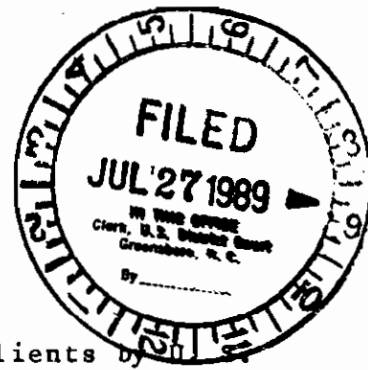


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



IN RE: U. S. PROBATION
OFFICER'S SUPERVISION
OF HIV CLIENTS)

STANDING ORDER
NUMBER 23

In order to provide for the effective supervision of clients by Probation Officers and specifically to provide guidance to probation officers who are supervising individuals on probation, bond supervision, parole, military parole, and supervised release, who are known to have tested positive for antibody exposure to the Human Immunodeficiency Virus (HIV) or who have developed symptomatic HIV disease, including Acquired Immune Deficiency Syndrome (AIDS), IT IS ORDERED THAT:

The Probation Officer shall, if possible, first attempt to have the supervisee give informed written consent authorizing the release of information about HIV infection to the U. S. Marshal, residential facilities, halfway houses, and jails. In the absence of such written consent, this information shall be disclosed to the U. S. Marshal when a violator's warrant is issued and to the health care provider and/or supervisor of the halfway house or jail facility when the supervisee is placed in their custody.

This the 27th day of July, 1989.

Richard C. Erwin
Chief Judge
United States District Court

Frank W. Bullock, Jr.
Judge
United States District Court

N. Carlton Tilley, Jr.
Judge
United States District Court

Eugene A. Gordon
Senior Judge
United States District Court

Hiram H. Ward
Senior Judge
United States District Court

States have made it a crime to knowingly spread AIDS and Congress is considering making this a Federal crime.

To date the Committee is not aware of any jurisdiction which has imposed an affirmative duty on a probation officer to make third-party disclosures. In fact, some jurisdictions whose precedent suggests that such a duty might be imposed have actually prohibited non-consensual third-party disclosure. See, e.g., *Tarasoff*, 551 P.2d at 334 and Cal. Health and Safety Code § 199.21. But, see also Cal. Health and Safety Code § 199.25, which permits a physician to make a non-consensual disclosure to the spouse of a patient with HIV infection. In addition, some States which impose criminal liability for knowingly spreading HIV infection also impose civil and criminal penalties for making a non-consensual disclosure that an individual has HIV or AIDS. See Fla. Stat. § 384.24 and § 384.29, Idaho Code § 39-601 and § 39-606.

In summary, it seems impossible to devise a uniform procedure regarding third-party warnings that respects State public health laws because of the variations in State laws. For the reasons articulated in this comment, the Committee believes that on balance a policy of limited disclosure is advisable. However, as the law in this area evolves, this provision may need to be reconsidered. Moreover, the importance of assessing and following State law in this area cannot be stressed enough.

5. In all cases, the officer should first attempt to have the supervisee give informed, written consent authorizing the release of information about HIV infection to the U.S. Marshal, residential facilities, halfway houses and jails. In the absence of such written consent, this information should be disclosed to the U.S. Marshal when a violator's warrant is issued and to the health care provider and/or supervisor of the halfway house or jail facility when the supervisee is placed in their custody.

COMMENT

This provision is consistent with § 2.38-04(h) of the Parole Commission's instructions and reflects the concern that arresting officers and custodial officers should be aware of the potential risk of exposure to HIV infection. It also assists the custodial officers in responding to any medical needs of individuals in their custody.

6. When information concerning an individual's HIV antibody test result or information concerning a diagnosis of HIV infection is disclosed to the officer by a third party or by the client, the officer should seek the written, informed consent of the client before

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

PROBATION OFFICE

WALTER BLACK, JR.
CHIEF PROBATION OFFICER

P.O. BOX 3327
GREENSBORO, N.C. 27402
(919) 333-5341

REPLY TO:

- () P.O. BOX 3327
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- () P.O. BOX 1476
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- () SUITE 140, YADKIN PLACE
202 N. LEE STREET
SALISBURY, N.C. 28144
- () SUITE 500 FEDERAL BUILDING
251 N. MAIN STREET
WINSTON-SALEM, N.C. 27101

December 20, 1990

The Honorable Richard C. Erwin, Chief Judge
United States District Court
251 North Main Street, Suite 223-A
Winston-Salem, North Carolina 27101

Dear Judge Erwin:

After careful deliberation and much consternation, we are presenting the attached documents as an interim plan for probation/supervised release supervision as a primary method to consider the recent U. S. Sentencing Commission policy statements. Please observe that the Commission issued only policy statements and as such they are not law and for the Court to be compliant, only judicial consideration of the policy statements is necessary before sentencing in a revocation matter.

Although there are small differences in probation and supervised release conditions, the Commission elected to develop a single set of policy statements for both. The Commission views the policy statements as the first step in an evolving process. Also, these policy statements should allow for greater flexibility in their initial application.

In our attempt to maintain a defined posture in the milieu of these ongoing changes, we have attempted to postulate a set of minimum standards to guide us in this evolutionary process. These standards are to help us absorb the impact of the policy statements and to some degree control our demands on the Court.

It is our feeling that these standards provide an encompassing aspect of our daily supervision needs. Presently, we use these standards in assessing our probation and parole clients and the policy statements are no more than an extension of our evaluative tools.

In the recently published policy statements, the Sentencing Commission directs that alleged Class A and B violators be promptly reported to the Court. Grade C violators are to be promptly reported unless the probation officer determines (1) that such violation is minor and not a part of a continuing pattern of violations and (2) non reporting will not present an undue risk to an individual or the public.

The Honorable Richard C. Erwin, Chief Judge
Page 2
December 20, 1990

The documents we are presenting to you are intended to give us a local policy in which we can operate. Hopefully, the Chief Probation Officer will reserve the responsibility of forwarding violations to the Court. The U. S. Probation Office will closely adhere to the criteria we are now presenting. The local criteria when combined with the Commission's policy recommendations will allow for the control of violation matters being constantly thrust upon the Court.

The proposed Standing Order is offered only as an interim measure to undergird our local criteria. Likewise, at the time specific guidelines are subsequently rendered by the Commission, we might only need to amend or update our Standing Order with only minor interruption.

Thanks for considering this proposal and should you need more details or information, please do not hesitate to contact us. We look forward to discussing this matter with you if necessary.

Sincerely,

Walter Black, Jr.
WALTER BLACK, JR.

Chief U. S. Probation Officer

WB/br

Attachments:

1. Proposed Standing Order (Draft)
2. Proposed Minimum Requirements
3. Format for Informal Violation Report

MIDDLE DISTRICT OF NORTH CAROLINA: Policy/Minimum requirements for reporting violations

GRADE A VIOLATIONS - Mandatory report required:

Conduct constituting federal, state or local offense punishable by a term of imprisonment exceeding twenty (20) years.

Conduct constituting a federal, state or local offense punishable by a term of imprisonment exceeding one (1) year that (a) is a crime of violence, (b) is a controlled substance, or (c) involves possession of a firearm or destructive device described in 26USC5845(a).

GRADE B VIOLATIONS - Mandatory report required

Conduct constituting any other federal, state or local offense punishable by a term of imprisonment exceeding one year.

GRADE C VIOLATIONS - Mandatory report required:

1. Failure to report in person within ten (10) working days of release from custody and whereabouts are unknown.
2. Arrest for any law violation (punishable by imprisonment of one (1) year or less) if conduct involved violence, firearms, controlled substances or DWI/DUI.
3. Absconder from supervision for more than 30 days.
4. Confirmed positive urinalysis.
5. Travel out of the District w/o authorization and failing to return within fifteen (15) working days.
6. Restitution or fine in default.
7. Association with person(s) engaged in criminal activity after being previously warned by PD.
8. Entering into an agreement to act as an informer or a Special Agent of any law enforcement agency w/o permission of the Court.
9. Failure to cooperatively participate in required CCC program, or comply with court ordered sanctions of Home Detention (to include electronic monitoring), or failure to perform court ordered community service.

GRADE C VIOLATIONS - Mandatory report required if two (2) willful violations occur within a six (6) month period:

GRADE C VIOLATION. (continued)

1. Failure to comply with requirements of court ordered substance abuse treatment program.
2. Failure to comply with requirements of court ordered mental health treatment program.
3. Failure to comply with any other Special Condition denoting risk control and/or correctional treatment.
4. Any violation of the law constituting a federal, state or local offense punishable by a term of imprisonment of 1 year or less (other than those offenses involving violence, firearms, possession of controlled substance or DWI/DUI).
5. Association with a felon w/o permission of PO, and after being previously warned.
6. Leaving the District w/o permission of PO.
7. Failure to submit a urine specimen upon demand.

GRADE C VIOLATIONS - Mandatory report required if three (3) willful violations within twelve (12) month period:

1. Failure to submit a truthful and complete written report within first ten (10) days of month.
2. Failure to report as directed.
3. Failure to notify PO within 72 hours of being arrested or questioned by a law enforcement officer.
4. Failure to notify PO within 72 hours of any change in residence or employment.
5. Failure to work at, and /or maintain suitable employment.
6. Failure to support legal dependents or manage other family responsibilities.
7. Excessive use of alcohol.

(a combination of three (3) or more of the above violations occurring within a 12 month period will mandate a report).

wbjr

VIOLATION REPORT

Name: _____

Judge: _____ Docket #: _____

Date Received: _____ Expiration Date: _____

NATURE OF VIOLATION(S) AND OFFICER'S EVIDENCE:

PREVIOUS VIOLATIONS REPORTED TO COURT:

NONE

Violation

Date Reported

ACTION RECOMMENDED BY OFFICER:

DECISION OF JUDGE: Agree with Officer's Recommendation

Take Following Action:

USPO DATE

SUSPO DATE