



# Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions?



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## ABSTRACT

**Purpose:** In response to escalating revocation rates in community supervision, many jurisdictions have adopted graduated sanction policies. Research on graduated sanctions has shown promising results. However, most studies focus exclusively on jail sanctions and have largely ignored the possibility that community-based graduated sanctions such as written assignments, increased treatment participation, or community service hours may be as effective, or more effective, than jail sanctions. Extending this research, the current study examines whether community-based sanctions are as effective in increasing offender compliance as spending time in jail.

**Methods:** Using data from over 800 violations committed by a random sample of probationers and parolees on intensive supervision probation, multilevel models are estimated that examine whether jail sanctions are more effective than community sanctions in 1) extending time to the offender's next violation event, 2) reducing the number of future violations, and 3) successfully completing the probation program.

**Results:** Results consistently indicate that jail sanctions do not outperform community-based sanctions.

**Conclusion:** Due to the financial, social, and potentially criminogenic effects of jail, the lack of significant differences between jail sanctions and community-based sanctions calls into question the use of jail as a means of punishing persons on community supervision.

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## Introduction

A primary appeal of community-based corrections since their inception has been the belief that these forms of punishment reduce our reliance on incarceration, which is not only costly but also potentially criminogenic (Wodahl & Garland, 2009). Recently, however, the capacity of community supervision to ease prison populations has been questioned, due in large part to burgeoning revocation rates. Since the 1980s, revocation rates among offenders on probation and parole have increased substantially (Wodahl, Ogle & Heck, 2011b). Community corrections failures have contributed noticeably to prison growth and crowding, and strained state and federal economic resources (Adams, 2013; Criminal Justice Policy Council, 2002; Grattet, Petersilia, Lin, & Beckman, 2009; Travis & Lawrence, 2002). In addition, the incarceration accompanying revocation has been shown to have a detrimental impact on offenders, their families, and the communities in which they reside (Clear & Rose, 2003; Petersilia, 2003; Rollo, 1988; Sabol & Lynch, 2003).

The use of graduated sanctions has gained traction in recent years as a mechanism to mitigate the effects of rising revocation rates. Graduated sanctions, sometimes referred to as administrative responses, refer

to the imposition of swift, certain, and proportionate punishments for offenders who violate the conditions of their community supervision (Taxman, Soule, & Gelb, 1999). While graduated sanctions are official responses to noncompliance, they do not involve the formal revocation of community supervision, which often results in long-term imprisonment. Normally imposed by the supervising officer or judge, these sanctions allow the offender to avoid revocation and remain under community supervision. For example, a probation officer may impose 10 hours of community service on a probationer as a sanction for missing a probation appointment, or a parolee may receive a 4 day jail sanction as a response to a positive drug test.

A growing body of research suggests that graduated sanctions can be an effective tool to increase offender compliance with community supervision conditions and reduce revocation rates<sup>1</sup> (Grommon, Cox, Davidson, & Bynum, 2013; Hawken & Kleiman, 2009; Kilmer, Nicosia, Heaton, & Midgett, 2013; Steiner, Makarios, Travis, & Meade, 2012; Wodahl, Garland, Culhane & McCarty, 2011a). While there is considerable evidence to support the efficacy of graduated sanctions in improving community supervision outcomes, little is known about how these sanctions can be implemented to achieve the best results. One particularly important gap in the research is the salience of sanction type. The vast majority of research on graduated sanctions has focused exclusively on one type of sanction – jail sanctions (Grommon et al., 2013; Hawken & Kleiman, 2009; Kilmer et al., 2013; Steiner et al., 2012).

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Aside from sending offenders to jail, there are a number of alternative, community-based graduated sanctions that jurisdictions can impose on recalcitrant supervisees, such as electronic monitoring, written assignments, or increased treatment participation. To date, however, we know very little about the capacity of these noncustodial sanctions to improve community supervision outcomes. The current study seeks to address this limitation by examining whether community-based sanctions are as effective in increasing offender compliance as spending time in jail.

### Graduated Sanctions in Community Corrections

Graduated sanctions first gained wide-spread attention for their use in drug court programs (NADCP, 1997). Likely motivated by the success of drug court programs, a number of jurisdictions adopted the use of graduated sanctions in more traditional probation and parole caseloads. Perhaps the most well-known example is the Hawaii HOPE program, which focuses on probationers who are at a high risk to experience a probation violation. Hawken and Kleiman's (2009) well-known evaluation of HOPE program found that the imposition of short jail sentences for offender noncompliance was associated with a number of positive outcomes, including reduced positive drug tests, fewer missed appointments, and lower revocation rates. Similarly, Grommon et al. (2013) studied graduated sanctions in the supervision of parolees in a Midwestern state, finding that parolees who were subject to frequent random drug testing and swift and certain jail sanctions had lower rates of relapse and recidivism than parolees who were not subject to these interventions. Other recent examples of graduate sanction implementation in jurisdictions include the Probation Operation Management (POM) program implemented in 2004 in the state of the Georgia, the Wyoming Department of Corrections' Intensive Supervision Program, and South Dakota's 24/7 Sobriety Program (APPA, 2013).

Research on the efficacy of community-based graduated sanctions is important for several reasons. First, not all agencies have the capacity to impose jail sanctions on noncompliant offenders. While many jurisdictions have changed policies and passed legislation authorizing the use of jail sanctions, others have relied exclusively on noncustodial responses (APPA, 2013). Furthermore, many agencies are likely contemplating the implementation of a graduated sanctioning program but may be discouraged from acting because they lack the ability to include jail in their repertoire of sanctions.

It must also be recognized that utilizing jail sanctions can be resource intensive. The cost of incarcerating a probationer or parolee in jail even for a short period of time can be substantial, with estimated daily costs per jail inmate exceeding \$100 in many locales (Piquero, 2010; Santora, 2013). Further exacerbating the cost issue, jail sanctions can also be time and labor intensive for correctional and court personnel. In many programs, jail sanctions must be imposed by the judge. This requires the offender to be returned to court, which subsequently creates additional work and time commitments for those involved in the process (Kleiman, 2011). Community-based graduated sanctions by contrast can often be imposed directly by the supervision agent without the need to return the offender to court for a hearing. The costs in terms of both time and money can certainly be justified given the benefits of jail sanctions on offender outcomes; however, if community-based responses are equally effective, the use of jail sanctions becomes more difficult to justify.

### Jail versus Community-Based Graduated Sanctions

Guided by theory and prior research, two possible outcomes regarding the effectiveness of jail versus community-based graduated sanctions are proposed. The first is guided by deterrence theory and suggests that jail will outperform community-based graduated sanctions because of the punitive nature of spending time in jail. The second is that community-based graduated sanctions will outperform jail sanctions due to the deleterious effects of incarceration and the jail environment.

The following paragraphs explore these competing proposals in more detail.

### Graduated Sanctions and Deterrence

The use of graduated sanctions to improve offender compliance with supervision conditions is guided primarily by deterrence theory (Braga & Weisburd, 2012; Duriez, Cullen, & Manchak, 2014). Punishments or sanctions as applied in deterrence theory are designed to reduce the likelihood of an undesired behavior by increasing the perceived costs or negative consequences associated with the action (Pogarsky, 2009). This *deterrent effect* is theorized to operate on two levels. On one hand, general deterrence asserts that the knowledge of punishments is sufficient to dissuade the act, meaning that individuals do not need to experience the effects of punishment first-hand in order to be discouraged from offending (Gibbs, 1975). On the other hand, specific deterrence operates when individuals who have previously been caught and sanctioned for engaging in deviant behavior cease or curtail their involvement in these activities because they are unwilling to risk future punishment (Gibbs, 1975). While it is likely that the deterrent effect of graduated sanctions operates at both the general and specific levels, our inquiry is limited to the latter – the specific deterrent effect of graduated sanctions. Deterrence theory further posits that the capacity of sanctions to reduce criminal behavior is dependent upon three interrelated factors – the severity, certainty, and celerity of the punishment (Gibbs, 1975; Pogarsky, 2009). Given our focus on the effects of jail versus community-based sanctions, it is the severity aspect with which we are most concerned.

On its face, deterrence theory has little to say about the efficacy of specific types of punishments (i.e. jail versus community-based sanctions); it does, however, assert an inverse relationship between punishment severity and the likelihood of future transgressions (Paternoster, 2010). This suggests that the effectiveness of community-based graduated sanctions compared to jail will be largely determined by the degree to which offenders differentiate the two in terms of their austerity. As noted by Nagin, Cullen, and Jonson (2009), "if a custodial sanction is perceived to be more costly than a noncustodial sanction, the imprisonment sanction will exert a greater deterrent effect" (p. 124).

Research demonstrates that offenders view spending time in jail as a particularly punitive sanction, especially when compared to community-based alternatives (May, Applegate, Ruddell, & Wood, 2014; May, Wood, Mooney, & Minor, 2005; Wood & Grasmick, 1999). For example, May et al. (2005) found that Kentucky probationers viewed county jail as more punitive than a variety of community-based punishments including electronic monitoring, day reporting, and community service hours. May et al. (2014) offer several potential explanations for why offenders view jail in such punitive terms. They note that jails are often dangerous environments that produce high rates of violent and sexual victimization. Jails also house a broad range of offenders, many of which are mentally ill and/or under the influence of drugs and alcohol, which exacerbates the disruptive environment (May et al., 2014). Additionally, jails typically provide few education, work, or treatment opportunities for inmates, meaning that much of the inmates' time is idle and passes slowly (May et al., 2014). These findings suggest that graduated sanctions which involve jail time will be more effective deterrents than community-based responses due to the punitive nature of spending time in jail.

### The Deleterious Effects of Incarceration and the Jail Environment

A competing hypothesis is that community-based graduated sanctions will outperform jail sanctions due to the deleterious effects of incarceration and the jail environment. Removing a probationer or parolee from the community, even for a short duration, may produce a number of negative consequences that heighten the risk of supervision failure. Employment, for example, is strongly related to both reoffending and community supervision outcomes (Morgan, 1994; Wilson, Gallagher, & Mackenzie, 2000). Jail terms can adversely affect one's employability by

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