



Behavior Management of Justice-Involved Individuals: Contemporary Research and State-of-the-Art Policy and Practice

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SECTION III.

Why Behavior Management Matters

Despite the best efforts of justice system professionals, the fact is that many justice-involved individuals will violate one or more of their terms and conditions at some point during their supervision period. For instance, in a study of prisoners released in 30 states in calendar year 2005, at least one in four were arrested for a probation or parole violation within five years of their release (Durose, Cooper, & Snyder, 2014).¹ In another study of offenders under the jurisdiction of the Washington State Department of Corrections from 2002 to 2008, 45% of offenders had committed at least one violation while on community supervision (Drake & Aos, 2012, p.11).² Similar findings are reported in Georgia, where an NIJ-funded study found 47% of parolees violated their terms of supervision and 27% were arrested for a felony offense during their parole supervision term (Meredith & Prevost, 2009).

Troublingly, a large portion of the individuals under community supervision in the U.S. are committed to a correctional facility (detention center, jail, or prison) as a result of their violation behavior (both “technical” and new criminal behavior committed while on supervision). In 2013, 15% of probationers and 30% of parolees were incarcerated either for committing a new offense while under active supervision or for violating their conditions of supervision (Herberman & Bonczar, 2014). It is most typically the latter condition — failure to comply with the “technical conditions” established by releasing authorities (magistrates, courts, paroling authorities) — that results in confinement. For instance, the U.S. Department of Justice, Bureau of Justice Statistics, reports that in 2013 the majority (63%) of parolees returning to prison did so for a violation of their terms and conditions of supervision, rather than for a new crime (Herberman & Bonczar, 2014).³

Also concerning is the fact that confinement for a violation does not seem to achieve a desirable public safety impact in terms of reductions in future violations and recidivism. A study conducted in Wyoming concluded that “community-based sanctions are no less effective in preventing future noncompliance than institutional sanctions” (Wodahl, 2007, p. 217). In a study conducted in Multnomah County, Oregon, researchers from the Vera Institute found that people who received jail as an intermediate sanction were 76% more likely to have their supervision revoked than those who

¹ This estimate should be considered conservative. An additional 39.9% of recidivists were charged with public order offenses, such as failure to appear and obstruction of justice.

² This percentage represents the 70,398 offenders who committed at least one violation while on community supervision out of the population studied (N=157,116).

³ It is acknowledged that, in some jurisdictions, local practice may be to revoke supervisees on technical violations rather than to pursue new law violations.



did not receive a jail sanction, even when controlling for demographic and crime-related attributes (Rengifo & Scott-Hayward, 2008). Another study, this one conducted in Washington State, found that “felony recidivism is not lowered by using confinement for offenders who violate the technical conditions of their community supervision” (Drake & Aos, 2012, p. 6). In fact, the authors report that confinement was associated with an increase in recidivism (Drake & Aos, 2012).⁴

It is for good reason, then, that justice system professionals and others are concerned about the seemingly endless “revolving door” of individuals who are placed on community supervision and who continue to engage in problematic behavior, facing revocation to a correctional facility — especially given that the goals of community supervision are to allow individuals to stabilize, receive risk-reducing services, and/or make amends for their offenses and contribute to their families and communities. The outcome is an undesirable one for everyone: justice system costs climb, court and parole hearing dockets are overrun with violators, victims do not receive restitution payments, defendants and offenders are unable to benefit from community stabilization and service opportunities, and family members lose the emotional and financial support of their loved ones.

Developments over the Past Three Decades

Encouragingly, research and field experience demonstrate that the revolving door can be slowed considerably. Over the past three decades, new learnings have emerged about what works in changing behavior generally and, as important, the steps that can be taken to prevent noncompliant and illegal behavior from occurring in the first place.

In 1988, the National Institute of Corrections (NIC) pioneered the first national effort to provide assistance to jurisdictions interested in stemming the tide of supervision violations. By 1991, NIC had sponsored work with eight state parole boards to develop methods to respond to violation behavior in consistent and proportional ways. In the ensuing years, these and other NIC-sponsored projects resulted in the provision of technical assistance to 29 probation and parole agencies across the U.S. The lessons learned from these efforts were captured in *Policy-Driven Responses to Probation and Parole Violations* (Burke, 1997) and *Responding to Parole and*

⁴ The study looked retrospectively at violators from 2002 to 2008. It should be noted that the authors indicate that it was not possible to determine whether the increase in recidivism was the direct result of confinement (i.e., confinement was causal) or due to other factors.

Probation Violations: A Handbook to Guide Local Policy Development (Carter, 2001a). Among these lessons were how to engage collaborative partnerships (among the courts, prosecutors, defenders, parole boards, and corrections/supervising agencies) and develop policies and practices based on the principles of effective responses to offender behavior.

Interest in this area has continued to grow over the last two decades. Indeed, an examination of innovations nationally reflects continuing interest in the implementation of policies and practices designed to deter violation behavior.⁵

A Summary of the Research and Frameworks on What Works in Shaping Behavior

The research literature over the past few decades has provided substantial support for the principles of correctional interventions and their impact on changing offender behavior. The groundbreaking research findings of the late 1990s (see, for example, Andrews & Bonta, 1998; Andrews, Dowden, & Gendreau, 1999) offered a framework for thinking differently about “what works” in changing offender behavior, along with key principles and tools to guide correctional practice, while drawing upon earlier theoretical frameworks such as social learning theory (Bandura, 1977).⁶

While the justice system has historically placed a great deal of emphasis on responding to violations — including technical rule infractions — through the use of punishment,⁷ a growing body of research demonstrates that the use of positive reinforcement⁸ and negative reinforcement⁹ is more effective in changing behavior than punishment alone (Andrews & Bonta, 2006; Gendreau & Goggin, 1996).

The use of punishers, or sanctions, finds its roots in the philosophy of punishment referred to as “deterrence theory.” Deterrence theory holds that people are less likely to repeat behaviors for which they are punished (specific deterrence) and are less likely to engage in behaviors for which others are punished (general deterrence).¹⁰

⁵ See, for example, Hawken, Davenport, & Kleiman, 2014, for a review of swift and certain programs for drug offenders underway nationally.

⁶ Social learning theory asserts that behavior is learned from the environment through observation. Learning occurs through a variety of experiences including observing the consequences of behavior (see, for example, McLeod, 2011).

⁷ Some examples of common punishments for violations include short stays in jail, increased reporting, and curfews.

⁸ Positive reinforcement incentivizes and rewards prosocial behavior. Common positive reinforcements in the justice system include words of affirmation, certificates of achievement, and tangible items such as bus tokens.

⁹ Negative reinforcement is the removal of unwanted stimulus. Common negative reinforcements include decreased urinalysis and the withdrawal of some supervision requirements (e.g., submission of verification slips).

¹⁰ For more information on deterrence theory, see Becker, 1968, and Paternoster, 2010.

Are graduated sanctions effective? What is a “sanction”?

In the 1980s, the term “graduated sanctions” was used interchangeably with “intermediate sanctions” to reflect penalties for noncompliance that could be utilized in lieu of revocation to jail and prison (e.g., house arrest, electronic monitoring, drug testing, community service). Over time, the term evolved to suggest “structured, incremental responses to non-compliant behavior while under supervision” (Taxman, Soule, & Gelb, 1999, p. 183), or a series of escalating penalties that increase in severity with each violation. Under such an approach, for instance, a series of drug test failures might result first in a penalty of one day in jail, followed by three days in jail for a second positive drug test, followed by seven days in jail, etc.

There is a pervasive notion in the field today that if a small dose of a sanction did not net the desired results (desistance of the problem behavior), a larger dose would do the trick. With the exception of a small number of single-site studies, to date, graduated sanctions — in and of themselves — have not been empirically demonstrated to reduce future violations and recidivism. While admittedly an area in need of further exploration, some important conclusions from previous studies are noteworthy. For instance, Marlowe, DeMatteo, & Festinger (2003, p. 4) note: “Behavioral research suggests, however, that ratcheting sanctions up slowly could lead some clients to become ‘habituated’ (accustomed) to being sanctioned, thus making it more difficult to suppress their negative behavior in the future.” Further, Wodahl (2007, p. 214) notes: “Little evidence was gleaned from this research to support the notion that graduated sanctions increase offender compliance with release conditions. In fact, findings suggest that the application of graduated sanctions can, in certain circumstances, increase the likelihood of noncompliance.” A subsequent study by Wodahl, Ogle, Kadleck, and Gerow (2009) raises important questions about our notions of “sanctions” generally. To most justice system professionals, the term “sanction” is synonymous with “punishment,” and punishment consists of a relatively limited band of behavioral responses, such as house arrest and confinement. Yet Wodahl’s survey of probationers and parolees revealed that offenders view nonincarcerative, treatment-oriented responses — such as completing writing assignments, participating in treatment, or providing community service — as more punitive and onerous than jail.

These findings suggest that the use of different terms might be warranted. The following is suggested:

- ▶ Replace the term “sanction” with the term “response,” to suggest that an action taken as a result of a violation need not be punitive (perceived or otherwise) to be effective.
- ▶ Replace the term “graduated sanctions” with “effective responses to noncompliance” — suggesting that if a previous response was ineffective in positively shaping behavior, perhaps a different approach (rather than a more severe one) is called for.

The deterrence theoretical framework raises the following question: If punishment really does deter people from rule-breaking behavior, why are there so many repeat offenders/ violators (Holsinger, 2013)? While some may suggest that the reason is that the punishment is not severe enough, the answer may have more to do with our definition of “sanction”¹¹ (and the recipient’s own perceptions about what is punitive) and in the delivery of the response. Indeed, research demonstrates that responses to violations are more likely to result in positive outcomes when they adhere to the principles of celerity (swiftness), certainty, fairness, responsivity, proportionality, and parsimony.¹²

“It is argued that the empirical evidence does support the belief that criminal offenders are rational actors, in that they are responsive to the incentives and disincentives associated with their actions, but that the criminal justice system, because of its delayed imposition of punishment, is not well constructed to exploit this rationality.” (Paternoster, 2010, p. 765)

Key Principles Guiding Effective Responses to Noncompliance

Principle	To increase the impact and utility of the response, respond...
The Celerity (“Swiftness”) Principle	...to the behavior as quickly as possible. ¹³
The Certainty Principle	...each time undesirable behavior occurs. ¹⁴
The Fairness Principle	...in ways that are perceived to be fair ¹⁵ and consistently applied to similarly situated individuals. ¹⁶
The Responsivity Principle	...in ways that take into consideration the characteristics of the individual. ¹⁷
The Proportionality Principle	...in ways that are no more severe than the behavior warrants. ¹⁸
The Parsimony Principle	...using as few interventions/resources as necessary. ¹⁹

¹¹ See “Rethinking Common Terms and Approaches: Are graduated sanctions effective? What is a ‘sanction’?” (page 7).

¹² See American Probation and Parole Association, n.d., and BOTEC Analysis Corporation, 2014, for a more detailed discussion of each of these principles.

¹³ See Hawken & Kleiman, 2009; Paternoster, 2010.

¹⁴ See Hawken & Kleiman, 2009; Nagin, 1998; National Institute of Justice, 2014; Paternoster, Brame, Bachman, & Sherman, 1997; Pogarsky, 2007.

¹⁵ See Paternoster et al., 1997; Sherman, 1993; Tyler, 2007.

¹⁶ See Taxman et al., 1999.

¹⁷ See Andrews, Dowden, & Gendreau, 1999; Sherman, 1993.

¹⁸ See Martin & Van Dine, 2008; Quirk, Seldon, & Smith, 2010; Taxman et al., 1999.

¹⁹ See Quirk et al., 2010.

The Use of Incentives and Rewards

Key Considerations in the Effective Use of Incentives and Rewards

To be effective, incentives and rewards should be:

- ▶ tailored to the individual;
- ▶ swiftly applied;
- ▶ applied generously initially, and tapered over time; and
- ▶ provided in a manner that encourages internalizing the intrinsic benefits of the behavior.

As noted previously, an important aspect of shaping behavior — equal or perhaps even more important to the effective use of disapproval (Molm, 1988; Wodahl, Garland, Culhane, & McCarty, 2011) — is recognizing and rewarding prosocial behavior.²⁰ Research indicates that positive reinforcements should be used at least four times as often as expressions of disapproval in order to enhance individual motivation and encourage the continuation of prosocial behavior (Andrews & Bonta, 2006; Wodahl et al., 2011).

To be effective, however, responses to prosocial behavior should be customized to take into account that which is meaningful to the individual, rather than using a “one size fits all” approach (Bonta & Andrews, 2007; Tittle & Botchkovar, 2005). Consider, for example, how disincentivizing a “reward” of a steak dinner is to a vegetarian, a candy bar is to a diabetic, or baby formula is to a non-parent. Further, as is the case with responses to noncompliant behavior, rewards are more effective when they immediately follow the positive behavior. The impact of rewards is greatest when they are administered with regularity initially and tapered over time, once the behavior becomes habituated (Skinner, 1974).²¹ Finally, rewards should be deliberately provided in a manner that facilitates the individual’s ability to identify and internalize the short- and long-term benefits of demonstrating on an ongoing basis the prosocial attitude/behavior.

The Model Penal Code on Rewards and Responses to Noncompliance

“The Model Penal Code encourages state probation systems to make greater use of positive rewards for compliance, alongside consistently applied penalties for noncompliance. One of the best-known findings of behavioral psychology is that rewards are generally more effective at altering behavior than penalties — yet this principle has been underutilized in community supervision. In addition, the application of penalties for probation violations in most jurisdictions has been slow, infrequent, and unpredictable. When sanctions come, often after many violations have accumulated, they tend to land heavily on probationers, including the overuse of revocations to prison. This pattern conflicts with research findings that sanctions achieve their greatest deterrent effect when applied swiftly and certainly — while increases in the severity of penalties yield disappointingly little in marginal deterrence. Section 6.03 proceeds from the view that uses of both “carrots” and “sticks” in American probation practice are in need of reexamination.” (The American Law Institute, 2014, p. 30, lines 15–26)

²⁰ Contingency management, an approach to reinforcement originally used in the fields of behavioral therapy, mental health, and substance abuse treatment to manage behavior and increase treatment retention, is presently applied in courts and other justice system settings. The approach is one structured method for identifying and responding to prosocial behavior. It is based on three general behavioral principles: frequent monitoring of the target behavior; provision of tangible, positive reinforcers when the target behavior occurs; and removal of the reinforcer when the target behavior does not occur. See Viglione & Sloas, 2012.

²¹ In fact, Skinner (1938) states that, unlike negative reinforcements, positive reinforcements can still be effective even when they are not applied consistently (i.e., are tapered or reduced) over time.

Putting It Together: Responding to Behavior in Ways That Produce Positive Outcomes

Mindful of the emergent research on effective responses to behavior, a variety of programs and approaches are in operation across the country that strive to reduce noncompliance and criminal behavior and increase the short- and long-term success of justice-involved individuals. Exhibit 1 reflects some of the specific models, or programs, that have been described in professional publications and some of the key results of these efforts. Exhibit 2 (page 12) reflects similar efforts that were designed to reach the same ends through the development of policy frameworks. What these programmatic and policy frameworks have in common are approaches that are evidence-based (i.e., responses to noncompliant behavior that are swift, certain, fair, responsive, and proportional) and balanced with responses to prosocial behaviors that are also evidence-based (i.e., customized, applied swiftly, delivered appropriately, tapered over time).

Making It Work: Operationalizing the Research

Experience in implementing evidence-based policies and practices over past decades — including but not limited to swift and certain behavioral responses — suggests that there is more to implementation than simply replicating programs. Success requires at least five essential elements.

- ▶ **Understanding the Science.** The first of these is an appreciation for the behavior change research. For behavior management systems to be successful, those responsible for designing them must have a keen understanding of the behavior change research previously described, and how it is effectively implemented.
- ▶ **Effective Collaborative Partnerships.** Equally important are effective collaborative partnerships. To be sure, those who manage defendants and offenders under community supervision and their justice system partners must be in alignment with each other in order to effectively implement evidence-based programs and services, including and especially consistent responses to violation behavior. For example, for pretrial and prosecutorial diversion cases — as well as many of the specialty courts — law enforcement, judges/commissioners/magistrates, pretrial agencies and/or case management staff, prosecutors, defenders, and victim advocates are all critical stakeholders. In the instance of probation, these same stakeholders have a vested interest. For parolees, parole commissioners/hearing examiners, parole board members, victim advocates, state corrections agencies, parole supervision agencies, and Governor's Offices' representatives are critical stakeholders.

Illustrations of Select Programmatic Efforts to Manage Behavior

State/County	Program Name	Target Population	Program Results
Alaska/Anchorage	Anchorage Probation Accountability with Certain Enforcement (PACE)	General	Preliminary results from the experimental design suggest reductions in positive drug tests (Carns & Martin, 2011).
Georgia	Probation Options Management (POM) Program	General	The POM program resulted in demonstrated reductions in the use of jail as a sanction, officer time spent in violation hearings, and time between the violation behavior and officers' responses (Speir et al., 2007).
Hawai'i	Hawai'i's Opportunity Probation with Enforcement (HOPE)	Drug Offenders	The outcomes of a 2009 evaluation of Hawai'i's HOPE program (Hawken & Kleiman, 2009) showed that close monitoring of probation conditions—coupled with swift and certain responses to violations—improved compliance with the terms of probation and decreased drug use.
South Dakota	South Dakota 24/7 Sobriety Project	Alcohol-Involved Offenders	An evaluation conducted by Kilmer et al. (2013) found reductions in subsequent arrests at the county level for driving while under the influence of alcohol (12% reduction) and domestic violence (9% reduction) as a result of 24/7.
Texas	Texas SWIFT (Supervision with Intensive Enforcement)	General	The evaluation of SWIFT showed that, compared to a matched comparison group, subjects in SWIFT were significantly less likely to violate the terms of their probation, were half as likely to be revoked, and were half as likely to be convicted of new crimes (Snell, 2007).

EXHIBIT 2

Other State and Local Efforts to Address Behavior Management Using a Structured Policy Framework Process²²

Locally Based Efforts		Statewide Efforts	
Maricopa County, Arizona	◆	California	●
Pima County, Arizona	◆	Colorado	● ◆
Napa County, California	◆	Connecticut	◆
San Francisco County, California	◆	District of Columbia	◆
Santa Cruz County, California	◆	Georgia	●
Yolo County, California	◆	Kansas	●
Arapahoe County, Colorado	◆	Michigan	■
Denver County, Colorado	◆	Missouri	■
El Paso County, Colorado	◆	New Jersey	●
Jefferson County, Colorado	◆	New York	●
Weld County, Colorado	◆	Oregon	■
First Circuit Court, Honolulu, Hawai'i	■	Pennsylvania	●
Grant County, Indiana	◆	Rhode Island	■
6th Judicial District, Iowa	◆	South Carolina	■
Macomb County, Michigan	◆	Tennessee	●
Ramsey County, Minnesota	◆	Utah	■
Cuyahoga County, Ohio	◆		
Montgomery County, Ohio	◆		
Multnomah County, Oregon	◆		
City of New York, New York	◆		
Dutchess Suffolk County, New York	◆		
Nassau Ulster County, New York	◆		
Suffolk City of New York, New York	◆		
Ulster County, New York	◆		
City of Charlottesville/Albermarle County, Virginia	◆		
Virginia Beach Department of Corrections, Virginia	◆		
Williamsburg Department of Corrections, Virginia	◆		
Milwaukee County, Wisconsin	▲		
5th District Department of Corrections, Wisconsin	■		

Key:

- ◆ Probation Violations
- Parole Violations
- Probation and Parole Violations
- ▲ Systemwide

²² This list is not intended to encompass all efforts conducted nationally, but instead includes those agencies with which the Center for Effective Public Policy has worked to establish policy frameworks to guide responses to violations and prosocial behaviors.

The participation of these partners varies depending upon the point along the justice system continuum where evidence-based responses to behavior will be imposed (which, arguably, should be all points in the justice system).

Experience demonstrates that genuine collaborative partnerships oftentimes must be built before work of this nature can progress, and sufficient diligence must be paid to the development of a shared understanding of the core research as well as the outcomes stakeholders hope to achieve. From this, the necessary agreements can be developed that will support effective implementation of structured and research-informed behavior management processes.²³

- ▶ **Guarding Against Implementation Failure.** Change is not easy, nor is it always successful. According to Rogers, Wellins, and Connor (2002), up to 85% of change initiatives fail and up to 70% of these failures can be attributed not to bad ideas but to flawed execution. A third essential component of success, then, is the translation of research, desired goals, and working agreements into policy and practice that is successfully operationalized. This means bringing to bear the knowledge that supports successful change initiatives, as well as tools that are designed to prevent “drift” and, ultimately, implementation failure.²⁴
- ▶ **Performance Measurement.** Successful implementation of new programmatic efforts also necessitates the ability to track and describe quantitatively the impact of the change strategies. Understanding the data elements that will support analysis of the initiative—and implementing processes and systems to ensure that these data are collected, analyzed, and used—is the fourth critical ingredient.
- ▶ **Communication Strategies.** The long-term viability of approaches such as these may well depend on an understanding of, and appreciation for, the fifth critical ingredient: effective and proactive communication strategies. Justice system professionals are in the risk management business. As much as the alternative would be desirable, it is not possible to predict individual human behavior with precision. This means that the likelihood is high that at some point in time an individual under community supervision will behave in an unpredictable way, and that this may come on the heels of previous noncompliant behavior. Such an occurrence will inevitably call into question the sensibility of the behavior management system that was “supposed to” hold the individual accountable and prevent problematic behavior. Anticipating such circumstances, it is all the more essential that those who are responsible for managing the behavior of those on supervised release have a well-considered behavior management system in place; discuss its empirical basis, effective implementation, and oversight in a transparent, proactive, and ongoing way; and be prepared to communicate with interested parties — particularly the general public and the media — when the unpredictable occurs.

²³ For a more thorough discussion about the critical role of collaboration, who to involve, and how, see Chapter 3, “Collaboration: A Central Ingredient for Success,” in Carter, 2001b.

²⁴ For a discussion on “drift to failure,” see Dekker, 2005. For additional information regarding the science of implementation, see the resources listed on the National Implementation Research Network’s website: <https://nim.fpg.unc.edu/publications-resources>.