
From: Cook, Tristan D - DOC <Tristan.Cook@wisconsin.gov>
Sent: Friday, July 07, 2017 12:27 PM
To: Polcyn, Bryan
Subject: RE: Probation violations / revocations

Bryan,

Our core mission is public safety. Whether an offender is on community supervision or confined in a DOC facility, we hold offenders accountable for their behavior and provide education, treatment, and programming to increase their opportunity for success in the community. When an offender violates their rules of supervision ("supervision violation"), we have a number of options available to hold offenders accountable.

An offender's supervision level is based on an agent's professional judgment as well as the offender's criminal history, recidivism risk, and a number of other factors. The levels of supervision are low, medium, high, enhanced, and intensive (for sex offenders). The amount of time an agent spends working with an offender increases as the offender's supervision level increases. There are also programs like the Milwaukee Collaborative Offender Reentry Program, which operates in conjunction with the Milwaukee Police Department, where agents conduct random home visits to increase accountability, visibility, and contact with offenders and their families.

When a supervision violation occurs, agents conduct an investigation and determine a response with their supervisor. Violations are categorized into low, medium, high, and very high severity. There are a number of options available to probation and parole agents depending on the severity of the violation, which may include a warning, amendment of the rules of supervision, a sanction, or revocation.

When there is an allegation of criminal behavior against an offender on community supervision, they are typically taken into custody immediately on a jail hold. If they are not in custody, an apprehension request is issued. Offenders typically remain in jail while DOC investigates the supervision violation.

By administrative code, the investigation into a supervision violation occurs much more quickly than a criminal investigation and trial. When DOC notes in the violation staffing guide that new criminal behavior has occurred, a probation and parole agent is using their professional judgment to determine that the alleged supervision violation constitutes criminal behavior. This is a proxy for an offender being arrested or charged with a crime, as those decisions are made by law enforcement and the relevant district attorney. In many cases, when an agent determines that a supervision violation involving criminal behavior has occurred, the offender may never be arrested or charged for that behavior.

DOC generally determines its response to a supervision violation before an offender is brought to trial. As a result, probation and parole agents must rely on their professional judgment and other information when determining the response to a supervision violation.

If an agent feels revocation is the appropriate response to a supervision violation, the agent must determine that revocation is necessary under one or more of the following conditions:

- Confinement is necessary to protect the public from further criminal activity by the offender;
- The offender is in need of correctional treatment, which can be most effectively provided if they are confined; or
- It would unduly depreciate the seriousness of the violation if supervision were not revoked.

Additionally, an administrative law judge must review DOC's recommendation to revoke the community supervision of an offender and decide whether to approve DOC's recommendation (unless a hearing is waived by the offender). DOC is required by state statute and administrative code to provide certain due process protections throughout the revocation

process, including an offender's right to have an attorney represent them. If the revocation is approved or the hearing is waived, the administrative law judge determines the amount of confinement time (except under certain conditions, e.g. an offender receives a stayed sentence). In 2016, there were 10,759 revocations statewide, including 2,408 in Region 3, which is contiguous with Milwaukee County. Please note that this includes all revocations, not just those to prison.

I would also add that there are responses besides revocation that can result in an offender spending a significant amount of time incarcerated in a county jail or DOC facility, including holds, sanctions, or alternatives to revocation.

Regarding your findings below, I believe that it's important to emphasize that every supervision violation must be investigated by the probation and parole agent and substantiated before a response is determined. When an agent and supervisor are reviewing a Violation Staffing Guide, they are determining whether the violation can be proven beyond a preponderance of the evidence. In situations where DOC is not able to substantiate a violation and an offender is later convicted for the same violation, DOC may reopen the initial investigation.

I would also note that both the severity of a supervision violation and the offender's supervision level have a significant impact on DOC's response to a supervision violation and should be considered together when reviewing the department's response to a supervision violation.

In a majority of the cases where criminal behavior was alleged and revocation was not sought, no criminal charges were ultimately brought by the District Attorney. Of these cases, only two offenders were ultimately convicted of a crime.

I would also note that there are a number of violations that do not involve criminal behavior that are considered high and very high severity violations, including failing an alternative to revocation, tampering with or removing monitoring equipment, and absolutely refusing to comply with community supervision.

Regarding Byron Thomas, he was placed in absconder status in July 2016 due to missing an appointment with his agent. During this period, he was also at the scene of a fight in early August 2016. He was arrested and placed on a hold from August 5 to 12, 2016. Following allegations that he committed armed robbery, he was placed in custody on August 15, 2016 and revoked for 1 year. He has been in custody since August 15, 2016 and his criminal trial is ongoing.

Regarding Shaquille Goodwin, he was arrested on August 8, 2016 for a supervision violation and placed in an alternative to revocation at the Milwaukee Secure Detention Facility from August 2016 to February 2017. He has not had any medium, high, or very high severity supervision violations since his release in February 2017.

Regarding Erica Lovejoy, she was arrested in November 2015 for tampering with electronic monitoring equipment, not contacting her agent, and not seeking approval before changing her residence, none of which are violations of criminal law. She was in custody at MSDF from November 6 to December 3, 2015. After her release, she was placed at a 90-day residential service program in December 2015, which she successfully completed. She was next arrested in August 2016 after testing positive for cocaine. She was in custody at MSDF from August 8 to August 19, 2016. She was required to participate in offense-related programming following her release. She was next arrested in January 2017 for absconding and was in custody from January 28, 2017 to May 1, 2017, when her community supervision discharged. As DOC cannot extend the sentence of an offender, she was released when her supervision discharged. I would also note that she has not been convicted of a violation of criminal law since her original sentence in May 2014.

Tristan

Tristan D. Cook
Communications Director
Wisconsin Department of Corrections
608-240-5060 (office)
608-422-1601 (mobile)