

Federal Judicial Center
Off Paper - Episode 8:
The New Post-Conviction Supervision Policy
for U.S. Probation Officers

Mark Sherman: From the FJC in Washington, D.C., I'm Mark Sherman and this is *Off Paper*.

Over the past several years, the Federal Probation in Pretrial Services System has transformed itself from one concerned primarily with the monitoring and compliance of individuals who are on pretrial release, probation, proposed incarceration supervised release to one primarily concerned with reducing recidivism through the use of evidence-based practices and supervision. This fundamental shift in probation and pretrial services work has required officers who supervise individuals in the community to embrace a new understanding of their role.

As you might imagine, in a system consisting of approximately 8,000 officers serving federal and district courts in communities stretching from Maine to Guam and from Alaska to the Virgin Islands, such transformation is a long and arduous process. Helping individuals on community supervision change their behavior in ways that will reduce the risk of recidivism is accomplished through a framework of principles commonly referred to as Risk-Need-Responsivity, or RNR. The risk principle means prioritizing supervision and treatment resources

for higher risk individuals. The need principle means targeting interventions such as mental health and drug treatment to the criminogenic needs of the individual. The responsivity principle means that officers need to be responsive to an individual's temperament, learning style, culture, and gender.

In 2013, the Probation of Pretrial Services Office of the Administrative Office of the U.S. Courts convened a post-conviction supervision working group of officers to help update national policy in a way that would ensure that it aligns with the RNR framework and evidence-based practice. Chief U.S. Probation Officer John Bently of South Dakota chaired the group and Chief U.S. Probation Officer Jonathan Hurtig of New Hampshire served as vice-chair. Chief Hurtig currently serves as chair of the Administrative Offices Chief's Advisory Group. Deputy Chief U.S. Probation Officer Brad Whitley of the Middle District of North Carolina also served on the post-conviction working group, as did a number of other officers. The group was supported by Scott VanBenschoten, the supervisory probation administrator at the Administrative Office.

With the updated national policy now ready for primetime, we're devoting this episode of *Off Paper* to discussing it and its implication for federal probation departments, their leaders, their officers, their clients, and their communities. In the first part of the program, we'll talk with Chief Bently,

Chief Hurtig, and Scott Vanbenschoten about the principles that animate the new policy. Then later, we'll be joined by Deputy Chief Whitley to get into some of the nitty-gritty.

So there's a new policy in town, people, and I know you're on the edge of your seats wanting to know more about it. You're excited, right? Well, you're in luck because we're going to help you understand what it all means. So keep it right here.

John Bently, Jonathan Hurtig, and Scott Vanbenschoten, welcome to the program.

Scott Vanbenschoten: Thanks.

John Bently: Thanks, Mark.

Jonathan Hurtig: Thanks, Mark.

Mark Sherman: Scott, I'd like to begin with you and your role in shepherding the new post-conviction supervision policy to fruition as a staff member at the Administrative Office. What are the big takeaways of the new policy in terms of the overall approach and how does it differ structurally from what we're used to in terms of policy versus procedures?

Scott Vanbenschoten: Hi, Mark. Thanks for having us on and addressing this topic. Let me start with the big takeaways. I would suspect that each of us on the call or the podcast today would have a slightly different view of what they believe their biggest takeaways are. But for me, the biggest takeaway is simply that we're better aligning our policies with what we know

to be true through research and really the accumulation of evidence. So that effort, which is always changing and always moving, I believe will move our policies to address evidence-based practices in a much cleaner and better way. So that, to me, is the biggest takeaway.

Structurally, that really sets the foundation of our charge. Historically, everybody in our system understands we have these things called monographs. They take back a very long time. These monographs really were a combination of both policy and procedure. A decision was made at the AO to really separate those two things and have a document called the *Guide to Judiciary Policy*. In that guide, it's literally policy. So we had to, as a group, go through what our existing materials said and to separate out what was policy versus what was procedure which sounds simple but it was a long process.

Really, the whole policy part was focusing on things like what does the statute say we are and what we're supposed to do; conceptually, who are we and what are we supposed to do; philosophically, who are we and what are we supposed to do and what kind of outcomes do we want to achieve; and, aspirationally, who do we want to be long term as a system. That to me really sort of set the foundation for what the policy is about, and later on we have this procedures document we're

going to be working on which gets into what are the nitty-gritty steps one by one to accomplish what we set forth in the policy.

Mark Sherman: So Scott, is it fair to say then really that the separation out of the policy and the procedure is really like the policy is about the who and the what; whereas, the procedure is about the how.

Scott Vanbenschoten: I think that's a fair way to put it. Absolutely.

Mark Sherman: Great. So I want to ask you, John Bently, you know, you've chaired the working group and you're the Chief U.S. PO in South Dakota. So you're both a policy wonk and a practitioner. And I think it would be really helpful for you to elaborate on the fundamental principles that undergird the new policy. I made a brief mention of them in the opening of the program when I referred to the Risk-Need-Responsivity framework, but it's obviously a lot more complicated than that. So can you first talk about that, and then I'd like to hear from you about the relationship of the new policy to this concept of evidence-informed decision making in the supervision of individuals in the community.

John Bently: Thanks, Mark, for having us on. Mark, I'm going to defer to Chief Hurtig on the concept of evidence-based principles and practices as he chaired the previous group on

that matter and is going to be very articulate. And all them talk about the evidence-informed decision making.

Mark Sherman: Sure. Jonathan, you want to jump in?

Jonathan Hurtig: Sure. Hi, Mark. You know this is something that began many years ago, when the Probation and Pretrial Services Office started with the research to result initiative back in probably 2005 or 2006, and then continued with the development of the first evidence-based practices working with it. The previous guide began to introduce some of the evidence-based principles, particularly in Chapter 5 in the old treatment services chapter. But they just incorporated them by reference.

The new changes or the proposed changes to the guide include explicitly establishing evidence-based practice as the general framework for effective supervision. So now we're recommending that probation offices provide supervision services in accordance with evidence-based practice. Particularly, offices should consider the principles that you referenced at the beginning of the show of Risk-Need-Responsivity, fidelity, and measurement when providing all supervision services.

Mark Sherman: It sounds to me like it's really taking the sort of evolving notion involving concept of Risk-Need-Responsivity and applying it throughout the policy as opposed to sort of just one piece of the policy or separate pieces of the

policy as it has been the case thus far. Is that a fair summary?

Jonathan Hurtig: Yes, that is correct. I would frame it as it's really laying the foundation for everything we do.

Mark Sherman: For sure. John Bently, back to you. Talk about this idea of evidence-informed decision making. How does that play into this new policy?

John Bently: Well, as you know, Mark, many decisions that the chiefs and deputy chiefs make regarding our work - such as hiring, training, promotion, how we declare our resources, the programs we developed, individual tasks we assign to officers - not all those are really guided by evidence-based practices because there's a fairly narrow window to have a practice be considered evidence-based. It requires significant empirical evidence.

But when we're looking at the decisions we make day to day, we feel it is important to have language that supports a method of decision making which is evidence-informed. This method integrates evidence-based practices with our own professional judgments, with the available empirical evidence that does exist, and each probation offices' own evidence which is formed by kind of collecting and analyzing your own local data, being aware of what's happening in your own district.

Mark Sherman: So I think that that is really a helpful clarification particularly for officers and offices in the field. Because I think that sort of making distinction between the larger empirical evidence that is informing overall practice versus the data that districts are using in generating and communicating to officers to help them in their day-to-day work, it's that latter part of the practice where we're really getting into evidence-informed decision making by individual officers working on individual cases. Fair?

John Bently: Sure. And also the offices themselves, so how the managers are making decisions as well.

Mark Sherman: Got it. Got it. So it's really sort of working up the line, up and down the lines. You've got the officers who are using data from the reports that they're seeing generated from within the district and elsewhere to inform their individual practice with individual clients and cases. Then you've got the manager, supervisors, deputies, all the way up to chiefs sort of using that data to make evidence-formed decisions about caseloads and sort of management-oriented types of decision that they need to make.

John Bently: Well said.

Mark Sherman: Thank you. I'm getting it. So Jonathan, I wanted to come back to you. I know that there are some key legal changes in the new policy that are important to highlight.

For example, there are some changes regarding the term conditions of supervision or records in confidentiality, et cetera. So can you talk about those briefly?

Jonathan Hurtig: Well, the general framework and the legal framework, Mark, for our authority in everything we do is going to be set out in Chapter 2 of the new guide. It really talks about different types of supervision - probation, supervised release, or conditional release - and it lays out what our statutory authority is in relation to those various types of supervision. But then it talks specifically about the condition, and there's three types of conditions being mandatory, standard conditions, and special conditions.

What we did was we changed that section so that it's aligned with the changes that the Sentencing Commission made. That became effective on November 1, 2016. We don't spell out everything in all the conditions, but rather we brought reference to those changes by Sentencing Commission. Also there'll be a hyperlink in there to the document that was released by the AO regarding the overview of probation and supervised release conditions. So everything that you'll be reading and being provided guidance on in the guide is consistent with what was changed by the Sentencing Commission back in 2016.

With regard to the record and confidentiality which is another important aspect of what officers have to pay attention to, that's going to be laid out in Chapter 5 in the new guide. It goes into different areas, like the general release of vital information when outside entities are making a request, talks about disclosure specifically as it relates to third party risk. And it talks about confidentiality and disclosure of treatment records, as well as officers providing testimony whenever they may be subpoenaed by an outside agency.

Mark Sherman: Well, thank you. John Bently, I want to come back to you because there have also been some changes on the nomenclature in the new policy that are designed to help probation leaders and officers to think somewhat differently about supervision work. So what are some of those changes and what do they mean?

John Bently: Well, one change we've made, the previous guideline which we spoke to what officers need to do. It was kind of a directive to officers but, as Scott indicated, now we've taken all the procedures in a sort of policy. So it's geared more toward what the probation office needs to do that we share among managers, and officers, and support staff. We share the responsibilities to fulfill our mission so that you're finding the new language speaks to what a probation office needs to do rather what a probation officer needs to do. It's a much

more global and macro approach than the nitty-gritty details that Scott referenced that are procedural in nature.

The second thing we worked on was the previous language spoke to people under supervision as offenders, and offender is really a past term for people that we're supervising. They're not necessarily active offenders and we wanted to recognize that and support and affirm their potential to be lawful, and so we defer them now as individuals or persons under supervision rather than offenders.

The third thing we came up with was we wanted to have a kind of succinct and comprehensive model, something that we capture our overarching goal, to use our methods, to go compensate, and those we supervise to not commit crime. And because what we came up with was lawful self-management where people can make conscious choices to be lawful, when a person we supervise acquires those necessary skills and motivation to be lawful, our communities become safer and our work is done. So we felt that that term, lawful self-management, could be a great model we would have to move forward and say this is what we're trying to achieve.

Mark Sherman: This is *Off Paper*. I'm Mark Sherman. We're going to take a short break. When we come back, we'll be joined by Deputy Chief U.S. Probation Officer Brad Whitley from the Middle District of North Carolina to talk about how the new

post-conviction supervision policy embraces the concept of the officer as a change agent. We'll also talk with Brad, John Bently, and Scott about the new policy's framework for effective supervision and its components. Before we break, we're going to say goodbye temporarily to Jonathan Hurtig. Jonathan will rejoin us in the final segment of the program. Back in a moment. Stay with us.

Lori Murphy: Hi. This is Lori Murphy, head of the Executive Education Group at the FJC. Our group recently launched a podcast called the *Executive Edge* that focuses on leadership in the federal courts. Each episode brings leadership guidance, research, and insight to court executives and highlights cutting-edge thinking about public and private sector leadership. We do this by talking with critical thinkers whose research and expertise are directly related to the work of federal court executives.

In our first episode, FJC Senior Education Specialist Michael Siegel interviewed Sydney Finkelstein, faculty director for the Tuck Center for Leadership at Dartmouth College, about his book *Why Smart Executives Fail: And What You Can Learn From Their Mistakes*. In episode 2, Michael talked to Nancy Koehn, a historian at Harvard Business School and author of *Forged in Crisis: The Power of Courageous Leadership in Turbulent Times*.

Episodes are available wherever you get your podcast or on fjc.dcn@jc.gov or the U.S. Courts' YouTube channel. So come on, get the edge.

Mark Sherman: Welcome back. We're joined now by Deputy Chief U.S. Probation Officer Brad Whitley of the Middle District of North Carolina. Brad, welcome to *Off Paper*.

Brad Whitley: Thank you, Mark.

Mark Sherman: The new post-conviction supervision policy sees the probation officer as an agent of change, which, for many officers and many districts, is really a departure from the traditional more law enforcement-oriented approach. We've all heard the popular and not very endearing refrain that the role of the officer with regard to individuals they supervise is to - quote - tail them, nail them, and jail them. But the new post-conviction supervision policy really rejects that notion, and very powerfully I might add.

So can you talk about, Brad, what it means for the officer to be a change agent and how the new policy encourages that.

Brad Whitley: Yes, Mark. Again thanks for having us. So having joined the system back in 1993, I'm very familiar with the tail them, nail them, and jail them kind of verbiage. In those days, when I joined the system, it seems like we were coming into this division with either kind of an enforcement mindset or possibly a social work mindset. I remember the term

being used back then of being a balanced officer, but there really wasn't a good model of that. It seemed like the two different mindsets didn't seem to see the benefits of combining the two and being that balanced officer. So back then really the focus of our training seemed to be really directed at monitoring behaviors and reporting noncompliance back to the core. There wasn't really any focus on officers' involvement with offender needs or responsivity issues other than, you know, what you're aware of. From the pre-sentence report and possibly your first interview, you know, you became aware of the needs or issues. You're basically a referral agent to outside services, and we've relied heavily on them to impact the person under supervision and to create that change that we're talking about.

It's worth kind of revisiting a little bit about our work group. It was made up of approximately, I believe, 12 individuals from around the country with every position represented, from chiefs to line officers, with heavy insistence on line officers being part of this working group. But we started in 2013 with a meeting about a kind of a book club. I believe it's Scott's idea, so I'm giving him credit for it. If not --

But we all read the psychology of criminal conduct, which kind of laid the foundation for our working group, so we could all develop what I like to call a uniform lens of kind of what

Simon Sinek talks about. So as we knew just where, on past review on update to guide the supervision, we all had to have some kind of agreement and understanding of what we had to do and then what we were going to do with that task. When the group finally got together for our first meeting, a lot of us were literally meeting each other for the very first time. And because we all talk about having read and reviewed and discussed and processed all the research from the psychology of criminal conduct, we all came to a pretty quick lens consensus on some very significant things.

I'll just start with our statutory obligation. You know we have one, but the state diverges all suitable methods that are not inconsistent with conditions specified by the court. We can aid the person under supervision and bring about improvements in their conduct. So we took a look at that. And how do we do this? So we all are kind of connected really quickly on believing that thinking behavior change were the primary ingredient for the term that John used earlier of lawful self-management and long-term community protection.

Mark Sherman: So one of the things, Brad, that all of this brings to mind for me, especially hearing you talk about sort of the, quote/unquote, book club that you referred to, is what is driving underlying theory of the work and the why? It seems to me that really the emphasis is on intentionality. How does the

policy encourage officers and explicitly encourage them to be change agents. And that's really an increase in intentionality. Really sort of attending to that and sort of making it a part of the policy itself rather than sort of leaving it to individual probation and pretrial offices, leaving it to individual officers to take it upon themselves to figure out their why. Obviously they're still going to need to come to the job having a sense of that, but really the policy now is it really very much intentionally building in this concept of officer as change agent to really inform their why. Fair?

Brad Whitley: That is absolutely fair, Mark. So we were very intentional with our work in the guide and we do have -- you know, we quote research. We do that throughout the guide to support the interventions, the philosophy, both of those things. So it is very intentional throughout the guide, but our group agreed we have a system and we named it offices because, as John and Jonathan talked about earlier, it's the responsibility of the office from top to bottom. So we all have that shared responsibility in that effort to influence change with our persons under supervision.

We need to just understand what the research suggests, understand the risk or the court correction practices, the importance of just simply building rapport with the person under supervision, practices in active listening, identifying

historical and current risk factors, what's driving the risk factors, and even doing individual supervision. Not the term we've used forever but, you know, really and truly getting in there and assessing what the individual needs are and then trying to respond with appropriate intervention.

Mark Sherman: It's really about intentionally engaging the client, really promoting that client engagement through the practices that the officer engages in.

Brad Whitley: Absolutely. I mean we understood, you know, our philosophical why had to much our policies and procedures in the guide. So again, we're very intentional.

I think historically the difference is, as you look back in 1993, even though there was research back then suggesting a lot of the things that we've adopted today, it wasn't being emphasized. Officers weren't given the information and the tools that they have now to actually be that change agent, but I talk to officers all the time about being on the sidelines, and monitoring the game, and recording what happened versus actually getting in the game, and playing the game, and being an active participant. We have the ability to make a difference, and just showing officers the research and then letting them see the success that's for themselves.

Mark Sherman: Great. John Bently, I want to come back to you. I want to shift gears a little bit, too, and get into a

discussion of the framework for effective supervision that's been developed by the new policy. Can you just describe the framework in general terms? Then we'll get into the details.

John Bently: Sure. Mark, our working groups need to establish some of the structure which could guide our work both now and in the foreseeable future. When you look up at the night sky, some of us see things, like well-known things we all kind of see - the Big Dipper, the Little Dipper, some see the bear. You kind of form images in your mind, but that's not really up there. There's not a real dipper.

Now, we wanted to have a structure where the stuff we're seeing rolled out, the dots are already connected. When PCRA comes out, which is the Post-Conviction Risk Assessment, motivational interviewing, our new violence trailer or the new violence curriculum, I think it's difficult for people to understand how this all fit. So we are looking much more like our solar system as I said. There's a constellation of practices that synthetically mesh with the kind of person, the purpose and objective that we have. So we want to create a structure that we felt, oh, this can work where anything new comes in and can fit into this general structure. It starts with how people begin supervision, how we analyze what their history has been with them, what the risks are, what the supervision method should be, and how we should monitor their

behavior, how we should intervene, how we should restrict liberties, and then how they need to transition off supervision. So that's kind of the structure we've come up with.

Mark Sherman: So Brad, the framework consists of several components. Probably the best place to start is with the transition to supervision. So briefly, could you describe what that looks like in the new policy?

Brad Whitley: Sure, Mark. So with the transition supervision, the research indicates that many of our high risk offenders violate their terms and conditions within the first 180 days or so of their release. So our emphasis, from the working group, is to really drive on the importance of establishing communication early in the re-entry process so the foundation is there for the professional and working relationship that we're trying to develop, trying to identify as early as possible any barriers or risk factors that are likely to be triggered upon someone's release so that we can bring some awareness to it, the barriers and the risk, and hopefully resolve them or at minimum have a plan or some kind of strategy or intervention to address them.

A relatively new skill over the last five years or so that we really want to emphasize with officers is the importance of skilled role clarification and using that immediately upon someone's release so that the officer and the person under

supervision both have a good solid conversation and awareness about what the expectations are during the term of supervision. Kind of what the district goals are, the person under supervision's goals are, and what everyone hopes to accomplish during the supervision term.

Mark Sherman: Interesting. Scott Vanbenschoten, yet another component of the framework is about examination of past criminal behaviors. So can you discuss that?

Scott Vanbenschoten: I can. Mark, do you mind if I go back a little bit?

Mark Sherman: No, not at all. Please.

Scott Vanbenschoten: [Cross-talking] a previous thing.

Mark Sherman: Of course.

Scott Vanbenschoten: You started the segment with this notion of some people talking about this all goal of tail them, nail them, and jail them. On the other side of that argument is sort of this hug a thug concept, right, where on one hand officers maybe are all about behavior change and then they don't engage in holding people accountable. On the other side, as you mentioned, it's all about holding people accountable and not about behavior change. I think we always struggled with how to get the right balance of those two things. And not us. In terms of the federal system, I think the whole industry of probation has struggled with that.

And I love what you said about intentionality. Really it's about how do we properly monitor people, how do we properly intervene with people, how do we properly restrict people in an intentional way to get the best possible result. That word, "intentionality," I think is critical, and I just wanted to bring it back to that because I thought that that was a really important point. We've always talked about the spectrum, and people are on these two ends of the spectrum, and how do we get the right set of ingredients to produce the best result with being a change agent but also holding people accountable. And that word "intentionality" I think was great. So I just wanted to circle back to that.

So what was your question? I'm sorry.

Mark Sherman: Yes. Well, I appreciate that, Scott, very much. So the question, just going back to another component of the framework, is about the examination of past criminal behavior.

Scott Vanbenschoten: Obviously throughout our history, when a case would come onto supervision, the officer would typically look at somebody's criminal history and look at the PSR and look at other sources of information, whether they be interviews or court records or whatever to try to get a sense of what he or she needs to do on supervision.

Back to that word, "intentionality." What we're asking officers to do slightly differently here is look at those records and have a conversation with the person on supervision in a way to really help draw lines between behaviors that occurred, thoughts that occurred, situations the person was in that helped lead to noncompliant and/or criminal activity.

So in a nutshell, at the beginning of supervision, we really are encouraging officers to meet with the offender - and again, I used the word "offender" because of 20 years of calling people offenders, but meet with the person on supervision to have a real intentional conversation using some specific technique to help that person draw or I guess connect the dots between their thoughts, situation, behaviors, and ultimately what led to criminal activity. And we're going to be offering ways and techniques to do that really effectively.

The purpose of that is (a) the person can start to draw connections but (b) you also can create a really good case plan out of that, and (c) it helps build relationship between the officer and the person on supervision. So that examination of past criminal behavior, if you just look at it at the surface, you'll say, well, we've always done that, but we're going to do it in a way that's more intentional and a way that tries to accomplish those very specific goals.

Mark Sherman: Sort of following on from that, Scott, if you would, let's talk about risk assessment because that's an important component of the framework as well. What do probation leaders and officers really need to be aware of when it comes to risk assessment?

Scott Vanbenschoten: Sure. Well, obviously we've transitioned as a system to a fourth generation risk assessment. We call it PCRA 2.0. It's being used nationally and it's a very solid, validated tool that provides information about general recidivism, as well as likelihood of violence while on supervision. Now that's great and that's a key baseline process to help build supervision off of, but it's done in an incremental way. So it's from the beginning of supervision. Typically it's done after -- well, really it's tied to case plan, so it's done when case plans are done. Certainly officers can do the PCRA when big changes happen in the case.

But human beings are dynamic. They're always changing. Almost on a daily basis risk goes up and down. So we're starting to think about - and this is really aspirational at this point - how can we take risk assessment from this thing that is, although dynamic, it's not dynamic quickly enough if that makes sense. But how do we understand risk in a more imminent way. Like our people about to commit a new offense, how serious would that offense be?

So this idea of imminence and risk assessment is in the new policy, but also this concept of trying to understand risk of harm. It's easy to say risk is simply if somebody commit a new offense or not, are they arrested for a new offense. But risk is bigger than that, right? Risk is what kind of offense, what's the severity of the offense that that person is at risk of committing. It really can differ from sex offenders to financial crimes. How are people at risk for committing harm to others and how can we try to identify that and understand that in advance of it happening so we can react to that. So this idea of imminence and this idea of risk to harm are now integrated into the new policy, and it's this idea of how do we more comprehensively think about risk as we move forward.

Mark Sherman: So John Bently, how does what Scott just described translate to supervision itself? Particularly the notion of monitoring restriction and intervention.

John Bently: Previously our system had a paradigm of how the social worker's law enforcement approach as if they were opposing forces. And we came up with a previous design in the federal system called correctional and controlling strategies. Our working group believes that was not the best direction to go on at this point and time. With the research, we've had a better understanding of our work. We feel that it's kind of like being a parent. I don't change my approach to my children

in terms of love based upon whether they behave or don't behave. I might adjust my practice. So I might decide you need some consequence for inappropriate behavior or you need some reward for positive behavior, but my heart doesn't change in that process.

When you approach someone under supervision, we're trying to say you don't need to switch a hat if you properly manage their behaviors. And as we start looking at behavior management, we saw three things that we generally do with people under supervision. We monitor their behaviors. We work with the court to restrict the freedom they have to control risk as best we can. Then we also craft and implement the interventions necessary to build accomplices of those who supervise to make conscious choices to be lawful, the concept called lawful self-management and the applied principles that Scott just spoke to, of Risk-Need-Responsivity. They really drive the levels and the types of MRNI needed to effectively supervise the people we have on supervision.

Mark Sherman: This part of the discussion, as I'm listening to you all, is really just the heart of this new policy. So it's really worth spending time that we are on it. And so Brad, coming back to you, the last part of the framework deals with transition off supervision. So what does that look like in the new policy?

Brad Whitley: So Mark and my fellow past members can correct me if I'm wrong, I'm not sure if there's a whole lot of difference there. It's kind of the reemphasis of normalizing I think early termination is kind of the biggest focus. In my career, early term of supervision has not been the norm. It's been the exception. I think we're really trying to rebrand that and put it out there, that we need to look at that. It needs to be an active ongoing assessment that starts basically from day one and specifically through the first 18 months of supervision really trying to determine if someone is going to be a candidate. If so, having a lens of if their behavior is good, it's sustained, and there aren't any foreseeable issues, that we need to really look early termination. Again, it's rewarding the good behavior. It's cost-saving to districts, and it's also making room and if it gives us capacity to deal with the population we continue to receive. Unfortunately, there is no shortage of business for us.

So with all the things we're asking officers to do - all the skill development, all the research, all the extra assessment - is all great information. But we are asking officers to be a lot more actively engaged in being that change agent that we talked about earlier. I mean we're in the best position of anyone to be a change agent. I mean we work in the frontlines with the individuals under supervision and we know

them better than anyone else. To do that, you have to use the early term and the low intensity caseloads to make room so that the officers have the time to do the things we're asking them to do. So I think, overall, it's just kind of using the early term and trying to re-message that as being kind of an expectation in that it's an ongoing assessment. It is the norm. It's not the exception anymore.

Mark Sherman: I'm talking with Chief U.S. Probation Officer John Bently of the District of South Dakota, Deputy Chief U.S. Probation Officer Brad Whitley of the Middle District of North Carolina, and Scott Vanbenschoten from the Administrative Office of the U.S. Courts about the new post-conviction supervision policy for federal probation officers.

John Bently, I know you've got places to go and people to see so we're going to say goodbye to you now. I just want to thank you so much for talking with us.

John Bently: It's my pleasure. Thanks, Mark.

Mark Sherman: After a short break, we'll be back to talk about how the new policy deals with the transfer of supervision from one district to another. We'll also get some final thoughts about the new policy from our guests. You're listening to *Off Paper*.

Male Voice: In 2017, FJC Probation and Pretrial Services Education introduced ten competencies for experienced U.S.

Probation and Pretrial Services officers. Each competency contains a definition, a set of accompanying behaviors, and an outcome that describes what the competency looks like in action. To assist officers in furthering their professional development, the FJC recently created the Experienced Officer Competencies Toolkit.

The toolkit includes links to the Charter for Excellence, the competencies for experienced U.S. Probation and Pretrial Services officers, a self-assessment, a professional development plan, and FJC programs and resources for experienced Probation and Pretrial Services officers. The self-assessment and professional development plan are fillable PDFs - meaning you can download, complete, and save the form on your computer or device. The toolkit also includes brief videos designed to help officers deepen their appreciation of the connection between excellence as envisioned by the Charter and the competencies. The videos can be streamed or downloaded for use at training events, meetings, district retreats and the like.

The Experienced Officer Competencies Toolkit can be found by clicking on the education menu tab on the fjc.dcn homepage, and then clicking on Probation and Pretrial Services education.

Mark Sherman: We're joined again by Jonathan Hurtig, Chief U.S. Probation Officer for the District of New Hampshire and chair of the Chiefs Advisory Group. Brad, let's talk about the

transfer of an individual under supervision from one district to another. How does the new policy deal with that?

Brad Whitley: So Mark, the working group wanted to emphasize the need to be uniform in our shared responsibility to maximize the success of the persons under supervision regardless of what district they might be sentenced in. So our language in the guide points to having a collaborative analysis and decision making and that being the norm on analysis of the factors in each district, what would contribute to success or possibly non-compliance with the terms of supervision. But really the key piece of the section is when relocation is more likely or equally likely to kind of maximize that law on behavior that we're hoping for and working towards, the supervision of a case should be transferred. And kind of as a measure to ensure that there is fair and collaborative analysis regarding transfers, we've added language that a chief or their designee should authorize any denials of supervision.

Mark Sherman: So before we go, I wanted to get some final thoughts from each of you about what in your opinion the different audiences served by this new policy should take away from it, sort of what's the bottom line. So Jonathan Hurtig, in your capacity as chair of the Chiefs Advisory Group, what should chiefs in particular take away from this policy?

Jonathan Hurtig: Yeah. Mark, I think this policy really defines our evolution as a system and where we have come over the course of the last 15 years from that. This really wasn't anything that this particular workgroup put together in isolation, but rather we did it throughout all of the education and training that was referenced earlier. But more importantly, we've done it based on what chiefs and districts have worked hard at over the course of the last 15 years. And I think it's hard when you are going through constant change and you're looking at new policies, new procedures, new programs all the time. So take a minute and look back and reflect upon where we've come as a system.

I think about, for me personally, going back to I think it was 2009 or 2010 when we had our first evidence-based practices conference for chiefs and deputies in Houston, Texas, and when we were rolling out the blueprint for the implementation of evidence-based practices and talking about what the plan was. I think at that point there was a lot of apprehension, and maybe people were scared because it was something new where we were putting different terms and definitions to things that we have done.

When I look forward -- and I fast forward to I think it was 2015 in San Francisco, during a Chiefs conference when we were putting together the strategic plan for the system for the next

ten years and comparing those two discussions and where everyone was at and where they were talking about the need to effectively implement actual risk assessment and the rollout of STAR [phonetic] and the new case plan and just where we come, in comparing those two different dates while they're only five, six years apart, we've come a tremendous way in the system.

It's even more remarkable when you look at we're decentralized. So it's not as if a directive comes out of Washington and it's implemented the same everywhere. The beauty of our decentralized system is that we can take into account the differences we all face. I think that this policy really lays the foundation of not only what we've done and what we've accomplished, but more importantly where we want to go as a system. And I think it does a really good job at that.

The other thing I would say is that none of this happens overnight. This has been an evolution that our system has been going through, and so it does take time. It takes patience. There are things that we're going to do that the evidence is going to tell us may not be successful. A good thing about that is that we can ship, and adjust, and change course along the way to make sure that we are doing things that are proven to work.

Lastly, although the guide and the policy doesn't speak to this, it is critical that chiefs and administrators think about this - and that's the organizational development that goes along

with working with any of this and making sure that your staff is educated and provided their resources to make sure that they can effectively implement these practices and these policies. With that is implementation and how chiefs in district go about implementing certain things. So it's not just the policy or practice of standing alone. It's those things combined with the organizational development and the implementation that are really going to ultimately lead to our long-term success.

Mark Sherman: That's an extraordinarily helpful historical perspective on sort of how the system has been evolving over the past basically five, ten, fifteen years. And I think folks in the audience will have an appreciation of it if only because they've listened to this conversation and heard sort of how complicated the work of the officer is, how complicated obviously people are, and that this is something. This is a large system as you referred to thousands of officers stretching from coast to coast, plus the Virgin Islands and Puerto Rico and Guam. Really just a huge system, as well as sort of its decentralized nature, really important for folks to keep in mind and to think about this as sort of an incremental process.

Jonathan, I also wanted to ask you about what are the main takeaways for individuals on supervision themselves and their communities. I mean, they're really the ultimate consumers of this new policy. So what should do they take away from it?

Jonathan Hurtig: Yes. I think whenever you're talking about individuals and the communities affected, you have to look at what desired outcomes of supervision are. We want to make sure appropriate execution of sentence. We want to make sure that there's a reduction in reassigning. Ultimately, the most important thing is the protection of the community. But how we go about that and how we try to achieve that is focused on the individual. If that individual is successful, we're ultimately successful in reaching all those goals in which the person doesn't commit any crimes. They're held accountable to the victim, the families, the community, and any other court responsibilities that they have and that ultimately they're prepared for continued success not only throughout the period of supervision but more importantly beyond.

For the individuals, I think there's a great emphasis talked about earlier about establishing that working relationship between the officer and the person under supervision, and that it really is a collaboration between the two. And that the individual has a tremendous amount of input and control. I know that people under supervision often feel that they don't have control. They actually do have a lot of control about where their supervision goes, how successful they are, and ultimately what they accomplished.

For the communities, I think we've always focused on social network. There's great emphasis on it now in terms of we've got to extend just beyond that and it's establishment of pro-social and support networks that involve people's families, significant others, employers, and just other pro-social supports that we can tap into

So this is much larger than just the officer working with the individual. It's setting up the individual for long-term success because we're only involved in their lives for a relatively short period of time. It's up to them and the skills that they developed and learned while under supervision and those supports within their own communities that are ultimately going to ensure their long term success.

Mark Sherman: So Brad, as Jonathan was speaking, I can't help thinking about your reference back to the why of the officer and sort of why do officers do this job, sort of the larger aspects of the work. And you are deputy chief. You've been a supervisor. You've been a line officer. So I want to ask you what those three groups - deputies, supervisors, line officers - should take away from the new policy?

Brad Whitley: Well, that's a good question, Mark. I guess let me start with my newest role as deputy. So I would say I think the emphasis in the new guide is office over officer. All of us being engaged, all of us being responsible, taking a lot

of that verbiage from the old guide of officer and putting it on office because we're truly all responsible.

So for the deputies, just being engaged. For my role, which is relatively new, I'm about 12 months into the deputy role, I'm really actively engaged more so with the supervisors. So it's kind of a trickle-down effect. I'm engaged with the supervisors in getting them to engage with the officers and doing things differently.

But I think we all came into the system, you know, even if you were an enforcement mindset officer. I would put myself in that category when I joined them many years ago, but also in my heart I wanted to help those that I could. But I wasn't necessarily given the direction or even the tools or information of how to do so other than be a referral agent. So with all we have now, again it is a lot, we have a lot more information to actually assist and be that change agent. So just being positive with staff and encouraging them.

I always say for us to change a person under supervision's behavior and thinking, we have to change our own thinking and behavior as an agent too. So anytime, as a deputy or a supervisor, you can do that using effective reinforcement with your line staff when they are actually out there trying to make a difference. Even if it's not successful, just the effort alone, make sure you're reinforcing that.

But as officers, kind of going back to Jonathan, this isn't going to happen overnight. Be realistic about it knowing you should have the support of your chief, your deputy, and your supervisors to help you take on this new task and new skills. And again, being realistic. We're not going to move the needle of change with everyone. Taking that burden off of you that we're going to change everyone's thinking and behavior, that's not realistic. But we can. We can change people's thinking and behavior. We have to take it one case at a time and help facilitate change with those that we can given that opportunity to change.

So I think that's it, other than, at the end of the day, I think it finally made sense for me in my career of, you know, revocations are still going to happen. Violations are still going to happen. That's not going to go away. But if we can change a certain number of our persons under supervisions' thinking our health can change their thinking and behaviors, that's truly the long-term community protection that we're all trying to achieve.

Mark Sherman: Beautifully said. So Scott Vanbenschoten, from your perch at the Administrative Office, you sort of see the whole chessboard in terms of our federal system. So in terms of not just probation but sort of the federal criminal justice system writ large - and by that I mean federal

prosecutors, defense lawyers, Bureau of Prison's halfway houses, treatment providers, certainly the judges for whom we all work - what should the largest system take away from the new policy?

Scott Vanbenschoten: I don't know if I'm exactly a Garry Kasparov here as a chess player, but I guess I see it in two ways. One is we're doing our part as the probation system, as a piece of a larger criminal justice system to continue to move the needle towards being a professional, following evidence, and doing the right thing as a system. We've always done it. I believe we've always been professional. We are maintaining that and moving the needle forward as the outside world has taught us more stuff through research and through experience, that we're holding up our end of the bargain in the criminal justice system as being as professional as possible.

But also when I look at how judges and defense attorneys and AUSAs see us in the court system, we've always been seen as, in terms of federal occupation [sounds like], as really the best of the best in terms of officers, in terms of their knowledge and professionalism. And it's my hope that this policy catches us up a little bit because those officers in many places have jumped ahead of us in terms of the policy, and this catches us up. And for those officers that this is new to, hopefully it can help move them forward as well so that we're all seen

uniformly as a professional and educated and on the cutting edge.

I believe we've always been that. Without question actually, I believe we have the best probation officers and probation system in the land. Our policy I think is going to better support it, and hopefully judges and defense attorneys and AUSAs will see that. That's how I see it in the larger picture.

Mark Sherman: Scott Vanbenschoten, Jonathan Hurtig, Brad Whitley, I want to thank the three of you very much for talking with us.

Scott Vanbenschoten: Thank you.

Jonathan Hurtig: Thank you, Mark.

Brad Whitley: Thanks, Mark.

Mark Sherman: *Off Paper* is produced by Paul Vamvas. The program is directed by Maisha Pope.

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I'm Mark Sherman. Thanks for listening. See you next time.

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