

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED
MAY 10 1985
S. ALAN COOK
CLERK SUPREME COURT
BY *Diana L. Bentley*

IN THE MATTER OF: ADMINISTRATIVE)
REQUIREMENTS FOR INTENSIVE)
PROBATION PROGRAMS)

ADMINISTRATIVE
ORDER NO. 85-10

A. Preamble

The following requirements are adopted to administer intensive probation programs in the State of Arizona pursuant to Arizona Revised Statutes §12-291 et seq. These requirements are adopted under authority of the foregoing law and by authority granted this Court by Article VI, Section 3 of the Arizona Constitution. In furtherance of the Legislature's policy as set forth in A.R.S. §12-291, the purpose of intensive probation programs administered pursuant to this order should be to reduce prison commitments by adoption of intensive probation programs for offenders for whom the nature of the offense and the criminal history of the person supports the conclusion that there is a substantial probability that the person will remain at liberty without violating the law so as to reserve prison space for more serious offenders, enhance restitution to victims, and provide cost-effective punishment for offenders placed into intensive probation programs by means of strict controls, sanctions, and close supervision.

B. General Administration

Administration of intensive probation programs on behalf of this Court shall be under the direction of the Supreme Court's Administrative Office of the Courts. The Administrative Director of the Courts¹ is authorized to prescribe and adopt procedures, forms, and reports necessary for the financial and program administration and management of intensive probation, intensive probation appropriations, distribution of funds, and other requirements imposed by law or this order. The Administrative Office of the Courts is authorized and directed to monitor intensive probation programs including authority to inspect, audit, or have audited the records of any superior court operating an intensive probation program; to conduct seminars and educational sessions for judges and probation personnel regarding the purposes and operation of intensive probation; and, to annually prepare the Supreme Court's report stating the number of persons supervised on intensive probation during the prior year and the nature of the offense and the criminal history of each of these persons for submittal to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Arizona Criminal Justice Commission at the time the Supreme Court submits its annual budget request to the Legislature.

¹As used in this order Administrative Director means the Administrative Director or his designee

The Administrative Office of the Courts is also directed to prepare additional written materials consistent with the above-referenced act and this order setting forth various techniques, practices, and other recommendations regarding the operation and management of intensive probation supervision programs, including criteria to be considered by probation officers in determining whether to recommend a person for intensive probation supervision. Such written material shall be distributed to appropriate superior court judges and adult probation officers.

The Administrative Director of the Courts may adopt other administrative practices and procedures, not inconsistent with this order as may be necessary and expedient for the Supreme Court's administration of the intensive probation supervision program.

C. Budget Request Preparation

1. The presiding judge of the superior court in any county wishing to implement and operate an intensive probation program shall submit each year a proposed plan and budget request for the following fiscal year to the Administrative Office of the Courts. The date for submittal shall be established by the Administrative Director and such budget requests shall be filed on forms and according to instructions prescribed by him.

2. Budget requests from a participating superior court may include normal and reasonable categories necessary to support and operate an intensive probation program, including funds for personal services, employee-related benefits, professional and outside contractual services, operating expenses including travel expenses and equipment.
3. If, in any year, the total appropriation provided by the Legislature to the Supreme Court for intensive probation programs is less than the sum total of the requests of the participating superior courts, the Administrative Director of the Courts, with the approval of the Chief Justice, shall determine the portion to be allocated from available funds to each participating superior court.
4. All budget requests shall be supported by adequate justification and explanation as required by the Administrative Director.

D. Program Plan and Financial Management

1. Each participating superior court shall submit its plan in the format and on forms as required by the Administrative Office of the Courts. Such plans must be submitted and approved prior to distribution of funds. The plan and any plan modifications shall be consistent with A.R.S.

§12-292 et seq., this order and the court's budget request. The Administrative Director is authorized to approve those plans and modifications which he believes are in conformity with the applicable laws and this order. Modification of approved plans shall be submitted in writing by the presiding judge in a form approved by the Administrative Director. In the event that the Administrative Director determines not to approve a plan or plan modification submitted by a superior court, he shall submit the plan to the Chief Justice of the Supreme Court for consideration and final determination.

2. Upon approval of the plan and availability of funds, the Administrative Director shall enter into a written funding agreement with the submitting court for distribution of the allocated funds on a basis determined by the Administrative Director. The Administrative Director shall have authority to alter the funding arrangement if such action is necessary due to a lack of funds, a lack of financial need by the court, or due to failure to comply with the applicable statutes the approved plan or these administrative requirements.
3. Funds received by the superior court pursuant to these administrative requirements shall be deposited into a special revenue fund with the

county treasurer established pursuant to the procedures provided in Section III.B of the Auditor General's Uniform Accounting Manual for Arizona Counties.

4. State funds appropriated to the Supreme Court for distribution to superior courts shall be used only for the support and operation of approved intensive probation programs. Upon agreement with any one or more participating courts, the Administrative Director may withhold funds allocated to such courts and may authorize direct expenditures for the benefit of such courts. The Administrative Director may also reallocate funds during a fiscal year, when circumstances justify such action.
5. The presiding judge of each participating superior court shall submit to the Administrative Office of the Courts, by January 31 of each year, a report as required by the Administrative Office of the Courts, setting forth actual financial and program activity related to each court's plan as of December 31.
6. The presiding judge of each participating superior court shall return to the Supreme Court on or before August 31, for reversion into the State general fund, all intensive probation funds distributed to that superior court which are unencumbered as of June 30 of each fiscal year and

unexpended as of July 31. The reverted funds shall be accompanied by a closing financial statement and a program activity report related to each court's plan as of June 30, signed by the presiding judge.

7. In the event that a superior court experiences a decreased need for funds or declines to participate after the Legislature has appropriated funds for intensive probation programs, the Administrative Director of the Courts with the approval of the Chief Justice shall determine how such funds allocated to that court shall be used consistent with the provisions of the above-referenced act and this order.
8. Each participating superior court and its probation department shall maintain and provide to the Administrative Office of the Courts such data and statistics as may be required by the Administrative Director. Such data shall include, at a minimum, the information necessary for the Supreme Court's Intensive Probation Supervision report each year as required by law.
9. Each participating superior court and its probation department shall retain all financial records, applicable program records, and data related to each approved plan for a period of at least five years from the close of each fiscal year.

10. In the event that the Board of Pardons and Paroles elects to participate in this program, it shall first submit proposed procedures to the Administrative Director regarding the method to be used in placing and supervising a parolee in an intensive probation supervision program. Such procedures should also include the process to be used for administrative coordination. The Administrative Director is authorized to approve acceptable procedures which must be consistent with the law and this administrative order.

E. Eligibility Requirements for Intensive Probation Recommendation

1. A person who was granted parole and is subject to A.R.S. §31-415 may be placed on intensive probation supervision pursuant to A.R.S. §31-417 in the county in which he resides if the parole board finds that he has committed a technical violation of parole that is not chargeable or indictable as a criminal offense and the court in that county operates an intensive probation supervision program with a placement available to accept the parolee. Such parolees must have been sentenced by the Superior Court of Arizona.
2. Only persons who are sentenced for criminal offenses or technical probation or parole

violations after June 30, 1985 are eligible for intensive probation supervision. Only those probation eligible offenders convicted of a class 4, 5, or 6 felony may be placed in an intensive probation program. Technical probation and parole violators may also be placed in an intensive probation program.

3. To be included in an intensive probation supervision program, the offender must be eligible for probation or be a technical violator. A probation officer may recommend an eligible offender to the court for intensive probation supervision only after having considered the risk assessment score pursuant to a uniform statewide risk assessment method adopted by the Administrative Office of the Courts for use in all intensive probation supervision programs. An offender who scores outside the limits allowed for intensive probation supervision may not be recommended for intensive probation supervision unless approved in writing by the chief probation officer.
4. The probation officer in making the recommendation to include an offender in the intensive probation supervision program should consider the nature of the offense, the prior criminal history of the offender, the substantial probability that the

will remain at liberty without violating the law, the length of the potential prison sentence, the potential harm to the victim, the attitude of the victim toward placing the offender on intensive probation supervision, incarceration for purposes of deterrence, patterns of prior behavior, the offender's potential for employability, payment of restitution, performance of community service, and any other factors deemed appropriate to the ends of justice.

5. If the probation officer recommends that the offender be placed in the intensive probation supervision program, the reasons supporting the recommendation shall be included in the pre-sentence report. The officer should only recommend intensive probation for offenders that would otherwise have been recommended for incarceration with the Department of Corrections.
6. In order to be included in the intensive probation supervision program the court shall determine that, based on the nature of the offense and the criminal history of the person, there is a substantial probability that the person will remain at liberty without violating the law.
7. Pursuant to these administrative requirements and A.R.S. §12-292.A(2), the superior court may place an offender in the intensive probation supervision

program who is already on probation but has violated that probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.

8. Prior to placing an offender into an intensive probation supervision program, the court shall consider the probation officer's recommendations, the factual basis and circumstances leading to the offender's conviction and any other factors deemed appropriate to the ends of justice. When granting intensive probation supervision, the court pursuant to A.R.S. §12-292.D shall set forth on the record the factual and legal reasons in support of the sentence.
9. Following incarceration, intensive probation shall be conditioned on the offender:
 - a) Maintaining employment or being involved in supervised job searches and community service at least six days a week throughout his term of intensive probation.
 - b) Paying restitution and paying a monthly probation fee of not less than \$30 unless, after determining the inability of the offender to pay the fee, the court assesses a lesser fee. Probation fees shall be deposited in the probation services fund.

- c) Establishing a residence at a place approved by the intensive probation team and not changing his residence without the team's prior approval.
 - d) Remaining at his place of residence at all times except to go to work, to perform community service and as specifically allowed in each instance by the adult probation officer.
 - e) Allowing administration of drug and alcohol tests if requested by a member of the intensive probation team.
 - f) Performing not less than ten hours of community service each week.
 - g) Meeting any other conditions imposed by the court.
10. The court shall also require as a condition of intensive probation that the offender be incarcerated for not less than 45 days but may give credit for time served prior to sentencing to satisfy this requirement. In addition, where otherwise appropriate and permissible, such offender is eligible for work furlough programs while incarcerated. A person is considered to be on intensive probation field supervision upon release from incarceration.

F. Waiver Procedure

1. A presiding judge of a superior court in a county with a population of fewer than 300,000 persons may request a waiver of any or all the requirements of A.R.S. §12-293, subsection A, subsection B, and subsection F, paragraph 2, if the caseload of every adult probation officer supervising persons on intensive probation is not more than 15 persons and the program plan requires visual contact with each intensive supervision probationer at least one time a week. Such probation officers shall only supervise persons on intensive probation supervision.
2. Waiver requests shall be filed with the Administrative Office of the Courts in a format and on a form prescribed by the Administrative Director. The Administrative Director or his designee shall recommend to the Chief Justice approval or disapproval of the waiver request and the Chief Justice will determine whether to grant or deny the waiver. The decision of the Chief Justice shall be communicated to the presiding judge in writing.

G. Program Operating Procedures

1. For purposes of uniform administration and coordination, documentation and recordkeeping,

information retrieval and reporting, monitoring and evaluation, and training, the Administrative Director of the Courts is authorized, where desirable and feasible, to adopt additional uniform requirements regarding A.R.S. §12-292.F, §12-293, and §12-295. Each superior court and probation department operating an intensive probation supervision program shall comply with any such requirements.

2. Each intensive probation supervision plan of a superior court must include, at a minimum, the requirements and responsibilities set forth in A.R.S. §12-293.F.
3. In compliance with A.R.S. §12-293.F(4), an intensive probation team or officer shall bring a defaulting probationer or parolee into court or before the Board of Pardons and Paroles if, in the judgment of the adult probation officer, the person's conduct justifies revocation.
4. Pursuant to A.R.S. §12-295, the intensive probation team shall assist each person under its supervision in obtaining employment. The person's wage shall be paid directly to an account established by the chief adult probation officer from which the adult probation officer shall make payments for restitution, probation fees, fines, and other payments. The term "other payments" shall be

restricted to court-ordered payments imposed as part of the sentence or as a condition of probation arising out of the proceeding by which the person was placed on intensive probation. In the absence of specific court-ordered monthly payment schedules, the chief adult probation officer shall establish such monthly, bi-monthly, or weekly payment schedules for each person in an intensive supervision program which emphasizes payment of restitution and probation fees.

The balance of any monies shall be placed in an account to be used for or paid to the person or his immediate family in a manner and in such amounts as determined by the chief adult probation officer, the court, or the Board of Pardons and Paroles. Any monies remaining in the account at the time the person successfully completes probation or parole shall be paid to the person. In establishing the payment schedule contemplated by this section, the chief adult probation officer shall review the amount of living expenses and available income of the probationer and determine the amount of money to be paid for court-ordered payments each month. Payment schedules and amounts may be modified by order of the court or the Board of Pardons and Paroles.

5. Each adult probation officer providing intensive supervision shall, as set forth in the plan, periodically examine the needs of each person in an intensive supervision program and the risks of modifying the level of supervision of the person. The court or the Board of Pardons and Paroles may at any time modify the placement or the level of supervision of a person granted intensive probation.
6. When, in the judgment of the intensive probation officer, the intensive probation supervision is no longer required, the officer may recommend to the court or parole board that the person be removed from the intensive probation supervision caseload. If the court or parole board transfers the person to regular probation or parole then the person will be assigned to some other probation officer. In the instance of a parolee, the parole board assumes supervision responsibility.
7. Whenever the court or Board of Pardons and Paroles receives notification from an intensive probation officer proposing termination of the intensive probation placement or proposing modification of the level of supervision of a person granted intensive probation, the court or board shall notify the prosecuting attorney of any proposed modification.

8. Any recommendation by a probation officer to the court or the parole board to terminate an intensive probation placement or to modify the level of supervision shall be supported by a new risk assessment analysis, satisfactory compliance and performance by the probationer or parolee with all conditions and terms of intensive probation.
9. Levels of supervision may be progressively decreased over the term of supervision dependent upon compliance by the person with all of the conditions of probation, including continued law-abiding behavior. Requests by the intensive probation officer for a change in the level of supervision of a probationer or parolee shall be in accordance with the following minimum requirements for such changes, but the level of supervision cannot be decreased beyond the minimum level described in the following requirements for intensive supervision.

Minimum Requirements
Levels of Supervision For
Two-Person Intensive Probation Teams

Supervision Level I

1) Visual Contacts

The team is to have a minimum of four visual contacts with each probationer per week.

- a. Each participating probation department is to include in their I.P.S. operations varied visual contacts to include evenings and weekends. (See requirement #5.)
- b. Additional contacts of varied nature are also to be included as part of each plan to ensure the close supervision and monitoring of each probationer. (See requirement #5.)

2) Employment Verification

The team shall make weekly contact with the employer of the probationer.

3) Employment-Seeking Verification

The unemployed probationer is required to present verification of job search activities each weekday unless otherwise instructed by the intensive team or officer.

4) Arrest Records

The intensive teams, during Supervision Level I, shall make a weekly arrest record check as part of the information collected on the conduct of the persons sentenced to intensive probation.

5) Curfew

The team or officer shall monitor and enforce curfews established pursuant to A.R.S. §12-292, Subsection F. 4.

6) Community Service

The team or officer shall monitor and enforce the minimum requirements for community service as per A.R.S. §12-292, Subsection F. 6.

7) Alcohol/Drug Tests

The team or officer will administer alcohol and drug tests as required in the judgment of the officer or according to the policy and procedures of the participating superior court.

Supervision Level II

The recommendation must be supported by a new risk assessment analysis, stable employment, compliance with community service requirement and other conditions, positive adjustment, including remaining arrest free and free of drug and alcohol abuse.

1) Visual Contacts

- a. The team is to make a minimum of two visual contacts per week. Contacts each month should include evenings and weekends.
- b. Additional contacts of varied nature are to be included as part of the plan by each department to provide for close supervision and monitoring of the probationer.

2) Employment Verification

The team shall contact the employer at least once every two weeks.

3) Employment-Seeking Verification

Same as Supervision Level I.

4) Arrest Records

Same as Supervision Level I.

5) Curfew

Same as Supervision Level I.

6) Community Service

Same as Supervision Level I.

7) Alcohol/Drug Tests

Same as Supervision Level I.

Supervision Level III

After completion of supervisions levels I and II, the officer shall again assess the risks and needs of the probationer, and the adjustment of the probationer.

The officer may recommend that the probationer be placed in Supervision Level III or may make other appropriate recommendations.

1) Visual Contacts

a. The team is to have at least one visual contact per week with the probationer.

b. Some additional contacts of a varied nature are to be made to provide for the close supervision and monitoring of the probationer pursuant to the approved plan of each department.

2) Employment Verification

Same as Supervision Level II.

3) Employment-Seeking Verification

Same as Supervision Level I.

4) Arrest Records

Same as Supervision Level I.

5) Curfew

Same as Supervision Level I.

6) Community Service

Same as Supervision Level I.

7) Alcohol/Drug Tests

Same as Supervision Level I.

H. Allocation and Management of the Number of Intensive Probation Supervision Placements

1. Pursuant to section 7 of Chapter 237, Senate Bill 1135, Title 12, Arizona Revised Statutes, Article 9, Thirty-Seventh Legislature, First Regular Session, 1985, no more than a monthly average of 1200 persons may be in intensive probation field supervision at any one time during 1985-86, nor more than a monthly average of 1200 persons at any one time during fiscal year 1986-87, and no more than a monthly average of 1200 persons at any one time during fiscal year 1987-88.
2. The intensive probation placements for 1985-86 will be apportioned amongst the participating superior courts based on each court's need and percentage of the total number of persons committed to the

Department of Corrections in 1984. In subsequent years the Administrative Director of the Courts is authorized to determine the method for allocating placements subject to the approval of the Chief Justice. The Board of Pardons and Paroles shall be allocated not more than 25 placements at any one time during the 1985-86 fiscal year.

3. The Administrative Director may prepare and implement procedures for adjusting allocated placements between and amongst superior courts. Such procedures shall be submitted to the Chief Justice for approval and are subject to future modification.

These administrative requirements are subject to modification as deemed necessary.

APPROVED this 10th day of May, 1985, by the Arizona Supreme Court.

~~WILLIAM A. HOLOHAN, Chief Justice~~