



Zero Tolerance Policy Rescinded and Alternatives Implemented to Address Technical Violations

at a glance

In 2003, the Department of Corrections established a 'zero tolerance policy' that required its probation officers to report to the court every offender in community supervision who violated conditions of supervision. As a result, offenders who committed technical violations were brought before the court as well as those who committed new criminal offenses. Although this policy increased offender scrutiny, it had several disadvantages including substantially increasing court workload and costs to incarcerate offenders for relatively minor violations.

Since OPPAGA's 2007 report, the department has rescinded its zero tolerance policy and has directed its probation officers to report only those technical violations that are willful unless otherwise directed by the courts. The department, Legislature, and circuit courts also have implemented alternative ways to address technical violations, including technical violation notification letters, notices to appear, and specialized courts. As a result, the number of offenders brought before the court for technical violations has significantly decreased, as have prison admissions for such violations. The new policy and alternatives are conserving limited resources while holding technical violators responsible for their actions.

Scope

In accordance with state law, this progress report informs the Legislature of actions taken in response to OPPAGA's 2007 review of the Department of Corrections' zero tolerance policy.¹

¹ *Department of Corrections Zero Tolerance Policy Increases Offender Scrutiny But Is Not Based on Risk to Public Safety*, OPPAGA [Report No. 07-13](#), February 2007.

Background

The Department of Corrections oversees persons who are sentenced to felony community supervision in lieu of incarceration or after serving a prison term. Persons under community supervision must abide by conditions set by the courts or the Florida Parole Commission.² These conditions generally include not committing new crimes, making monthly contact with probation officers, submitting to random drug tests, and remaining in their county of supervision. Probation officers monitor offenders' compliance and report violations to the courts.

The department established a zero tolerance policy in 2003. Prior to March 2003, probation officers were required to notify the courts when any offender under community supervision committed a new crime. In some cases, officers did not consistently notify the courts of technical violations.

In March 2003, the department established a zero tolerance policy for offenders on community control, requiring probation officers to report all technical violations committed by these persons to the court. In 2004, the department extended this policy to all offenders under community supervision in response to several cases in which supervised offenders committed murders. The courts or Parole Commission then decided whether the offenders were to continue on community supervision or receive additional sanctions such as jail or prison.

² The Florida Parole Commission is responsible for offenders on post-prison release supervision, such as parole or conditional release. We excluded the commission from our analysis because it is responsible for only 3.6% of the supervised population.

The zero tolerance policy increased scrutiny of offenders but had several disadvantages. Our 2007 report concluded that while the zero tolerance policy had increased offender oversight, it also had several negative consequences. Notably, it substantially increased probation officers' workload, who submitted 54% more technical violation reports to the courts after the policy was implemented. This generated a corresponding increase in law enforcement workload, which typically assisted in arresting offenders, as well as increased county jail populations, as these persons were typically denied bond and remained in jail until their court hearings were held.

Court workload also increased due to the need to hold hearings to determine whether the violations had occurred and if penalties should be imposed. More than half of technical violation reports did not result in additional penalties.³ However, the Office of Economic and Demographic Research reported that the number of technical violators sentenced to prison increased 20% during the first year of the zero tolerance policy and further increased each year thereafter. As a result, technical violators as a percentage of total prison admissions increased.

Our prior report recommended that the Department of Corrections revise its zero tolerance policy to target those offenders who posed the greatest threat to public safety and handle persons who commit minor technical violations in a more cost effective manner to better allocate limited state and local criminal justice resources. To improve its ability to assess the effectiveness and impact of its supervision policies, we also recommended that the department collect data on the types of new crimes and technical offenses committed by offenders on community supervision.

Current Status ---

Consistent with our recommendations, the department revised its zero tolerance policy and has since rescinded it. This change, together with alternatives created by the Legislature and the courts, have resulted in lower probation officer and court workload and reduced jail and prison costs. The department also has begun collecting data on the technical violations committed by persons on community supervision.

The zero tolerance policy has been rescinded and several alternatives have been implemented

The department rescinded its zero tolerance policy. In August 2007, the department modified its zero tolerance policy to require probation officers to only report willful violations that offenders purposely commit or have control over, such as failing to submit to a drug test. Officers were no longer required to notify the courts when supervised offenders committed technical violations that could not be substantiated as willful violations, such as missing appointments due to work conflicts. In May 2008, the department rescinded the policy altogether and eliminated the zero tolerance policy language from its procedures.

Several alternatives have been implemented to more efficiently handle technical violators. The department, Legislature, and local circuit courts have also established alternatives for handling technical violations, including technical violation notification letters, notices to appear, and specialized courts.

Technical Violation Notification Letters. The 2007 Legislature enacted Chapter 2007-210, *Laws of Florida*, to authorize judges to direct the department to issue notification letters when low-risk offenders in community supervision commit technical violations.⁴ These letters are prepared by probation officers and notify the judge that the offender has committed a minor violation. This keeps the judge informed of the offender's behavior but does not require the offender to be arrested unless the judge orders otherwise. Judges in 15 circuits have authorized these notification letters.

Notices to Appear. Chapter 2007-210, *Laws of Florida*, also authorized judges to issue notices to appear for low-risk offenders who commit technical violations. These notices require offenders to report to a hearing to resolve their technical violations but do not require them to be arrested and wait in jail until such hearing. This frees jail resources for more serious offenders. Thirteen circuits permit the use of these notices, although some allow the notices for only monetary technical violations. Pinellas County in the 6th Judicial Circuit reported that it has used these notices to resolve approximately 45% of technical violation cases.

Violation of Probation Courts. Eight circuits have established specialized courts to expedite technical violation cases. These courts assign a court division or judge to hear all technical violation cases, which decreases the time it takes to dispose of the violations.

³ Some judges might have considered the time offenders served in jail awaiting hearing as reasonable punishment for the technical violation.

⁴ Offenders who have been convicted of or alleged to have committed violent or sexual offenses are ineligible for notices to appear. The use of violation letters varies by circuit. All judges in some circuits allow the letters, while only some judges do so in other circuits.

For example, in Hillsborough County, violations are disposed within seven days, compared to several weeks or months when violations are heard in regular court dockets. These courts help reduce jail overcrowding because violators spend less time awaiting their hearings.

Probation Officer Recommendations. Chapter 2007-210, *Laws of Florida*, required probation officers to provide a recommendation to the court in violation of probation cases to assist judges in making their decisions. These recommendations assess appropriate sanctions for the technical violation and the department’s ability to continue supervising the offender in the community. The department had prohibited its staff from making such recommendations during the zero tolerance period.

Early Termination. While the department has had the authority to recommend that the court grant offenders early release from community supervision, it previously did not regularly do so.⁵ In November 2008, the department revised its policy and now makes such recommendations when offenders have successfully served at least half of their term of supervision and have met all court requirements. A total of 17,420 offenders were released from supervision through early termination in Fiscal Year 2008-09 compared to 5,735 in Fiscal Year 2007-08.

Drug Courts. The 2009 Legislature enacted Chapter 2009-64, *Laws of Florida*, to expand post-adjudicatory drug courts for prison-bound, non-violent felony offenders who are amenable to treatment and agree to participate in the program. Drug courts are designed to provide supervised community treatment services in lieu of incarceration for drug addicted offenders. The 2009 General Appropriations Act included \$19 million in federal grants to expand post-adjudicatory drug courts in nine counties to divert certain offenders who would otherwise be incarcerated. Drug courts provide an alternative to incarceration for those technical violators with substance abuse problems.

Other Efforts. As we recommended, the department has begun collecting data on the technical violations committed by persons on community supervision. This information can help the Legislature and department assess the effectiveness of community supervision and efforts to divert these persons from incarceration.⁶ The

⁵ Section 948.04(3), *F.S.*, provides that the department may recommend early termination of probation when offenders have performed satisfactorily, have not violated any conditions of supervision, and have met all financial sanctions imposed by the court, including fines, court costs, and restitution.

⁶ The department implemented this recommendation for technical violations reported to the courts via a violation report. Technical

department also has implemented individualized supervision plans. These plans, jointly developed by probation officers and offenders, identify each offender’s needs and goals to increase their compliance with supervision conditions. The department also has trained its probation staff in motivational interviewing techniques, which emphasize supervision strategies to change offender behavior.

These efforts have reduced violation reports, court workload, and the number of technical violators sentenced to prison

Because probation officers are no longer required to report non-willful or negligible technical violations, the number of violation reports submitted to the courts has substantially decreased. As shown in Exhibit 1, the monthly average number of reports submitted for technical violations decreased by over 65% after the zero tolerance policy was rescinded.

**Exhibit 1
The Average Number of Violation Reports Filed Per Month Significantly Decreased**

Type of Violation	Average Violation Reports Filed Per Month	
	Zero Tolerance Period ¹	After Zero Tolerance ²
Technical	6,019	2,054
New Law	2,717	1,415
Total	8,736	3,469

¹ March 2003 to July 2007, or 53 months.

² May 2008 to December 2009, or 20 months.

Source: OPPAGA Report No. 07-13 and OPPAGA analysis of Department of Corrections data.

The reduction in violation reports has decreased both probation officer and court workload. This enables officers to spend more time supervising offenders rather than completing violation reports and associated paperwork such as court affidavits and warrants. This decline also reduced workload for the court system, including state attorneys, public defenders, and judges. The policy change also reduced county jail populations as fewer offenders are being arrested and detained until hearings.

The number of offenders sentenced to prison for technical violations has also decreased, as shown in Exhibit 2. The number of offenders sent to prison increased annually after the zero tolerance policy was established in 2003, but has decreased since the policy was modified in 2007 and rescinded in 2008.

violation notification letters are not entered as violations in the database.

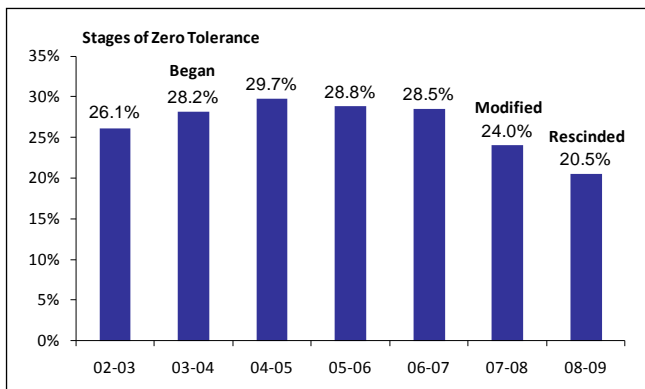
Exhibit 2
The Number of Technical Violators Sentenced to Prison Has Declined Over the Last Two Fiscal Years

Fiscal Year	Number of Violators Sent to Prison	Percent Change
2002-03	7,898	-
2003-04	9,478	20.0%
2004-05	10,148	7.1%
2005-06	10,576	4.2%
2006-07	11,207	6.0%
2007-08	10,145	(9.5%)
2008-09	8,195	(19.2%)

Source: The Office of Economic and Demographic Research, Criminal Justice Trends, February 19, 2010.

Technical violators as a percentage of total prison admissions have also decreased. As shown in Exhibit 3, technical violators as a percentage of total admissions was as high as 29.7% during the zero tolerance period, but declined to 20.5% in Fiscal Year 2008-09 when the policy was rescinded.

Exhibit 3
Technical Violators as a Percentage of Total Prison Admissions Has Decreased



Source: OPPAGA analysis of data from the Office of Economic and Demographic Research.

While the number of technical violators sent to prison has decreased, a greater percentage of technical violations are now resolved by incarceration, as shown in Exhibit 4. This reflects the fact that minor violations are now being handled non-judicially, while more serious cases are being sent to the court.

Exhibit 4
A Higher Percentage of Technical Violation Cases Are Being Sentenced to Jail or Prison

Disposition	Average Monthly Technical Violation Reports			
	Zero Tolerance Period ¹		After Zero Tolerance ²	
No Additional Penalty ³	3,201	53.2%	53	2.6%
Increased Sanctions	746	12.4%	478	23.3%
Jail	1,209	20.1%	838	40.8%
Prison	862	14.3%	684	33.3%
Unknown	1	0.0%	0	0.0%
Total	6,019	100.0%	2,054	100.0%

¹ March 2003 to July 2007, or 53 months.

² May 2008 to December 2009, or 20 months.

³ Some judges might have considered the time offenders served in jail awaiting hearing as reasonable punishment for the technical violation.

Source: OPPAGA Report No. 07-13 and OPPAGA analysis of Department of Corrections data.

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