual Institute in Denver, the Regional Representatives and committee chairs were educated about their roles and responsibilities. An opportunity to network with each other enabled them to gain a different perspective on how each of them operate within their region and committee. This process enabled the Executive Committee to interact and discuss their expectations to the governing body of APPA. Nominations of future officers and a succession plan for future leaders of this organization was also discussed.

All of these issues are important to the future growth and survival of this organization. As community corrections professional leaders, we have the obligation not only to the organization, but to our normal daily job responsibilities to manage our business in a similar manner. This is just sound business practice.

As we all face serious budget restraints, the need to operate smarter and leaner has been forced upon us. Many states across the country are being asked to do more with less. Administrators and managers are being forced to re-evaluate their operations and prioritize the core values and basics of what is absolutely necessary and what measures can be taken to reduce expenditures while protecting the public and meeting the mission of their departments. This is the proposal the Executive Committee presented to the Board of Directors at the Annual Institute in Denver. We must operate this association as a business to insure a sound future for a strong organization.

The Executive Committee and myself are dedicated to providing a strong leadership in regards to the decisions we make in the governance of APPA. You will likely begin to see some changes in the Institutes and membership. However, please know that during these difficult times, we are just as committed to meeting the needs of our members and the field of probation, parole and community corrections, as always.

During the next issue, I will continue to review the goals and objectives of the organization, and the progress that has been made over the past year.

Sincerely,

Kathy Waters

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Volume 27 Number 2 Spring 2003

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Instructions to authors. *Perspectives* disseminates information to the American Probation and Parole Association's members on relevant policy and program issues and provides updates on activities of the Association. The membership represents adult and juvenile probation, parole and community corrections agencies throughout the United States and Canada. Articles submitted for publication are screened by an editorial committee and, on occasion, selected reviewers, to determine acceptability based on relevance to the field of criminal justice, clarity of presentation, or research methodology. *Perspectives* does not reflect unsupported personal opinions. Submissions are encouraged following these procedures:

Articles should be submitted in MS Word or WordPerfect format on an IBM-compatible computer disk, along with a hard copy, to Production Coordinator, *Perspectives* Magazine, P.O. Box 11910, Lexington, KY, 40578-1910, or can be emailed to smeeks@csg.org in accordance with the following deadlines:

- **Fall 2003 Issue – May 20, 2003**
- **Winter 2004 Issue – August 21, 2003**
- **Spring 2004 Issue – November 11, 2003**
- **Summer 2004 Issue – February 19, 2004**

Unless previously discussed with the editors, submissions should not exceed 10 typed pages, numbered consecutively and double-spaced. All charts, graphs, tables and photographs must be of reproduction quality. Optional titles may be submitted and selected after review with the editors.

All submissions must be in English. Notes should be used only for clarification or substantive comments, and should appear at the end of the text. References to source documents should appear in the body of the text with the author's surname and the year of publication in parentheses, e.g., (Jackson, 1985: 162-165). Alphabetize each reference at the end of the text using the following format:

Anderson, Paul J. "Salary Survey of Juvenile Probation Officers." Criminal Justice Center, University of Michigan (1982).

Jackson, D.J. "Electronic Monitoring Devices." *Probation Quarterly* (Spring, 1985): 86-101.

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Editor's Notes

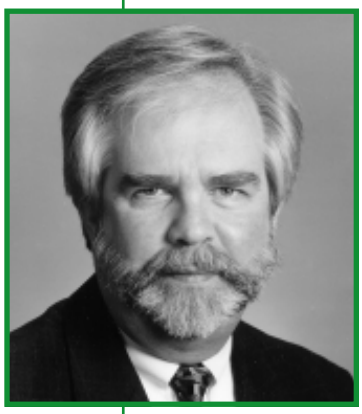
Welcome to the spring issue of *Perspectives*. We are pleased to present a rich and varied issue, one that is packed with important and useful information. The range of the subjects covered once again demonstrates the depth and range of challenges facing our membership every day.

Our lead article by Maureen Buell, Elizabeth Layman, Susan McCampbell and Brenda Smith addresses an area that has been rarely discussed openly in community corrections. Sexual misconduct is an uncomfortable subject, one that most of us would rather not deal with. As the article demonstrates, a strategy of avoidance has great potential for damage, to individual staff and to the agency.

We need look no farther than the sexual misconduct scandals plaguing America's churches to see how such situations can seriously damage institutions that were previously held in the highest regard. The nature of the work of probation and parole officers often has them working alone, in the community, in residences and other locations outside direct supervision. It should not be hard to see the risks that exist.

The awareness of all staff – line officers, supervisors and administrators – must be increased so they recognize the importance of this issue. Of the many recommendations provided in the article, the most important is to be prepared and to be proactive. Develop and implement policy, train staff, investigate incidents and stay on top of this area.

The need for training and education of staff at all levels is also evident in Maricopa County, Arizona public defender Donna Elm's article on the search waiver term. This is a complicated legal area, and we should not be lulled into a sense of overconfidence by the existence of cases that support warrantless searches of probationers and parolees. As Elm explains, the case law on search and on the seizure of contraband is not simple. The legal definition of "reasonable suspicion," the basis for a warrantless search, is by itself worth extensive discussion and training with field staff and supervisors.



William Burrell

The societal challenge of how best to deal with drug offenders continues to generate substantial debate and dialogue across the country. A number of states have passed referendums that radically redefine the role of the criminal justice system with certain groups of drug offenders, usually first offenders or those convicted only of possession. One such state is California, where Proposition 36 redefined the role of criminal justice agencies, including probation, with non-violent drug offenders. Donna Goyer offers a review of the San Diego County Probation Department's response to this new law. She also profiles the population sentenced under the new law, and provides some early assessment of the impact. Of real value to our readers are the issues that have caused problems with implementation, and some of the recommendations that have been made for amending and improving the law. Other states have seen similar laws proposed, and it is helpful to understand what has worked and what has not, in order to inform other who may be headed down this same road.

In her article on Maryland's Proactive Community Supervision, Judith Sachwald describes one agency's efforts to reinvent its community-based supervision of offenders. Building on the "what works" literature, and integrating key elements of the "broken windows" philosophy, the Maryland program goes a long way toward maximizing the untapped potential of community supervision. Emphasizing quality contacts (not just drive-by home visits or less than five minute office contacts) and focusing on intervention and rehabilitation, this model demonstrates how a comprehensive, evidence-based community supervision model looks.

One area we have worked hard to help our readers with is technology. As APPA Technology Committee chair Joe Russo notes in his Technology Update, the technology available to community corrections in the past has been relatively scarce. That is changing. Joe calls our attention to the upcoming annual conference on technology for community corrections, being held in Arlington, Virginia in June. I attended one of these conferences several years ago, and it was terrific. The presentations may just provide you with a technology that could pay back your travel and more.

We hope you enjoy this issue of *Perspectives*, and that you find it useful. Please be sure to read the information about the many activities of APPA, and see how your leadership, staff and colleagues are working hard to serve you, the members. We on the Editorial Committee would be very interested in hearing from you about *Perspectives*, and how we might better meet your needs.

Bill Burrell

Functional Standards Development for Automated Case Management Systems for Adult Probation

The American Probation and Parole Association (APPA) with a grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) has developed a document defining functional standards to assist probation agencies in implementing effective automated case management systems. Increased workload, changes in job tasks, and increased record keeping requirements along with an enhancement in available technology for information management have prompted probation agencies to automate case management systems.

There have been no guidelines or standards to assist probation agencies in the development, implementation, maintenance or enhancement of automated case management systems. Limited availability of shared information among agencies has forced each agency to struggle through an expensive independent development process that included identifying its organizational needs, translating those needs into functional requirements for a case management system, and communicating those needs appropriately to a systems architect. APPA has administered this project to produce standards to:

- Alleviate the burden faced by probation agencies for individual system development;
- Facilitate dialogue between probation agencies and case management system providers;
- Encourage conformity in probation automated case management systems by recommending these as national standards.

APPA is pleased to announce that in collaboration with the National Center for State Courts they have produced these draft functional standards for automated case management systems for probation agencies. The standards were reviewed, edited and enhanced by a Standards Development Team composed of probation practitioners, criminal justice information technology experts, and information system vendors. The Standards have been revised to reflect the recommendations from the Team. Now we are soliciting your comments. APPA invites you to view the standards document at the APPA Website, www.appa-net.org under Project Announcements and post your comments.

For other information about this project please contact:

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Dear APPA Individual and Agency Members:

As community corrections professionals you undoubtedly experience firsthand the challenges, difficulties and rewards of our unique profession. At the same time when the need for effective probation, parole and community corrections services, both juvenile and adult, is heightened by jammed court dockets and crowded prisons and jails, our agencies too often remain vulnerable to severe fiscal restrictions and short-sighted public policy initiatives. While the affects of these damaging forces vary from state to state and community-to-community, we all are certainly at substantial risk of eroding public support and an increasing inability to meet statutory mandates and community expectations.

Over the last decade, APPA has gained prominence on both the national and state level as a leading and influential voice for community corrections professionals. We have regularly provided important information and input to policymakers. As a result, APPA has had an impact on the definition of issues and the shaping of solutions vital to our profession.

In order to continue to advance the interest of community corrections and its practitioners, APPA must strive for an even more significant role in speaking out on the critical issues that affect us all. This role must be premised on the healthy and secure financial position of the Association. For years, the Association has offered a multitude of membership benefits for incredibly low dues. In fact the last time individual dues were raised was ten years ago and agency dues have never been raised. Unfortunately, the rising cost of doing business has sent us the message that if we want to continue and expand our work on behalf of community corrections, we simply must have more money to do so. The Association has adopted all manner of cost containment strategies, which have proven successful, and we are committed to continuing our fiduciary responsibilities. But a revenue shot in the arm is needed. **Therefore, effective March 1, 2003, we will be raising dues to $50 per year for an individual membership and $135 for a 3-year individual membership. Agency dues have been increased to $650 for Agency Level I, $450 for Level II to and $250 for Level III.**

I encourage you to take a look at both individual members, agencies, and affiliate organizations get from their APPA ties by visiting our website www.appa-net.org.

I think you will agree that APPA membership is cost-effective for you and your agency.

Beyond these tangibles the core importance of APPA is as a vehicle for a diverse group of practitioners coming together to forge the future of our profession. APPA's voice, our voice, must be heard above the political rhetoric that often does not offer clear and cost-effective thinking on crime and justice issues. In order to be heard, we need your active involvement and support.

Please consider what APPA can offer and the value of membership. We need you too; and together can make community corrections a strong and positive force for meaningful change.

Sincerely,

Kathy Waters

Kathy Waters, President
American Probation and Parole Association

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Transition from Prison to Community Initiative:

A Conversation with Cranston Mitchell, Project Manager

Background

Since joining the Community Corrections Division of the National Institute of Corrections (NIC) about three years ago, former Missouri Parole Board Chair Cranston Mitchell[1] has been principally involved in the improvement of policy and practice for parole decision making. Mr. Mitchell has helped to provide assistance in the parole discipline to many state and local jurisdictions, addressing management issues such as training, information sharing and program evaluation as well as important day-to-day operational issues related to assessment, case flow, classification and supervision terms. Notably, these initial efforts to support the parole discipline have included management of a cooperative agreement with three states to build new assessment instruments as well as annual orientations for new parole board members. These projects have been augmented by previous NIC efforts focusing on violations, effective interventions and gender responsive strategies, among others.[2]

NIC's Transition from Prison to Community Initiative (TPCI) was generated from these efforts. The TPCI pulls together pieces of the system that have historically been addressed piecemeal and integrates them into a coherent model. States implementing the NIC Model will establish collaborative partnerships involving corrections, parole supervision and human services agencies to assess data pertaining to offender populations and their families, to modify agencies' procedures and practices, to implement evidence based programs that address offender needs, to reduce recidivism and, thereby, to increase public safety by making transition more effective. In cooperation with Abt Associates, the TPCI Cooperative Agreement Awardee, NIC has developed and is currently testing the model processes that will help states to bring about improvement in offender reintegration, and to measure the success of the effort through indicators developed collaboratively at the local level, including some measure of violation/revocation reduction over time.

Development efforts for the proposed model were initially supported by a Project Advisory Board who received input from over thirty-five practitioners. DOC directors, parole chairs, executive directors of parole boards, former offenders and service providers have been advising NIC and Abt Associates throughout the initiative. Indepth discussions with this group unearthed some common systemic problems related to prison release including poor communication among the system members themselves, inconsistent policy, and gaps in service delivery. It became apparent that a lack of joint planning between human service agencies sometimes had the unintentional result of creating nearly insurmountable pitfalls for offenders who could not access even the most basic services needed to successfully transition back into their families and their communities: bus transportation, housing, affordable child care and employment. Based on this real world information, project assumptions and an overall model were developed. (*Continued on page 12)*

By Dot Faust

(*Continued from page 11.*)

First Lessons from the Initial Sites

Two states, Missouri and Oregon, have subsequently been identified to involve their own multi-disciplinary teams in structured work with NIC and Abt Associates to test these model assumptions. The processes that are being engaged at these sites are intended to help the local teams work together as true systems on implementing reforms that will improve transition from confinement to community.

According to Project Manager Cranston Mitchell, a valuable lesson learned already in these states is that "there is a need to build policy bridges that cross agency lines." In order to develop meaningful joint policy, Cranston maintains that support from both the Governor's Office and from the Legislative Leadership has been critical. There seems to be no other way to ensure ongoing commitment from agencies who have no history of a common mission in any policy area. In fact, both Missouri and Oregon have found that they now include public safety and traditionally non-criminal justice agencies at the table as a matter of routine when addressing transition issues.

Another insight has been the realization that some internal shifts must take place among staff employed by the institution and/or department of corrections. As Cranston puts it, "Their responsibility for public safety does not end when the person walks out the prison gate."

At the same time, the releasing authority may have to expand its willingness to support and reward positive pre-release accomplishments of the offender, as well as to provide incentives for offenders who are involved in the transition process.

Two final pieces of advice from Cranston's experience with the Initiative so far: Discuss reallocation of state resources even if budget increases are not possible; and engage both the community and the offender in transition planning with you from the very beginning.

Next Steps

It is projected that additional jurisdictions will be identified for intensive involvement in this initiative during the spring of 2003. Even if your state was not an applicant or an identified site, however, you can still obtain the model and current information on the project from NIC's website at http://www.nicic.org. Your state may also be eligible for certain types of technical assistance related to any policy development underway on transition issues. For more information on available assistance, please contact Cranston Mitchell at 800-995-6423.

Endnotes

[1] *Mr. Mitchell is the former Chairman of the Missouri Board of Probation and Parole, serving from April 1986 to December 1999. He was first appointed to the Board in July of 1984. Mr. Mitchell earned his degree in Political Science from the University of Missouri-St. Louis. As a Danforth Fellow, he participated in the State and Local Government for Senior Executives at the John F. Kennedy School of Government, Harvard University. Mr. Mitchell is an active member of the National Association of Blacks in Criminal Justice, the American Probation and Parole Association, the American Corrections Association, and is Past President of the Association of Paroling Authorities, International.*

[2] *See also Responding to Parole and Probation Violations, A Handbook to Guide Local Policy Development, NIC, Center for Effective Public Policy, Edited by Madeline M. Carter, 2001.* ❐

***Dot Faust** is a Correctional Program Specialist with the NIC Community Corrections Division in Washington, D.C.*

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Technology Update

Annual Conference Spotlights Technology in Community Corrections

In the past, the technology available to community corrections agencies has been relatively scarce. In recent years, however, there has been tremendous growth in this area. So much so that it has become difficult to keep track of all the new technology being developed. With this in mind, the National Law Enforcement and Corrections Technology Center (NLECTC) developed an annual event created to spotlight some of the more important technology developments and applications for community corrections. The event is called the Innovative Technologies for Community Corrections Conference. Since the first conference in 2000, the event has grown rapidly both in terms of practitioner attendance and vendor support which is indicative of the need for more information about technology and how it can support the mission of community corrections.

The conference draws attendees from across the country and from all areas of community corrections including probation, parole, juvenile justice, work release and treatment providers. NLECTC, a federally funded program, strives to keep the practitioner's cost to attend the conference at a minimum. Registration fees are set to cover the cost of meals provided to attendees during the conference.

At the core of the conference are 32 educational workshops organized into four distinct tracks, drug testing, electronic monitoring, information technology and management issues. The track format allows participants to follow their primary area of interest or bounce from topic to topic.

Most workshops are presented by practitioners with real-life field experience with the technology. This allows the attendee to get an unbiased account of how the technology works in the field as well as information on the implementation, training and funding issues encountered. Workshops that spotlight technology on the horizon are typically presented by the developers. These workshops offer a

BY JOE RUSSO

Thank you sponsors!

APPA expresses its deepest gratitude to the following companies for their generous support of the APPA Institute in Salt Lake City, Utah which took place January 5-8, 2003. Their contributions truly enhanced the quality of the Institute. Only through this support can APPA maintain its high standards of Institute training. Please convey your appreciation to these sponsors.

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glimpse at the technology of the future and often allow the practitioner to have input into the particular product's development.

Drug and Alcohol Testing

For many years urinalysis was the primary, if not only, method used for drug testing in criminal justice. The disadvantages of urinalysis combined with promising innovations in alternative techniques are leading more agencies to explore non-invasive technologies. Past and future conferences will spotlight such techniques as hair analysis, sweat analysis, oral fluid analysis, pupillometry and transdermal analysis and their applicability to community corrections. Techniques still in the research and development stage such as handwriting analysis and fingerprint residue analysis are also presented.

Electronic Monitoring

Electronic monitoring technology has developed rapidly since its inception in 1983. First-generation systems were great at the time, but they could only determine whether the offender was at home or not at home. Second-generation wide-area, continuous monitoring systems have since been developed. These systems can now locate an offender continuously as he moves through the community, which allows agencies to better supervise the offender outside the home. This track explores recent advances in electronic monitoring technology including RF, GPS and terrestrial-based tracking. Procurement and implementation issues, evaluation issues and key elements of a successful electronic monitoring program are also highlighted.

Information Technology

Computers are critical to an agency's ability to capture, analyze and share data on offenders. Workshops in this track spotlight innovative information technology projects from across the country from a lessons learned perspective. Topics include case studies of successful automation projects, internet-based case management systems, automated reporting kiosk systems, mobile computing, geographic information systems and computer forensics to monitor computer literate offenders.

Management Issues

The selection, acquisition and implementation of new technology are just as important as the technology itself. This track focuses on important issues for the manager to consider and plan for. More generic than the other tracks, this section covers issues such as how to evaluate and select new technology, the keys to obtaining grant funding, the potential of E-learning as a tool to deliver high quality, cost-effective training and technologies to improve officer safety both in the office and out in the field.

The 4th Annual Innovative Technologies for Community Corrections Conference will be held on June 2-4, 2003 in Arlington, VA.

For further information about the NLECTC conference or the APPA Technology Committee, please contact Joe Russo, Program Manager, National Law Enforcement and Corrections Technology Center, 2050 East Iliff Avenue, Denver, CO 80208, Phone (800) 416-8086, email: jrusso@du.edu. ❐

Joe Russo *is Corrections Program Manager for the NLECTC in Denver, Colorado and is the chair of the APPA Technology Committee.*

American Probation and Parole Association

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Corporations with an interest in the field of probation, parole and community corrections are invited to become APPA corporate members. Corporate members receive benefits such as enhanced visibility among APPA's nationwide network of community corrections professionals, as well as shared information on the latest trends and issues that specifically affect community corrections.

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Corporate Member Profile

Loryx Systems, Inc.

Company History/Background

Loryx Systems, Inc. was formed three years ago in association with NetISphere, Inc., a Microsoft Certified Partner, for the purpose of developing state of the art criminal justice management information systems.

We offer superior solutions:

The key advantage of Loryx Systems, and why we are able to offer superior information solutions, is our unique combination of experience in criminal justice and information technology. Our developers and engineers have actually worked at criminal justice agencies as investigators, case managers, supervisors, and program administrators. Because of this practical experience, we see the work environment differently than other companies; we see it through your eyes.

Because we understand how the probation and parole system works, and the types of information and tools your agency needs to be effective, we are able to design total information solutions that truly meet the needs of your clients, staff and managers.

Loryx Systems Technology:

Loryx Systems products are designed with industry-leading **Microsoft.NET** technologies. Using state of the art browser-based technology, mainstream ODBC compliant databases such as Microsoft SQL Server and Oracle, and capable of interfacing with legacy and other local criminal justice system databases, we offer products that are both reliable and scalable to meet your current and future needs.

Primary Market

Loryx Systems specializes in deploying systems for probation and parole, pretrial, and treatment courts. **Monitor**, our probation and parole MIS system is designed for both juvenile and adult populations and for both single agency and state-wide adoption by community corrections, probation, and parole agencies.

Product Description

Monitor is Loryx Systems answer to the endless operational and administrative challenges faced by probation and parole agencies, which are constantly required to do more with less. **Monitor** was specifically designed to meet probation and parole needs. By allowing efficient and effective tracking of all clients, requirements, referrals, and deadlines, **Monitor** increases client success rates, agency communication, staff accountability, and program performance, all at an affordable price.

A total information solution, **Monitor's** benefits and functionality greatly exceed those provided by traditional case management systems. **Monitor** delivers on the promise of a management information solution that will revolutionize how work is done and in the process provide new levels of efficiency, public safety, and cost savings.

Monitor accomplishes this revolution because it is constructed with AIM **(active intelligent management)** principles and technology developed by Loryx Systems. With **AIM**, users are instantly informed of all aspects of client, staff, and program performance in a manner that allows them to act on that knowledge. **AIM** identifies and places critical data into the hands of system users, making the crucial difference in client compliance and staff performance.

Monitor is a customizable solution that can link your department with other agencies and private organizations. Outcome-based management is enhanced through the ability to generate performance reports with the click of a button, allowing modification of agency policy to take advantage of best practices.

Monitor is a comprehensive system that provides modules for all probation and parole functions, yet is easy to use. Examples of Monitor Modules include:

- Intake / Investigations
- Risk and Needs Assessment
- Facility Management
- Case Management
- Specialized Caseloads
- Community Service Programs
- Financial Management
- Drug Testing
- Violations and Warrants
- Victim Services and Restitution
- Agency Administration
- Management Reporting

Corporate Membership

Our membership in APPA is central to our goal of creating the most useful, user-friendly management information system available. APPA represents the best practices in probation and parole and Loryx Systems reflects these standards in our software. Only by studying the latest advances in the field can we assure that our software continues to define the leading edge in program and case management.

Contact Information

To receive additional information about **Monitor** or other products, please contact:

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Training Announcement

Youthful Offenders in Adult Corrections: Effective Interventions

Youthful offenders remanded to adult jails, prisons and community corrections are continuing to flood the system with unique challenges and issues that demand immediate attention. No longer considered "juveniles" in the eyes of the criminal justice system, and far from ready to assume the role of adult, this group of offenders calls for a completely unique set of operational guidelines if they are to be effectively managed and treated in the adult correctional environment.

This 32-hour distance learning training program will address the unique needs of these offenders by developing a system-wide, strategic approach to offender management and treatment, based on a strong foundation of research which is both educational and concrete in nature. All programming and management aspects of the training program will model what we know to be effective in assessing, reducing and managing risk in the youthful offender population. Areas that will be covered include social learning theory, adolescent development, health and nutrition, staffing, criminal thinking and strategies for change, interventions and programming issues, security, classification and risk assessment, physical, sexual and emotional abuse, policies and procedures, and offender rights.

For questions about this program, feel free to call Nancy Shomaker or Ed Wolahan, at 800-995-6429, or email at nshomaker@bop.gov or ewolahan@bop.gov. ❐

2003/2004 Professional Development Program

The American Probation and Parole Association (APPA) Professional Development Program provides selected training and technical assistance opportunities for APPA members as well as professionals in the field of probation, parole, community corrections and community justice.

APPA Training is:

- Accredited for Continuing Education
- Provided by Community Corrections Professionals
- Research-Based
- Specific to Community-Based Supervision
- Tailored to the Needs of the Community Justice Agency

If you are you are interested in bringing APPA specialized training to your area or for more information on the current training programs, contact: Karen L. Dunlap (859) 244-8211, or email at kdunlap@csg.org.

Some Topics Available For Training:

- Basic Field Officer Safety Training
- Advanced Field Officer Safety Training
- Strength-Based Practice for Community Corrections Practitioners
- Strength-Based Training II: Motivation and Movement: Becoming Change-Focused
- Survival Skills for Middle Managers
- Effective Strategies for Probation or Parole Supervision
- Performance Based Measures in Community Corrections
- Practicing Prevention: Contributing to the Safety and Vitality of Your Community

Scheduled Training Dates and Locations:

Managing Sex Offenders' Computer Use
Golden, CO
April 3-4, 2003
June 23-24, 2003
September 24-25, 2003
November 3-4, 2003
January 21-22, 2004

Survival Skills For Middle Managers: *Out of the Frying Pan and Into the Fire*
St. Petersburg, FL
April 22-23, 2003

Olathe, KS
August 4-7, 2003

Strength-Based Training Part I: Practice for Community Corrections Practitioners
Las Vegas, NV
May 14-15, 2003

Strength-Based Training II: Strength-Based Assessments: Increasing the Resources for Positive Behavior Change
Las Vegas, NV
May 16-17, 2003

Bend, OR
August 18-19, 2003

Olathe, KS
August 6-7, 2003

Call for Presenters

American Probation and Parole Association
Winter Training Institute
Reno, Nevada – February 8-11, 2004

The American Probation and Parole Association is pleased to issue a call for presenters for the Winter Training Institute scheduled to be held in Reno, Nevada on February 8-11, 2004. Institute participants include community supervision and corrections personnel, the judiciary, treatment providers, criminal justice researchers and others who are interested in the field of community justice. Presentations should relate to the following topics:

- Community Justice Initiatives and Innovations
- Executive Management
- Human Resources
- International Issues
- Juvenile Justice Issues and Programming Strategies
- Legal Issues
- Multi-Agency Collaboration/Interdisciplinary Participation
- Parole Issues and Post-Incarceration Supervision Strategies
- Pre-Trial Services
- Program Specialization in Community Supervision and Corrections
- Sentencing Strategies and the Judiciary
- Substance Abuse
- Technological Innovations

The above-suggested topics are not all-inclusive. Other topics related to the field of community supervision and corrections are acceptable.

Submission Guidelines

Persons interested in submitting a proposal for consideration should forward the following:

1) Workshop title
2) A clear, concise, accurate description of the workshop as it will appear in the program (average length is 75 words; submissions on disk in Microsoft Word are preferable)
3) Name, title, agency and complete mailing addresses with phone numbers of all proposed faculty members
4) Brief resume or vitae of each faculty member
5) Primary contact person for the workshop (include complete address and phone number)

Presentation summaries may be mailed, faxed or emailed to:

Rhonda Grant
Program Manager
Dept. of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250-0666
Phone: (803) 734-9241
Fax: (803) 734-9373
Email: rgrant@ppp.state.sc.us

Presentation summaries should be received no later than **May 15, 2003**. Ideally, a presentation panel should consist of two or three persons. Annual Institute program track committee members will contact the person who nominated the workshop(s) to indicate their selection for the Institute. Please note that it is APPA's policy that, regrettably, expenses and fees associated with participation cannot be reimbursed by APPA.

National Survey on Probation and Mental Health

Several specialty probation agencies have been developed for offenders with mental health and/or substance abuse problems. To inform policy and practice, probation professionals and academics have collaborated to launch a national survey of these agencies. However, we need your help to identify specialty probation agencies.

Please contact us today with any information that may help us locate and represent specialty agencies. Contact Dr. Jennifer Skeem by phone (702) 895-4983) or e-mail: skeem@unlv.edu. Thank you!

This survey is supported by the MacArthur Research Network on Mandated Community Treatment

JOB ANNOUNCEMENT - CHIEF PROBATION OFFICER / ALAMEDA COUNTY

Alameda County, located in the ideal climate and rich diversity of the eastern San Francisco - Oakland Bay Area, is seeking a Chief Probation Officer. Appointed by the Board of Supervisors and working closely with the Alameda County Courts, the Chief Probation Officer is responsible for a full array of juvenile & adult probation programs and facilities serving an urban & suburban population of 1.8 million. Department resources include a $74 million FY02-03 budget and 749 FTE staff.

The ideal candidate will be an experienced probation manager/administrator with significant success in preventative and rehabilitation programs, community safety and effective labor relations in a comparable community. This collaborative, enthusiastic, and results-oriented leader will bring outstanding communication, interpersonal and consensus building skills along with a vision for excellence. At least six years of increasingly responsible probation or corrections experience, including senior management level service, in a similar organization is expected. A Bachelor's degree in public/business administration, social welfare, psychology or related field is required. A Master's degree is desirable. Must meet all minimum standards for a Peace Officer under California law. A detailed brochure is available.

Annual salary $139,320, plus attractive executive benefits package. To be considered for this exceptional career opportunity, submit resume, three work-related references and current salary by Friday, March 21, 2003 to:

CSAC Human Resources Advisory Services
241 Lathrop Way, Sacramento, CA 95815
Tel: 916 263-1610, Fax: 916 561-7205, Email: resumes@cps.ca.gov

For more information about the County of Alameda, please refer to www.co.alameda.ca.us
Note: Resume packets should be sent or e-mailed to CSAC

Spotlight on Safety

Information on the Internet can Help or Hurt

There is a new feature that makes it possible to type a phone number into Google's search button and have MapQuest's Home Page returned as a result. Any person wishing to discover the physical location of a phone number, whether it is a business or home address, can use this feature to locate the street address and receive explicit directions to get there from anywhere in the country. This feature can be used by a probation/parole officer as an investigative tool to locate an offender or by an offender to find out where the officer lives. Google has made available an option that will allow anyone to remove their phone number from the database that is linked to the mapping feature.

To remove your number follow these instructions:

- Go to Google's web site, www.google.com. (Do not use any links).
- Type in the phone number separated by dashes, i.e., xxx-xxx-xxxx. Click on "Google Search."
- If the phone number appears in the mapping data base, an icon resembling a telephone will appear next to the first or second entry on the results page.
- Clicking on the telephone icon will take you to a page called the Google Phone Book that contains a description of the service.
- Scroll to the bottom of that section and follow directions to have your information deleted. ❒

Robert L Thorton *is the Director of the Community Corrections Institute in Eatonville, WA and chair of the APPA Health and Safety Committee.*

BY ROBERT L. THORNTON

Opening Windows to Effective Intervention

Proactive Community Supervision

BY JUDITH SACHWALD

IN 1666, Pope Alvey most likely became the first individual in Maryland history to be conditionally released under suspension of sentence. Mr. Alvey, a repeat offender, was convicted of stealing a cow and was sentenced to hang by the St. Mary's County Provincial Court, but the court suspended the sentence and released Alvey on the condition that he behave for the rest of his life. As community supervision agencies were unheard of at that time, it is reasonable to speculate that the community kept watch over Alvey and reported to the court if he did not behave. The challenge today is to not only re-engage the community and its resources in community supervision, but to provide effective agent intervention.

Quality Contact

Much of the current dialogue about reengineering parole and probation supervision emphasizes the redefinition of community supervision as a mechanism for rigorously enforcing court and/or parole board orders without recognizing the significant benefit that can occur from the routine contact with the offender. The discussion presumes that the contacts and services that comprise supervision do not form an intervention. Restricting the scope of supervision to the enforcement of stipulated conditions is short-sighted. It overlooks the public safety mission of supervision to manage offender behavior and reduce recidivism, and discounts the taxpayers' investment in community supervision agencies. However, viewing community supervision as the management of offender behavior opens the window for employing supervision as the vehicle for offender change.

By taking stock of the innovations in probation during the last 50 years, we repeatedly find that the cry from both scholars and practitioners is that intervention is a vital component of efforts to improve public safety (Andrews, et. al., 1990; Anglin & Hser, 1990; Lipton, 1995; MacKenzie, 1997; Taxman & Piquero, 1997). Noted criminologist Joan Petersilia in her recent review comments, "The empirical evidence regarding intermediate sanctions is decisive; without a rehabilitative component, reductions in recidivism are elusive."[1] Supervision is seldom considered a vital component of an intervention strategy because it is more often perceived only as the conduit to treatment (e.g., referrals, service provision, etc.), instead of a component of the intervention. However, drawing upon the work of behavioral change, the conduit facilitates important steps in the change process – namely, precontemplation, contemplation, and action orientation – that are critically important to achieving the desired behavior change goals.

Supervision constitutes a critical function within the change process. It is naive to assume that a court/parole order is sufficient incentive for the offender to want to change his/her behavior and to know how to change his/her behavior. While some implicitly refer to supervision as purely monitoring and record keeping, the basic functions are similar to case management and require working with the offender in the change process. The contacts that comprise supervision can serve the vital function of identifying problem behaviors, working with the offender to reduce denial and accept responsibility, and identifying a plan of action. All are critical in facilitating the psychological processes associated

with behavioral change. In the process of reengineering probation, the focus should be on working with the offender to achieve public safety goals by using the contact as a vehicle for motivating offenders in the direction of changing their behavior. The emphasis becomes offender management and necessitates that offenders become the primary focus of the community corrections operation.

Maryland's Proactive Community Supervision Model

At any given time, only about one-third of the adults under the jurisdiction of Maryland's criminal justice system are incarcerated. The other two-thirds reside in the community and are under mandatory, parole, or probation supervision. Under these circumstances, the community in community supervision must mean more than not incarcerated. Maryland's Proactive Community Supervision (PCS) model has been developed in order to maximize the untapped potential of community supervision. It is a comprehensive community-based approach to parole and probation supervision with three objectives:

- Protecting public safety;
- Holding offenders accountable to victims and the community; and
- Helping offenders become responsible and productive members of society.

Under PCS, agents are assigned to supervise offenders in a specific neighborhood or area. This provides agents with the opportunity to become acquainted with the people who see and

interact with offenders every day — family members, friends, neighbors, local business owners, clergy. Unlike the traditional office-based system, PCS takes agents into the community to do the bulk of their work. They have more frequent face-to-face contact with the offenders under their supervision and become exceptionally knowledgeable about the offenders. This has a number of advantages. On the simplest level, if offenders know an agent is in their community on a regular basis, talking with their friends and walking down the same streets, offenders will recognize that they are under closer scrutiny with less chance to get away with a crime or a technical violation. Offenders also benefit from this approach. Agents work with them to identify and guide them to the services they need to fight addictions, gain basic job skills and education, and find a decent job. The benefit of this multi-faceted approach is to solidify the relationship between the offender and the agent in order to achieve effective intervention. Accordingly, through intensive surveillance — made possible by reducing caseloads to 50-55:1 — and rigorous enforcement of conditions, PCS will help make communities safer immediately. Through effective agent intervention, PCS will help sustain safer communities.

PCS emphasizes the agent's role as the manager of offender behavior. Like any manager, therole is to guide, facilitate and reinforce the change process. It is up to the offender to engage and pursue behavioral change. The PCS model provides the agent with the tools to manage offender behavior, particularly the skills that draw upon the most beneficial way of getting the recipient to invest in behavior change. The focus is contact with the offender. By using effective communication and intervention skills to guide the contact, the agent facilitates the change process through an emphasis on getting the offender to recognize the issues, and to establish or to reinstate a strategy to change directions. The contact becomes the nucleus of supervision. Under the PCS model, the agent's role is to be the impetus for change as well as the vehicle for returning the offender to custody. The goal is to ensure that the agent uses effective intervention tools to achieve public safety.

Quality Contact Standards (QCS) are incorporated as part of the PCS model whereby the focus of the interaction is on four parts: 1) deportment or the manner in which the working relationship occurs between the agent and offender; 2) assessment and case planning where the focus is on using a contract to achieve behavioral goals (e.g., get a job, keep a job, etc.); 3) treatment referral to obtain needed services for offenders; and 4) sanctions and maintaining ground rules to ensure that offenders are held accountable for their behavior. QCS includes a tool to help agents and their supervisors analyze and enhance their interaction with the offender in the areas that define PCS.

PCS puts the agent in the driver's seat to manage the behavior of the offender. Whilecommunity supervision is a field where the role of the agent frequently changes (almost daily), it is the agent who is responsible for working with the offender. In essence, the agent must manage the behavior change process with the offender. By incorporating the main tenets of effective interventions, PCS refocuses the efforts of the agent on being part of the change process.

The Empirical Evidence Supports PCS

Maryland's proactive community supervision model embraces the tenets of evidence-based interventions, but it does not dismiss the important contributions of the efforts promulgated by the "broken windows" scholars. In the work by Rhine, et al. (2000), the emphasis is on refocusing supervision into the community and using partnerships to garner support for supervision. Instead of promoting the agent as a community activist to improve the overall conditions of the community, the focus of the effort is on the agent working with the offender.

Identify Criminogenic Risk/Needs Factors

The purpose of this process is to learn more about the offender and his/her situation. In this case planning process, the agent is becoming familiar with the factors that contribute to the offender's likelihood of engaging in criminal behavior. Risk refers to prior criminal history; and needs refers to the traits and settings that may influence the offender's behavior. Maryland has several components to identify risk/needs:

1) drug testing of offenders at time of placement on supervision to identify offenders who are actively using illicit substances; 2) using the Addiction Severity Index and/or the Psychopathic Checklist Revised (PCLR) to identify need and suitability, respectively, for substance abuse treatment services; and 3) a new risk screening tool that is under development. The goal of the instrumentation is to arm the agent with actuarial information about the offender that can assist in making decisions about intervention programs. The agent is to use this information to develop a supervision plan that places the responsibility for reducing risk factors on the offender in a way that better enables him/her to manage the necessary behavioral change.

Target Interventions to High-Risk Offenders/Responsivity

The responsivity principle is that the services should match the crime-related needs of the offender, and that the high-risk offender is more likely to make gains from the intervention than the lower risk offender. Furthermore, the personality traits and learning style of each offender should be taken into consideration when assigning him/her to services, recognizing that different strategies work for different folks. More gains can be made by ensuring that high-risk offenders – offenders with greater risk/needs driving their criminal behavior – receive formal intervention services first. HotSpots, Break the Cycle, the Baltimore City Drug Treatment Court, and the Correctional Options Program all focus on the high-risk or high-needs

offender by using risk/needs assessments to determine need for treatment services. The screening for these programs identifies offenders that have high risk or high needs; the agent can use these to ensure that offenders receive formal treatment services and close supervision.

Minimize Contact and Services for Low-Risk Offenders

Low-risk offenders do better with minimal formal intervention (Andrews & Bonta, 1994). Monitoring such as drug testing can be used as an external control for the low-risk offender as a means to ensure that the offender is not regressing. Other minimal services include reporting via a kiosk (a pilot is underway in Prince George's County), report status only, and telephone reporting as a means to maintain contact with the offender.

Use Cognitive Behavioral Interventions

Research repeatedly has shown that cognitive behavior intervention models are more likely to reduce recidivism than other forms of interventions (e.g., reality therapy, nondirective counseling, etc.) (Andrews & Bonta, 1994; Taxman, 1999). Cognitive behavioral interventions focus on helping the offender learn how to respond differently through a change in thinking processes. The emphasis is on the offender's change in behavior. The PCS model is grounded in cognitive behavior interventions. When using the scientific principles of Motivational Interviewing (Ml), the probation contact yields greater motivational opportunities. It is through this communication with the offender that the agent uses his/her interviewing skills to empower the offender to become engaged in behavior-changing activities (e.g., recognizing a problem behavior, taking steps to address the behavior, etc.) and to monitor and learn more about the offender's participation level in the process. In this manner the agent is providing a critical function of ensuring that offenders are following through with their behavior-changing processes.

The sanctions protocol is an example of a cognitive behavior process. As part of this protocol, the offender and agent sign the sanction contract. It outlines the expectations for supervision and provides the formula for successful completion of supervision. The sanctions provide a mechanism to offer feedback to the offender. For the first positive drug test or missed appointment, the schedule calls for a verbal warning. A warning is a communication tool — it allows the sanction contract to be reviewed and the commitment discussed. It also allows the agent to begin to work with the offender on his/her drug problem by discussing different risk and need factors. The tone and manner of the communication are critically important because they demonstrate the agent's interest in helping the offender even when the offender may not be interested in helping him/herself.

Engage Social Support in Interventions

PCS recognizes that the agent is just one of the mechanisms to assist the offender in the behavior change process. The offender's social support system is a critical component of the process of change. Utilizing a team approach with other formal agencies (e.g., police, treatment providers, community organizations, etc.) can provide the offender with the tools to engage and continue on the path of change. The utilization of informal social controls such as family and/or friends is also a critical component of the change process. The agent, as part of the offender management, marshals up all of the available formal and informal support mechanisms.

Changing the Organization

To bring about these changes, the Maryland Division of Parole and Probation developed a 4-year plan which calls for hiring 244 additional agents as well as other staff; re-writing all of its policies and procedures; redefining the role of agents and supervisors; expanding the warrant apprehension unit; and establishing new relationships with criminal justice, treatment and other organizations. The plan received full funding for fiscal year 2002 from the Governor and the General Assembly. In addition, the Governor's Office of Crime Control and Prevention awarded a $3.5 million grant to help the Division expedite the implementation of PCS.

At the moment, the most significant initiatives are hiring new agents, acquiring new computer hardware and software, and training. In collaboration with the Information Technology and Communications Division of the Department of Public Safety and Correctional Services, an electronic case management system is under development. The system will enable agents to focus their time and effort on offender management instead of administrative duties and report writing. The case management system also will provide agents with critical data on the offenders under their supervision which will enable agents to promptly determine the next and most appropriate supervision intervention (e.g., additional contact, new service, warrant request).

After consultation with a variety of supervision and behavioral experts, the Division crafted a comprehensive curriculum that incorporates the key concepts of motivational interviewing, behavior change, and progressive sanctions. All field staff in the Division are being trained on the curriculum with the goal of having all employees familiar with the key concepts of PCS (and QCS). The hands-on training approach involves role playing and modeling and rating staff and interactions. The training is based on the key principles of changing the organization and the culture of the organization. A renewed focus on the contact as the intervention point accentuates the invaluable and professional nature of the work that will be performed by Maryland's parole and probation agents in the 21st century.

Endnotes

[1] Petersilia, J. 1999. "A Decade with Experimenting with Intermediate Sanctions: What Have We Learned?,' *Perspectives*, 23(1):39-44.

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Judith Sachwald *is the Director of the Maryland Division of Parole and Probation.*

Introduction[1]

INAPPROPRIATE RELATIONSHIPS BETWEEN OFFENDERS AND EMPLOYEES of community-based corrections organizations have emerged as a serious issue.[2] Among the most dangerous and destructive of these inappropriate relationships is sexual misconduct. The very nature of community corrections, with semi-autonomous employees, the increasing focus on a rehabilitative rather than the punitive model, the increase of offenders assigned to these programs, and actual allegations of sexual misconduct have raised the awareness of administrators of the need for action.

The bottom line: Sexual misconduct jeopardizes the safety of the public. Employees who compromise their professional ethics and responsibilities by engaging in inappropriate and, in most states, illegal behavior, undermine the criminal justice system, further victimize vulnerable individuals, put the safety of themselves and their peers in jeopardy, and erode public and legislative support for the mission of their agency.[3]

Community corrections agencies that have yet to experience allegations of sexual misconduct have a range of options available in preventing misconduct that may not exist for agencies where allegations are public, or where litigation has begun. Agency administrators should be, therefore, proactive and aggressive in taking steps to prevent sexual misconduct. Otherwise, they risk the inevitable allegation that forces the agency into a reactive posture.

This article addresses:

- Definitions of staff sexual misconduct with offenders;
- Myths and realities of sexual misconduct in corrections;
- National developments that have affected staff sexual misconduct with offenders;
- State laws prohibiting staff sexual misconduct with offenders;
- Critical issues for community corrections;
- Actions agency administrators can take to address and prevent staff sexual misconduct; and
- Investigations.

Defining Staff Sexual Misconduct with Offenders

Sexual misconduct includes a range of behaviors – from sexual innuendo, harassment, hostile work environment, to incidents of sexual contact and coerced sex and rape.

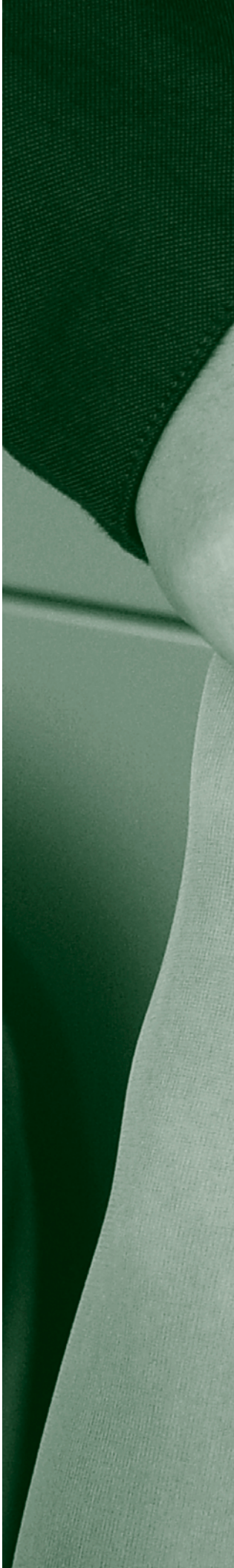
For discussion purposes:[4]

> Sexual misconduct includes, but is not limited to, acts or attempts to commit acts such as sexual assault, sexual abuse, sexual harassment, sexual contact, obscenity, sexual gratification for any party, unreasonable and unnecessary invasion of privacy, behavior of sexual nature or implication, and conversations or correspondence suggesting a romantic or sexual relationship. Staff sexual misconduct is also behavior such as sexualized name calling between offenders, and between staff and offenders, staff who "observe" offenders of the opposite sex during period of partial or total nudity for periods of time longer than necessary for facility security interests, staff having physical contact with offenders outside the need for searches and related security functions, and staff who make explicit comments about the physical appearance of offenders.

This definition is intended to highlight a range of inappropriate behaviors that are most often identified with sexual misconduct. Administrators should review their state statutes[5] for additional language and adopt definition(s) that are the most relevant for their operations.

Often the code of conduct for employees and offenders, does not specifically describe behaviors that are acceptable and prohibited. A critical first step in preventing sexual misconduct is defining it. An agency's code of conduct that directs staff to avoid "over-familiarity" or "conduct unbecoming" in working with their clients is insufficient to hold employees and offenders accountable for professional behavior. While one would expect employees to know that sexual relationships with offenders, especially offenders under their supervision is just plain wrong, the absence of agency direction on the matter can provide a convenient scapegoat for ignorance. This ignorance places the agency staff member and the offender at risk.

BY MAUREEN BUELL, ELIZABETH LAYMAN, SUSAN W. MCCAMPBELL AND BRENDA V. SMITH



Addressing Sexual Misconduct in Community Corrections

Myths and Realities[6]

Many "myths" have emerged about staff sexual misconduct.

Myths

1. Staff know their professional boundaries and have the skills to enforce these boundaries with offenders.

Focus groups of community corrections professionals, at all levels, have revealed that there is a critical gap in staff's ability to establish and maintain professionalism. That gap is that there is not a universally shared and publicly acknowledged and defined standard about sexual misconduct. Should agencies have to specifically tell staff not to become involved in sexual activities with offenders under supervision? Apparently, they do. Community corrections staff report they are unclear about their boundaries, which are further blurred by being responsible for increasing treatment and counseling functions, rather than a strict supervision. As a result of unclear boundaries, and employees' emerging role as helper rather than enforcer, the "slippery slope" of seemingly minor indiscretions and unprofessional behavior can result in sexual misconduct.

Focus group participants also report that training, both pre-service and in-service, for employees in many states is deficient. New employees may be trained in the nuts and bolts of the agency's policies and paperwork requirements, but should also receive information about offenders and interpersonal skills needed to be safe and successful. Too often new employees don't know the significance of the abuse history of their clients and how that history will impact their supervisory relationships. Staff receive information not just about work behaviors to avoid, but what behaviors to embrace in their work. Employees often look to supervisory staff in the organization as their role models and mentors, and if the appropriate behaviors are not there, employees are left to develop their own set of professional boundaries. Supervisors often are unprepared or overloaded to provide appropriate guidance.

The multi-generational workforce does not share the same values or ethics. This is neither good nor bad, just a statement of fact. It is up to the agency to define for all workers acceptable behavior and support that critical directive with training and role modeling.

2. This is a male staff/female offender issue.

Available data from institutional settings indicates that, although the issue of sexual misconduct emerged in women's prisons, the misconduct is occurring on all "four quadrants" – female employees/male offenders, female employees/female offenders, male employees/ female offenders and male employees and male offenders.[7] Therefore an agency's strategic response to addressing and preventing misconduct must include policies that recognize this reality.

In some organizations, cross gender supervision has been blamed for misconduct. While thoughtful deployment of staff, based on fiscal and other management concerns, is a responsibility of agency leadership, banning cross gender supervision will not halt all staff sexual misconduct. It may, however, decrease offenders' sense of vulnerability and thereby lessen sexual misconduct, but is not the answer.[8]

3. Offenders consent to inappropriate relationships with employees.

Most state statutes, the policies in many agencies, and several court decisions, do not accept or recognize the ability of offenders to consent to illegal or inappropriate behavior with employees. The custodial and supervisory power that community corrections programs and employees have over the offender – most clearly the power to request revocation of an offender's probation or parole – makes the relationship a grossly unequal one. When that level of an imbalance of power exists, there can be no consent.

4. Offenders manipulate inexperienced employees into compromising situations.

In the current work environment, there are many staff that are inexperienced with the offender population they are assigned to supervise. Offenders with long histories of physical and sexual abuse, may view the world quite differently than those who have not experienced these events. These offenders present challenges to the most seasoned corrections professional. Agency leadership has an obligation to prepare and supervise all employees to understand these clients, and give these employees the skills needed to work with them. An excuse for misconduct cannot be that staff are ill-prepared or too inexperienced for their responsibilities.

5. Only new employees get involved with misconduct.

There is no one profile of the staff person who gets involved in sexual misconduct. In some cases they are staff who, for whatever reason, allow their professional boundaries to be crossed, with serious ramifications; in other, rarer instances, they are "predators" watching for vulnerable victims. Employees who get involved are those who are newly hired, and those who have long tenure with an organization. Exemplary employees get involved, as well as problem employees. Supervisors and managers get involved.

At the conclusion of investigations into sexual misconduct allegations, agencies often recognize that there were plenty of early warnings that problems existed, but no one acted on these red flags.[9] Prevention includes making both staff and supervisors aware of the indicators, as well as the skills and resources to confront the issues.

Realities

The reality of sexual misconduct is that the leadership of the organization sets the tone for the professional conduct of all employees. In the absence of clear policy and procedures, effective training and contract management, misconduct will develop. The leadership of the organization is responsible for assuring that the culture of the organization is healthy,

promotes professionalism, encourages and rewards staff's ability to report misconduct, ensures competent investigations, and prevents the development of a sexualized and hostile work environment. If staff do not believe that the organization has their interests at heart, or if past agency conduct, whether real or perceived, supports these beliefs, a "code of silence" will develop. When established, this code of silence is difficult to address, and it inhibits agency leadership from determining what is really going on in the organization.

The National Scope

Several national and international reports have addressed, explored and investigated the issue of staff sexual misconduct. While none of these reports have specifically addressed community corrections, they are relevant. A summary of these reports is provided so the reader will appreciate the scope of this attention and identify the potential impact on community corrections.[10]

- **Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners,** Brenda V. Smith, National Women's Law Center (1997). This survey provided the first analysis of state statutes' prohibitions of staff sexual misconduct with offenders. This study examines elements of these statutes, including scope, consent, defenses and penalties.

- **In December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U. S. State Prisons."** This report described numerous incidents of sexual harassment, sexual abuse, sexual contact and privacy violations of women in six large correctional facilities, including one combined prison/jail system.[11]

- **In 1997, the United States Department of Justice (DOJ) filed civil rights lawsuits against two states' Departments of Corrections.** The results of this litigation were settlement agreements, involving extensive reorganization and revision of policies and procedures. The actions of the U. S. DOJ were based on their findings that the departments failed to sufficiently protect female inmates from sexual misconduct by staff.[12]

- **In July 1998, "Nowhere to Hide: Retaliation Against Women in Michigan State Prison" by Human Rights Watch.** The report examined numerous allegations of retaliation against the female inmates who had filed suit or complaints against the department for acts of sexual misconduct.[13]

- **In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]** was issued. The report concluded that sexual misconduct by staff is widespread in U. S. prisons, especially when compared to systems in other industrialized counties. The report offered many recommendations, including the criminalization of sexual misconduct between staff and inmates.[14]

- **In June 1999, the United States General Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff."** Four jurisdictions, accounting for more than one-third of the total prison population, were studied. The report found that the following areas were significantly lacking attention: training, reporting methods, procedures for responding to allegations, procedure for preventing

"The reality of sexual misconduct is that the leadership of the organization sets the tone for the professional conduct of all employees. In the absence of clear policy and procedures, effective training and contract management, misconduct will develop. The leadership of the organization is responsible for assuring that the culture of the organization is healthy, promotes professionalism, encourages and rewards staff's ability to report misconduct, insures competent investigations, and prevents the development of a sexualized and hostile work environment."

retaliation against those filing reports, conducting competent investigations, maintaining records of reports and investigations and tracking the progress of investigations.[15, 16]

- **In 2001, Amnesty International published "Abuse of Women in Custody – Sexual Misconduct and Shackling of Pregnant Women: A State-by-State Survey of Policy and Practices in the U. S."** This report expanded on AI's 1999 report "Not Part of My Sentence: Violations of Human Rights of Women in Custody" through a national review of policies relating to the treatment of female offenders, with emphasis on the treatment of pregnant offenders.

Clearly, the 1990s created an awareness of the problem of sexual misconduct where an imbalance of power exists – in the military, in religious institutions, in high schools and colleges, and in prison and jail settings. Currently, forty-seven of the states have passed laws criminalizing sexual relationships between staff and inmates (also Puerto Rico, Federal Bureau of Prisons, and the District of Columbia).[17] This number is an increase from 32 states with legislation in 1996. The Association of State Correctional Administrators passed a resolution in 2000 declaring zero tolerance for staff sexual misconduct. The National Sheriffs' Association passed a resolution in June 2002 supporting efforts by sheriffs and jail administrators to aggressively address misconduct.

Litigation regarding allegations of misconduct is increasing. Seldom does a month go by where litigation is not initiated, or a court ruling made.[18] Although the U. S. Supreme Court has not dealt specifically with this issue, many lower federal courts have.

While few managers use only the threat of litigation to promote policy development and training, the interests of plaintiffs' attorneys, the courts, as well as the appalling treatment of offenders in regard to sexual misconduct should provoke agencies to action.

Legislation

Another outcome of the increased attention to staff sexual misconduct with inmates has been the enactment of laws specifically prohibiting sexual contact between correctional staff and inmates.[19] In the early 1990s, few states had laws specifically prohibiting sexual contact between corrections staff and inmates.[20] In the absence of such statutes, many incidents of sexual misconduct could not be prosecuted under existing general sexual assault statutes where consent is a defense to the conduct. Often, involved staff claimed that the inmate had either enticed them or had consented to the conduct.[21] States enacted laws, often in the wake of visible incidents, prohibiting any sexual contact between prisoners and staff.[22] These laws differ in their coverage – some applied only to prisons or other detention facilities,[23] while others cover prisons, parole, probation and work release programs.[24] Still others covered juvenile facilities.[25] Some states took the approach of covering anyone under custody or authority of law.[26]

A cursory review of these laws makes clear that states either have or are moving to cover the conduct of community corrections employees. Existing legislative language that refers specifically to community corrections agencies or seeks to cover anyone under custody or authority of law casts a broad net. Currently, with no revisions, community corrections employees could be subject to criminal penalties for sexual abuse of offenders in 27 states.[27] However, a number of issues remain that are very specific to the structure of community corrections agencies. First, many of these statutes require that the correctional officer have direct supervisory or disciplinary authority over the offender.[28] It leaves open the possibility that relationships between offenders and other community corrections staff who are not directly supervising an inmate could engage in sexual and other intimate relations. While stories abound of correctional staff – both in facilities and in community corrections agencies – who have gone on to have relationships, father or mother children with offenders, and marry, few agencies have developed policies to address these situations.

Then there are other states that have taken the position that relationships between offenders and probation and parole authorities are off limits in their statutes. For example Nevada's law prohibiting staff sexual misconduct with inmates specifically exempts parole and probation from its coverage.[29]

Third, there is the issue of states like South Carolina that have codified sanctions for false reporting. South Carolina's statute provides that any "person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct" can be imprisoned for up to one year.[30] These statutes have a chilling effect on reporting by both staff and inmates.

Finally, the organizational structures that parole and probation agencies find themselves under may determine the application of these laws prohibiting staff sexual misconduct. Many of the statutes only cover the departments of correction.[31] If community corrections agencies are separate, part of the Department of Public Safety[32] or part of the courts, there may be separate sanctions or no sanctions at all. Because some parole and probation officers are licensed social workers there may also be licensing ramifications for sexual misconduct with offenders. This points to the need for a thorough review of your state law, agency policies and licensing regulations.

Community Corrections Environments

The community corrections environment presents a host of challenges to administrators in developing policy and practice to address staff sexual misconduct. There are significant differences between community corrections and traditional institutions in, among other areas:

- organizational structure;
- human resources;
- role autonomy;
- employees' access to confidential information about offenders;
- need for quality supervision of treatment and counseling responsibilities; and
- extremely high caseloads.

Although the vast majority of incarcerated offenders will eventually return to their communities, many under some type of correctional

supervision, the profile of community corrections offender is different from those who are incarcerated. Many community corrections' clients present a lower level of public safety risk and will never see the inside of a correctional institution. Although staff sexual misconduct reaches across all four quadrants the increase of women under community supervision presents additional challenges to staff who are not knowledgeable about the impact of an offender's abuse histories with current behavior, particularly behavior toward authority figures.

As with institutions, it is important to consider the inclusion of volunteers, contractors and third-party providers of services in policy development. With organizations experiencing budget shortfalls and the increased reliance on private providers, the imbalance of power is present with the same potentials for misuse.

In the Community

For purposes of discussion, the following are examples of areas for the attention of administrators. The list is not intended to be exhaustive, but intended rather to generate thinking and discussion regarding the potential for and the impact of staff sexual misconduct within a community corrections environment.

Legislation, Policy and Procedures

Of the 47 states that have criminalized staff sexual misconduct in an institutional setting, 27 states' statutes also extend to community corrections. Administrators must assess whether policies that address staff sexual misconduct are fully relevant to the community corrections environment and enforceable.

Organizational Structure

Uniquely, community corrections organizations fall in a wide variety of organizational structures – including the courts, county government, sheriffs' department, state department of correction, state government functions within another agency or some combination thereof. These variations give rise to challenges in defining the acceptable, legal and prohibited staff and offender behaviors; how, to whom and where to report allegations; which entity conducts an investigation; and who administers discipline. In addition to probation and parole functions, there may be variety of other legal statutes or regulations that place offenders in the community, such as furlough or conditional release.

Where does the responsibility lie to develop policy and procedure and effectively address sexual misconduct? Certainly, if an organizational structure presents challenges to administrators, imagine the impact on staff and the offender population in trying to understand the rules, negotiate through the system to report allegations and seek protection against retaliation.

Agency Culture

All correctional organizations have a culture that is unique, regardless of whether they are institutional or community environments. Many elements of culture are positive for the organization, but issues of sexual harassment, poor staff morale, hostile work environments and sexualized work environments can be equally present in community agencies as in other institutional settings. When an agency administrator takes steps to address staff sexual misconduct, the organization's culture needs to be analyzed and addressed in the strategies. Unaddressed, the potential for sexual, as well as other misconduct, is great. The opportunities for systemic misconduct may be somewhat different than in an institutional setting, but the dynamics of sexual misconduct – abuse of power and breaching professional boundaries – are consistent.

Ethics and Professional Boundaries

Many community corrections staff have enhanced their effectiveness through acquisition of skills often previously provided by trained treatment providers. But too often, treatment services for offenders are viewed within a correctional context rather than a treatment context. Without appropriate supervision, treatment and supervision boundaries may become blurred, placing both offenders and staff in vulnerable positions. Many of the cognitive behavioral strategies – techniques that enhance professionalism of staff and have proven effective with offenders – can create opportunities for misuse of relationships and information. Staff using these tools often do so without appropriate supervision increasing the potential for diminishing professional boundaries.

Power and Autonomy of Community Corrections Staff

Staff performing community supervision functions generally work quite independently, assuming sole responsibility for the caseload, with enormous discretion in responding to offender behaviors. Within the role, much of the work occurs away from supervisors, peers and outside of a traditional office setting. To effectively monitor offender change, staff/offender contact occurs in offender's personal environments, which may often include their residence. Maintaining professional boundaries while still providing effective supervision is a balancing act in community settings.

Prior or Current Personal Contact with Offenders

It is true in many communities that community corrections staff may have had prior relationships with offenders. In less populated communities, staff and offenders may have gone to school or worked together, their children may be involved in the same activities, frequent the same community services and have any number of legitimate prior connections. The fact that many offenders placed on community supervision may be seen by the officer or the neighborhood as more socially acceptable, can have the effect of relaxing professional boundaries. It is even a possibility for supervisors to discover that an offender has offered to perform legitimate services for a staff person (i.e. car repair). Taken as an individual event, such a situation may be a minor concern, or even accepted as part of the daily workings of the organization. In reality, this acts contribute to relaxing professional boundaries and opens the staff up to future favors requested by the offender.

Most community corrections organizations have work rules that discourage or prohibit personal relationships between staff and offenders.

A Success Story

One organization overcame these obstacles when faced with public allegations of staff sexual misconduct – and the allegations were true. Their first step was to develop the agency's policy regarding zero tolerance and overcome staff resistance. The agency provided very specific training and policies on staff sexual misconduct, and clearly announced their zero tolerance policy. Newly hired staff receive training from experienced staff explaining the damage to the work environment when violations are allowed to continue. Finally, and importantly, the training covers how and why internal affairs investigations are conducted. Many staff are unaware of how many steps in most agency's internal investigations process are actually geared at protecting staff, rather than being "out to get" staff, regardless of their guilt. Inmates were also oriented to the agency's policies and procedures. The sheriff personally meets with all staff in pre-service and in-service training to support this policy.

Contact Sheriff Beth Arthur, Arlington County, Virginia, Office of Sheriff, barthur@co.arlington.va.us

However, some community corrections staff have argued that having a personal relationship with an offender that they do not supervise, or having become unknowingly involved with an offender under supervision, should not be characterized as misconduct. Agencies must articulate clearly what activities are prohibited and thoughtfully address areas that can arise – subjects which tend to be ambiguous in a community corrections setting.

Administrative Leadership and Support

The impact of staff sexual misconduct on an organization is devastating. As within institutions, sexual misconduct often starts with small, seemingly harmless actions, which if detected, would diminish the occurrence of incidents. Supervisors need the time, talent and support to effectively manage their subordinate staff. Often part of this equation is missing and well-intended supervisors are clearly "stretched too thin" to provide quality and timely supervision. In addition to sufficient training and support, staff must be encouraged and supported to openly discuss their interpersonal challenges and the potential professional compromises inherent in supervising offenders. While institutions have publicly attempted to meet these challenges, focus group participants gathered for the purpose of discussing this issue in community corrections indicate that it is rare that staff sexual misconduct is discussed within the community corrections arena. Supervisory staff often do not have sufficient information to address this issue. Organizations must develop the resources to train and support supervisors to be both vigilant in addressing staff sexual misconduct and to provide staff with the tools to do their jobs professionally.

Administrative and Political Issues

Staff sexual misconduct issues may be less defined in the community. Existing personnel policies may present challenges to effective reporting, investigating and the ability to adequately protect alleged victims. Hiring standards currently in place may not be sufficient as there may be conflict in policy regarding off-duty behavior, or determining whether a particular staff person is actually appropriate to supervise offenders. There may be resistance by collective bargaining units to criminalize staff sexual misconduct with offenders in the community, especially because of the issue of "freedom of association." Agency administrators may believe it to be less of an issue in the community environment or are unsure how to begin to address the issue. Where power and authority over another exists, so does the potential for staff sexual misconduct.

Investigations and Data Collection

Who is responsible for carrying out investigations of alleged incidents of staff sexual misconduct? Many community corrections organizations have no authority to initiate or investigate allegations, have no investigative protocols and often must assign their own staff, many of who are not trained investigators, and who must add an investigation to their already overburdened work schedule. Some organizations have informal arrangements within their larger organization to conduct investigations. Some agencies may rely on outside law enforcement agencies or create a memorandum of understanding with an entity to perform investigations. Without a credible and consistent investigation process, the quality of investigations is undermined and staff and alleged victims will have little confidence in the process. If staff and offenders do not believe in the investigative process, they will be less likely to report, and a code of silence will flourish.

Collecting and maintaining data on allegations and findings is often missing within community corrections environments. The structure to adequately develop and keep information, which often may not appear to be relevant or even connected, is often non-existent with an inability to assess the extent of presence of the problem.

Administrators in community corrections organizations must begin the process of addressing staff sexual misconduct with offenders. Many lessons and resources can be drawn from the prison

and jail experience. The unique organizational structure of many community organizations will present challenges to effectively addressing misconduct, with union, staff and political barriers to overcome. As noted previously, administrators can be proactive or reactive. The proactive approach lends itself to preservation of the agency's reputation and integrity, assures protection for staff and offenders, and allows leaders to develop their own solutions, rather than having solutions thrust on them. As one sage correctional administrator observed, public allegations about staff sexual misconduct with offenders are not career builders.

Preventing Sexual Misconduct

An agency with the best policies, procedures, training and supervision may well receive allegations of sexual misconduct by staff. That is a fact of life. But the agency that has proactively pursued policy development and training is certainly in a better position to address allegations. So, what are the prevention strategies?

1. Establish a zero tolerance policy.

Written policy is the best offense. This proactive strategy is built with the commitment to a policy of zero tolerance for staff sexual misconduct. This commitment must be clearly role modeled by agency leadership, through public statements and adoption of concise and descriptive policies. Without all three – public statements, policies and setting the example – staff receive mixed messages. Even model behavior is not enough when written policy does not exist,

If personal integrity, public safety and professionalism are not sufficient reasons to adopt zero tolerance for staff sexual misconduct, then vicarious liability should be. Vicarious liability is created when:

Someone else (such as a supervisor) knew or should have known what was occurring or about to occur, but did nothing to correct the situation, and that lack of action was the proximate cause of subsequent harm, injury, or death.

Vicarious liability[33] can result from the failure to train, negligent supervision, or negligent hiring or retention. Under vicarious liability, administrators are responsible for activities within their organizations. Administrators who develop effective policy, who stay abreast of legal issues, who assess their organization's vulnerabilities and address problems as they arise through reprimand, training, investigation and sanctioning, will have a far greater chance of insulating themselves and their agencies from individual staff member's actions.

Gaining staff support of the zero tolerance policy is a challenge for some agency administrators. Getting staff to see what's in it for them is often the first question needing to be overcome. Staff are usually suspicious and untrusting of the internal investigative process, and see few reasons to risk becoming a snitch. The "wall of silence" exists in many organizations, where the agency's informal culture protects staff whose behavior is out of step with agency policy or the law.

2. Define prohibited behaviors.

Specifically defining prohibited behaviors is essential to insuring education of staff and offenders, as well as prompting compliance. Without knowing the specific agency policy on what constitutes misconduct, it is difficult to hold staff and offenders accountable for prohibited actions.

3. Require mandatory reporting by employees.[34]

Agencies that have been successful in addressing misconduct report that requiring staff to report suspicions of misconduct is an integral part of their prevention strategies. Most agencies require staff to report suspicions of illegal activities, but in the case of staff sexual misconduct, the administrators need to assess whether they believe that they are receiving reports.

4. Review all policies to insure they are consistent with and promote zero tolerance.

Adopting a single policy is a first step. Agency administrators should also examine if their other policies and procedures support zero tolerance in the workplace.[35]

5. Develop or amend contracts for services that require the contractor to adopt zero tolerance, agency definitions, reporting requirements and protection for the agency's clients of contractors who are accused of misconduct.

With many services in community corrections organizations provided by third party contracts, agency contracts must include requirements for contractor behaviors consistent with the agency's definitions of sexual misconduct, state law, as well as mandatory reporting and cooperation during investigations. Requests for proposal for services should include the agency's zero tolerance policies and definitions and require the incorporation of these policies in the final contract language. It may be possible to amend existing contracts for services to require the contractor to adopt protocols to prevent and address misconduct, and define how the agency's clients will be protected from contractors accused of misconduct during the investigative process. Contracts should include language that places harsh penalties for inappropriate contractor behavior, consistent with the agency's penalties, as well as the means by which the agency can terminate contracts that violate the agency's zero tolerance policies.

6. Train staff not only regarding policies and procedures, but also equip them with the skills and knowledge they need to supervise offenders on their caseload.

Staff frequently learn what not to do in the course of their job responsibilities, but often don't receive formal training on what to do.

Miranda v. Arizona, 384 U.S. 436 (1966):

If an investigation involves possible criminal allegations, and becomes accusatory, then Miranda rights apply to all parties. Those parties are protected from making self-incriminating statements under coerced conditions, and without proper legal advice and representation.

When the investigation or interrogation reaches the point where the respondent (person under investigation) may be making self-incriminating statements, he/she must be advised of their rights under the Constitution as defined by Miranda. It is highly recommended to include a written form, delineating the Miranda warning, signed by the respondent and witnessed by at least one investigator.

Garrity: v. New Jersey, 385 U.S. 493 (1967):

In Garrity, the Supreme Court decided a case where police officers were ordered and compelled by internal investigators, with authority of a N.J. statute, to give a statement about alleged conduct. The officers were told that if they did not make the statement, they would lose their jobs. The officers gave the statements, which were later used to incriminate them in a criminal prosecution. The court found that states have the right to compel such statements as a condition of employment, but such statements cannot be used against officers in criminal prosecutions. What does this mean for corrections administrators and investigators?

- Statements can only be compelled as a condition of continued employment if there is immunity from using the statements to self-incriminate in criminal court.
- If the respondent staff member is granted immunity, but refuses to answer specific questions as part of an administrative inquiry, directly related to official duties, the respondent may be dismissed or suffer disciplinary consequences for failing to answer.
- If the respondent staff member is granted immunity from criminal prosecution, and the statement given provides probable cause, administrative sanctions are allowed.

It is highly recommended that Garrity warnings be given in writing and signed by the respondent staff member with at least one witness.

Training staff about the agency's zero tolerance policy and reporting procedures is critical. As critical is giving staff the skills they need to effectively supervise their client caseloads. Role modeling and mentors can assist both new and longer-term staff as they face the daily challenges of their workplace. Agencies should also consider orienting staff to the internal investigative process as a means to gain the staffs' understanding and, hopefully, confidence in the process. This confidence is critical to reporting suspicions.

7. Orient offenders and their families to the agency's policies, including multiple reporting mechanisms and protections against retaliation.

Offenders and their families need to know the definitions for the acceptable and unacceptable behavior by agency employees during the course of the supervision relationship. Only through targeted education, with multiple reporting points and guarantees against retaliation, can administrators receive credible and full information.

Many agencies and staff fear that an aggressive zero tolerance policy, coupled with offender orientation/training about staff sexual misconduct, will invite and encourage malicious and deliberately false allegations by offenders against staff with whom the offender seeks to "get even." Agencies with aggressive policies report this infrequently occurs. The real danger is to allow this fear to prevent the development and enforcement of a zero tolerance policy, or to resort to a watered-down approach that can leave staff and offenders more confused and with less direction. Agencies must also be clear in distinguishing between malicious allegations and allegations for which no corroborating evidence could be found.

Prevention is a multi-pronged strategy. Critical to this discussion is that agency options diminish when an allegation is made public. Proactive management before an allegation surfaces means administrators can plot a deliberate course of action to achieve prevention through development of policies and procedures, training staff, orienting offenders and defining the investigative process.

Investigations

One of the most critical issues facing community corrections professionals regarding staff sexual misconduct with offenders is the investigative process.

Because there are many different types of organizational structures, it is difficult to present a single investigative model that fits each and every organization. Managers are faced with the task of developing an investigative process specific to their particular agency's organizational structure, state statute, or administrative regulations. Designing protocols and written memoranda of understanding with outside organizations who will investigate allegations (i.e. state police, local police, inspector general, etc.) are also recommended.

There are, however, a few basic principles of investigating allegations of staff sexual misconduct that apply across the spectrum. These elements can be included in memoranda of agreements that agency administrators wish to conclude with investigating agencies, if other than their own. These elements include:

- An investigative process supported by written policies and procedures that require thorough, timely, and fair investigations into allegations of staff sexual misconduct;
- Investigators who are specially trained to handle these sensitive and critical investigations;
- An internal investigative process clearly understood by all staff and offenders to eliminate the air of mystery and fear which often results in the strengthening of the code of silence;
- Specific and clear reporting procedures for staff, offenders and third parties that provide a safe atmosphere for those who report allegations, assure protection from retaliation and provide for appropriate handling of false allegations; and
- Cross training of personnel from other agencies who may be investigating allegations of sexual misconduct.

Each agency should consider establishing investigative protocols *before* allegations arise, whether or not another organization will be the investigating body. At a minimum, these protocols should address:

- How reports are received and processed;
- Preliminary inquiry procedures;
- Identifying, collecting and preserving evidence, including chain of custody;
- Who investigates each type of allegation;
- Procedures for notifying staff and offenders of an investigation, where required by state law, administrative regulations, policy, or collective bargaining agreements;
- Medical and mental health interventions, as needed, for those involved, both staff and offenders, including referral of staff to employee assistance programs/resources;
- Reassignment of staff and offenders, if necessary, during the investigation;

Red Flags

The National Institute of Corrections has conducted training for several years entitled "Staff Sexual Misconduct with Inmates." At the conclusion of that training, participants are asked to list those behaviors that they now see as RED FLAGS — events, actions or activities that should have tipped them off sooner to the possibility of staff sexual misconduct. Some of these red flags are relevant in the community corrections setting:

- Over-identifying with an offender or their issues (i.e. blind to offender's actions)
- Horse-play, sexual interaction between staff and offender
- Offender knowing personal information about staff
- Staff isolation from other staff
- Staff granting special requests or showing favoritism
- Staff spending an unexplainable amount of time with an offender
- Offender grape-vine, rumors
- Staff overly concerned about an offender
- Drastic behavior change on the part of an offender or staff
- Staff confronting staff over an offender
- Staff/offender improving his/her appearance, dress, make-up, hair
- Staff can't account for time
- Staff's family being involved with offender's family
- Staff in personal crisis (divorce, ill health, bankruptcy, death in family)
- Staff who consistently work more overtime that peers and who volunteers to work overtime
- Staff having excessive knowledge about an offender and his/her family
- Staff intervening, or helping with the offender's personal life, legal affairs
- Overheard conversations between staff and offender which are sexualized in nature, or refer to the physical attributes of staff or offender

- Format of the report;
- Timelines for completion (generally);
- Point of contact (person) between the investigators and your agency;
- Confidentiality of information;
- Access to agency personnel and offender records;
- Interview protocols for staff, offenders, and third parties, including when mental health practitioners may be helpful to the investigation;
- Use of covert equipment, surveillance, etc.;
- Production of evidence (fiscal, physical (DNA), telephone records);
- Establishing partnerships with the external investigative body and outside agencies, such as prosecutors, state and local law enforcement agencies, hospitals, advocacy groups, etc.

Many of these investigations involve human interactions at their worst, as staff are alleged to have compromised their integrity, and possibly, friends and co-workers. The investigator must have an understanding of these human dynamics and how they affect communication, particularly during initial and follow-up interviews. The investigator must also be able to handle the potential of criminally prosecuting a fellow employee, and even someone of higher rank. The investigator must also understand how the abuse histories of offenders will impact an investigation. Investigators must be skilled at assessing the impact of post traumatic stress disorder as investigations progress, and understand how and when to involve mental health professionals to protect vulnerable victims and to enhance the investigative outcome.

Community corrections personnel have identified investigations as one of their most trying dilemmas when addressing allegations of misconduct. This is especially true when they don't have the authority, personnel, mandate, or skills to conduct a timely, credible investigation. Those outside agencies who may be required or assigned to investigate allegations are often uninterested in promptly pursuing allegations, or their lack of knowledge about community corrections limits their effectiveness. Meantime, staff and offenders are watching this drama and ascertaining for themselves whether investigation of allegations and addressing misconduct is really a priority for the agency.

Summary and Conclusions

Zero tolerance policy; clear and consistent procedures; a well-designed investigative process or development of investigative protocols; thorough, timely, fair and competent investigations; training for all levels of to the issue; offender orientation/training — these elements will support an organization in its efforts to not only prevent staff sexual misconduct with offenders, but also effectively manage allegations to protect the integrity of the organization and its staff.

Resources

The National Institute of Corrections has resources currently available to community corrections administrators. Some of these resources are on NIC's website, www. nicic.org. NIC also has funding available for on-site technical assistance and training. For more information, contact Allen Ault, Ph.D., Chief, Special Projects Division, National Institute of Corrections, aault@bop.gov. Other resources have been noted and footnoted throughout this article.

Endnotes

[1] The source material for this article was gathered by the Center for Innovative Public Policies, Inc., during development of a National Institute of Corrections (NIC) funded projects [Cooperative Agreements 01P18GIR4, 01P18GIR4, Supplement # 1, 02P18GIR4, Supplement #2] to produce training curriculum for agency personnel charged with investigating allegations of staff sexual misconduct with inmates, and provide training and technical assistance. The Center for Innovative Public Policies, Inc. would like to acknowledge the work of NIC, its staff and numerous consultants who have provided leadership and support of the field in this important public initiative. For more information about this subject, or to obtain NIC technical assistance and/or training, please see the resources section of this article.

[2] See *Smith v. Cochran*, 216 F. Supp.2d 1286, *Sepulveda v. Ramirez*. 967 F.2d 1413 (9th Circuit 1992).

[3] See Brenda V. Smith, *Fifty State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Prisoners*, 2002. [hereinafter Fifty State Survey] See also Training Program, Investigating Allegations of Staff Sexual Misconduct with Inmates, July 7 – 12, 2002. www.wcl.american.edu/faculty/smith/02conf.cfm for an electronic version of this document.

[4] For additional definitions see *Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators*, Susan W. McCampbell and Larry S. Fischer, National Institute of Corrections, August 2002. This document is available at www.cipp.org, and will be available through the NIC Information Center (www.nicic.org).

[5] Op. Cit. *Fifty State Survey*

[6] See also, "Investigating Allegations of Staff Sexual Misconduct: Myths and Realities," Susan W. McCampbell and Elizabeth P. Layman, *Sheriffs*, November-December 2002. [www.cipp.org/sexual/article2.pdf]

[7] A description coined by A. T. Wall, Director, Rhode Island Department of Corrections. See also the National Institute of Correction's video conference, December 12, 2002, www.nicic.org.

[8] Brenda V. Smith, *Watching You, Watching Me: Judicial Responses to Cross Gender Supervision of Prisoners* (forthcoming 2003) on file with author.

[9] See page 35 for a list of "red flags" developed in NIC's training work with corrections agencies. Thanks to Jennie Lancaster, North Carolina Department of Corrections, and Teena Farmon, California Department of Corrections (retired) for their work in this area.

[10] See also "Sexual Misconduct in Corrections," by Elizabeth P. Layman, Susan W. McCampbell, Andie Moss, *American Jails*, November/December 2000. [www.cipp.org/sexual/article2.html]

[11] Human Rights Watch, Women's Rights Project: *All Too Familiar: Sexual Abuse of Women in U. S. Prisons*, 1996. www.hrw.org.

[12] *U. S. v. State of Michigan*, Civil Action No. 97-CVB-71514-BDT (E.D. Michigan, 1997), *U. S. v. State of Arizona*, No. 97-476-PHX-ROS.

[13] Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*, 9/98. www.hrw/reports/98/women.

[14] United Nations Economic and Social Council, Commission on Human

Rights 55th Session: Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights Resolution 1997/44; Addendum – Report of the mission to the USA on the issue of violence against women in state and federal prisons: E/CN.4/1999/68/Add.2GE.99-10012(E), 4 Jan 99. www.un.org/pubs.

[15] United Statues General Accounting Office: *Women in Prison: Sexual Misconduct by Correctional Staff;* Report to the Honorable Eleanor Holmes Norton. House of Representatives; GAO-GGD 99-104, June 1999. www.goa.gov.

[16] See also, United Statues General Accounting Office, *Women in Prison: Issues and Challenges Confronting U. S. Correctional Systems*, Report to the Honorable Eleanor Holmes Norton. House of Representatives; GAO-GGD 00-22, December 1999.

[17] The states currently without specific statutes are Vermont, Alabama and Oregon. Op. Cit., *Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisons*.

[18] Kristine Mullendore & Laurie Beever, *Sexually Abused Female Inmates in State and Local Correctional Facilities*, 1 WOMEN, GIRLS & CRIM. JUST. 81-96 (Oct./Nov. 2000) (providing thorough case summaries of recent litigation involving sexual abuse of women prisoners).

[19] See generally Brenda V. Smith, *Fifty State Survey of State Criminal Law Prohibiting the Sexual Abuse of Prisoners* (2002) [hereinafter 50 state survey 2002].

[20] At present, only three states – Alabama, Oregon, and Vermont – have not enacted legislation specifically prohibiting sexual contact between staff and inmates. Legislation in Vermont is pending. *See* 50 STATE SURVEY 2002, *supra* note 1.

[21] See e.g., *Carrigan v. Davis*, 70 F. Supp.2d 448, 451 (1999) (citing defendant's assertion that his sexual activity with the plaintiff was not only consensual, but that she seduced him); *Long v. McGinnis*, 97 F.3d 1452 (6th Cir. 1999) (alleging plaintiff 's consent to sex with male inmate); *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997) (noting that if a state legislature's treatment of the injury is *de minimis* – in that sanctions for crimes are relatively lax – it will result in *de minimis* review at trial when a violation of the law is alleged); *Fisher v. Goord*, 981 F. Supp. 140 (W.D.N.Y. 1997) (ruling that consensual sex engaged in before the enactment of New York's law characterizing such activity as statutory rape was legal, while acknowledging the particular situation in prisons that operates to make "consensual" sex a sham).

[22] See Smith, *50 State Survey 2002*, *supra* note, at 3 (noting that COLO. REV STAT. §18-3-404 (West 2000) provides that any actor subjecting any person in custody to any sexual contact is guilty of unlawful sexual conduct.)

[23] *See id*. at 15, 22, 26, 29 (Idaho, Louisiana, Massachusetts, Mississippi, New York and Pennsylvania are among states who have enacted legislation prohibiting sexual contact with inmates only in prisons or detention settings).

[24] *See id*. at 13, 20, 41 (Georgia, Kansas, and North Dakota are among states that have enacted legislation covering prisons, parole, probation, and work release programs).

[25] *See id*. at 19-20, 23-25, 31, 37 (Iowa, Kansas, Maine, Maryland, Montana, and New Mexico are among states that have enacted legislation expressly prohibiting sexual contact with inmates in juvenile facilities).

[26] *See id*. at 10-12, 19 (The District of Columbia, Florida, and Iowa are among states that have enacted legislation covering anyone in custody or under authority of law).

[27] See *Fifty State Survey*, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, South Carolina, Utah, Virginia, Washington, West Virginia and Wyoming

[28] See, e.g., *Fifty State Survey*, Connecticut, District of Columbia, Georgia, and Illinois.

[29] *See* NEV. REV. STAT. 212.187(1) (1997). The language of the statute specifically provides that "[a] person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than in the custody of the division of parole and probation and of the department of public safety of residential confinement, is guilty of a category D felony." (emphasis added) *Id.*

[30] S.C. Code Ann. §44-23-1150 (D).

[31] *See, e.g.*, ARIZ. REV. STAT. ANN. §13-1419 (West 1989 and Supp.); DE. CODE ANN. tit. 11, § 1259 (1995 and Supp.) (using the term "detention facility"); IDAHO CODE §18-6110 (Michie 1997 & Supp.); KY. REV. STAT. ANN. § 510.120 (Michie 2000); MO. REV. STAT. § 405 (West 1996 & Supp.); R.I. GEN. LAWS §11-25-24 (1999); S.D. CODIFIED LAWS §24-1-26.1 (Michie 1998 and Supp.); (using the term "detention facility"); VT. STAT. ANN. § 3256 (2000).

[32] *See* Nev. Rev. Stat. 212.187(1) (1997), supra at n. 11.

[33] See *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

[34] Two states, Florida and Missouri, include as part of their statute mandatory reporting by staff. Failure to report is a separate criminal offense.

[35] Op. cit. McCampbell/Fischer, *Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators.* ❐

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ROADWAY TO RECOVERY

San Diego County's Response to Proposition 36

(Substance Abuse and Crime Prevention Act of 2000)

History

Considered by many as one of the most important pieces of criminal justice legislation since the three strikes law was passed, the Substance Abuse and Crime Prevention Act of 2000 (SACPA) has become law and is beginning to change the way the criminal justice system does business in California. Instead of focusing solely on control and suppression strategies for drug offenders, this new law has shifted at least part of the focus of law enforcement and the judiciary over to treatment and rehabilitation of non-violent drug offenders.

The SACPA mandates that beginning July 1, 2001, persons convicted for new non-violent drug offenses (drug possession, transportation for personal use or being under-the-influence) shall be offered the choice to receive probation and drug treatment instead of being incarcerated as a condition of probation. After completing treatment and all conditions of probation, they can apply to have their conviction dismissed. The law also allows current probationers and parolees into treatment if they are convicted of an additional non-violent drug offense.

Excluded from participation are persons who have been convicted of one or more serious or violent offenses within the past five years, convictions for drug transportation which are not for personal use, persons who refuse treatment, or if the current offense involved use of a firearm. Cases that involve possession for sale, producing or manufacturing illegal drugs or the commission of another crime in addition to a drug possession conviction are also ineligible.

Once sentenced, probationers can receive up to three chances to participate in the program. This means that a probationer can continue participation until a third drug related violation is found. At that point, the probationer is excluded from the program and subject to incarceration for

BY DONNA GOYER AND JEANIE EMIGH

their crimes. However, other provisions such as danger to the safety of others, unamenability to treatment and convictions for certain other crimes may lead to immediate removal from the program.

On the surface, it might appear to be a treatment program for first or second time offenders or the mild mannered weekend drug user who is unfortunate enough to get caught. This was probably the mind-set of many of the voters, 62 percent of whom passed the proposition into law. However, this is generally not the case. Most first time drug offenders are offered diversion programs that keep them out of the formal justice system, and they would not be likely candidates for supervision under the provisions of the SACPA.

The law states that a person who has committed a serious or violent felony in the past can be included if their prior conviction(s) are over five years old and she/he has not had another felony conviction (other than non-felony drug convictions) within the past five years, was not convicted of a misdemeanor involving physical injury or threat of physical injury within the past five years, or has not been in prison within the past five years.

It is offenders who fit these categories (priors over five years old or with a history of older crimes) that make up the bulk of those sentenced to treatment in California, as they are being diverted from prison sentences they might otherwise have faced because of three strikes legislation.

According to the California Department of Corrections, from July 30, 2001 to July 30, 2002, the state prison population shrank by 5,192 total inmates and much of this decrease was attributed directly to SACPA. The largest population decrease (down 4,355 persons) was seen in the first six months after SACPA was voted into law. This was the largest drop in any six month time period since 1980. Further, the San Diego Union Tribune recently reported that the number of people in state prisons on drug possession charges has declined by 16.8 percent since the law was implemented. This is significant, since it costs approximately $26,690 per year to house each inmate. Since the state allocated $120 million to run the program statewide, the potential savings to the state based upon these figures is approximately $18,574,000.

The state of Arizona has passed similar drug treatment legislation and reported a savings of $6,711,464 in the 1999 fiscal year (Drug Treatment and Education Fund Annual Report, Supreme Court of Arizona, 1999) as a direct result of the implementation of that program. Due to the potential to provide necessary treatment services and save millions of dollars in the process, several other states are considering similar legislation.

The San Diego Experience

While the SACPA has set into motion one of the greatest changes to the California criminal justice system in many years, the mechanics of its implementation (screening, monitoring, etc.) was not addressed in the original proposition and has been left to local jurisdictions. This has led to a variety of different models being implemented around the state. The County of San Diego has adopted a public safety/treatment model whereby the Department of Probation plays a very active role in the supervision of persons sentenced to treatment programs. As stated on the County of San Diego Proposition 36 website, "the County of San Diego is dedicated to promoting the three-way, non-punitive partnership between justice, non-violent drug offenders, and treatment facilities, working together towards recovery."

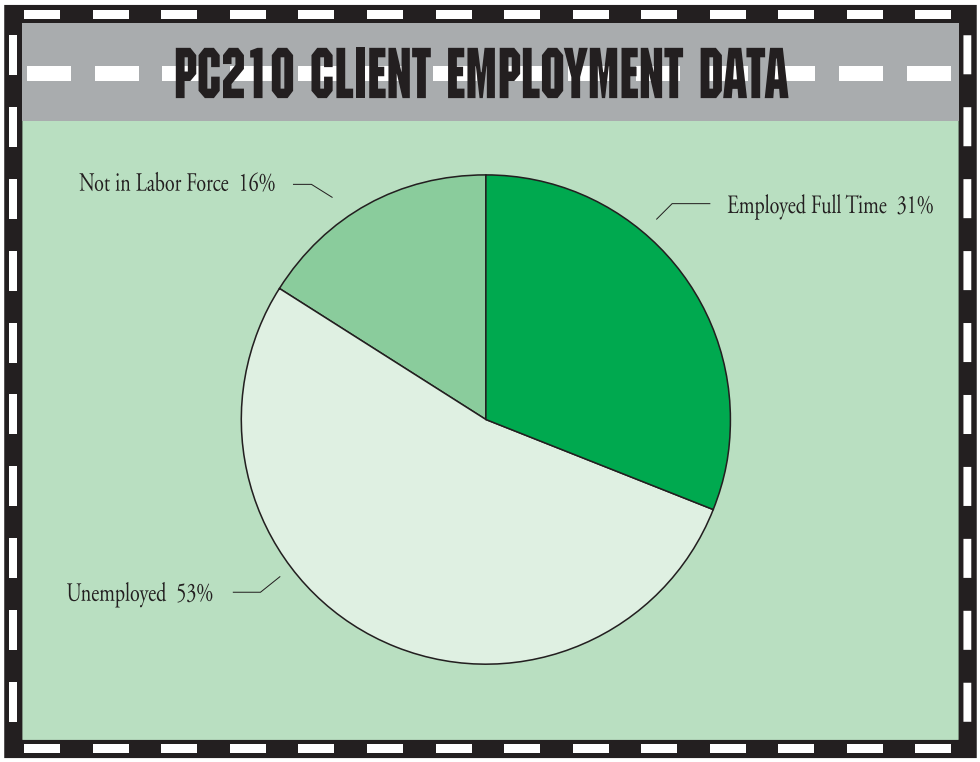
To that end, the probation department follows a rigorous screening and placement process, and officers in the program receive additional training on working with drug-involved probationers. As a result, they have been highly successful getting offenders enrolled into treatment programs (71-77 percent). Other counties in the state have reported a failure to appear rate of up to 40 percent, so the public safety and treatment partnership is working well for the County of San Diego.

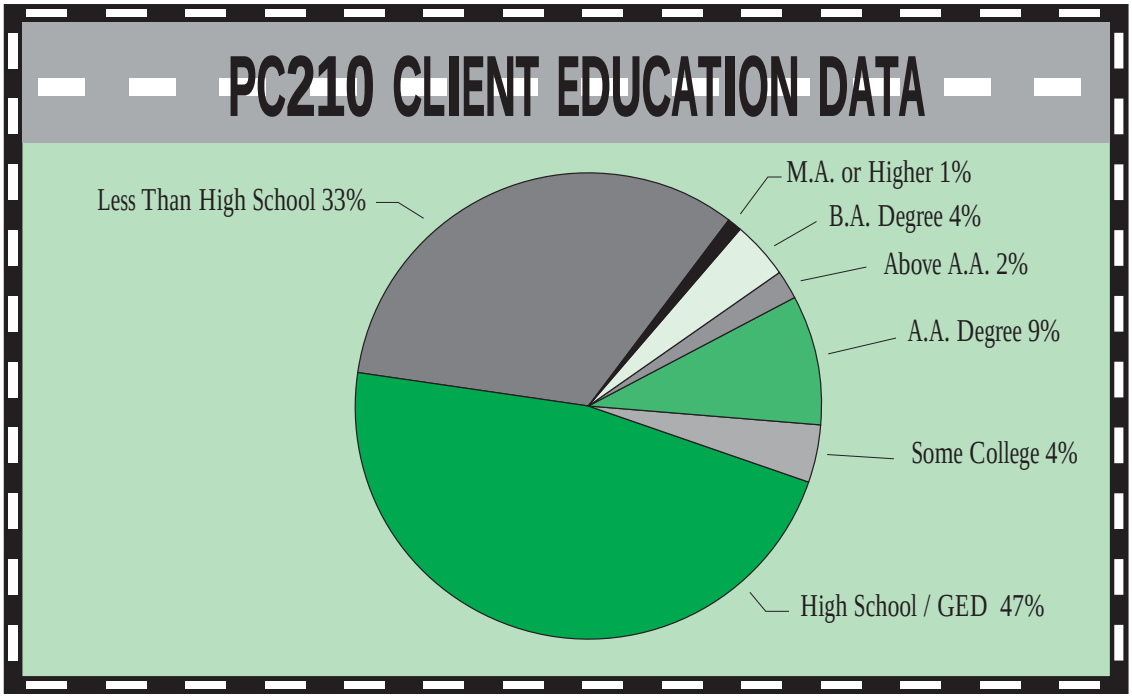
What remains to be seen is if probationers are successful after being placed into the program, and if so, what types of things need to be in place to help ensure their success. In San Diego, a number of different variables have already been collected and examined. The following section presents some preliminary data on the program outcomes in San Diego County, client profiles, and initial outcomes from the first program year.

Preliminary Data and Client Profiles

Initial data has provided the following preliminary picture of the typical program participant. The average age is 35 years with a modal age of 36 years. Participants are more likely to be male (74 percent) than female, and 28 percent were being supervised on parole or probation at the time of the arrest that put them into the program. Most have been arrested at least four times in the past with an overall sample average of 4.63 prior arrests.

Eighty percent of program participants are single, over half are unemployed and almost 60 percent are involved with methamphetamine or crack cocaine. Twelve percent are homeless at the time of program entry and about 7 percent are in need of dual mental health and treatment services. thirty-three percent of the population has less than a high school degree, and very few have obtained a college degree or higher.



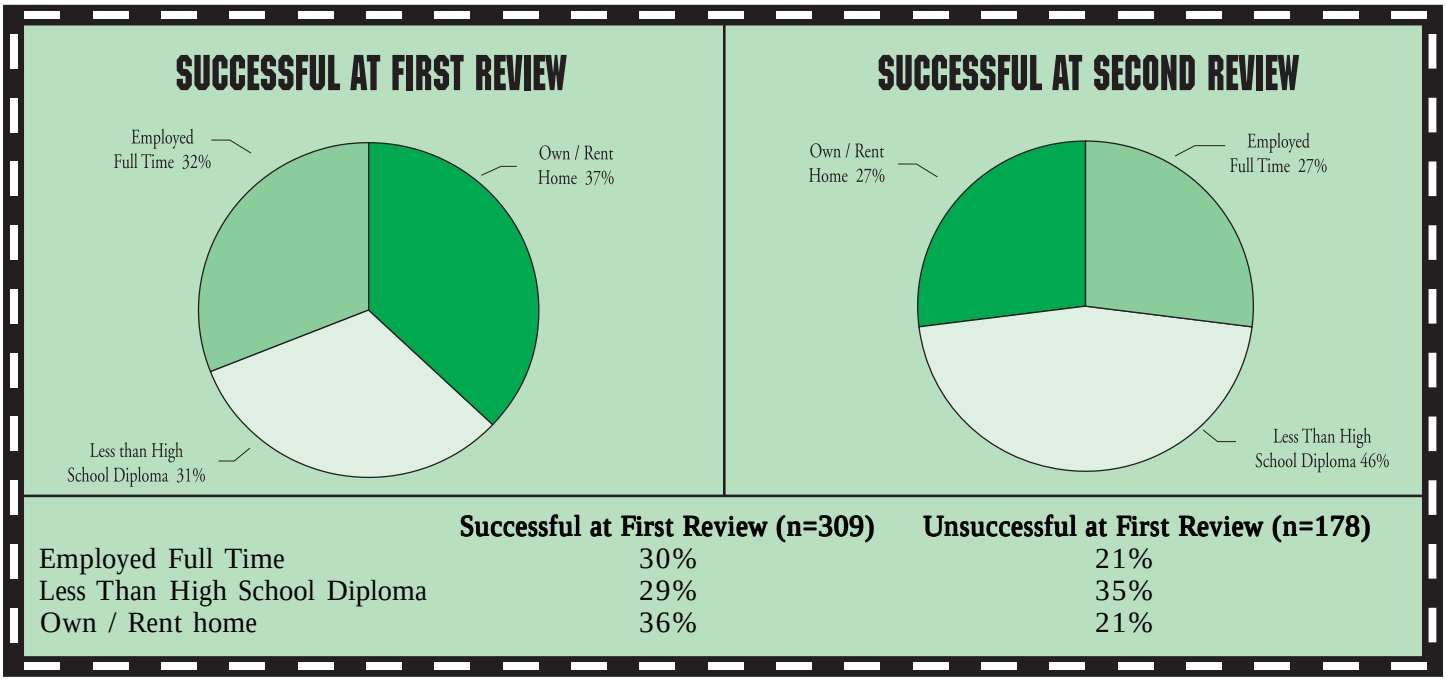


One rather surprising statistic from the preliminary data is that 48 percent of the participants report never having had prior drug treatment services, although most had been arrested or served time prior to their current offense. Of the 48 percent who have not had prior treatment, 78 percent were still enrolled in treatment at the end of the sixth months. This is a high percentage for what is essentially a population who did not seek out treatment of their own accord. However, since this is preliminary data it is uncertain if that 78 percent will actually complete treatment and/or probation.

While it is apparent that the law is meeting the goal of diverting people who might otherwise have been convicted and sentenced to prison for petty drug offenses due to multiple prior strikes, it remains to be seen how effective treatment will be in altering the lives of persons with lengthy drug abuse patterns and often lengthy criminal histories. It is far too early to make any concrete assumptions. The state of California has provided funding for a statewide evaluation and several counties, including San Diego, will be conducting local evaluations in an effort to help answer that question.

Early data from San Diego County supports prior research studies, showing that social supports (housing, employment, education, etc.) are significant factors in treatment success. The two charts presented below, illustrate the differences on social support factors between those who were and were not in compliance at their first review.

Although based on a small sample, for those who have completed treatment programs (254 persons), we have also seen a substantial increase in employment rates (up 93 percent) and permanent housing rates have gone up 15 percent.



	Successful at First Review (n=309)	Unsuccessful at First Review (n=178)
Employed Full Time	30%	21%
Less Than High School Diploma	29%	35%
Own / Rent home	36%	21%

Current Issues and The Future of Drug Treatment Legislation

A. Statewide Issues

At present, several bills amending the SACPA are working their way through the legislative process and other changes have already been made to help improve the law as it was originally written. Of note is the Burton Bill, which provided funds for drug testing not included in the original legislation. Other bills that are pending could provide additional funds for treatment centers, address licensing issues and social service eligibility for persons in the program, provide funds to cover necessary transportation costs, delete the requirements to register as a narcotics offender, add drug paraphernalia for personal use as a nonviolent drug possession offense, specify completion of treatment, and add date rape drugs as excludable offenses.

While some have called for additional judicial authority to compel addicts to engage in treatment (short jail time as a consequence for failing to adhere to treatment, which is similar to the popular Drug Court model), the opposition to this particular enhancement has been so overwhelming that it is not part of any pending legislation.

Additional issues with the current law are:

- The judicial process for proving treatment or program violations can take several weeks for each violation. Since the defendant is entitled to three program violations, this process enables defendants to re-cycle for up to a year before being removed from the program. This is common knowledge among drug users and some agree to the program in order to take advantage of this process.
- The law has not been interpreted consistently, and there is debate in regards to what constitutes a drug or non-drug violation.
- Several appellate decisions have challenged the criteria for admission (allowing more serious offenders into the program or those whose cases were heard prior to implementation of the law).
- Savings to the state in regards to prison and jail beds not being used are not necessarily funneled back into the trust fund to cover additional unforeseen costs.
- Many of the offenders have extensive drug abuse histories (11+ years) and lengthy criminal histories.
- There is a statewide shortage of residential treatment beds.
- There is difficulty finding programs (particularly residential programs) for those with mental health issues.
- A large portion of offenders are unemployed, under-educated and lack stable housing. While the law calls for ancillary services to be provided, it is uncertain if existing services will be adequate to meet the needs of our population.

B. Issues Significant to San Diego and Other Larger Counties

- 45-75 offenders per month are re-referred back into the program. These offenders re-offend, drop out of treatment, fail to appear for treatment or abscond from the program until they are picked up by law enforcement. This places an additional burden on the courts, treatment providers, parole and probation. They must follow the client through multiple intakes and court hearings, process violation paperwork, issue warrants and write numerous court reports for the same clients. Funds provided to the county did not take this into account and are not adequate to cover the additional burden of the "revolving door defendant" or the large number of defendants with multiple cases.
- There are large officer caseloads 120+ per officer (felony and misdemeanor cases in the most populous areas).
- Personnel shortages in treatment and probation leads can lead to high turnover and/or burnout.

The Future

Following Arizona and California's lead, several efforts were underway during the last election in Washington, Florida, Ohio and Michigan to implement mandated drug treatment ballot initiatives in those states (ADA Weekly, January 7, 2002). However, the initiative failed to pass in the state of Ohio and there were not enough signatures collected to put the measure before the voters in Florida. In Michigan the measure was removed from the ballot because the Supreme Court declared that the required signatures for entry as a state initiative on the voter ballot were obtained improperly.

In Washington, DC voters overwhelmingly (78 percent) passed Measure 62. This measure will provide substance abuse treatment instead of conviction or imprisonment to eligible, non-violent defendants charged with illegal possession or use of drugs but it still needs congressional approval to take effect.

The experiences of Arizona and California are useful for any other states that may be looking at implementing similar laws. Those states should study the problems they have encountered, examine any pending legislative enhancements and appellate court decisions and use these sources as guidelines to develop even stronger programs. Ancillary services (housing, employment, emergency food and shelter) are particularly important and these are often the last and the least considered.

As we have seen, treatment can be a win-win situation for both the community and the drug-addicted person who is given a second or third chance to turn their lives around. However, for treatment to be effective it needs to be backed by a solid foundation, appropriate sanctions and adequate resources. One of the most promising things we have seen in the first year of the program is the impact treatment has on the lives of those who successfully complete programs. Those completing treatment programs have improved their employment rates by 93 percent and permanent housing rates by 15 percent, and in the first program year there were 12 tox-free babies born to previously drug-involved mothers. Despite the potential to save money in correctional costs and reduce crime rates the opportunity provided to save lives and move people on the path of becoming responsible citizens is probably the greatest benefit to SACPA type programs.

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LIMITS on the Search Waiver Term

I. Introduction

Throughout the United States, probationers and parolees are subject to release conditions requiring them to submit to search and seizure by authorities.[1] In most states, this condition is an express term of their probation or parole; it may be embedded in their written terms of release, or judges state it orally during sentencing (or parole boards during parole hearings). Other jurisdictions have codified this waiver in their laws or regulations.

The search waiver term is meant to bypass Fourth Amendment requirements that safeguards the right of persons to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. Clearly, the waivers bypass at least the warrant requirement, but how much further can probation/parole officers (POs) go? In some states, the waiver provisions include other specific limitations. For example, POs may only search if they have reasonable suspicion that contraband or evidence of a crime will be found. Further, some jurisdictions require that before undertaking a search, POs must clear it with their supervisors. Additionally, many departments call for police escort or assistance when conducting the search. In fact, some areas give police alone authorization to conduct probation searches. Nonetheless, many probation/parole terms do not contain much guidance, leaving field officers to wonder how far they can go.

A common form of this waiver is: Submit to search and seizure of person or property at any time by any PO without a search warrant. This is one of those broad waiver terms that certainly sound like POs are entitled to search whatever, whenever, for whatever reason. However, that is not what the law provides. A line of federal case law (that also applies to state agencies) establishes that a probation waiver does not relinquish all of a probationer's right to privacy. The Fourth Amendment still requires POs to observe some protections for probationers and parolees.

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II. Probation Search Law

Search and seizure waivers had been in effect for years (as terms of probation, created by statute, or inferred under case law) when Joe Griffin's case wound its way into the U.S. Supreme Court (See *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164 (1987)). Wisconsin probation regulations authorized warrantless searches of probationers upon reasonable grounds when believed that contraband was present and with supervisors' approval. After receiving information from the authorities that Griffin had guns in his apartment, his PO (accompanied by police) searched Griffin's residence. Upon finding a gun, the state charged him as a prohibited possessor. He moved to suppress the gun because the search was done without a warrant and on less than probable cause. The U.S. Supreme Court noted that probationers have lessened expectations of privacy, but the Fourth Amendment, nonetheless, entitled them to some restrictions on searches. Deciding that "as long as the information possessed by the officer satisfies a federal reasonable grounds standard," the Court upheld the search of Griffin's residence. The Court, therefore, adopted a reasonable suspicion standard for probation searches.[2]

The Court's ruling in *Griffin*, however, confused the lower courts. The Supreme Court had actually only decided whether Wisconsin's regulation providing for warrantless searches was valid, avoiding the question of whether any search of a probationer's home must nonetheless be based on reasonable grounds. As a result, some courts focused on the reasonableness of regulations after this, while others focused on articulable reasonable grounds. Clearly, *Griffin* suggests to supervising agencies that they should adopt policy and procedures calling for POs to articulate reasonable suspicion of evidence of criminal activity and follow "reasonable" steps to minimize the intrusions before initiating probation searches.

The Supreme Court revisited the issue in *United States v. Knights.* Mark Knights had been placed on probation in California with a standard term allowing for search by POs or police without a warrant or even reasonable cause (see *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587 (2001)). Acting on reasonable suspicion of involvement with bombings,[3] police searched Knights's residence. Affirming that "The touchstone of the Fourth Amendment is reasonableness," the Court reiterated that reasonable suspicion was all that was needed to search Knights's home. "When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." While the Court still limited its ruling to the facts, this second opinion requiring a reasonableness standard indicates that the minimum requirement for probation searches will be reasonable cause.[4]

Courts also considered whether a probationer's express and voluntary waiver (as opposed to a regulation authorizing searches – like in *Griffin*) of his Fourth Amendment rights would get around the reasonable suspicion requirement. However the Third Circuit Court rejected the argument that a parolee had consented to the search by accepting parole and declining to finish his sentence in prison (*Baker)*, concluding that a reasonableness standard must nonetheless be inferred or the search would run afoul of the Fourth Amendment. The Court reasoned that signing a parole agreement giving the supervising officer permission to conduct a warrantless search "does not mean either that the parole officer can conduct a search at any time and for any reason or that the parolee relinquishes his Fourth Amendment right to be free from unreasonable searches. Rather, the parolee's signature acts as acknowledgment that the parole officer has a right to conduct reasonable searches of his residence listed on the parole agreement without a warrant."

A. The Reasonable Suspicion Standard

What do POs need to satisfy the reasonable suspicion requirement? It is "formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person ... is engaged in criminal activity" (*United States v. Thompson*, 282 F.3d 673, 678 (9th Cir. 2002) (quoting *United States v. Rojas-Millan*, 234 F.3d 464, 468-69 (9th Cir.2000)). This means that, as in a reasonable suspicion determination, the person searching must be able to articulate the reasons – so unspecified feelings and plain speculation are insufficient. It "cannot be based upon a mere hunch without factual basis, nor upon casual rumor, general reputation or mere whim," (*State v. Velasquez*, 672 P.2d 1254, 1262 (Utah 1983)), or "a mere inchoate and unparticularlized suspicion" (*Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 1097-98 1990)). Furthermore, an objectivity standard is applied, so that the reasonableness of the suspicions would be tested against a reasonable person standard. Finally, the suspicion must be of criminal activity; hence there must be information that something criminal is afoot to justify the search. Thus if a PO notices how shabbily dressed a probationer is, that will not justify a search because a poor fashion sense is not criminal.

Examples where the reasonable suspicion standard was met are:

- Where the probationer (who had an armed robbery prior) was shown two guns by a co-worker, then shortly afterward the co-worker saw him place something (making metal-on-metal sounds) in his car, and the co-worker found his guns were gone, there was reasonable suspicion (*United States v. Stokes*, 286 F.3d 1132 (9th Cir. 2002)).
- Where the probationer (with a drug prior) was seen to have crack users visiting his residence, and a confidential source told the PO he had bought crack from the probationer a week ago, there was reasonable grounds (*United States v. Russ*, 23 Fed.Appx. 245 (6th Cir. 2001)(unpublished)).
- Where the probationer (with a child sex offense prior) took children on a rafting trip out of state and was offering to take other children on trips, there was reasonable suspicion (*United States v. Vincent*, 167 F.3d 428 (8th Cir. 1999)).
- Where the parolee (with a drug prior) during a home visit appeared nervous and lied to the PO about things in her bedroom, and the PO saw a crumpled brown bag like what is used to hold drugs, he had reasonable cause to search the bedroom and bag (*State v. Maples*, 346 N.J.Super. 408, 788 A.2d 314 (N.J.Super.A.D. 2002)).

Examples where the reasonable suspicion standard was *not* met are:

- Where the probationer failed to report to his PO, and police gave confidential information that he had drugs in the trunk of his car, after jailing the probationer, the PO could not lawfully search a trailer (they thought, incorrectly, that it was his home). Moreover, the PO's belief that they could search based on their own personal feelings was insufficient (*United States v. Payne*, 181 F.3d 781, 787 (6th Cir.1999)).
- Where probationer (not permitted to drive) was arrested for violating his terms by driving, and the PO's search of the car revealed it was borrowed, the PO did not have "reasonable suspicion" to search the trunk, since no specific facts to believe evidence of a violation would be there (*Baker*).
- Where the probationer shared a home with others not under supervision, and the PO directed officers to search everything, including the car belonging to the roommates, they failed to articulate facts reasonably supporting that the probationer had access to that vehicle (*State v. Davis*, 965 P.2d 525 (Utah App. 1998)).
- Where the probationer's roommate was arrested, that did not provide the PO reasonable suspicion that the probationer was involved in

crime, to justify a search of his part of their residence (*United State v. Johnson*, 722 F.2d 525 (9th Cir. 1983)).

B. Distinguishing Home Visits from Searches

Note that courts do not treat routine home visits the same as searches (see, e.g., *United States v. Reyes*, 283 F.3d 446, 461-62 (2nd Cir. 2002)). Home visits are a necessary part of normal probation supervision. They differ from searches in the degree of invasiveness: home visits are circumspect (far less intrusive than a probation search), carried out to verify probation compliance, a rehabilitative environment, and that the probationer is not committing new crime (*Diaz v. Ward*, 506 F.Supp. 226, 228 (S.D.N.Y. 1980); *United States v. Workman*, 585 F.2d 1205, 1208 (2nd Cir. 1982)). On the other hand, searches are carried out to find specific evidence of new crime, and may extend not only into more private areas of the home but also into closed containers. Therefore, POs conducting a home visit are not subject to the reasonable suspicion standard applicable to probation searches under *Knights*. That is because, being narrow and minimally invasive, they satisfy the reasonableness element of the Fourth Amendment.

Some agencies use plain view searches, referring to extensive exploration of the whole premises (more than the cursory look in a home visit) but without opening anything up.[5] However, courts have said that there is no plain view search because plain view instead refers to when items can be seized, not when premises can be searched (see *Texas v. Brown*, 460 U.S. 730, 738- 39, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983))**.**

> *" [P]lain view" provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment. 'Plain view' is perhaps better understood, therefore, not as an independent 'exception' to the warrant clause, but simply as an extension of whatever the prior justification for an officer's 'access to an object' may be (Payne, 181 F.3d at 787).*

Moreover when POs look beyond areas normally inspected during home visits, they risk violating the probationer's constitutional protections (*Reyes*). The Supreme Court advised that "the plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges" (*Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S.Ct. 2022 (1971)). Probation and parole departments should clarify how far their officers can go in visually inspecting premises before they tread into unnecessary invasions of privacy.

A PO who becomes reasonably suspicious during a home visit may extend the scope of his search to private areas – as long as he can articulate his reasonable suspicion. For example, in a home visit, the PO realized that the probationer was nervous regarding her bedroom. The PO properly stayed out of the bedroom, but did question her about whether there was anyone in the bedroom. When she denied it (and because he had earlier seen a child in there), he knew she was lying about things in her bedroom. This finally gave him reasonable suspicion to search her bedroom. In the bedroom, he saw a brown paper bag; recognizing that it was the type used to hold drugs, he then had reasonable suspicion to search that bag. Indeed in the bag were drugs *(Maples)*.

Nonetheless if a PO sees contraband or evidence of a crime in plain view during a normal home visit, that could immediately establish reasonable suspicion to do a full search. This plain view observation is fortuitous and not an unreasonable search. Therefore the usual fourth amendment inquiry does not apply. However, Fourth Amendment seizure issues could be implicated.

III. Probation Seizure Law

Usually the issue is whether the search was lawful, and if so, whatever was found was seized without further inquiry. Consequently, probationers waiving Fourth Amendment seizure rights is almost never addressed in the case law. But not everything found is subject to seizure under a probation waiver of Fourth Amendment rights.

A rare but important First Circuit case took up this issue (see *United States v. Giannetta*, 909 F.2d 571, 577-80 (1st Cir. 1990)). Jim Giannetta was placed on probation with a search and seizure waiver term. The police developed information that he was involved in insurance fraud, a chop-shop operation, a fraudulent credit card scheme, and a false credit application. The PO, accompanied by the detective who had developed this information, conducted a probation search of Giannetta's residence. The search uncovered documents to manufacture false identification, others' checks and bank

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"The plain view doctrine has two prerequisites: (1) the government must have a prior justification for being in a position to see the item; and (2) the incriminating nature of the item must be immediately apparent."

statements, charge slips, bank account information, calendars, photographs and computer diskettes. The PO knew that Giannetta had only minimal assets, so these documents were likely fraudulent or stolen. Therefore, the PO seized them.

The Court noted that, "[a]lthough Fourth Amendment cases refer indiscriminately to searches and seizures, there are important differences between the two" (*Giannetta* (citing *Texas v. Brown*, 460 U.S. 730, 747, 103 S.Ct. 1535, 1546 (1983), and *Arizona v. Hicks*, 480 U.S. 3221, 328, 107 S.Ct. 1149, 1154 (1987)). Searches threaten the interest in maintaining privacy, while seizures threaten the interest in retaining personal property. The court decided that the appropriate standard for seizure during a licit probation search was the plain view rule from the *Coolidge* case. That is because the plain view rule is typically applied when police are already authorized to search because of a warrant or exigent circumstances, and they come across other incriminating evidence.

The plain view doctrine has two prerequisites: (1) the government must have a prior justification for being in a position to see the item; and (2) the incriminating nature of the item must be immediately apparent (see *United States v. Johnson*, 784 F.2d 416, 419 (1st Cir. 1986); *see also Reyes* at 468). "Immediately incriminating" nature means that the POs have probable cause to believe the item is contraband or evidence of a crime. (*Giannetta* at 578; *Hicks*, 480 U.S. at 326, 107 S.Ct. at 1153; *United State v. Rutkowski*, 877 F.2d 139, 142 (1st Cir. 1989)).

Probable cause to support a plain view seizure requires more than hunch, guesswork and cop-on-the-beat intuition, but less than proof beyond a reasonable doubt or a near certainty that the seized item is incriminating (*United State v. Rutkowski*, 877 F.2d at 142). There must be enough facts for a reasonable person to believe that the items in plain view may be contraband or evidence of a crime (Giannetta at 579).

In Giannetta's case, the court found that the PO had sufficient cause to believe that the majority of the items seized were immediately incriminating, hence he was justified in seizing them. However in cases where items seized lack "immediately incriminating" character, the plain view rule would lead to a finding that the seizure violated the Fourth Amendment.

IV. Conclusions

Because of the technical standards regarding probation waiver searches and seizures, supervising agencies should consider adopting policy and procedure that spell out the necessary legal requirements for their field officers. Interpreting the search and seizure standards into practical, everyday situations can help POs recognize when they are crossing the line, and prevent unwarranted intrusions into probationers' privacy. As *Griffin* indicated, having guidelines that reflect reasonableness, the touchstone of the Fourth Amendment, could also protect both departments and those they supervise from consequences of illegal searches.

Endnotes

[1] Searches of parolees are treated the same as probationers for fourth amendment purposes. (see *United States v. Grimes*, 225 F.3d 254 (2nd Cir. 2000); *United States v. Baker*, 221 F.3d 438 (3rd Cir. 2000); *United States v. Hebert*, 201 F.3d 1103 (9th Cir. 2000)).

[2] This is the same standard that police apply when deciding whether they can make a traffic stop or pat down an individual looking for weapons.

[3] The reasonable suspicion was substantial, but not enough to meet the police's standard of probable cause to search. Reasonable suspicion that Knights had been involved in vandalism and arson of utilities' facilities was met by: after Knights's power had been turned of, he bypassed the meter; once he was prosecuted for that, vandalism coincided with his court appearances; Knights had been stopped by a deputy near a gas line, and there was items that could be used for the vandalism in his truck; shortly thereafter, a pipe bomb was detonated at a utility facility near Knights's home; immediately after someone had broken into a telecommunications vault, setting fire to it, deputies confirmed that Knights's truck engine was still warm; finally, officers watching Knights saw him emerge at 3:00 a.m. holding what looked like pipe bombs, and officers later saw he had materials to manufacture Molotov cocktails.

[4] Note that federal appellate courts treated *Griffin* and *Knights* as requiring reasonable suspicion for a probation search. (e.g., *Grimes*; *Baker*; *United States v. Payne*, 181 F.3d 781, 787 (6th Cir.1999); *United States v. Stokes*, 286 F.3d 1132 (9th Cir. 2002)) Additionally, state courts followed suit (e.g., *State v. Maples*, 346 N.J.Super. 408, 788 A.2d 314 (N.J.Super.A.D. 2002); *State v. Davis*, 965 P.2d 525 (Utah App. 1998))

[5] Some agencies, like Arizona's Maricopa County Probation Department, use this phrase, but appear to refer to no more than licit home visits. ❐

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Calendar of Events

2003

Apr. 3-4 — **APPA Training Seminar: Managing Sex Offenders Computer Use,** Golden, CO. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

Apr. 12-15 — **Clinical Updates in Correctional Health Care**, Anaheim Marriott, Anaheim, CA. Visit www.ncchc.org for more information.

Apr. 13-16 — **Association of Paroling Authorities, International 19th Annual Training Conference**, Renaissance Grand Hotel, St. Louis, MO. Contact (573) 796-2113 or visit www.apaintl.org.

Apr. 23-25 — **International Conference on Domestic Violence, Sexual Assault and Stalking**, Holiday Inn on the Bay, San Diego, CA. Contact (858)679-2913 or visit www.mysati.com.

Apr. 30-May 3 — **National Association of Sentencing Advocates 2003 Annual Conference & Mitigation Institute**, Sheraton Uptown, Albuquerque, MN. Visit www.sentencingproject.org/nasa/ for more information.

May 4-8 — **American Jail Association Training Conference & Jail Expo**, Albuquerque Convention Center, Albuquerque, MN. Contact (301) 790-3930 or visit www.aja.org.

May 4-8 — **2003 Spring Ohio Women's Law Enforcement Network Training Conference**, Holiday Inn North, Columbus, OH. Contact Lt. Ginny Fogt (614) 728-5308.

May 14-15 — **APPA Training Seminar: Strength-Based Training I: Practice for Community Corrections Practitioners,** Las Vegas, NV. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

May 16-17 — **APPA Training Seminar: Strength-Based Training II: Strength-Based Assessments-Increasing the Resources for Positive Behavior Change**, Las Vegas, NV. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

May 21-23 — **Second National Training for Sexual Assault Response Team Members**, New Orleans, LA. Visit www.sane-sart.com for more information.

June 2-4 — **Innovative Technologies for Community Corrections Conference**, National Law Enforcement and Corrections Technology Center, Hyatt Regency Crystal City, Arlington, VA. Contact Joe Russo (303) 871-3683 or e-mail jrusso@du.edu.

June 23-24 — **APPA Training Seminar: Managing Sex Offenders Computer Use,** Golden, CO. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

June 29-July 2 — **Texas Corrections Association 2003 Annual Conference**, Worthington Renaissance Hotel, Fort Worth, TX. Contact (512) 454-8626 for more information.

Aug 6-7 — **APPA Training Seminar: Strength-Based Training I: Practice for Community Corrections Practitioners,** Las Vegas, NV. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

Aug. 6-7 — **APPA Training Seminar: Strength-Based Training II: Strength-Based Assessments-Increasing the Resources for Positive Behavior Change**, Olathe, KS. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

Aug. 18-19 — **APPA Training Seminar: Strength-Based Training II: Strength-Based Assessments-Increasing the Resources for Positive Behavior Change**, Bend, OR. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

Aug. 24-27 — **APPA 28th Annual Training Institute, Cleveland Convention Center, Cleveland, OH. Contact Kris Chappell at (859) 244-8204 or visit www.appa-net.org.**

Sep. 7-10 — **New England Council of Crime and Delinquency's 64th Annual Training Institute**, Sheraton Tara-Hyannis, Cape Cod, MA. Contact Paula Keating poppy16@yahoo.com or visit http://neccd.doc.state.vt.us.

Sep. 16-20 — **8th International Conference on Family Violence**, Town and Country Hotel and Convention Center, San Diego, CA. Visit www.fvsai.org for more information.

Sep. 24-25 — **APPA Training Seminar: Managing Sex Offenders Computer Use,** Golden, CO. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

Oct. 11-14 — **6th National Crime Prevention Council Conference on Preventing Crime**, Washington Hilton Towers, Washington, DC. Contact (202) 261-4165, e-mail conference@ncpc.org or visit www.ncpc.org/pop.

Nov. 2-5 — **Probation Officers Association of Ontario Symposium 2003,** Sheraton on the Falls & Brock Plaza Niagara Falls, Ontario Canada. Visit www.poao.org in August 2003 for more information.

Nov. 3-4 — **APPA Training Seminar: Managing Sex Offenders Computer Use,** Golden, CO. Contact Karen Dunlap at (859) 244-8211 or e-mail kdunlap@csg.org.

To place your activities in Calendar of Events,
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American Probation and Parole Association
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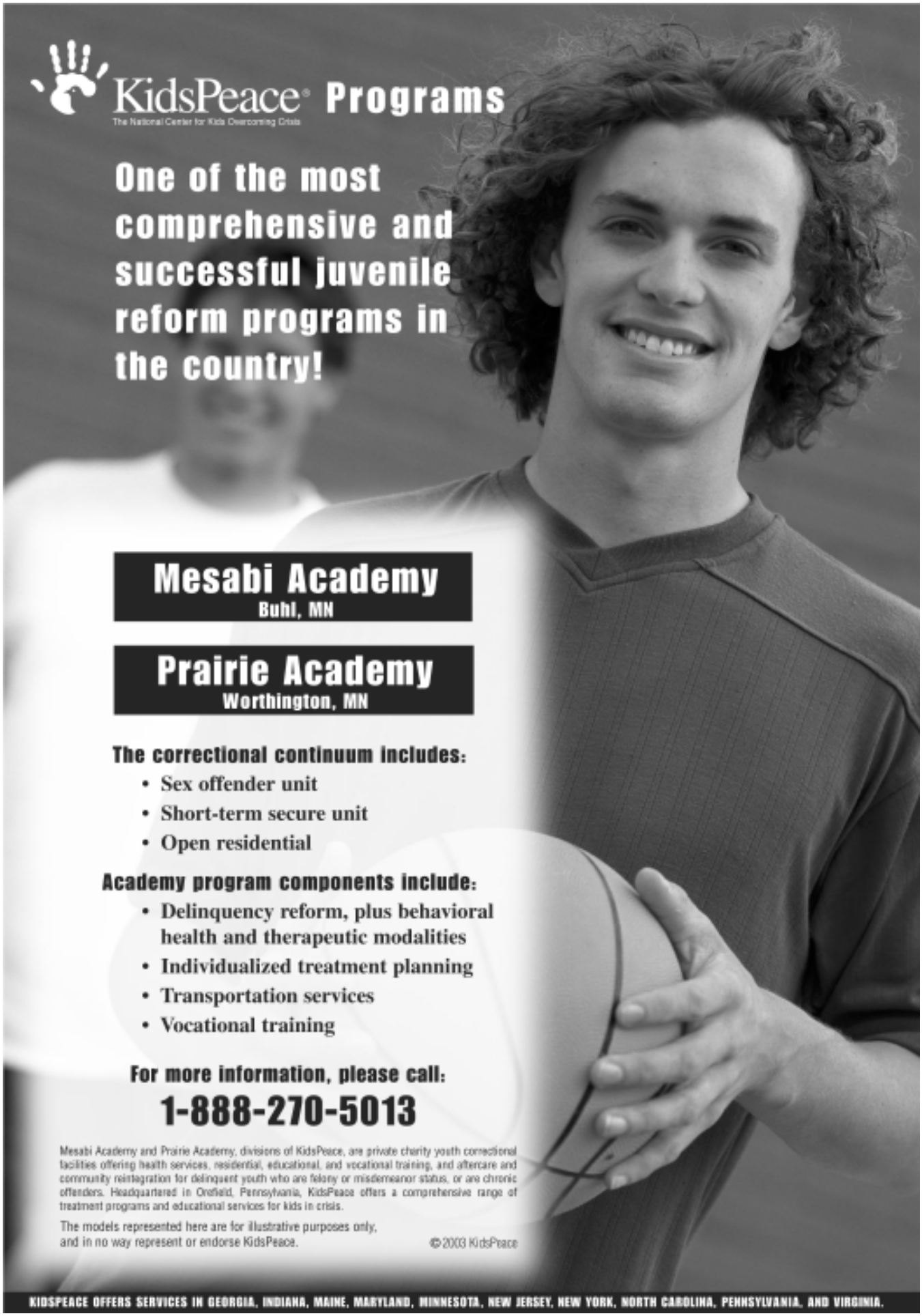
Information must to be received no later than four months prior to event to be included in the calendar.



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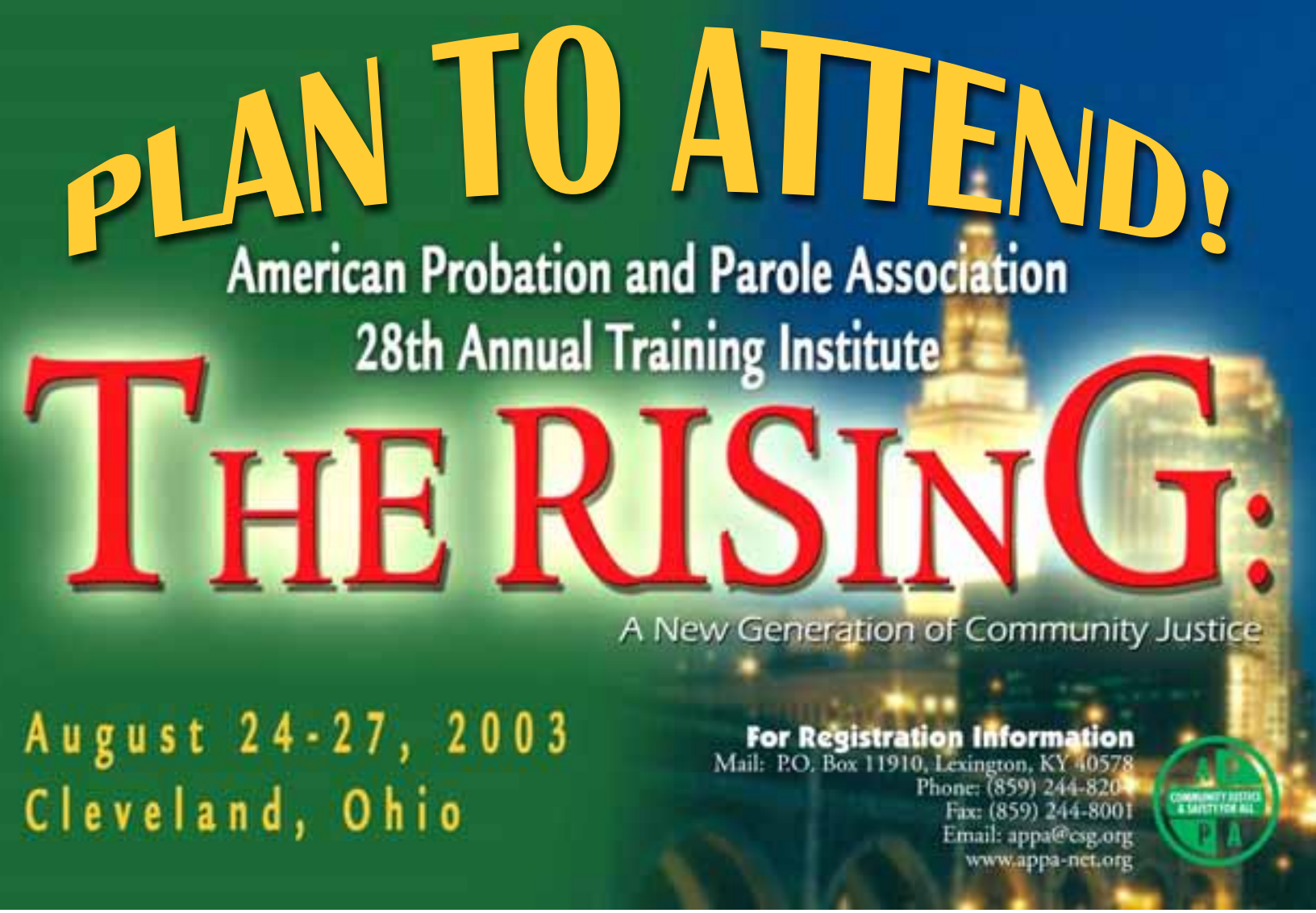

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