

**WRITTEN STATEMENT
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ON

SENTENCING OPTIONS

**PREPARED FOR THE
UNITED STATES SENTENCING COMMISSION
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Chairman and Members of the United States Sentencing Commission

Mr. Chairman, I am Donald L. Chamlee, chief of the Division of Probation of the Administrative Office of the United States Courts. Thank you for the invitation to appear before you today and address sentencing options in addition to incarceration that are available to the court when sentencing an offender for a Federal violation.

Inasmuch as I appeared before the Commission on May 22 of this year, I shall not review my background in detail again. Suffice it to say that I have 25 years of progressively more responsible experience with the U. S. Probation System and an additional 3 years experience as a county and state probation and parole officer. My academic credits include a master's degree in criminology from the University of California at Berkeley and a fellowship at Harvard Law School.

The Federal Probation System is one of the largest community correctional systems in the United States. As such it represents the principal alternative to incarceration in the Federal criminal justice system. Currently there are 68,500 persons under the supervision of our 1,902 officers and 40 probation officer assistants serving in 300 offices nationwide. In a year's time those officers will also prepare 36,000 presentence investigation reports to aid in pronouncing sentence on the 38,500 criminal defendants sentenced by U. S. district judges.

The pertinent statutory charter for our activities are found in several chapters of title 18. Sections 3651-56 authorize the grant of probation to a defendant and spell out the duties of probation officers and the Director of the Administrative Office with respect to probation. Sections 3579-80 outline the procedures for making an order of restitution. Chapter 311, sections 4201-4218 authorize release on parole for inmates of Federal institutions.

Our drug aftercare program, which I will speak to later, is codified at section 4255. Finally, another of our major responsibilities, pretrial services, is set forth at section 3152-56. This latter activity receives a good deal of our attention, but it is not directly relevant to the discussion today.

Our function of most direct assistance to the courts is the preparation of presentence investigation reports. The general statutory authorization is set forth in Rule 32(c) of the Federal Rules of Criminal Procedure. More specific guidance for probation officers in preparing reports is contained in our publication Publication 105, The Presentence Investigation Report, Administrative Office of the United States Courts, 1984 (Revised). This document lays out the detailed procedures for investigation and verification that I referred to in my May 22 statement concerning the uses and reliability of prior criminal record information.

Our second major function, and the one that makes probation a viable alternative to incarceration, is the supervision of offenders. We currently supervise seven different categories of offenders: district judge and magistrate probation, pretrial diversion for U. S. attorneys, parole, mandatory release, military parole for the U. S. Disciplinary Barracks, and special parole. The standards for supervision activities by probation officers are contained in a second publication, Publication 106, The Supervision Process, Administrative Office of the United States Courts, 1983. I have previously provided copies of both documents for the Commission's use.

Publication 106 provides a systematic method of classifying offenders and addresses the need to bring the greatest resources to bear on offenders who

are at greatest risk of being engaged in subsequent criminal activity. The publication sets out a system for utilizing predictive devices to set the level of supervision activity. Two actuarial devices are used in the system to predict likelihood of recidivism - the Risk Prediction Scale (RPS-80), for persons on probation, and the Salient Factor Score (SF-81), for persons on parole. After the predictive device is used, the system requires explicit identification of supervision problems, the establishment of objectives to meet those problems, and the development of a supervision plan which sets forth the methods to reach those objectives, as follows:

There are two levels of supervision - low activity and high activity. The purpose and value of differentially designating persons to one of these two levels is to free probation officers to direct systematically their skills and energies to those in greatest need of services and monitoring.

Low Activity Supervision

Persons in the low activity supervision level, as reflected in their histories, have usually experienced relative success in establishing personal stability. Although occasionally it is necessary for the probation officer to respond to crisis situations, sustained contact is seldom necessary. Probation officers are to manage these cases through the use of referred services and collateral contacts. **The probation officer should not encourage more than one personal contact per quarter and three personal contacts per quarter should be the exception rather than the rule.**

High Activity Supervision

Persons in the high activity supervision level, as reflected in their histories, have usually experienced difficulty in establishing and maintaining personal stability. **Probation officers should direct the greater proportion of their efforts toward persons in the high activity supervision level. There is no upper limit on the number of times a given person may be seen in a month's time. All persons in this supervision level, however, are to be seen at least once a month.** The purpose, frequency, and location of personal and collateral contacts are shaped by the supervision plan.

Overrides

Although the appropriate predictive device ordinarily serves to determine the initial supervision level, particular circumstances may be present in low activity cases which justify raising the supervision level to high activity. **This override of the supervision level established by the predictive device is made only with the approval of a supervisor.** There are three conditions which justify an override. They are:

I. Aggravated Offense/Offender Circumstances

- A. Violence
 - 1. Present offense or prior record involving violence
 - 2. Use of weapons in the commission of crime
- B. Notoriety of Offense/Offender
 - 1. Violation of trust by high ranking public official
 - 2. Value of crime greater than \$100,000
 - 3. Crimes endangering national security
- C. Continuing Criminal Conspiracy
 - 1. Wholesale drug distributor
 - 2. Member of organized crime
 - 3. Major corporate offender

II. Special Conditions

- A. Court or Parole Commission* ordered special supervision
- B. Drug aftercare program ordered

*Special supervision may be ordered by the Parole Commission for the first 6 months of supervision. In such cases the expected minimum contact rate between the probation officer and offender is at least two personal contacts per month.

III. Exceptional Case Circumstances

Exceptional case circumstances are significant social problems characterized by aggravated personal distress which, if left unresolved, would likely subject the community or offender to harm. Exceptional circumstances also include a first-time youthful offender who exhibits multiple areas of extreme instability which requires more than three personal contacts a quarter to carry out the supervision plan. **It is important for the probation officer to recognize that persons who are classified as low activity by the predictive device experience low violation rates. Therefore, overrides based on exceptional circumstances should be rare.** Although events such as loss of job or separation from a spouse are distressing to many, an override is considered only if the person is overwhelmed by these events and unable to cope with such problems.

At present we are supervising 40,800 persons in low activity supervision and 27,700 in high activity. Based on our experience and research, a proper workload for a probation officer who supervises only high activity cases would be 41 offenders whereas for the probation officer who supervises only low activity cases, the figure would be 90 offenders. Although probation offices are not always organized in this way, staff is requested of Congress and allocated using these criteria.

Specific Programs and Functions

To give the Commissioners an idea of what is presently available, I would like to turn now to some of the programs and functions we perform in carrying out court or Parole Commission orders. First, and one of which I personally am most proud, is our drug aftercare program.

DRUG AFTERCARE

Population Served

The drug aftercare program provides drug treatment and urine surveillance services for more than 6,800 drug dependent federal offenders who are under the supervision of the United States Probation System. Clients include probationers, parolees, special parolee term releasees, mandatory releasees and military parolees. Sixty percent of the treatment population are parolees. Treatment services are provided by nearly 300 drug treatment programs under contract to the Administrative Office of the United States Courts, by probation officers, available community resources, or any combination thereof.

Program Philosophy

The goals of drug aftercare are abstinence from illegal drug use and the reintegration of the offender into society as a law-abiding and contributing member. To accomplish this goal, we prefer treatment modalities that favor an abstinence approach over those which use medication as the primary treatment tool. Methadone maintenance is used only as a last resort before revocation and only after abstinence methods have been exhausted.

Urine Surveillance

Urinalysis is a key ingredient of the drug aftercare program and enables the probation officer to determine whether a person under supervision has refrained from, continued, or returned to the use of controlled substances. A three-phase urine collection and treatment system has been established for all drug dependent persons under supervision. Urine testing rates range from six specimens per month in Phase I to two specimens per month in Phase III. Clients move from phase to phase depending on their record of drug free supervision. Failure to remain drug free will result in not only increased urine testing but may also result in the client being placed in progressively more restrictive treatment situations.

The selection of competent laboratories to provide urinalysis services is vital to the success of the aftercare program. The Administrative Office contracts with a national authority on toxicology and urine testing to provide technical assistance in the preaward review and postaward monitoring of laboratory performance. In addition, several hundred test specimens with known quantities of drugs are sent during each year to our contract

laboratories disguised as client specimens. Test results are evaluated to determine if the laboratories perform proficiently. Experience has shown that the level of laboratory proficiency is directly related to the intensity of our monitoring program.

Outcomes

Data have been collected by the Probation Division of the Administrative Office of the United States Courts on 3,991 individuals who were discharged from the program between April 1984 and January 1986. Seventeen percent of the offenders had one criminal conviction prior to treatment and forty percent had two or more prior convictions. Forty-seven percent had been incarcerated at least once for terms exceeding 30 days. The offenses of conviction cover a broad spectrum of offense categories and were not limited to drug offenses.

The patterns of these drug abusers were well established and long standing. Six out of ten had a history of heroin abuse. Half of the participants had been in drug treatment programs on one or more previous occasions. The onset of drug abuse occurred on the average 11 years prior to entry in the drug aftercare program. Twenty-three percent of these individuals had been in methadone based drug treatment on previous occasions.

Although this is a difficult population, fifty percent of the offenders satisfactorily completed treatment. Of those who failed, forty percent were removed from treatment and their supervision revoked because of continued drug abuse or because of technical violations, such as failure to report. Only eight percent were terminated because of new arrests.

Alcohol Treatment

Legislation is currently pending that, if enacted into law, will give the Director of the Administrative Office authority to contract for alcohol abuse treatment. During the 12-month period ending December 31, 1985, over 3,000 clients were received for supervision with a special condition requiring alcohol abuse treatment. A decline in the availability of public programs has left the probation staff with limited resources to provide required treatment services. The authority to contract for services will expand the probation system's ability to provide treatment services and thereby more effectively protect the community.

COMMUNITY SERVICE, FINES, AND RESTITUTION

Although a sentence to community service is not explicitly provided for in the current law, courts impose such orders in one out of six probation orders. They are imposed under the authority of 18 USC 3651 which allows a court to impose probation "upon such terms and conditions as the court deems best." All but five judicial districts have used such orders. The majority of orders require 200 hours or less of service. Data obtained from 10,300 closed cases in the Federal Probation Sentencing and Supervision Information System (FPSSIS) over the last 12 months indicates that 142,850 hours of community service were completed by 1,553 cases. In addition, 7.6 million dollars was collected from 6,000 cases in fines and restitution.

We have guidelines for implementing community service in Publication 106, The Supervision Process. The Judicial Conference Committee on the Administration of the Probation System is currently expanding those guidelines

and expects to approve a monograph on this topic within the next few months. With the support of the National Institute of Corrections, we are also developing instructions and guidelines on better assessing defendants' financial resources with the goal that fine and restitution orders will be more realistic and collectable.

SPECIFIC QUESTIONS FROM THE COMMISSION

Let me turn now to the specific questions set forth in your letter of June 20.

***Should some form of intensive supervised probation be imposed on certain types of federal offenders? If so, what kind of offenders should be placed on intensive supervised probation and what forms of control and supervision should be imposed.**

Let me say at the onset that the Federal Probation System has already made significant inroads toward an intensive supervision program. This has been accomplished both by the categorization of offenders into high risk and low risk groups and by the creation within appropriate areas of the country of specialists to handle high risk groups. These specialists include drug specialists, special offender specialists, and mental health specialists. All these specialists were chosen because of their abilities for handling certain kinds of offenders and in doing so they perform the function of providing more intensive supervision.

We are, as well, working with the Parole Commission on a special curfew program. The purpose of the program is to reduce prison overcrowding through intensive community supervision. Those offenders placed in this program are

subject to stringent requirements, including a curfew, and failure to adhere can mean a quick reincarceration.

On the whole, however, we have tried to avoid the establishment of highly visible programs with titles such as intensive supervision or restitution centers because we consider our officers journeymen, qualified to respond to a broad array of situations. One officer typically performs many functions. He or she may provide intensive supervision for a few high risk offenders and general supervision for low risk offenders, provide drug aftercare services to a few more and conduct presentence investigations for the courts.

The approach we have taken to the supervision does not involve a broad, nationwide program directed from Washington. Our belief is that with the diversity and complexity existing within a nationwide probation system, the most appropriate service we could provide was to support those in the field as they identified problems and sought solutions. Requiring each district to follow a predefined intensive supervision program without regard to their special circumstances might do more harm than good.

Your next question is:

***What roles should the Commission, the court and the probation office have in determining which offenders are placed on intensive supervised probation? What type of probation conditions not expressly listed in 18 U.S.C. 3653(b)(1-19) should the Commission consider in drafting the guidelines?**

I recommend that the Commission discharge its responsibilities with respect to intensive supervision and probation conditions through the issuance of policy statements rather than guidelines. Our present standards for high activity approach the idea of intensive supervision with flexibility.

Officers are called upon to establish as much personal contact with an offender as the situation requires. Our research into that subject, however, shows that the requirement for contact varies in each case as the situation changes. That is why our supervision plans, prepared by the officer every 6 months and reviewed by the supervising probation officer, provide for an approach tailored to the need for supervision at that time. With respect to conditions of probation, there too the specifics of correctional program design are best left to the court and the probation office.

Day to day oversight of a given case should be left to those most intimately involved in the supervision of the case. I feel the Commission should rely on the court and probation officers to carry out your preferences and priorities as indicated in your policy statements. It is impossible to anticipate every situation that will develop during a period of supervision. Supervision of offenders is an evolving process, that is why we call our Publication 106, The Supervision Process.

Your third question is:

***The Commission is interested in ongoing intensive supervised probation programs and has invited Harvey Goldstein, Assistant Director for Probation in New Jersey and Chairman of the American Probation and Parole Association, to testify at the July 15 hearing. We request your evaluation of current state programs and their applicability to the Federal system.**

Approximately thirty states have some form of intensive supervision program. These programs vary widely in design and implementation. Most were motivated by an ever-growing prison population which severely strained the capacity of their prison systems. Mr. Goldstein will, no doubt, inform you of the specific mechanisms his state developed for the release of state prisoners into the community.

As I understand the situation in New Jersey, in order to accomplish the goal of intensive supervision a separate unit was established. The officers charged with the supervision of these offenders are required to see them several times a week and the probation officers are potentially on duty 24 hours a day. The requirements of the program are stringent and salary enhancements were offered to induce probation officers to participate.

I believe careful consideration should be given to the prison populations served. That which is appropriate to the state prison population may not be appropriate to those in the Federal system. We developed our system of high activity supervision to address those cases that need intensive supervision. The program addresses the broad spectrum of high risk offenders, such as the drug addict and the organized crime offender, who both require intensive supervision but call for quite different supervision techniques. I am open to suggestions that will enhance our supervision capabilities but would caution against establishing a system which may not adequately address case problems.

You also asked about electronic monitoring. We do not have experience with this new approach. Because of its recent popularity, the topic is scheduled for discussion by the Probation Committee when it meets in Washington, D. C., this week. We are interested in exploring the potential of electronic monitoring and house arrest. The purposes of both need to be made more clear, and surely that is one of the roles of this Commission.

To conclude, the Federal Probation System has developed supervision methods that work for us. I point to our drug aftercare program as one example of what we are doing. There is more to do. For example, I urge the Commission to examine the need for periods of supervised release - and the law

needs to be strengthened to add some sanction more meaningful than contempt of court. In my mind, supervised release should be imposed for all serious offenders and those who are high recidivist risks. In addition, supervised release should be imposed where drug aftercare services are required, where fines or restitution will have to be paid on an installment plan, and where community service needs to be performed.

We look forward to the leadership this Commission will provide in establishing policy in the area of community supervision of offenders.

Mr. Chairman, this completes my prepared remarks. I will be pleased to respond to any questions the Commission might have.