

**THE SUPERVISION OF FEDERAL DEFENDANTS, MONOGRAPH 111
MARCH 2007**

[Criminal Law Committee](#)

[Acknowledgements](#)

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THE SUPERVISION OF FEDERAL DEFENDANTS

Monograph 111
Office of Probation and Pretrial Services
Administrative Office of the United States Courts
Revised March 2007

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September 2003**

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- *If the defendant is in full compliance and has achieved all supervision objectives*, the plan should immediately apply low intensity supervision standards (see Chapter [V- 4](#)) and consider the appropriateness of requesting that the court remove the pretrial services supervision condition.
 - *If the defendant is progressing satisfactorily, but has not yet accomplished supervision objectives*, the plan should remain essentially the same, but should reflect any positive compliance incentives, as appropriate.
 - *If progress towards objectives is marginal* (i.e., instances of lower risk violations as defined by the noncompliance framework—see [Chapter VI](#)) the revised plan should either remain the same or reflect any revision to the objectives, the conditions, and/or the risk control and risk reduction strategies undertaken to address the noncompliance.
 - *If progress towards objectives has been unsatisfactory* (i.e., instances of higher risk violations as defined by the noncompliance framework—see [Chapter VI](#)) the revised plan is to reflect any revision to the objectives, the conditions, and the risk control and risk reduction strategies undertaken to address the noncompliance.

Subsequent Evaluations: Although most cases should be evaluated every six months, supervisors may schedule more frequent reviews depending on the complexity of the case and the experience of the officer, e.g., for a new officer in a higher-risk case with multiple supervision issues. Conversely, at the time of the case staffing, supervisors may defer the next formal evaluation for up to one year for stable defendants in full compliance for whom the court has determined that the supervision condition should not be removed. This flexibility in scheduling subsequent evaluations is designed to focus supervisors' time where it is needed most, i.e., during the first six months of supervision when the least is known about the defendant; on higher-risk cases throughout their periods of supervision; and with officers who will benefit most from coaching, instruction and mentoring.

At each subsequent evaluation, the officer and supervisor are to staff the case to reassess the defendant; discuss progress, new issues or concerns; and revise the plan as necessary. The areas of evaluation are the same as those for the six-month case staffing, described above.

The Release Status Report

Officers are to start another investigation and assessment cycle in order to prepare a Release Status Report for the court (1) just prior to the start of trial or (2) upon entry of a guilty plea by a defendant.⁹ A criminal records check is required before preparing the report.

The Release Status Report (Form [PS 38](#) or status memo containing the same information) provides a summation of the defendant's compliance with conditions of release and additional information that will assist the court in determining whether a defendant should be continued on release or detained. The officer submits the Release Status Report, along with a copy of the pretrial services report, to the judicial officer and to counsel.

The Release Status Report is to:

- inform the court of the conditions under which the defendant was released;
- inform the court of a defendant's compliance with conditions of release;
- identify risk-related case problems affecting compliance with release conditions;
- describe officer supervision strategies to monitor conditions and address risks;
- assess the defendant's performance on release;
- recommend that the defendant's release conditions remain unchanged, be modified, or revoked as supported by the information contained in the report.

The report should be disclosed in accordance with a district policy that protects the confidentiality of the report, ensures its return to the officer, and does not require the officer to attend hearings for the sole purpose of disclosing the report. For example, a reliable court employee (courtroom deputy, court clerk, etc.) may disclose the report to counsel at the appropriate time and then retrieve the report at the conclusion of the hearing.

⁹Since the presentence investigation report is to address the offender's status and performance under pretrial services supervision, a pretrial services status report is not to be prepared at the time of sentencing unless there is a local policy to the contrary or the court so directs in an individual case.

CHAPTER V. SELECTING AND EXECUTING SUPERVISION STRATEGIES

Pretrial services is the primary manager of defendants placed on pretrial supervision. The officer's primary responsibility is to develop appropriate supervision strategies to implement and monitor the defendant's compliance with release conditions set by the court to reasonably assure the defendant's appearance and the community's safety. The goal in every case is the successful completion of the term of supervision during which the defendant commits no new crimes, appears in court as required, and complies with all other court-imposed conditions of release.

The opening sections of this chapter describe the purposes and elements of core supervision activities, low intensity supervision standards, and targeted supervision activities for higher risk defendants. The next sections discuss the development and implementation of supervision strategies for cases that involve particular types of issues. The areas addressed are: Third-Party Custody, Employment, Education, Association Restrictions, Contact Restrictions, Weapons Restrictions, Residence Restrictions, Travel Restrictions and Controls, Substance Abuse, Mental Health, and Search and Seizure. These are followed by sections that address special populations (sex offenders and confidential informants) and courtesy supervision. The last section describes the documentation of supervision activities in the chronological record.

Selection Strategies

Officers are to develop an array of monitoring and, as appropriate, assisting strategies that are sufficient, but no more restrictive than necessary, to manage identified risks and facilitate desired outcomes. Strategies are comprised of a variety of activities that are tailored to the conditions imposed and the assessed risk in the individual case (see [Chapter IV](#)).

- Monitoring strategies are comprised of activities designed to detect and deter criminal activity and other noncompliance. These include activities undertaken (a) to set the parameters of the restrictions required by the conditions of release and explain the negative consequences of noncompliance; and (b) to verify compliance with all conditions. Field work verification strategies should be targeted to higher risk cases and should incorporate non-traditional early morning, evening and/or weekend hours as necessary to promote compliance and accomplish supervision objectives.
- Assisting strategies are comprised of activities designed to encourage compliance by addressing circumstances that are related to risk of danger or nonappearance. These include activities undertaken (a) to implement treatment, work or educational conditions; (b) to facilitate compliance with these conditions, for example, arranging for transportation to treatment or for child care during work/school hours; and (c) to help secure necessary employment, medical, legal, or social services *except that* in the absence of a condition, officers may not *require* defendants to secure such services (18 U.S.C. § 3154(7)).

Every supervision activity should be related to the objectives established for the individual case. Alone and in combination, the selected activities should be those deemed sufficient, but not more restrictive than necessary, to facilitate desired outcomes. The programs and tools discussed in this

chapter are to be used purposefully, only to the degree necessary to meet objectives, and as part of a comprehensive supervision plan. The strategies selected should also seek to maximize the strengths of the officer, the defendant, office specialists, and community resources to address most effectively and efficiently the specific types of risks identified in the individual case.

Core Activities

Core activities are to be undertaken in every case to appropriately monitor the defendant's compliance with the conditions of release. The frequency with which these activities are undertaken is to be guided by the level and type of defendant risk.

If the judicial officer specified the type or frequency of contact, the officer must follow that order but may request a modification if deemed appropriate based on the results of the assessment.

Report to Pretrial Services

Unless specified by the court, the officer must determine the frequency with which the defendant is to report to pretrial services, and the type of contact (e.g., personal, telephone). The frequency and method of reporting should be based on the conditions imposed by the court and the defendant's assessed risk. The officer should also consider the defendant's situation (e.g., physically disabled, work schedule) when establishing a reporting schedule.

In appropriate cases, the officer may use the Pretrial Services Supervision Report (PS-39) to obtain information regarding residence, employment, and contact with law enforcement. The officer should use this *optional* form selectively, e.g., in cases for which the officer does not have frequent contact with the defendant. *It should not be used for every defendant each time he or she reports.*

Home Contacts

One of the most valuable activities available to an officer is the home contact, which is utilized:

- as a primary strategy for verifying residence;
- to maintain an appropriate level of awareness and a supervision presence to encourage compliance in higher-risk cases;
- to monitor compliance with any restrictive conditions including, but not limited to, residence, associations, weapon possession, computer, etc.; and
- to establish rapport and maintain a dialogue with defendants and their families/house mates.

A home assessment is required during the initial assessment investigation and upon each change of residence. A home assessment includes the following elements:

- a review of documentation such as rental agreements, mortgage documents and receipts, and utility billings to verify ownership and monthly living expenses;
- observation of the interior to confirm the defendant's residence;
- verification of who else is residing at the residence; and
- plain view observation for evidence of contraband (see [V-19](#) for additional guidance on responding to contraband in plain view).

Officers should also determine, if possible, the daily schedule of the defendant and other residents for the purpose of planning unscheduled home contacts; and note other features of the residence that may assist in the supervision process or the safety of the officer, e.g., the presence of pets and the location of available exits and telephones in case of emergency.

In lower-risk cases, the home assessments required during the first month of supervision or upon a change of address may be the only home contacts undertaken during the entire period of supervision. The need for ongoing home contacts, their frequency and the specific activities to be undertaken will depend on the defendant's assessed risk, individual circumstances, and the purposes the contact is to serve.

Home contacts and assessments are *not* searches. When performing a walk-through, officers may not intrude into enclosed areas such as refrigerators, drawers, or closets without the consent of the defendant.

Criminal Record Checks

The officer should perform criminal record checks (a) no less than once every 90 days during the period of supervision; (b) before submission of a Release Status Report and/or violation reports and (c) at the time the defendant's case is terminated. The record check should encompass national and local arrests in any area where the defendant resides, works, travels, or otherwise spends time; and may be done via access to automated flash systems where available.

Advising Defendants of Known Court Dates

Officers are to ensure during all contacts with defendants that they know the dates of their next court appearances. *Defense counsel's concurrent responsibility to keep defendants informed does not relieve officers of their own responsibility to facilitate the defendant's appearance at all required court appearances.* If a defendant is unaware of the next court date(s), the officer should contact the clerk of court to obtain the court date and advise the defendant.

Low Intensity Supervision Standards

Officers must carefully assess the risks and needs in all non-petty supervision cases throughout the course of supervision. When the assessment indicates that, under the current circumstances, the defendant is likely to remain crime free, to appear in court, and to comply with all other conditions without further interventions by the officer, the case should be supervised under the following low intensity standards. “Working smart” means never supervising defendants more intrusively than required by their assessed risks and needs at any given time. Low intensity supervision is therefore appropriate *at any time* after the 30-day initial assessment period if so indicated by the results of the investigation and assessment.

Officers are to undertake the following activities in low intensity supervision cases:

- Direct defendants to call the office monthly and ensure that they are reminded of any court date(s) that fall before their next scheduled telephone report;
- Obtain criminal record checks every 90 days, before preparing a Release Status Report or a violation report, and at case closing;
- Require submission of a written monthly report (Form PS38); and
- Follow-up on any changes in circumstances, including re-assessment of danger to another person upon change of address or employment.

Likely candidates to be supervised under minimum standards would include:

- All defendants charged with petty offenses (i.e., infractions or Class B or C misdemeanors).
- Any defendant for whom an initial assessment investigation has been completed who is not in an excluded group and has a Risk Prediction Index (RPI) score of 0 or 1, has no targeted risk factors identified, is in full compliance with all conditions, and is not currently in treatment, home confinement or community confinement.
- Any defendant under supervision for more than one year who is not in an excluded group, has been in full compliance with all conditions for a minimum of 12 consecutive months, and has met or is progressing satisfactorily on all supervision objectives.

Excluded from low intensity supervision are Class A felonies; any case involving crimes of violence, sex offenses, or terrorism; any case involving drug offenses as described in 18 U.S.C. § 3142 (e); and defendants with significant ties to a foreign country.

Targeted Supervision Activities For Higher-Risk Defendants

The activities described in this section are to be undertaken *only* when required by the conditions of release or when they are both permitted by the conditions *and* deemed the least intrusive way of effectively implementing/monitoring the conditions of release.

Maintaining Law Enforcement Liaison

Other than record checks, the nature of contacts with law enforcement is limited by disclosure policies. Officers must always be aware of their limited authority to communicate information about the defendant. All such contacts are to be purposeful and must comport with the confidentiality requirements set forth at 18 U.S.C. §3153(c)(1) and the regulations found in the *Guide to Judiciary Policies and Procedures* (see [Appendix A](#)).

These regulations permit *chiefs* to authorize the release of “status” information (e.g., residence, telephone number, employer); they also permit the *judicial officer*, after giving due consideration to any promises of confidentiality to sources and any harm to any individual that might result, to authorize disclosure of information to law enforcement agencies for the following purposes:

- Investigation of a crime committed in the course of obtaining or maintaining pretrial release.
- Investigation of a failure to appear for the criminal justice proceedings with respect to which pretrial services were provided.
- Investigation of a violation of a condition of pretrial release.
- Protection of the defendant, law enforcement personnel, prison officials, or other care providers in circumstances in which an arrest is contemplated, defendant is to be confined, defendant has escaped, or other circumstances in which information must be disclosed to protect such persons or the public against any risk of harm presented by the defendant or to protect or provide necessary care to the defendant.

As examples of appropriate interaction with law enforcement agencies, officers may request information that pertains to a defendant's criminal record and, with the appropriate permission of the chief or the court, depending on the type of information that must be disclosed:

- contact law enforcement agencies if the officer has information that a defendant may have violated a condition of release, such as restricted association and/or travel;
- request law enforcement agencies to verify that a defendant lives or is at his residence in instances when the geography and/or distance, or other significant circumstance, prevent the officer from doing so; and
- request assistance from law enforcement agencies in exceptional circumstances, e.g., potentially dangerous field contacts.

When permitted, the frequency of contacts with law enforcement should vary depending on the defendant's level and type of risk. For example, permitted contact with law enforcement should be more frequent for defendants who have a lengthy arrest record, history of violence, pattern of criminal activity, and/or criminal associations.

Community Observation

Community observation is fieldwork that does not involve a direct contact with the defendant or collateral sources. It may be the preferred way to maintain awareness when it is used to unobtrusively monitor compliance with specific conditions in a way that does not intrude on the activity itself. For example, an officer might drive by an Alcoholics Anonymous meeting to see if the defendant's car is parked there; or use a drive-by electronic monitoring unit to determine if a defendant subject to a home confinement condition is at the grocery store/employment/place of worship in compliance with an approved schedule.

Community observation may also be appropriate to document or dispel suspicions that a defendant may not be in compliance with a condition of release. For example, observation of a defendant's work site or residence during the start or end time of his or her reported work schedule may be appropriate if a defendant who is required to work is suspected of falsely reporting employment. While occasional observations of this nature may be productive, prolonged surveillance is rarely worth the officer time required, is generally not appropriate, and *always requires supervisor approval*.

Referrals

Officers will often need to make referrals to other government or community agencies to secure treatment or social services necessary to implement conditions of release or to respond appropriately to defendant requests for assistance.

When making referrals or approving treatment plans for services required or permitted by the conditions of release, officers are to be guided by the principle that the intrusiveness of the intervention is to be sufficient, but not greater than necessary, to address the nature and extent of the presenting issue and accompanying risk in the individual case. Other considerations in selecting a particular provider or expert include:

- willingness to accept and experience with non-voluntary defendants;
- credentials and accreditations;
- policies and procedures that may affect the officer's ability to monitor compliance;
- comprehensiveness or specialization of programs, including a sensitivity to cultural differences;
- location and hours of operation; and
- costs for programs and services.

When the referral is required to implement a condition of release, officers should explore all financial resources available to the defendant, such as veterans benefits, private insurance, social security benefits, public funds, or co-pay from personal funds before expending "Alternatives to

Detention” (BOC 2527) funds. When services are requested by the defendant *without* a related condition of release, “Alternatives to Detention” funds may *not* be used to pay for the services. Should the officer assess that such services are needed to address a risk of nonappearance or danger to the community, the officer should advise the court and request appropriate conditions.

Under the confidentiality policy (see [Appendix A](#)), an officer may disclose pretrial services information to agencies that the court has contracted to provide supportive services and that have signed a nondisclosure agreement. Further, upon written request of the defendant, the chief may authorize disclosure of pretrial services information for the purpose of obtaining a public benefit, securing employment or providing information to a treatment or health care provider subject to the qualifications that (a) the defendant be informed the information may not be favorable and (b) such disclosure does not violate a promise of confidentiality, will not result in harm to any individual, and will not compromise the objectives of keeping pretrial services information confidential.

Addressing Danger to Another Person

If an officer determines that the defendant presents a danger to another person (see [IV-9](#)), 18 U.S.C. § 3154(5) requires the officer to notify the court and the U.S. attorney’s office of the danger and suggest any modification of release conditions or other action that might reduce the danger.

Once such danger is identified, the officer first should personally contact the assistant United States attorney and the court and follow this notification with a letter. The letter should describe in detail the apparent risk factors and recommend a course of action. Such action may include:

- adjusting supervision activities to minimize the danger;
- recommending that the judicial officer modify the release condition to preclude the individual from the employment or activity that results in the danger;
- giving a confidential warning to the person at risk or another party who can eliminate or reduce the danger;¹⁰ or
- permitting the defendant to inform the person of the factors that create the danger, followed by officer verification that the warning has been made.

In determining what recommendation to make to reduce danger, officers should also consider the possible jeopardy to the defendant's employment or other interest that could result from a warning.

Officers must obtain court approval before taking an action other than adjusting supervision activities in accordance with current conditions. They are then to monitor closely the defendant’s compliance with any actions ordered by the court.

¹⁰As noted in [Chapter IV](#), a duty to warn a third party of a reasonably foreseeable risk of harm does not arise unless the risk is to an identifiable individual. Reactions to risks to undefined groups (such as the general public) or to broad classes of individuals (such as all children in the neighborhood) should generally be addressed with other appropriate supervision strategies (such as those described in the first two bullets). Warnings to groups or broad classes should be made only after careful consideration of all of the consequences of such warnings and, of course, after consultation with and approval of the court. (See [Guide to Judicial Policies and Procedures, Volume X, Chapter IV](#).)

Additional Resources

- *Guide to Judiciary Policies and Procedures*: Volume X, Chapter IV; [Supervision Services; Part D](#), Sections 3 and 4.
- [Confidentiality of Pretrial Services, Presentence, and Supervision Release Information](#). David N. Adair, Jr., Associate General Counsel. (Available on the J-Net, OPPS Legal section).

Strategies For Addressing Particular Types of Issues

Third-Party Custody (18 U.S.C. §3142(c)(1)(B)(i))

Explanation: The court may require the defendant to remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court. The designated person must be able to reasonably assure the judicial officer that the defendant will appear as required and will not pose a danger to the safety of any other person or the community.

This condition, commonly known as third-party custody, may be appropriate for defendants who have good community or family ties; or when used with other alternatives, e.g., outpatient treatment or home confinement with electronic monitoring. The appointment of third-party custodians can also be a good option for higher risk defendants with whom it is difficult for officers to maintain frequent personal contact, e.g., those who reside in far distant geographical locations.

Strategies: If not done prior to the defendant's release, the officer should conduct a criminal record check on the third-party custodian and notify the court of any adverse findings. Officers are also to have ongoing contact with the custodian to exchange information and to continue to assess the ability and commitment of the person to fulfill his or her obligation.¹¹

After ensuring that third-party custodians are aware of their responsibilities and the potential consequences for failing to fulfill those responsibilities,¹² officers are to work to establish and maintain a constructive partnership to facilitate supervision goals. The officer should ascertain whether the custodian has experienced any problem that could affect the his or her ability to perform the requirements of the condition, and should provide assistance to resolve such problems. If a problem cannot be resolved, the officer is to notify the court and the assistant United States attorney.

Additional Resources

- *Judicial Officers Reference On Alternatives To Detention: Monograph 110*, Probation and Pretrial Services Division, Administrative Office of the United States Courts, November 1991, p. 2.

¹¹ See Appendix A for rules related to disclosing necessary information to a third-party custodian.

¹² Third-party custodians are subject to the provision of 18 U.S.C. Section 401 (contempt of court) if the custodian does not comply with the court's requirements.

Employment (18 U.S.C. §3142(c)(1)(B)(ii))

Explanation: The court may require that the defendant maintain employment or, if unemployed, actively seek employment if it determines that employment may alleviate or reduce the potential risk that a particular defendant (e.g., one who is young or one with inadequate community ties, may not appear or would pose a danger. Employment provides a point of contact for the officer and makes productive use of the defendant's time. Officers are also to assist, but absent a condition may not require, any defendant who is released to secure employment.

Strategies: Officers verify an employed defendant's compliance with a condition to maintain employment by reviewing paper documentation, contacting employers, and/or contacting the defendant at work. The choice of verification strategies is to be determined by the nature of employment, the potential for loss of employment, and the risk factors presented by the employment. If the officer determines that direct contact with the employer may negatively jeopardize the defendant's employment, the officer should use other means of verification, e.g., review pay stubs; telephone/observe the defendant at work.

Officers should assist any unemployed defendant who is subject to an employment condition to secure employment through e.g., referrals to employment agencies; and may provide such service to defendants without a condition if they so request. Officers should also verify the job-seeking activities of unemployed defendants who are required to seek or maintain employment. Defendants seeking employment should provide the names of the employers where they have applied for work, and for documentation verifying these efforts, e.g., an application to or correspondence from a potential employer. Personal contact with prospective employers is usually not appropriate, but officers may directly contact any employer who interviewed, but did not hire, the defendant. The officer should be careful not to jeopardize any of the defendant's future employment opportunities.

Additional Resources

- *Special Needs Offenders Bulletin*, "Reducing Risk Through Employment and Education" (Federal Judicial Center, February 2000) and Federal Judicial Center Broadcast (March 2000).

Education (18 U.S.C. §3142(c)(1)(B)(iii))

Explanation: The court may require a defendant to maintain or commence an educational program to assure that the defendant is occupied by responsible activity, which will help reduce the potential for nonappearance or danger. Officers are also to assist, but absent a condition may not require, any defendant who is released to secure educational services.

Strategies: Officers are to help defendants locate and enroll in an acceptable educational program, as necessary; and then verify enrollment and attendance using strategies that avoid adversely affecting the defendant's enrollment. Direct contact with the school is not usually appropriate. Officers can monitor compliance by reviewing documentation (e.g., registration materials, class work, grade reports); contacting the defendant at school; or verifying attendance with relatives or a third-party custodian.

Additional Resources

- *Special Needs Offenders Bulletin*, “Reducing Risk Through Employment and Education” (Federal Judicial Center, February 2000) and Federal Judicial Center Broadcast (March 2000).

Association Restrictions (18 U.S.C. §3142(c)(1)(B)(iv))

Explanation: The court may restrict a defendant’s personal associations to reduce the likelihood that the defendant may engage in criminal activity through association with such people as co-defendants, unindicted co-conspirators, or gang members.

Strategies: To monitor restrictions on associations, officers should make unannounced home contacts, and further verify compliance through collateral contacts with the assistant United States attorney, family, and other relevant persons, including, where appropriate, law enforcement officials. Other unannounced field contacts may be appropriate depending on the nature of the risk giving rise to the contact restriction (e.g., gang membership; danger to another person).

Officers should also communicate with other officers who may supervise co-defendants to ensure that there has been no unauthorized contact between or among defendants; and may use PACTS to check for other defendants and offenders who live at or near the same address or who work for the same employer.

Additional Resources

- *Special Needs Offenders Bulletin*, “Street Gangs” (Federal Judicial Center, August 1997) and Federal Judicial Center Broadcast, “Overview of Gangs in the Federal System” (1997).

Contact Restrictions (18 U.S.C. §3142(c)(1)(B)(v) and (xiv))

Explanation: The court may impose restrictions on the defendant’s contact with alleged victims or potential witnesses to reduce potential danger to a person or to reduce the likelihood that the defendant may obstruct justice. This condition may be appropriate if, for example, the court has information that the defendant has interfered or may attempt to interfere with the prosecution of the case; that the defendant intimidated or may attempt to intimidate a victim or witness; or that the victim is young, infirm, or easily intimidated. The court may also impose restrictions on the defendant’s contact with other persons if deemed necessary to address an identified danger to the person.

Strategies: To implement contact restriction conditions, officers are to advise defendants of the name(s) of persons with whom they are to avoid contact; and then inform the person(s) specified on the release order that the condition is in place and advise them to notify the officer if the defendant contacts them.

Officers should further verify compliance with this condition through periodic follow-up contacts with the individuals to whom the order pertains; and collateral contacts with the assistant United States attorney and law enforcement agencies, as appropriate.

Weapons Restrictions (18 U.S.C. §3142(c)(1)(B)(viii))

Explanation: Courts may impose a condition requiring that the defendant refrain from possessing a firearm, destructive device, or other dangerous weapon. A weapons restriction may be appropriate for defendants with a history of weapons offenses or who are currently charged with crimes involving violence or weapons in order to address an identified public safety risk.

Strategies: The officer should first clarify for the defendant exactly which items are restricted and instruct any defendant who possesses restricted items to make arrangements immediately to transfer these items to local law enforcement or another person who does not reside with the defendant. The designated custodian of the items should reasonably assure the court that the items will not be returned to the defendant without the court's permission.

To monitor the defendant's compliance with a weapons condition, officers should verify that the restricted items were transferred to the designated custodian and advise the designated custodian to notify the officer if the defendant violates this condition. Officers should also check with collateral sources who are in a position to know if the defendant is in compliance with this condition; and observe for restricted items in plain view during home contacts. (See [V-20](#) for guidance on how to respond to contraband in plain view.)

Residence Restrictions

The court may require defendants with unstable or unsuitable living arrangements to reside at a specific address. For example, younger defendants can be required to reside in the home of their parents; defendants in need of more structure or those with no suitable place to live can be placed in a halfway house. The court may also require that defendants remain in their homes or return to custody for specified hours.

Required Residence at a Specified Private Address (18 U.S.C. §3142(c)(1)(B)(iv)): The defendant's initial compliance with this condition is verified by the home assessment conducted during the initial assessment investigation. Continued compliance can be monitored through review of rent receipts/mortgage payments or utility bills, announced and unannounced home contacts with the defendant, and/or collateral contacts with family and house mates.

Halfway House Placement (18 U.S.C. §3142(c)(1)(B)(iv)): A halfway house is a community-based residential facility. Defendants may leave the premises only with permission and for approved activities, e.g., employment, school, or medical treatment. When the court orders halfway house placement, the officer should:

- contact the halfway house and arrange the defendant's admission;
- execute appropriate release of information forms;
- send a copy of the pretrial services report along with a referral letter which contains (1) the officer's authorization for the defendant to be absent from the facility at specific times and for specific purposes, (2) the conditions of release, and (3) a brief description of supervision issues;
- advise the halfway house staff to notify the officer if the defendant does not comply with the facility's regulations or the conditions of release;
- contact the facility counselor in person or by telephone to monitor the defendant's performance; and
- meet with the defendant in the facility and, as appropriate, in the pretrial services office and the community.

If placed in a halfway house facility solely for residential purposes, a defendant should only be required to abide by the rules of the facility to the extent necessary to maintain order and safety.

Additional Resources

- *Judicial Officers Reference On Alternatives To Detention: Monograph 110*, Probation and Pretrial Services Division, Administrative Office of the United States Courts, November 1991, p. 17.

Home Confinement (18 U.S.C. §3142(c)(1)(B)(vii and xiv)): The court may impose as a condition of release that a defendant remain at his or her place of residence during specified hours. Monograph 113, *The Federal Home Confinement Program For Offenders and Defendants*, provides specific guidance on home confinement policies and procedures, which are summarized below.

Levels of Home Confinement: There are three levels of home confinement: curfew, home detention, and home incarceration.

- Curfew, the least restrictive condition, prohibits the defendant from leaving his/her residence during specific hours, generally at night.
- Home detention, the most common condition, restricts the defendant to the residence at all times except for approved leave for employment, education, medical attention, religious practice, or treatment.
- Home incarceration restricts the defendant to the residence at all times except for approved absences for religious or medical reasons.

The level of home confinement recommended by an officer is to be the least restrictive necessary to facilitate desired outcomes.

Strategies: Electronic monitoring is the preferred tool for monitoring whether a defendant is at home at the required times. It is less labor intensive, less intrusive, and more effective than utilizing a strategy that combines frequent home contacts and random phone calls for verification. When a defendant's medical condition or other circumstances preclude use of traditional electronic monitoring, officers can verify compliance through telephone contacts, home contacts, or location verification systems that do not require the defendant to wear a tamper-resistant transmitter (e.g., automated telephone contact systems).

If the condition is to be monitored through telephone contacts, the defendant should not have the special telephone feature "call forwarding," which allows defendants to appear to be at their residence when they are actually at another location. If an officer determines that a defendant has and will not remove this feature, the officer should notify the court and the assistant United States attorney and recommend appropriate action. The officer should continue to verify that a defendant does not have "call forwarding" on the residence telephone by reviewing the defendant's telephone bill for special feature-billing, and/or contacting the telephone company.

Other strategies are needed to monitor the additional schedule requirements. Unannounced field contacts, personal and collateral telephone calls, and/or drive-by checks are needed to verify compliance with the approved schedule—for example, to verify employment or attendance at doctors' appointments or religious activities.

In the highest risk cases, global positioning satellite systems may be considered for use in monitoring both home and other location restrictions, but only if the district has developed a local policy to guide the use of this intensive monitoring strategy. As with traditional electronic monitoring, the home confinement condition should include explicit authority to use this tool.

Whenever any form of automated monitoring is employed, officers are required to respond promptly to alerts on a round-the-clock basis. They are also to conduct on-site inspections of the equipment at least monthly to check that it is functioning properly.

In keeping with the direction provided in Monograph 113, officers should make effective use of earned leave as a tool for assuring that the condition of a defendant's pretrial release remain the least restrictive necessary to reasonably assure appearance and community safety.

Additional Resources

- [*Monograph 113: The Home Confinement Program*](#). Federal Corrections and Supervision Division, Administrative Office of the United States Courts, June 1999.
- [*Remote Supervision Technologies*](#). Federal Corrections and Supervision Division, Administrative Office of the United States Courts, April 1999.

Intermittent Custody (18 U.S.C. §3142(c)(1)(B)(xiii))

Explanation: The court may require the defendant to return to custody for specified hours following release for employment, schooling, or other limited purposes.

Strategies: To implement and monitor this condition, officers should:

- contact the facility and arrange for the defendant's custody;
- provide the facility with a written referral and instructions that describe the terms under which the defendant may be released;
- execute a written agreement with the facility requiring the facility to notify the officer of all apparent violations;
- contact the facility to verify the defendant's arrival and continue with follow-up contacts to monitor the defendant's continued compliance;
- monitor the defendant's activities when the defendant is not at the facility to ensure compliance with the other release conditions; and
- as appropriate to the defendant's risks and objectives, advise the employer, school personnel, or other appropriate persons to immediately notify the officer if the defendant fails to report.

Additional Resources

- *Judicial Officers Reference On Alternatives To Detention: Monograph 110*, Probation and Pretrial Services Division, Administrative Office of the United States Courts, November 1991, p. 19.

Travel Restrictions and Controls

The court may impose conditions that restrict a defendant's travel as deemed necessary to reasonably assure appearance and protect the community; and may require defendants who are nonappearance risks to surrender or not obtain passports or travel documents.

Restricted Travel (18 U.S.C. §3142(c)(1)(B)(iv)): The court may restrict the defendant's travel to reduce the risk of nonappearance and/or danger. The officer is to provide clear instructions to defendants as to where they are and are not permitted to go; to explain the process for requesting permission to travel in advance; and to monitor compliance with the restrictions through contacts with the defendant, family and significant others and/or use of available technologies (see [V-13](#)). If a defendant requests permission to travel, officers are to investigate the legitimacy and necessity of the travel; obtain copies of the itinerary and, as appropriate, train, airplane or bus tickets; and request the court's permission as necessary.

Even when restricted travel is not a condition of release, officers should keep informed of travel plans to maintain awareness of the defendant's whereabouts and adjust supervision strategies accordingly.

Surrender Passport or Travel Documents (18 U.S.C. §3142(c)(1)(B)(xiv)): The officer should verify that the passport was surrendered as ordered. If the court ordered the defendant to surrender his or her passport to the clerk of court, the officer should verify both that the passport was surrendered and that a notice of surrendered passport was sent to the United States Department of State.¹³

If the court ordered the defendant to surrender the passport to the pretrial services or probation office, the officer should:

- specify when the passport is to be surrendered;
- after obtaining the passport, give the defendant a receipt for the passport (PS Form 41) containing the defendant's name, the date the passport was surrendered, the passport number, the country of origin, the defendant's signature, and the officer's signature;
- retain a copy of the receipt in the case file;
- submit a notice of surrendered passport to the Department of State ([Form PS40](#));
- when the defendant cannot locate his or her passport, require the defendant to submit an affidavit through his or her attorney stating such;
- notify the court and the assistant United States attorney when the defendant cannot locate his or her passport; and
- after disposition of the case, notify the Department of State that the condition prohibiting possession of a passport no longer is in effect ([Form PS40](#)) and follow the procedures in [Appendix E](#) to dispose of the passport.¹⁴

The officer should follow the above procedures when the defendant has been ordered to surrender other travel documents, such as a visa, *except that* the Department of State is not to be notified.

If the court ordered the defendant to *surrender certification* to the clerk of court, the officer must verify that the license or certification was surrendered as ordered. If the court ordered the defendant to surrender certification to the pretrial services or probation office, the officer should follow the “Surrender Passport” procedures above *except* that certification should not be forwarded to the Department of State.

¹³ Often the court will order the defendant to surrender the passport to the clerk of court. If the clerk of court does not record the surrender on the docket sheet, the officer should interview the clerk of court to verify the surrender. The officer should also verify that the clerk of court submitted the notice of surrendered passport to the United States Department of State. If the clerk of court did not do so, the officer should.

¹⁴ See [Appendix E](#) for information regarding the handling of foreign passports, and the J-NET, Probation & Pretrial→Supervision and Investigation→[Passports](#) for additional information on disposing of foreign and domestic passports.

Obtain No Passport (18 U.S.C. §3142(c)(1)(B)(xiv)): If the court orders that a defendant not obtain a passport while on release, the officer should submit a “Notice Regarding Passport” (Form PS40) to notify the Department of State of the court’s order. When bond is exonerated and this condition no longer exists, the officer should submit the "Notice Regarding Passport" to notify the Department of State that the restriction no longer exists.

Substance Abuse (18 U.S.C. §3142(c)(1)(B)(ix) and (x))

Use Restrictions

Explanation: The court may order that a defendant refrain from any use or from excessive use of alcohol, or any use of a narcotic drug or other controlled substance to address risks associated with both nonappearance and community safety. It is usually imposed with a companion condition for substance abuse testing and/or substance abuse treatment. These conditions may be appropriate for defendants who test positive for drug/alcohol use at the time of arrest, those with a criminal history of alcohol or drug-related crimes, or defendants with a history of substance abuse.

Strategies: In the absence of a legitimate prescription, defendants are prohibited from using a narcotic drug or a controlled substance. The officer must obtain a letter or a copy of a prescription from the defendant's doctor that confirms the legitimate use of such substances.

The most effective way to monitor drug use is by substance abuse testing. The three-phase urine collection system required of probationers, parolees, and supervised releasees in treatment is not required of defendants under pretrial services supervision. Testing at the equivalent of Phase I (i.e., a minimum of three random tests with less than 24 hours notice per month) or Phase II (a minimum of two such tests per month) may be appropriate throughout the pretrial period for defendants who are in treatment.

Testing should be administered randomly and unannounced. Randomness is critical to prevent defendants from “timing” their drug use or attempting to manipulate testing results through chemical or other means. Except where geographical considerations make it prohibitive for a defendant to come to the office on short notice, random testing should be done by the office rather than a contractor. Scheduled drug tests serve little purpose and so should rarely be included as part of a contract or non-contract treatment plan.

The results from any local tests performed by office staff or a contractor using on-site local laboratories or hand-held urine testing devices are to be sent to the national laboratory for GC/MS confirmation **only** if the result is positive *and* such result subjects the defendant to possible imprisonment *and* either the defendant contests the accuracy of the results or there is some other reason to question the results of the test. The defendant’s admission of use should be documented in writing. (See the forms section of the J-NET for a [model admission form](#), the PROBPTS-4, that districts may wish to use.)

Alcohol abstinence conditions are to be monitored through collateral contacts with family and associates who have daily opportunity to observe the defendant's behavior, and through frequent, random breathalyzer or saliva tests. Urine testing, even if random, is unlikely to provide an accurate window of use, given that alcohol is excreted at a rate of approximately one (1) ounce per hour.

If the restriction prohibits "excessive use of alcohol," the officer should define the term so the defendant understands the meaning of "excessive." Excessive use of alcohol results in functional impairment of the individual, such as alcohol-induced disorderly or violent behavior, impaired job performance, and criminal offenses related to alcohol use, e.g., DUI/DWI.

In addition to clarifying the boundaries of use conditions and substance abuse testing, officers should also observe a defendant's behavior for physical signs of substance abuse or use of alcohol, e.g., slurred speech, rhinorrhea (runny nose), reddened eyes, and constricted or dilated pupils; and may contact significant others, e.g., relatives, co-signers, employers, to monitor the defendant's compliance with this condition when collateral contacts are deemed appropriate.

Additional Resources

- The Supervision of Federal Offenders, [Monograph 109](#), Chapter IV, pp. 19-22, and [Appendix I](#).

Substance Abuse Treatment (18 U.S.C. §3142(c)(1)(B)(x))

Explanation: If deemed necessary to reduce identified appearance and danger factors associated with a defendant's substance use, the court may impose a condition that the defendant undergo treatment for drug or alcohol dependency, and, if required, remain in a specified institution for that purpose.

Strategies: The first step in implementing this condition is to assess whether or not the defendant is drug-dependent. Sufficient information may already be available from the pretrial services investigation report, for example, pre-appearance drug test results, the score on the Texas Christian University Drug Screen II questionnaire ([TCU Drug Screen](#)), reports on the defendant's previous participation in treatment programs, or a prior diagnosis of drug dependency.

When, however, a defendant has a substance abuse treatment condition and the available information as to drug dependency is conflicting or inconclusive, the TCU Drug Screen should be administered during the initial assessment investigation. Absent other evidence to the contrary, a TCU Drug Screen score under 3 indicates that the defendant is not drug dependent. Ordinarily, the interventions for such defendants should be limited to substance abuse educational or support services instead of treatment; and no contract funds should be expended for these interventions.

If treatment is needed, defendants may be referred to contract or non-contract inpatient or outpatient treatment facilities for substance abuse. (See also [V-6](#) for general information on making referrals and disclosing information to service providers.)

To implement and monitor the defendant's compliance with this condition, the officer should:

- have the defendant sign [Form PS6B](#), “Authorization to Release Confidential Information (Drug or Alcohol Abuse Programs) Unrestricted Communication”;
- confer with the specialist to discuss available and appropriate treatment resources;
- discuss, or team with the specialist to discuss, treatment alternatives with the defendant;
- refer the defendant to the treatment provider by telephone and follow this referral with a packet that contains a cover letter, consent form, executed copy of [Probation Form 45](#) (may be sent, but is not required to be sent, to non-contract providers), and a copy of the pretrial services report;
- conduct a treatment plan orientation with the defendant to discuss purposes, expectations, and any obstacles;
- give the defendant in writing the treatment provider's name, address, telephone number, and intake appointment time, and offer to assist in resolving any logistical problems; and
- contact the treatment provider to ensure that the defendant appeared as required.

Officers should be involved in the treatment process and not relinquish the supervision of the defendant to the treatment facility. To effectively supervise defendants in inpatient or outpatient treatment, the officer should consult with the treatment counselor, tour the treatment facility, and review the defendant's response to treatment. Personal contacts at the treatment facility on at least a quarterly basis also will ensure that the defendant receives appropriate and required services.

Additional Resources

- *Judicial Officers Reference On Alternatives To Detention: Monograph 110*, Probation and Pretrial Services Division, Administrative Office of the United States Courts, November 1991, p. 4.
- *Perspectives on Probation and Pretrial Services: Substance Abuse Offenders*, FJC Broadcast April 2000.
- *Substance Abuse: What's Different About Women*, Federal Judicial Center Broadcast, February 2002.
- *Substance Abuse: Putting the Monograph Principles to Work*, Federal Judicial Center Broadcast, January 2004.
- *Substance Abuse: Introducing the TCUDS*, Federal Judicial Center Broadcast, August 2004.
- *Substance Abuse: Supervising the Alcoholic* Federal Judicial Center Broadcast, November 2004.

Mental Health (18 U.S.C. §3142(c)(1)(B)(x))

Explanation: The court may impose a condition that the defendant undergo psychological or psychiatric treatment to reduce the risk of nonappearance and/or danger associated with a defendant's emotional or mental health. Although the defendant may have no past history of mental health issues or treatment, this area should be explored carefully at the time of the post-release intake interview and throughout the period of supervision. The arrest and any subsequent conviction and sentencing are stressful events that may trigger depression and suicidal tendencies even in those with no past history of mental health issues or treatment.

Strategies: Officers who work with mentally disordered defendants must be patient and flexible, have a basic knowledge of mental health disorders, and be particularly skilled in firm yet non-confrontational communication strategies. Confrontations are generally counterproductive with this population and are strongly discouraged. Whenever possible, mental health cases should be supervised by an officer (or a team that includes an officer) who is a Mental Health Specialist or has specialized mental health training.

Referrals for mental health treatment should follow the steps outlined above for substance abuse referrals. In addition, mental health cases must be supervised closely with strategies aimed at monitoring compliance with any medication regimen and detecting signs that may indicate that the defendant is a danger to others or disoriented to an extent that could affect appearance.

Threats of suicide, psychotic symptoms (e.g., auditory/visual hallucinations, delusions) and other indications that the defendant is not taking required medications may indicate that the defendant is at imminent risk of dangerous behavior and must be reported to the mental health treatment provider *immediately*. Officers should also pay attention to signs of withdrawal (such as poor hygiene, disorganization within a household, or drastic changes in physical appearance); and check with the defendant and collateral sources even more frequently than usual during periods of increased stress (e.g., court appearances; holidays; changes in work, living arrangements or personal relationships).

It is critical in these cases to establish a collateral network that includes both treatment providers and individuals who are in daily contact with the defendant and thus in the best position to observe early signs of deteriorating and/or dangerous behavior. Further, defendants with mental illness require more flexibility and patience on the part of the officer. Cognitive impairment, delusions, confusion, or side-effects from medications may result in a mentally disordered defendant's failure to report for an office/treatment appointment. Circumstances such as these may be beyond the defendant's control and may require special consideration.

Additional Resources:

- *Guide to Judiciary Policy and Procedures, V. 10, [Chapter 11](#).*
- *Handbook for Working with Mentally Disordered Defendants and Offenders.* Federal Judicial Center.
- *Supervising Defendants and Offenders with Mental Disorders,* Federal Judicial Center Broadcast, February 2003.
- *Safety Series: Defendants and Offenders with Mental Health Disorders* , Federal Judicial Center Broadcast, January 2005.

Search and Seizure

Search: There is no explicit authority in Title 18, United States Code, for a condition of pretrial release that permits warrantless searches and seizures. Nonetheless, such conditions are sometimes imposed. These conditions present a number of serious difficulties because officers performing pretrial services have limited law enforcement authority; and lack training in search and seizure law, in search techniques, and in handling seized evidence. For similar reasons, the Committee on Criminal Law has discouraged searches of *offenders*. Searches of defendants should be performed even more rarely.

The Model Search and Seizure Policy for Probation Officers, which the Judicial Conference authorized for distribution in March 1993, is applicable only to offender searches, but may be used as guidance if defendant searches are required (see [Appendix D](#)).

The purpose of a search condition is not to gather information for prosecution purposes, but rather to ensure that a defendant is complying with other conditions of release. Generally, pretrial services information cannot be used on the issue of guilt in a criminal proceeding. Nonetheless, the judiciary's confidentiality regulations, enacted pursuant to 18 U.S.C. § 3153(c)(2) and (3) allow for use of such information in the prosecution of a crime committed in the course of obtaining or maintaining pretrial release (see [Appendix A](#)). Because it would be very difficult to accurately predict prior to a search whether an exception to the general rule of confidentiality would apply, officers should advise law enforcement officers assisting in a search that the judiciary's confidentiality regulations govern whether any evidence obtained during the search would be admissible in any later criminal proceedings.

Plain View Seizure: The nature of supervision may place officers in situations where evidence of criminal activity is within their sight. If permitted by the adopted local district policy, officers may, in accordance with the "plain view doctrine," seize contraband in plain view without a condition. The plain view doctrine permits the seizure of contraband if the following criteria are met:

- the officer is legally on the premises where the item is seen, e.g., conducting a home assessment;
- the contraband is within the plain sight of the officer; and
- it is immediately apparent that the item is illegal in and of itself (e.g., illegal drugs) or with respect to the defendant (e.g., a firearm in the home of a felon).

Officers are encouraged to exercise caution and sound judgment in applying the plain view doctrine. Situations may arise where it is lawful, but not prudent or safe, to seize evidence. Leaving the area and contacting a supervisor for guidance is often the safer and more productive course of action.

If evidence of new criminal conduct or another violation is seized pursuant to either a search or plain view seizure, officers must take appropriate steps, consistent with their office policy, to ensure that the evidence is safely and appropriately secured.

Additional Resources

- *Guide to Judiciary Policies and Procedures*, Volume X, Probation Manual, Chapter 13, [Part M](#).
- Office of the General Counsel Decisions: [Search and Seizure](#). J-Net→Probation and Pretrial Services→Legal Opinions and Articles.

Special Populations

Sex Offender Registration

Officers are to assess the applicability of registration and notification requirements for defendants who are convicted of an instant offense involving sexual misconduct or who have a conviction for a sex offense in their history. Officers should first determine if the defendant has (1) a federal conviction for a sex-related crime for which the offense conduct concluded on or after November 26, 1998,¹⁵ or (2) a state conviction for a sex-related crime, or (3) a military conviction for a sex-related crime for which the conviction/adjudication occurred on or after September 1, 1997. If the registration requirement appears to apply, the officer should inform the court of the conviction and request that the court add a condition of release requiring the defendant to register.

If the condition is imposed, officers should instruct any unregistered defendant according to the registration procedure reflected in their state's guidelines. Individual state laws governing registration and notification differ in many respects—including whether it is the conviction or the sentence that triggers the registration requirement. Officers may therefore need to discuss the applicable process with their supervisors, specialists or community experts in their own and other districts so that they may appropriately instruct the defendant and verify compliance. Notification requirements must also be considered when approving interstate travel or accepting or transferring jurisdiction/supervision of sex offenders. Defendants under courtesy supervision in another state are subject to the registration laws of the state in which they reside.

Additional Resources

- *Special Needs Offenders: An Overview of Sex Offenders in the Federal System*, Federal Judicial Center, 1998 (publication and broadcast).
- *Special Needs Offenders: Close-up: Sex Offenders Update*, Federal Judicial Center, 2002 (publication and broadcast).

¹⁵ Federal sex crime statutes include, but are not limited to: 18 U.S.C. § 1201 (Kidnapping) involving a minor victim, Chapter 109A (Sexual Abuse), Chapter 110 (Sexual Exploitation and Other Abuse of Children), Chapter 117 (Transportation for Illegal Sexual Activity and Related Crimes), or any such offenses prosecuted pursuant to 18 U.S.C. §§ 1152 and 1153 (Indian Country).

Confidential Informants

Some defendants are or may become confidential informants. Defendants may agree to cooperate with the government to receive favorable prosecutorial or sentencing consideration. The officer should ask law enforcement agents, the assistant United States attorney, and the defendant about the extent and type of the defendant's cooperation, e.g., testifying or negotiating a drug deal. If the defendant's cooperation affects his or her ability to comply with the conditions of release, the officer should discuss this with the United States attorney and defense counsel to resolve the conflict. The officer should notify the court of the conflict and, where appropriate, recommend a modification of the conditions of release.

Defendants under supervision who are confidential informants may present a risk to the safety of the officers who supervise them. On February 14, 1995, the Committee on Criminal Law of the Judicial Conference suggested the following procedures for the management of defendants who are acting as confidential informants:

- The law enforcement agency utilizing the defendant as a confidential informant will notify the pretrial services officer assigned the case of the “status” of a defendant as a confidential informant.
- The pretrial services officer will provide the law enforcement agency a copy of the conditions of release and the officer’s planned supervision strategies.
- The law enforcement agency will advise the pretrial services officer of any changes in the investigation which will either impact on the supervision strategies or require a change in the conditions of release.
- The law enforcement agency will advise the pretrial services officer of any violations of the conditions of release by the defendant.

Additional Resources

- [*Suggested Procedures for the Management by Federal Probation and Pretrial Services Officers of Defendants and Offenders Who are Confidential Informants*](#). Prepared by the Administrative Office of the United States Courts and Approved by the Judicial Conference Committee on Criminal Law. Distributed February 14, 1995.

Courtesy Supervision

Supervision standards are the same whether the defendant is supervised in the district of jurisdiction or in another district, i.e., courtesy supervision. Because a defendant is supervised by one district for another, communication and cooperation between the two districts is imperative. To begin the supervision process, the officer in the district of jurisdiction should:

- before the defendant's travel, telephone the district of supervision to inform that office of the defendant and advise that a letter requesting supervision will follow;

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- send a letter to the district of supervision to request courtesy supervision and, where appropriate, include supervision instructions, giving particular attention to any of the court of jurisdiction's rules regarding permissible activities or requirements for reporting to the court;
 - submit or verify submission of any passport notice that is required; and
 - send a copy of the order of release, the pretrial services report, and other pertinent documents, e.g., indictment or complaint, chronological records, to the case officer in the district of supervision.

The officer in the district of jurisdiction should notify the district of supervision of the dates of all judicial proceedings, and should contact the district of supervision as needed to monitor the defendant's compliance with the conditions of release.

The district of supervision should:

- prepare the Pretrial Release Reporting Instructions (Form PS7), review them with the defendant, and provide the defendant with a copy;
- conduct a home assessment;
- assess current risks and develop and implement the supervision case plan; and
- notify the district of jurisdiction in writing of all apparent violations.

The expenditure of "Alternatives to Detention" (BOC 2527) funds in courtesy supervision cases is the responsibility of the district of supervision.

Both districts should regularly communicate with each other to ensure that each office is aware of case problems and changes, and that appropriate action is taken to address those problems and changes.

At times a defendant is arrested and released in a district other than the district of jurisdiction. When this occurs, the district in which the defendant was released will advise the district of jurisdiction that they will provide courtesy supervision. The district providing supervision is not required to wait for a request for courtesy supervision from the district of jurisdiction. The district of jurisdiction should then advise the courtesy supervision district if conditions change when the defendant appears in the district of jurisdiction.

Recording Supervision Activity

The chronological record is the means by which officers document key elements of the defendant's circumstances and the supervision process, with emphasis on the work done to accomplish the desired outcomes of supervision and the results achieved.

The chronological record also conveys accurate up-to-date information about the case to facilitate:

- communication among officers and office staff who may share responsibility for the case during the period of supervision;
- supervisory oversight of the appropriate application of supervision statutes and policies in each individual case; and
- evaluation of the quality and effectiveness of program implementation at office, district and national levels.

It is essential that these records be complete, accurate, and prepared contemporaneously to the event recorded.

Content of the Chronological Record

The chronological record is to include only meaningful events that describe:

- the status, conduct and condition of the defendant;
- the supervision activities undertaken by the officer to implement the supervision plan and respond to identified risk/need issues; and
- key case processing events that affect the parameters of the supervision term (e.g., conditions added or removed by the court) or the supervision plan (e.g., plan staffings).

It is generally inappropriate for officers to include (1) future events (except those to document specific officer instructions to a defendant) or (2) incidental communications among office staff (e.g., e-mails between officers to *schedule* a home contact or a case staffing); and always inappropriate for supervisors to use the chronological record as the vehicle to document officer performance issues or to provide instruction to an officer.¹⁶ There is also no need to record the receipt of routine documents (e.g., monthly reports from defendants or treatment providers; documentation of financial payments) that are themselves in the file *unless* they reflect changed circumstances or otherwise prompt officer action.

¹⁶ Future events are more efficiently recorded in a calendaring system that can produce reminders. Officer performance issues and supervisory instructions to an officer should be documented in the officer's file—and calendared for follow-up by the supervisory officer—rather than memorialized in the defendant's file. See also footnote 2 and [Quality Performance Management](#).

Content of a Chronological Record Entry

Chronological entries reflect the professionalism of the officer and are to be purposeful, precise, objective and ready for judicial review. Specifically:

- Each entry must be both factual and pertinent.
- Each entry should be a clear, concise statement that describes the “who, what, how, when, why and where” of a relevant event.
- When recording contacts, summarize the purpose of the contact, the issues addressed and, as appropriate, any action taken by the officer, the reaction of the defendant, and/or any change to the defendant’s status.
- Avoid verbatim “I said then s/he said” reporting and get to the point.
- Avoid editorializing and recording unsupported personal opinions.
- Do not record extraneous information that is not germane to supervising the defendant.
- Do not use slang or pejorative terms (except as may be relevant when quoting others).
- Do not use any but the most basic abbreviations (e.g., FBI, DEA, USPO, USPSO, UA etc.) without first providing the full reference.¹⁷
- Do proof entries for spelling and grammar.

¹⁷ For example, to avoid having to repeat the full name of a local treatment provider, give an abbreviation along with the full name the first time the provider is mentioned, and then use the abbreviation alone in later references, e.g., “Mr. Jones was referred to the Glendale Substance Abuse and Mental Health Counseling Center (GCC) for outpatient services.”

CHAPTER VI. MANAGING NONCOMPLIANT BEHAVIOR

Introduction

Overview

The desired outcomes of pretrial services supervision are for the defendant to (1) commit no crimes, (2) appear for all court hearings and (3) comply with court-ordered conditions of release. This chapter provides guidance on officer responses when alleged violations of release are detected.

The conditions of release establish the behavioral limitations with which the defendant must comply. Defendant actions that do not conform to the conditions of release constitute noncompliant behavior. *Management of noncompliant behavior is critical to effective supervision and to the reduction of unnecessary detention.*

Noncompliant behavior may consist of new criminal activity, failure to appear for court hearings, or failure to meet the requirements of other conditions, commonly known as a technical violation. Because noncompliant behavior can take many forms and may or may not entail substantial safety concerns, officers should be particularly attentive to the thoroughness and objectivity of their assessment, the judicious exercise of their authority, and their professional demeanor when addressing noncompliance with defendants. All responses are to be sufficient, but not greater than necessary, to bring this individual defendant into compliance.

Officers are expected to take the following actions in response to noncompliance:

- Intervene with both risk control strategies to hold the defendant accountable and to deter further noncompliance, and also with risk reduction strategies to help prevent further noncompliance and to promote success during the period of supervision. (See [VI-4](#).)
- As required, report violations to the court and the U.S. attorney and recommend action proportionate to the degree and level of noncompliance. (See [VI-7](#).)
- Document the noncompliance and each of the above actions in the chronological record. (See [VI-9](#).)

Philosophy

A judicial order that releases a defendant into the community pending trial, sentencing, or appeal requires the defendant to comply with certain conditions of release. These conditions are imposed by the court to reasonably assure that the defendant will appear as required and not endanger the safety of any person or the community.

Intervening early and effectively in response to noncompliant behavior can enhance the probability that the defendant will meet desired outcomes. To do nothing in response to any violation, no matter how minor, only invites further noncompliance and is therefore not an option.

Officers are to respond to *all* instances of noncompliance with a “two-pronged” approach that includes a combination of risk control and risk reduction interventions.

- Risk control interventions are directed at deterring future noncompliance by ensuring that the defendant is held accountable for his or her actions and knows that future noncompliant behavior will result in swift and escalating negative consequences.
- Risk reduction interventions are directed at preventing future noncompliance by assisting the defendant through information, education, training, counseling or treatment to remove obstacles to compliance with conditions and to bring about positive changes in behavior.

Research indicates that this use of both risk control *and* risk reduction strategies is more effective than selecting one strategy over the other.¹⁸ The selection of the appropriate blend in the individual case is to be guided by the principles described in the next section and the intervention framework discussed at VI-4.

Principles

When noncompliance is detected, officers have a responsibility to *intervene* as well as to report and continue to monitor and assist. The standard for selecting appropriate interventions is that they be (1) authorized by the conditions of release, and (2) sufficient—but not more restrictive than necessary—to reach the desired outcomes in the individual case. The response is further to be purposeful and proportionate, multidimensional, certain and timely, and graduated.

Purposeful and Proportionate: Interventions are to be directed towards the defined objectives of supervision as determined by the initial and ongoing assessments, and guided by the need to:

- protect the community;
- assure appearance in court; and
- promote compliance with court orders.

Interventions should further relate to the nature and degree of the noncompliant behavior and to the context in which the behavior occurs. Contextual elements to be evaluated include the past history of the defendant, his/her overall adjustment during this period of supervision, and the circumstances surrounding the current instance of noncompliance. Because of these factors, an intervention used for one defendant may not be appropriate for another even if both engaged in the same conduct.

Multidimensional: The intervention is to be two-pronged, that is incorporating both risk control and risk reduction strategies. The two types of strategies are to be combined in a blend suited to the circumstances of the case.

Certain and Timely: Officers should begin to investigate immediately upon learning of a potential violation, and develop interventions that have some elements they can implement

¹⁸J. Petersilia, “Intermediate Sanctions: What Have We Learned?” in *Perspectives on Crime and Justice: 1997-1998 Lecture Series* (National Institute of Justice 1998) p. 89.

swiftly under existing conditions. For example, if a defendant's current conditions provide for substance abuse testing—but not treatment—officers can increase the frequency of testing and explore treatment options with the defendant while awaiting the court's decision on a request to add a treatment condition.

Graduated: Repeated incidents of noncompliance are to be addressed by increasingly more intensive, or graduated interventions.

Statutory Provisions for Responding to Violations

A defendant who violates one or more of the conditions of release is subject to modification of conditions, a revocation of release, an order of detention, and prosecution for contempt of court.

- Title 18 U.S.C. § 3142(c)(3) authorizes the court to amend the release order at any time to impose "additional or different conditions of release."
- Title 18 U.S.C. § 3148 (b) provides that the attorney for the government may initiate a revocation proceeding by filing a motion with the court. Judicial officers are to enter an order for revocation and detention if, pursuant to a hearing, the court finds (a) that there is probable cause to believe the defendant committed a crime while on release *or* clear and convincing evidence of any other violation and (b) that there is no condition or combination of conditions that will assure that the person will not flee or pose a danger *or* that the defendant is unlikely to abide by any condition or combination of conditions.
- Title 18 U.S.C. § 3148 (c) provides that the court may commence a prosecution for contempt.

Further, separate charges may be filed for failure to appear (18 U.S.C. § 3147) or for any federal offense committed by the defendant while on release (18 U.S.C. § 3147). Charges under these provisions can result in additional terms of imprisonment to be imposed consecutive to the sentence of imprisonment for any other offense.

Supervision Response to Apparent Violations

Investigate

When officers become aware of an apparent violation, they are to conduct a thorough investigation by obtaining relevant documentation and interviewing appropriate parties to verify the information received and explore the context. Activities may include contact with the defendant, defense counsel, law enforcement, and other relevant parties.

Assess and Plan for Supervision Interventions

All instances of noncompliance require a two-pronged intervention by the officer, but these can range from interventions within the officer’s authority to implement under existing conditions, to requests to the court for additional conditions of release, to recommendations for the revocation of release. The selection of appropriate risk control and risk reduction interventions is to follow the principles for responding to noncompliance (see [VI-2](#)).

The Intervention Framework: What follows is a two-level advisory framework that offers a concrete example of proportional, multidimensional, timely and graduated noncompliance principles in action. Its purpose is to stimulate greater creativity concerning the various types of interventions that could be usefully employed to work with defendants to bring them into compliance. The framework provides examples of lower risk and higher risk violations. For each, it provides a non-exhaustive list of illustrative responses.

LOWER-RISK VIOLATIONS: EXAMPLES	
<i>Note: The lower-risk category applies to the first instance of the behavior</i>	
<ul style="list-style-type: none"> • Change job without permission/failure to report change • Failure to report as directed to pretrial services • Failure to seek and/or maintain employment • Failure to follow officer instructions • Moving without permission 	<ul style="list-style-type: none"> • Driving offenses (excluding DUI and petty offenses) • Failure to abide by rules and regulations of CCC/CTC • Minor home confinement violation • Failure to comply with drug testing • Incidental travel without permission • Other non-recurring technical violations
ILLUSTRATIVE RESPONSES	
RISK CONTROL INTERVENTIONS (A non-exhaustive list)	RISK REDUCTION INTERVENTIONS (A non-exhaustive list)
<ul style="list-style-type: none"> ✓ Reprimand Orally ✓ Reprimand in writing ✓ Warn of consequences ✓ Set limits ✓ Establish deadlines ✓ Assign minor restrictions ✓ Establish behavioral expectations ✓ Increase reporting ✓ Increase monitoring ✓ Conduct drug/alcohol test 	<ul style="list-style-type: none"> ✓ Review conditions ✓ Counsel/provide direction ✓ Provide job assistance ✓ Make social service referrals ✓ Refer to self-help group ✓ Provide budget/financial counseling ✓ Provide or refer for marriage counseling, parenting skills, life skills, etc.

HIGHER-RISK VIOLATIONS: EXAMPLES

Note: The lower-risk category applies to the first instance of the behavior

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| <ul style="list-style-type: none"> • Pattern of violations from lower risk list • Refusal to surrender passport/ Obtaining a new passport • Any allegation of criminal behavior • Risk-related travel without permission • Criminal association • Illegal drug use/Alcohol abuse | <ul style="list-style-type: none"> • Employment involving third-party liability • Serious or repeated home confinement violation • Failure to appear/absconding • Rearrest • Refusal to participate in treatment |
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ILLUSTRATIVE RESPONSES

RISK CONTROL INTERVENTIONS (A non-exhaustive list)	RISK REDUCTION INTERVENTIONS (A non-exhaustive list)
<ul style="list-style-type: none"> ✓ Compliance meeting in office ✓ Staffing w/SUSPO or Manager ✓ Letter of warning, written reprimand ✓ Intensive supervision ✓ Increased drug testing ✓ Curfew (with or without EM) ✓ Home Detention (with or without EM) ✓ Placement in CCC for monitoring ✓ Revocation (Optional) 	<ul style="list-style-type: none"> ✓ Review conditions/re-instruct ✓ Provide/increase counseling ✓ Establish behavioral contract ✓ Enlist support of defense counsel ✓ Refer to outpatient counseling ✓ Refer to intensive outpatient treatment ✓ Refer to inpatient services ✓ Expand delivery of social services ✓ Refer for medical/psychiatric consultation ✓ Place in CCC for services ✓ Refer for budget/financial services ✓ Refer to self-help group ✓ Provide/refer for employment assistance ✓ Enlist collateral support ✓ Refer for anger management sessions

Applying the Framework: The framework provides a general model based on the types of responses that are ordinarily appropriate for various levels of noncompliance. In the business of supervising defendants, however, there is always the need to individualize the intervention based on an assessment of the implications for public safety and nonappearance given the overall circumstances of the defendant and the context in which the violation occurred. Officers should work collaboratively with their supervisors and specialists, as appropriate, to discuss possible interventions and to seek advice and support. This is particularly true as the gravity of the noncompliance increases, and the choice of appropriate interventions narrows.

Officers are encouraged to be innovative in their approach and creative in crafting responses suited to the situation, while selecting responses from both prongs: risk control and risk reduction strategies. Give thought to what is likely to be experienced as a negative consequence by this particular defendant as well as the most likely causes of this behavior that need to be addressed to avoid further violations. The goal is to appropriately blend and tailor strategies to provide what *this* defendant needs to successfully reach the desired outcomes.

In making these determinations, officers should consider the purposes of each available strategy. The purposes of some common community-based *risk control* strategies are as follows:

Reprimands and Warnings serve primarily to put the defendant on notice that the misconduct has been detected and that additional steps will be taken if there is a recurrence. They may be oral and/or written, with or without copies to the court and/or counsel. The content of the warning is to be guided by the intervention framework and the officer's assessment of the type of next least intrusive intervention that is likely to be perceived as a disincentive by the particular defendant.

Increased Reporting Requirements serve to clarify for the defendant that not complying with conditions will result in more burdensome requirements to document his or her activities.

Compliance Conferences provide for a more formal reprimand/warning at which the combined presence of officer, defense attorney, defendant and supervisor emphasizes the seriousness with which the noncompliance is viewed, and the multilateral support for required interventions.

Increased Restrictions make it clear to the defendant that not complying with conditions will result in more limitations on personal freedom (e.g., travel denial, curfew, home confinement).

Increased Overt Monitoring Activities make it clear to the defendant that the monitoring is being intensified (e.g., increased testing for substance use; more frequent home and community contacts, employment search verification). Reporting and increased surveillance of which the offender is *not* aware is *not* an intervention and so does *not* satisfy the requirement to implement a risk control strategy.

The purposes of some common community-based *risk reduction* strategies are as follows:

Re-instruction provides clear guidance to the defendant as to exactly what must be done to avoid a recurrence of the noncompliance. The re-instruction may be oral and/or written; be formalized through behavioral contracts; and/or include such things as requiring the defendant to attend another orientation meeting.

Social Services/Education/Training provide the defendant with additional information, skills and resources. These may be provided by the officer, by specialists on staff, or via referral to contract or non-contract providers in the community.

Therapeutic Assessment serves the primary purpose of providing both the defendant and the officer with information about the nature and extent of a suspected substance abuse or mental health problem. The assessment should provide a recommendation for the most appropriate form of remedial counseling/treatment. Assessments are always to be followed by appropriate action as indicated by the results.

Counseling/Treatment provides the defendant with professional assistance in overcoming an identified substance abuse or mental health problem. The intensity will vary by approach (outpatient/inpatient) and session frequency and/or length of stay.

Reporting

Standards

Pursuant to 18 U.S.C. § 3154(5), officers must "[i]nform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to . . . or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions."

Unless otherwise directed by the court, this does not mean that the judicial officer and United States attorney need be notified every time a defendant does not comply with the officer's instructions. Although officers are to *intervene* in every instance of noncompliance—no matter how minor—they have discretion to *report or not report* acts of technical noncompliance that, after investigation, they assess to fall in the "lower-risk" tier of the framework. Examples of these are a missed appointment or a minor curfew violation, or other non-recurring lower-risk violations (see framework at [VI-4](#)) that have been or are being resolved by officer interventions undertaken under the authority provided by current conditions. Officers should seek the advice of the supervisor or specialists if there is any question about whether to report a violation.

Conversely, the officer shall immediately advise the court and the United States attorney if the defendant is arrested or, after a timely investigation, assessed to have engaged in conduct that constitutes an apparent violation that poses a higher risk of nonappearance or danger to the community (see framework at [VI-5](#)).

Oral and Written Reports

In circumstances where the defendant poses an *immediate* danger to the community, or is an immediate risk of nonappearance, the officer may orally notify the court and United States attorney of the apparent violation. Oral notification is to be followed by a written report as soon as possible. A written record of the violation report is necessary because the court may need the information at a hearing to decide whether to continue release or to detain the defendant. Also, the defendant's performance on release might be a factor that the court considers at sentencing.

Violation Report for the Court

A violation report to the court should include:

- the defendant's release status, the date the conditions were ordered, the name of the judicial officer who ordered them, and the type and date of the next scheduled court hearing;
- a complete description of the facts regarding the apparent violation(s) or changed circumstances;
- a summary of the defendant's compliance with release conditions, including the results of a criminal record check;
- a summary of the officer's activities to address and resolve the defendant's noncompliant conduct; and
- a recommendation.

No Judicial Intervention Requested would be the appropriate recommendation in those cases where the officer's interventions permitted under current conditions are considered sufficient to bring the defendant into compliance.

Request for Modification of Conditions would be the appropriate recommendation when the defendant is not in compliance—and the officer's attempts to bring the defendant into compliance have not been successful, but additional conditions have been identified that the officer believes are sufficient to reasonably assure the defendant's appearance and community safety.

Request for Revocation would be the appropriate recommendation when the officer determines that no modification of conditions can reasonably assure the safety of the community and the appearance of the defendant. [See 18 U.S.C. § 3148(b) for revocation procedures.] When requesting a violation hearing, the officer should also request either that the court issue a summons to appear or an arrest warrant. Warrants should only be requested when there is an immediate risk of danger or nonappearance, or when it is believed that the defendant will not appear voluntarily.

Revocation is a last resort to be used when community-based alternatives have been deemed ineffective or insufficient to reach the desired outcomes of supervision. Officers are encouraged to staff cases with specialists and the supervisor, particularly before recommending revocation.

Documentation

Appropriate file documentation assists officers in managing their caseload, facilitates effective and efficient supervisory review, and builds a clear record to support more intrusive responses to any subsequent noncompliance.

Each instance of noncompliance, and the response to that noncompliance, must be documented clearly and concisely in the chronological record. The entry is to identify the nature of the noncompliance and the required risk control and risk reduction elements of the intervention.

Example:

Noncompliant Behavior: Defendant tested positive for THC on 1/1/04.

Risk Control Action: Defendant required to report to office. Drug testing increased to once a week. Court to be notified.

Risk Reduction Action: Reviewed conditions of supervision and elements of program plan. Discussed additional sobriety support systems.

TIPS FOR MANAGING NONCOMPLIANT BEHAVIOR

- ★ Always use a two-pronged approach (risk control and risk reduction) to manage acts of noncompliance.
- ★ Respond to all instances of noncompliance, no matter how minor.
- ★ Make sure that your defendant understands both the risk control consequence for his misconduct and the risk reduction intervention to be employed.
- ★ Manage noncompliance with a focus on the defendant's success.
- ★ Use the Suggested Interventions Model as a reference.
- ★ Remember that interventions should be the least restrictive necessary to achieve the goals of supervision. They also must be authorized, timely, proportionate, and graduated.
- ★ Collaborate with your supervisor to assist in the selection of interventions, and to meet with the defendant to redirect behavior.
- ★ Call upon the expertise of staff specialists to help guide the implementation of risk control and risk reduction strategies.
- ★ Remember to enter a summary of your case staffings (specialist and/or supervisor) in the chronological record.
- ★ Be familiar with legal opinions that may affect options or procedures.
- ★ Make sure that your violation reports clearly provide a complete description of the facts regarding the apparent violation.
- ★ Make sure that your violation reports clearly set forth the intervention strategies you took or recommend.
- ★ Confer with the United States Attorney's Office to ensure proper preparation for violation hearings.