



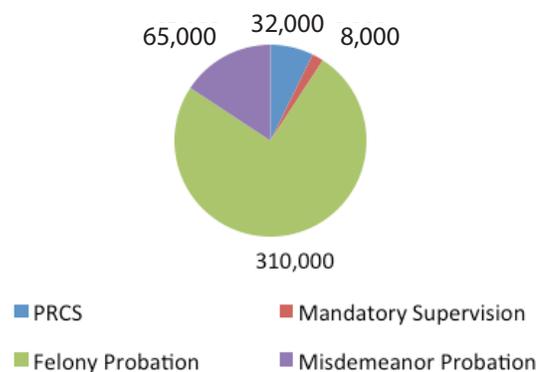
## Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision

Probation's balanced approach to offender supervision is necessary to meet its responsibilities of keeping the public safe, holding offenders accountable, and increasing the likelihood of offenders successfully reintegrating into the community. The use of intermediate sanctions is a key component of this balanced approach and has helped to reserve terms of incarceration for only serious violations of supervision.

### What is Public Safety Realignment?

Enacted through California Assembly Bills 109 and 117, realignment gave counties responsibility to manage two populations of offenders who have been the responsibility of the California Department of Corrections and Rehabilitation (CDCR). Post Release Community Supervision (PRCS) and those on Mandatory Supervision (MS) share the fact they have been convicted of a felony offense that is non-serious, non-violent, and non-sexual. For more information, <http://www.cpoc.org/realignment>

**Figure 1: Supervised Population as of June 2013**



Violations of probation supervision can consist of new crimes, or a “technical violation”, such as not participating in treatment, or missing a meeting with the probation officer. By using a structured sanctioning and reward policy, probation departments can use an expanding array of evidence-based tools to ensure offender compliance, while maintaining offender engagement in programs and assisting in the process of positive behavior change. Probation Departments are responsible for the supervision of 413,000 people in California (Figure 1).<sup>1</sup> Limited jail bed space throughout the state, coupled with the length of the revocation hearing process, underscores the need for a continuum of responses to technical violations. This does not diminish the responsibility of prosecuting new crimes or responding to breaches in offender compliance.

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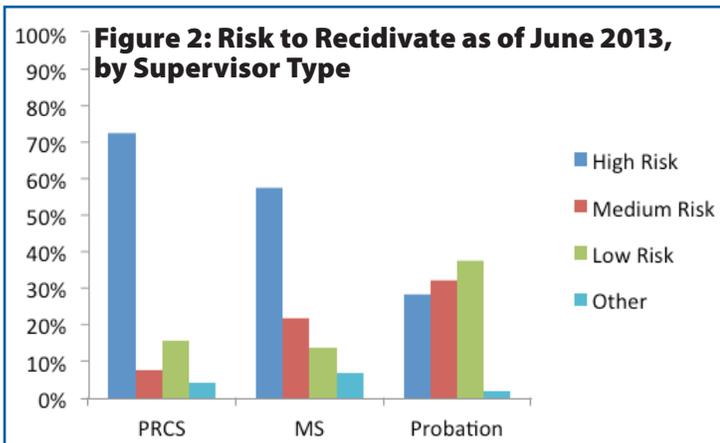
Graduated sanctions are “structured, incremental responses to non-compliant behavior while under supervision.”<sup>2</sup> This brief looks at the practices of county probation departments to balance the use of incarceration for technical violations of supervision with other intermediate methods of sanctioning non-compliant and negative behavior. Strategies that combine evidence-based practices, such as utilizing risk assessment tools and structured decision making matrices, give a department the tools needed to respond to violations with a proportionately matched response through graduated sanctions. Emerging strategies for the response to these violations suggest that risk-based probation monitoring, linked to effective treatment, as well as swift and certain responses to behavior, increase success and results in fewer new crimes. Realignment’s focus on reserving incarceration for offenders who pose the highest risk to public safety means county probation departments must rely on these intermediate tools to reduce jail and prison crowding, hold offenders accountable, keep offenders motivated to change and engaged with supervision, and produce cost effective outcomes that enhance public safety.

## Conditions of Supervision as a Contract

Upon receiving a grant of supervision, offenders are given terms and conditions that they must follow. These conditions give structure and set expectations for the period of supervision. General conditions may establish how often an offender must meet with a probation officer and that they must maintain sobriety and obey all laws. Specialized conditions may be added in order to address the offender’s specific risks, needs, and threat to public safety. Specialized conditions might include participation in treatment programs, drug testing, search and seizure requirements, and mandates of non-association with victims or criminal associates.

Violations of supervision conditions are often part of the offender change process, so departments need tools and evidence based strategies for appropriately dealing with violations when they occur. Violations that do not involve a new crime need not always result in a revocation and incarceration. Research by the National Institute of Corrections showed that 75% of offenders in a 4-state research project were in violation at one time or another during their supervision term.<sup>3</sup> Understanding the relative risk factors for each offender is an important step in developing a dynamic case plan and determining how to respond to violations. Nearly 70% of PRCS and 65% of Mandatory Supervision (MS) probationers are categorized as high or medium risk to reoffend. This is markedly different from the population on felony probation, of which 50% are at high or medium risk (Figure 2).<sup>4,5</sup>

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Given that caseloads for higher risk realigned offenders are typically smaller, there is a higher likelihood that when high-risk offenders commit violations, probation officers will be able to detect the violations. As a result, the success of realignment may depend on how probation departments respond to non-compliance. Since technical violations do not involve new criminal activity, they usually do not require court or prosecutorial action. This allows probation departments to exercise significant discretion to address technical violations by developing structured decision making processes that use a range of intermediate sanctions and evidence-based responses.

**Figure 3: Graduated Sanctioning Process**



## Graduated Rewards and Sanctions: Swift, Certain, and Proportional

Reward and sanction matrices – often referred to as structured decision making tools – give counties a way to respond to violations and provide rewards for positive behavior. Reward and sanction matrices are tools that help probation departments implement both consistent sanctions that discourage non-compliance, and consistent rewards that support pro-social behavior.

These responses enhance the offender’s motivation to initiate and continue with positive behavior change that results in reduced recidivism and enhanced public safety. Reward and Sanction matrices are based on extensive research which illustrates that:

- ➔ The use of incentives can be a powerful tool in shaping client behavior and promoting positive behavior change;<sup>6</sup>
- ➔ Rewards for pro-social behaviors should be tailored to the individual;<sup>7</sup>
- ➔ Violations can be reduced when responses to non-compliant behavior are swift,<sup>8</sup> certain,<sup>9</sup> and proportional to the client’s behavior;<sup>10</sup>
- ➔ Responses to non-compliance should not be more intrusive or restrictive than necessary;<sup>11</sup>
- ➔ Compliance can be increased when responses are perceived as consistent<sup>12</sup> and impartial;<sup>13</sup>
- ➔ Risk reduction is best accomplished when the risk and need principles are applied to client management strategies; intensity of responses should reflect the client’s risk, and responses should target criminogenic needs;<sup>14</sup>
- ➔ Comments and actions intended to reward positive behavior should outnumber those that address negative behavior by 4 (or more) to 1.<sup>15,16</sup>

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A violation response matrix provides a probation officer with a range of intermediate response options that vary in severity – from admonishing the offender, to increasing oversight of the offender, and up to incarceration or revocation of supervision. Most of these responses can be implemented outside of the court process. The level and type of response will depend on the level of public safety risk posed by the offender, the offender’s previous violation behavior, and the seriousness of the current violation. The consistent application of a violation response matrix gives probation departments a clear menu and structure for handling violations, while imparting a sense of fairness based on the rules that the offender was provided at the start of supervision. Effective sanctioning policies increase the likelihood that any act of non-compliance will be met with an appropriately matched response that will be evidence-based in ways that change offender behavior and reduce recidivism.<sup>17</sup>

Similarly, a reward matrix is an effective tool for enhancing an offender’s motivation to change behavior, engage in treatment, comply with court ordered conditions, and make lifestyle improvements beyond.<sup>18</sup>

The level and type of reward will depend on recent levels of compliance, the significance of the behavior or achievement, the offender’s risk to public safety, the offender’s previous behavior, and the meaningfulness of the specific reward to the particular offender.

Evidence from behavioral science in corrections environments has shown that rewards are effective at shaping behavior and creating lasting offender change.

Positive behaviors may be as simple as arriving at an appointment on time or as significant as completing the education requirements of a GED. Some of the most powerful rewards, such as affirmation and appreciation, reduced drug testing requirements, and reductions in the frequency of supervision office visits, cost nothing at all, while others may include small value gift cards or bus passes. Offenders themselves may often

be the best source for identifying the most impactful and effective rewards.

These evidence-based processes increase consistency, and, when tracked over time, can provide administrators with practical, front line data that can be used to develop the most effective supervision policies. Additionally, when the larger Community Corrections Partnership is supportive of the process of how probation responds to non-compliant behavior, stakeholders in local criminal justice will have a clear road map of what to expect from other agencies. This can help

diminish disagreements over how to proceed when offenders violate supervision terms, since the sanctions matrix provides clarity for both probation departments and stakeholders about the range of actions that are appropriate for a violation. Conversely, standards for positive behavior deserving of reward will be consistent and understood.

### Developing Reward and Sanction Matrices

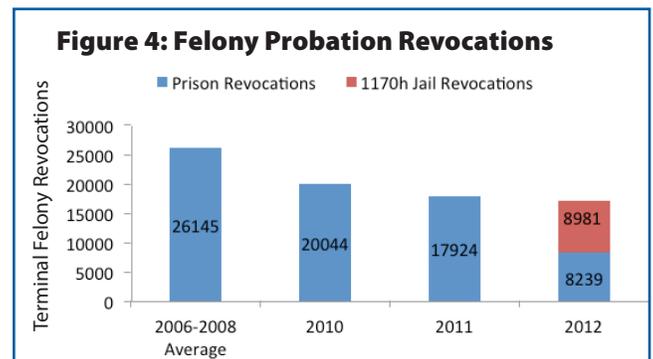
A Rewards and Sanctions matrix gives counties a structured set of options for rewarding offenders for pro-social activities and behaviors, as well as holding offender accountable when they violate terms.

A matrix is developed by the probation department such that there is uniformity in how a policy is applied by officers, as well as where the matrix incentivizes lifestyle improvements beyond the court ordered terms and conditions.

An example can be found at: [www.cpoc.org/research-data/briefs](http://www.cpoc.org/research-data/briefs)

# Violation Responses Involving Incarceration: Revocation and Flash Incarceration

A terminating revocation occurs when a probation officer files a petition with the court to have the supervision terminated, and the offender is sent to either local jail or state prison. Research suggests that responding to supervision violations with incarceration should be reserved for those with serious or repeated supervision violations. Historically, technical violators, who failed to comply with terms of probation, made up a large portion of those having their supervision revoked to state prison. Under Senate Bill 678 from 2009, state savings from reductions in felony probation revocations was shared with county probation departments to better support evidence-based practices and supervision, thus giving counties the tools and funds to optimally monitor offenders. As a result, fewer probationers have failed supervision and required incarceration in state prison, or local jail if they are ineligible for state prison under Penal Code Section 1170(h)'s provision in realignment (Figure 4).



California's realignment law gave probation departments the discretion to develop and use "flash incarceration" for those supervised under Post Release Community Supervision. This provides for imposition of jail terms in increments of up to 10 days without court intervention, thus making unnecessary the more time consuming, expensive, and sometimes permanent process of revocation. Counties tend to use a progressive flash incarceration policy such that each booking increases in length with seriousness or prevalence of violation behavior, culminating in the possibility of a revocation.

In order to enhance the likelihood of the desired behavior change once the offender has completed the flash jail term, best practices dictate immediate follow-up from a probation officer to assure the offender understands the reason for the sanction. Counties are training probation officers to engage offenders in structured cognitive interventions that are designed to assist the offender in examining the thinking process that led to the non-compliant behavior, and to develop solutions or pro-social options when the offender is confronted with similar situations in the future.

Probation departments used their authority to "flash incarcerate" 20,000 times, on 13,000 PRCS offenders in FY 2012-2013.<sup>20</sup> This ratio of 1.5 Flash Incarceration bookings in jail per person in the year implies the sanction was used multiple times on the same person. On average, 3% of the active PRCS population was booked into jail under flash incarceration per month since the start of realignment, along with 3% booked for revocation hearings.<sup>21</sup> This strategy should lead to a more effective sanctioning policy based on a growing body of national evidence on swiftness, certainty, and proportionality, as well as reduced jail bed usage while offenders await revocation hearings. Consequently, these saved bed days would be available to be better used for higher risk offenders who might need to be held in jail for longer periods. Furthermore, courts, district attorneys, and public defenders saved valuable resources by avoiding revocation workload processing. Two years into realignment, it is still too early to tell whether these numbers point to improvements from the pre-realignment world, but the evidence suggests that probation's approach to dealing with revocations and technical violations will yield positive results over the long term.

# The Balanced Approach to Supervision

Probation's work of protecting the public and facilitating the rehabilitation of offenders is challenging, and requires a balanced approach. Public Safety Realignment, with its shift of offenders from state to county supervision, arguably increases that challenge, but the balanced approach follows the direction of current research about how to effectively reduce recidivism, and thereby enhance public safety. It can reasonably be argued that some amount of supervision violations occur as a normal aspect of the offender change process. The key, then, is the manner in which probation responds to technical supervision violations. Risk assessment, graduated rewards and responses to offender behavior, and evidence-based behavioral interventions that target individual criminogenic needs, are all critical components of the balanced approach to supervision. Increasingly, one measure of probation's performance is the ability to assist offenders in successfully complying with terms and conditions of supervision, thereby helping them stay engaged in treatment and services. New tools such as flash incarceration allow probation to respond swiftly to violations, while relieving jails and courts of long revocation processes for technical violations. The application of graduated rewards and sanctions to all supervised populations, including probationers, PRCS, and Mandatory Supervision offenders, is part of a much broader shift to evidence-based approaches and intervention strategies. Used with fidelity, graduated sanctions and rewards for offender behavior are effective, as they draw on evidence that proportional, swift, and certain responses present the best opportunity for changing behavior, reducing recidivism, and securing community safety.



**For questions about this report, please contact: [Cpoc@cpoc.org](mailto:Cpoc@cpoc.org), or visit our website at [www.cpoc.org/research-data](http://www.cpoc.org/research-data).**

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<sup>1</sup>413,000 people have grants of supervision, across various types. This figure includes those wanted on active bench warrants, such that the number on active supervised caseloads may be smaller depending on how a county manages those on a warrant, but this higher number better reflects the number at risk for a sanction.

<sup>2</sup>Taxman, Faye; Soule, David; and Gelb, Adam. "Graduated Sanctions: Stepping Into Accountable Systems and Offenders." *Prison Journal*, 1999, 79(2):182–205.

<sup>3</sup>Burke, Peggy B., *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Transition to the Community* (Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 2004), 4.

<sup>4</sup>CPOC Annual Survey, Summer 2013. There are a number of validated risk assessment tools in use in California and they use different scales. Please refer to [www.cpoc.org/research-data/briefs](http://www.cpoc.org/research-data/briefs). This does not include those pending assessment, around 8% of the active supervised population.

<sup>5</sup>Chief Probation Officers of California, *Risk and Needs Assessment of PRCS offenders. Issue Brief #4* (2013)

<sup>6</sup>Andrews, D. A., Bonta, J., & Wormith, S. J. (2006). The recent past and near future of risk and/or need assessment. *Crime and Delinquency*, 52: 7-27; National Research Council (2007). *Crime, Parole, Desistance from Crime, and Community Integration*. Committee on Community Supervision and Desistance from Crime. Washington, DC: The National Academies Press; Petersilia, J. (2004). What works in prisoner reentry? Reviewing and questioning the evidence. *Federal Probation*, 68(2): 3-9.

<sup>7</sup>Andrews, D. A., & Dowden, C. (2007). The Risk-Need-Responsivity model of assessment and human service in prevention and corrections: Rehabilitative jurisprudence. *Canadian Journal of Criminology and Criminal Justice*, 49(4): 439-464.

<sup>8</sup>Rhine, E. (1993). *Reclaiming Offender Accountability: Intermediate Sanctions for Probation and Parole Violators*. Laurel, MD: American Correctional Association.

<sup>9</sup>Grasmack, H. G. & Bryjak, G. J. (1980). The deterrent effect of perceived severity of punishment. *Social Forces*, 59:471-91; Nichols, J. & Ross, H.L. (1990). Effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs, and Driving*, 6(2): 33-60; Paternoster, R. (1989). Decisions to participate in and desist from four types of common delinquency: Deterrence and the rational choice perspective. *Law and Society Review*, 23(1):7-40.

<sup>10</sup>Von Hirsch, A. (1993). *Censure and Sanctions*. Oxford, UK: Oxford University Press.

<sup>11</sup>Tonry, M. (1996). *Sentencing Matters*. New York: Oxford University Press.

<sup>12</sup>Paternoster, R., Brame, R., Bachman, R., & Sherman, L.W. (1997). Do fair procedures matter? The effect of procedural justice on spouse assault. *Law and Society Review*, 31:163-204.

<sup>13</sup>Burke, P. (1997). *Policy-Driven Responses to Probation and Parole Violations*. Washington, DC: National Institute of Corrections.

<sup>14</sup>Andrews & Dowden (2007).

<sup>15</sup>Gendreau, Paul, Tracy Little, and Claire Goggin. (1996). A meta-analysis of the predictors of adult offender recidivism: What works! *Criminology* 34:575–607; Andrews & Bonta (2006).

<sup>16</sup>Wodahl, E. J., Garland, B., Culhane, S. E., & McCarty, W. P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. *Criminal Justice and Behavior*, 38(4), 386-405

<sup>17</sup>Carey, M. And Carter, M. (2010). *Coaching Packet: Effective Case Management*. Silver Spring, Maryland: Center for Effective Public Policy.

<sup>18</sup>Marlowe Douglas (2007). Strategies for administering rewards and sanctions. In JE Lessenger & GF Roper (Eds.), *Drug courts: A new approach to treatment and rehabilitation* (pp. 317-336). New York: Springer.

<sup>19</sup>SB678 shifted \$340 million to develop and support counties use of Evidence-Based Practices through FY13-14.

<sup>20</sup>CPOC Annual Survey, Summer 2013.

<sup>21</sup>BSCC, *Local Adult Detention Facilities: Public Safety Realignment Data*, Accessed 11/30/2013.