

W. T. A.

Agenda Date: October 24, 2007

File Note Memorandum

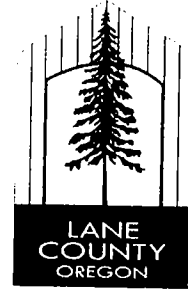
Item: In the Matter of Adopting Policy Changes in Supervision and Treatment Services/Parole and Probation on Supervision Standards for Felony and Misdemeanor Offenders, and of Establishing a Ceiling on the Number of Misdemeanor Cases to be Supervised at Any Given Time.

Presented by: Liane Richardson, County Counsel

- This item asks the Board to adopt policy changes in supervision and treatment of offenders due to heavy caseloads that require changes in order to adequately supervise the offenders most likely to reoffend. This file note discusses the proposal to establish a ceiling on the number of misdemeanor cases of 210 at any given time, due to the limited resources of the department.
- There is no clear mandate regarding whether or not the Department is required to supervise misdemeanor cases at all. There are conflicting statutes. Under SB 1145, we agreed to provide Parole and Probation services for felons in exchange for money from the State. The bill did not discuss misdemeanors, and the County receives no money from the state for supervision of misdemeanants. This would indicate that we do not need to supervise misdemeanants at all. However, ORS 137.630, which describes the duties of parole and probation officers, indicates that Parole and Probation Officers are to receive under supervision any person sentenced to probation by any court in the jurisdiction for which the officer is appointed to serve. This statute would indicate that the Department has to take any offender the court sends their way. Most of the misdemeanor offenders currently being supervised are sentenced to probation by the Court. This statute predates SB 1145, and may be outdated. Some counties have come to that conclusion and are no longer supervising any misdemeanor offenders. However, our reading of SB 1145 indicates that the employment provisions included in ORS 137.630 survived SB 1145 and are still good law. If that is the case, we cannot simply choose to not supervise misdemeanors, but we still have the ability, and should use the discretion, to determine how to supervise misdemeanor offenders. Another complicating factor is that our intergovernmental agreement and plan for community corrections, required under ORS 423.500 to 423.560, includes a component for supervising domestic violence offenders, many of whom are convicted solely on misdemeanor charges. Unless we change the plan, it appears we must supervise domestic violence offenders at some level.
- It is my analysis that a cap of 210 for misdemeanor offenders would best protect the County legally. It would allow the Department to use its discretion in determining at what level to supervise misdemeanor offenders.

AGENDA COVER MEMO

AGENDA DATE: October 24, 2007
TO: Board of County Commissioners
DEPARTMENT: Health & Human Services
PRESENTED BY: Rob Rockstroh



AGENDA TITLE: ORDER / _____ IN THE MATTER OF ADOPTING POLICY IN SUPERVISION AND TREATMENT SERVICES/PAROLE AND PROBATION ON SUPERVISION STANDARDS FOR FELONY AND MISDEMEANOR OFFENDERS, AND OF ESTABLISHING A CEILING ON THE NUMBER OF MISDEMEANOR CASES TO BE SUPERVISED AT ANY GIVEN TIME

I. MOTION

Order / _____ In The Matter of Adopting Policy In Supervision and Treatment Services/Parole And Probation On Supervision Standards for Felony and Misdemeanor Offenders, And of Establishing A Ceiling On The Number Of Misdemeanor Cases To Be Supervised At Any Given Time.

II. AGENDA ITEM SUMMARY

Due to high caseloads, the Department is unable to provide adequate supervision of offenders by Parole and Probation (P&P). The department requests that the Board approve policies in two areas to address this problem. One policy area relates to the supervision standards applied to all cases, including felony and misdemeanor cases. The second area relates to a ceiling or "cap" on the number of misdemeanor cases under supervision at any given time.

The agency currently supervises all felony cases referred from the courts or released from prison, as required by our Intergovernmental Agreement with the State. Under this proposal, P&P would continue to accept all felony cases, but would provide a reduced level of supervision to offenders at certain risk levels. Regarding misdemeanor cases, no clear mandate exists for the number of misdemeanor cases P&P supervises. The department is proposing that the Board establish a ceiling on the number of misdemeanor cases to 210 at any given time, due to limited resources.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Lane County P&P has had very high caseloads for several years. Those caseloads include both felony and misdemeanor cases. Felony cases are funded by the State Department of Corrections (DOC), and P&P is required by the Intergovernmental Agreement (IGA) with the DOC to accept all felony cases for supervision. Misdemeanor cases are not funded by the state, and the IGA does not require the County to supervise those cases. However, Lane County has supervised person crime misdemeanor cases for several years, and supervises them in the same manner as felony cases.

In the Spring of 2006, the Department of Health and Human Services (H&HS) went to the Board of County Commissioners (BCC) several times for discussion about the supervision of misdemeanor cases. P&P relies on County General Fund, which at that time was about \$40,000, and was not adequate to support the funding of the 400+ misdemeanor cases under supervision. The options presented to the Board included discontinuing the supervision of misdemeanor cases, or devoting more County funding to continued supervision of the same number of cases. The Board requested that H&HS meet with the Supervisory Authority Team (SAT) and a few other key leaders to discuss different options for misdemeanor supervision. Several options were discussed and reported back to the Board. Those included the concept of a domestic violence (DV) court (or "docket"), with a limited number of cases going to supervision; deferred sentencing for DV offenders; increased bench probation for DV offenders; increased casebanking of non-person offenders; and continuing to "push" the early discharge or conversion to bench probation process.

In April 2006, the Board chose to provide additional funding for three additional PO positions. Those positions were to be dedicated to supervising DV misdemeanors, in collaboration with the Circuit Court, using a "DV docket" model. The caseloads of these officers would be limited to 70 cases each, and the total misdemeanor caseload would be limited to 210 cases, a reduction from the 400+ cases under supervision at that time.

In August 2006, the Circuit Court informed H&HS that a DV docket or court was not viewed as an effective model, per the research that was available to the Court. As of September 17, P&P is still supervising 330 misdemeanor cases, with 251 being DV cases.

B. Policy Issues

There are two policy questions. One: shall Lane County policy reflect a reduced level of supervision for certain risk level offenders? Two: shall Lane County establish a ceiling on the number of misdemeanor cases to be supervised at any given time?

C. Board Goals

This proposed action relates to both the county's strategic plan and to the Lane County Community Corrections 2007-09 Biennium Plan.

Lane County Strategic Plan –

Strategy number one, Service Improvement - Reorganization. Reorganization includes the host of restructuring and re-engineering opportunities including but not limited to consolidation

- a. Lane County Government will actively seek to improve the efficiency, effectiveness and quality of public services by considering reorganization of service delivery systems...within county government...
- b. Evaluation criteria will include: (1) the size of any cost savings potential; (2) the impact on service quality and service levels; (3) the degree of similarity in functions; (4) public support of reorganization; and (5) the degree of cooperation from the relevant external entities (for intergovernmental reorganizations).

The proposed action of revising policy to re-define the level of supervision for low and limited risk offenders is sought to improve both the efficiency and effectiveness of supervision of the high and medium risk offenders as well as the pool of 210 misdemeanor offenders thereby improving the quality of public safety for Lane County citizens.

Evaluation criteria

- 1) The size of the cost savings potential can be estimated in two different ways.
 - ⇒ One way would look at the cost of adding the number of PO positions that would provide adequate supervision of the high, medium, low, and limited offenders reporting to the program.
 - ⇒ A second method of estimating cost savings potential that is less concrete would look at the potential risk/legal costs to Lane County resulting from negligent or inadequate supervision of offenders.
- 2) The impact on service quality would provide the Parole & Probation Program (when fully staffed) to adequately supervise all offenders.
- 3) The degree of similarity in functions criteria does not apply in this instance.
- 4) Public support of reorganization criteria does not apply in this instance.
- 5) The degree of cooperation from the relevant external entities does not apply in this instance since this is not an intergovernmental reorganization.

The Lane County Community Corrections 2007-09 Biennium Plan includes community supervision as one of the service categories funded and described in the plan. The program description reads: "This program provides community supervision and sanctions for approximately 3,500 offenders on supervised probation or post-prison supervision, including misdemeanor and felony domestic violence offenders

and sex offenders...” The proposed policy would not change the procedure in regard to supervision of domestic violence offenders based upon the assessment of risk to the safety of the community.

D. Financial and/or Resource Considerations

There are no known immediate financial impacts anticipated from taking action on this item.

E. Analysis

Evidence-based correctional practice indicates that correctional resources are best allocated toward higher risk offenders, in order to reduce recidivism. Lane County P&P has been moving toward this goal for the past few years.

Lane County Parole and Probation has supervised approximately 3,500 cases, including felonies and misdemeanors, for over a year. As of September 5, P&P had 3,642 active cases, including misdemeanors and felonies.

Listed below is a breakdown of the current caseload by risk/supervision level. These are the categories defined by the state Department of Corrections (DOC), which all P&P agencies use.

<u>Category</u>	<u>Number</u>	<u>Percentage of Caseload</u>
High	741	20%
Medium	1,272	35%
Low	647	18%
Limited	761	21%
New	152	4%
Not Classif.	69	2%
Totals	3,642	100%

P&P has 40 PO positions. Previously, there were 41 positions; however, one was eliminated this year due to insufficient resources. As of October 8, thirty-eight (38) of the PO positions were filled. Two additional applicants are in the background process. Another vacancy is expected at the end of October. Two of the current PO's are devoted full-time to the Defendant/Offender Management Center (DOMC), and do not carry caseloads, per agreement with the DOMC partners, leaving 36 currently to supervise cases.

The P&P policies on required supervision levels for various offenders are referred to as “contact standards”. This refers to the number of contacts between PO and offender or between PO and “collateral” contacts, such as treatment provider, family member, employer, etc.

Before April 2007, P&P contact standards were as follows:

<u>Category</u>	<u>Minimum # of Contacts</u>
High	Four per month
Medium	Two per month
Low	One per quarter
Limited	None (mail-in monthly report; qtrly file review)

Since April 2007, P&P contact standards have been:

<u>Category</u>	<u>Minimum # of Contacts</u>
High	Four per month
Medium	Two per month
Low	None (classed as unavailable for supervision due to custody or residential treatment status)
Limited	None

P&P is proposing that our policy remain as modified on April, with one exception, which is to reduce the required monthly contacts for high risk offenders from four per month to three per month. The reason for the reduction in required contacts is that the agency is not meeting the current standard.

The standards listed above are minimums only. Some offenders will receive more than the required level of supervision or contacts, depending on what is happening with the case (most notably, sex offenders and domestic violence offenders). For high and medium level offenders, PO's are also required to document contacts, and monitor compliance with treatment, job search, etc. In addition, other activities with offenders take PO time, e.g., arrests, transport to jail, writing violation reports, appearing in court, etc.

The "limited" offenders are considered "casebanked" offenders. By Lane County P&P policy, when offenders are placed on limited supervision, they are instructed not to make a residence or employment change without prior permission from the PO, and they must continue to pay supervision fees and other court-ordered financial obligations. The PO is required only to monitor law enforcement reports (which are received in our office when there is a law enforcement contact), and to sanction only as needed on violations from law enforcement contacts or other verified community report. No routine contacts are made with the offender, and no "monthly report" is required of the offender. However, officers can receive many contacts on these cases (and "lows"), e.g., requests for information from law enforcement, DHS/Child Welfare, child support workers, etc. The PO's cannot ignore these requests.

Misdemeanor "Cap"

The department must substantially comply with the provisions of the IGA with the DOC and with Oregon Revised Statute 423.525(7). This statute and the IGA expressly cover supervision of felons only; supervision of misdemeanants is not addressed. Under the agreement and statute, the County has discretion to develop the methods and means for the supervision of felons. It's unclear whether or not our department is required, under statute, to supervise misdemeanants. Because of this uncertainty, county counsel has recommended that we continue to accept limited numbers of misdemeanants and to exercise our discretion as to how they are supervised, in order to best protect the County and its citizens.

There are some limitations on the department's ability to exercise discretion as to how misdemeanor cases are supervised. Oregon Administrative Rule (OAR) 291-078-0020 requires "overrides" of supervision levels in some cases. For offenders with sex offense or assault convictions, the rule is very clear that those cases must be supervised at the "medium" level for at least the first six months. By Lane County P&P policy, all person crimes are overridden to "medium", for at least the first six months, even if they initially score at the low or limited level. This means that a higher proportion of misdemeanor cases are high/medium risk offenders, compared with felony cases.

The determination as to which offenders fill those 210 positions and at what level of supervision, would be made by our department, in conjunction with the D.A.'s Office and the Courts.

The information provided in this memo does not give a complete picture of the entire workload of this agency. Other duties beyond caseload supervision include investigating Interstate Compact cases, investigating transfer requests from other counties in Oregon, pre-release planning for prison inmates coming to Lane County, and writing pre-sentence investigation reports upon order from Circuit Court. Also, as mentioned above, P&P provides 2.0 POs to full-time support of the DOMC.

With the current scenario the workload of P&P will continue to be greater than we will have resources to accomplish in an adequate manner. This is a complex problem, compounded by the fact that the entire formula for state community corrections funding is dependent upon the number of felony cases supervised by P&P.

F. Alternatives/Options

1. To adopt the policy change regarding supervision standards for felony and misdemeanor offenders, and establishing a limit of 210 misdemeanor offenders under supervision by Lane County Parole & Probation at any given time. This will provide more PO time for supervision of medium and high risk offenders, an evidence based best practice recognized by Oregon State.

2. Not to adopt the policy change. This situation compromises the community's safety and requires Lane County to carry an unacceptably high level of risk of litigation for negligent or inadequate supervision.
3. To fund and fill additional PO positions in the Department of Health & Human Services to allow for active supervision (at appropriate levels) of all felony and misdemeanor cases, as appropriate, and as referred by the courts. To develop policy that will ensure maintenance of this ratio over time.

IV. Recommendation

To support number one above.

V. Timing/Implementation

Implementation of the policy on supervision standards can be implemented immediately.

Implementation of the policy to limit misdemeanor cases to 210 may be difficult, and will require cooperation from the District Attorney's Office and the Circuit Court, including Pretrial Services. One method of implementation may be to establish a threshold score on the "dangerousness" component of the Risk Assessment Tool score as a major criterion for the DA to use in requesting supervised probation on misdemeanor cases. Only cases meeting that threshold would be placed on supervised probation. The score could be adjusted up or down as needed to keep the misdemeanor caseload at 210. Whatever method is used to implement this will depend on the willingness of our partners, the District Attorney and the judges, to join in implementing the Board's direction.

VI. Follow-up

The department recommends that the Board schedule a follow-up discussion on this issue in three months, to monitor progress and address any inter-jurisdiction barriers to implementation.

VII. ATTACHMENTS

Board Order
Community Corrections Plan Description for Community Supervision
Draft Policy on Supervision Standards in Lane County

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THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

- ORDER:**
-) IN THE MATTER OF ADOPTING POLICY CHANGES IN
 -) SUPERVISION AND TREATMENT SERVICES/PAROLE AND
 -) PROBATION ON SUPERVISION STANDARDS FOR FELONY
 -) AND MISDEMEANOR OFFENDERS, AND OF ESTABLISHING
A CEILING ON THE NUMBER OF MISDEMEANOR CASES
TO BE SUPERVISED AT ANY GIVEN TIME

WHEREAS, pursuant to Oregon Revised Statute (ORS) 423.520 and ORS 423.478 Lane County has been allocated and accepted \$21,345,852 in grant funds from the state of Oregon to provide supervision, sanctions and services for adult offenders during the 2007-09 biennium; and;

WHEREAS, Community Supervision is a required element of the Lane County Community Corrections Plan and counties are given discretion to develop the methods and level of supervision of felons; and,

WHEREAS, the legal mandate to supervise misdemeanor cases is unclear; and,

WHEREAS, the resource level provided to Lane County Parole & Probation is inadequate for the supervision of all current felony and misdemeanor cases; and

WHEREAS, funding for County community corrections supervision services is generated based upon the number of felony offenders on the P&P caseload which requires P&P to take all felony cases to maintain funding and service;

NOW THEREFORE IT IS HEREBY RESOLVED AND ORDERED that the Board of County Commissioners adopt policy to direct Supervision and Treatment/Parole & Probation to limit offender supervision to target medium and high risk offenders and establish a ceiling of 210 misdemeanant offenders to be supervised at any given time.

DATED this 24th day of October, 2007.

Faye Stewart, Chair
Lane County Board Of Commissioners

Supervision

Program Name: Community Supervision – Lane County Parole & Probation

Program Purpose:

To reduce criminal behavior, enforce Court, Board of Parole and Post-Prison Supervision, and Local Supervisory Authority Orders, assist offenders to change and, provide reparation to victims

Program Description:

This program provides community supervision and sanctions for approximately 3,500 offenders on supervised probation or post-prison supervision, including misdemeanor and felony domestic violence offenders and sex offenders. It also includes investigative services, including transfer requests between counties, interstate transfer requests, and pre-sentence investigations as ordered by Circuit Court. Specialized services are as follows:

Neighborhood-Based Supervision Program: Several Probation/Parole Officers are "outstationed" in metro and rural agencies, including Eugene Police Department (EPD) substations, Junction City Police Station, Florence Justice Center, and the Housing Authority. These officers are assigned a caseload from their particular area, and they work closely with other agencies in that community, including law enforcement and social service agencies.

Sex Offender Supervision: Sex offenders receive specialized supervision from officers who have received additional training in this area. A specialized risk assessment tool is used for this population. Community notification occurs for selected cases. Polygraphs and specialized treatment programs are also utilized.

Domestic Violence Offender Supervision: Domestic violence offenders also receive specialized supervision. These officers work closely with other agencies, including victim advocates and victims themselves. Referral is made to batterer intervention programs which conform to state OAR requirements.

Defendant/Offender Management Center (DOMC): Two officers are stationed full-time at the DOMC office. A primary duty is the quick imposition of sanctions on supervised offenders in custody. These officers provide other assistance in determining custody placements, and monitoring offenders in community-based sanctions.

Gang Member/Affiliate Supervision: At least one caseload is devoted to specialized supervision of gang members and affiliates. This involves close coordination with local law enforcement and the juvenile system, as well as specialized knowledge of various gangs and how they function.

Pre-sentence Investigations: Upon the order of the court, preparation of reports containing scope of crime, criminal and social history information, victim(s) statement, medical/psychological information, sentencing guidelines computations, and recommended sentence.

Hearings: Represent Parole Board or Supervisory Authority at contested or uncontested violation hearings to determine an appropriate resolution.

Program Objectives:

To reduce criminal behavior, as measured by the number of new felony convictions after the beginning of probation or post-prison supervision.

To enforce court and Board orders, as evidenced by the percentage of positive case closures for probation and post-prison supervision cases.

To assist offenders to change, as indicated by rates of employment and treatment participation while under supervision.

To use evidence-based offender treatment programs for supervised offenders

To provide reparation to victims, as evidenced by rates of offender restitution payment and community service hours performed.

Method(s) of Evaluation:

Existing reports are available from state DOC databases on all the program objectives specified above.

SB 267 Eligible:

_____ Yes X _____ No

Monthly Average to be Served:

3500 ADP

Type of offender served:

- Probation
- Parole / Post-Prison Supervision
- Local Control

Risk Level

- High
- Medium
- Low
- Limited

Gender

- Men
- Women

Crime Category

- Felony
- Misdemeanor

Funding Sources:

<input checked="" type="checkbox"/> State Grant-in-Aid	\$ 7,558,808
<input checked="" type="checkbox"/> County General Fund	\$ 638,608
<input checked="" type="checkbox"/> Other (Client Supervision Fees)	\$ 1,082,000
<input checked="" type="checkbox"/> Other (DOR Probationer Fee)	\$ 254,000

SUBJECT: Contact Standards
DATE: 10/02/07
FILE CODE: 7-30
REFERENCE: OFFENDER SUPERVISION

POLICY:

Parole and Probation supervises offenders according to their risk level, with priority given to supervising cases assessed as high and medium risk to re-offend.

PROCEDURE:

- I. NEW: Remains a new case until completion of initial assessment and home visit with offender or determination of no residence by parole and probation officer (Indicate in keyword TRANSIENT). An offender will be considered a new case upon return to supervision if he/she has been absent from supervision for six months or longer.

- II. HIGH: **Three** contacts per month.
 - A. Must include two face to face in order of priority as below:
 1. Home visit with offender – At least one required every other month (A home visit must include entry into the offender's residence.) An attempted home visit in any form does not constitute a face to face contact.
 2. Office Visit
 3. Field Contact (other than home visit)

 - B. **The third monthly contact can be a collateral contact** (not necessarily face-to-face) – this includes contacts with treatment providers, law enforcement, spouse or other family members, employer, etc.

 - C. **The following items must be documented at least monthly:**
Employment status, treatment status, current residence, fee payments (including court, supervision, treatment). For offenders with drug use histories, sex offender conditions, or DV conditions, the status of those issues must also be addressed with the offender, and documented, as applicable.

- III. MEDIUM: Two contacts per month are required. One must be face to face in the same order as above, for High Risk.

A home visit is required every 4 months. (A home visit must include entry into the offender's residence.) An attempted home visit in any form does not constitute a face to face contact.

The following items must be documented at least every other month:
Employment status, treatment status, current residence, fee payments (including court, supervision, treatment). For offenders with drug use histories, sex

offender conditions, or DV conditions, the status of those issues must also be addressed with the offender, and documented, as applicable.

IV. LOW:

- A. Cases assessed as "low risk" on OCMS shall be classified as limited (except for cases on supervision for a person-to-person crime; see Offender Classification, File Code 7.24).
- B. Cases are classified as "low" when the offender is expected to be unavailable for supervision (e.g., in custody, residential treatment) for more than 30 days. Re-class as needed when offender becomes available again for supervision.

V. LIMITED:

- A. Cases in the limited category are casebanked cases. These are generally cases which have been assessed as low risk, according to OCMS criteria and the criteria in Section 7.24, Offender Classification.
- B. Standards and requirements for limited cases are:
 - 1. Prohibit offender from making changes in address or employment without prior permission from PO
 - 2. Require offender to pay supervision fees and other court-ordered financial obligations
 - 3. Follow up on EPRs as needed
 - 4. Sanction only as needed on violations identified by EPR or community report