

THE EFFECT OF DISPROPORTIONATE SANCTIONING ON CLIENT NONCOMPLIANCE

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VALUE STATEMENT

The current study shows that problem-solving courts should consider whether their sanctioning practices are proportional to the severity of clients' violations. Failure to deliver proportional sanctions may lead to an escalation in clients' noncompliance, especially among non-White participants.

ABSTRACT

Problem-solving courts attempt to shape clients' behavior through the use of sanctions for noncompliance. While previous research has examined whether offenders who receive sanctions are less likely to complete the program and more likely to recidivate, fewer studies have examined whether sanctions adhere to the tenets of deterrence theory, and whether sanctions that violate these tenets lead to changes in clients' behavior. The current study uses data from a veterans treatment court to examine: (1) how court team members rate the severity of common violations, (2) whether the team administers sanctions in a disproportionate manner based upon NADCP's ranking of sanctions, and (3) if disproportionate sanctioning is correlated with clients' escalating their noncompliance. The results show a significant level of disproportionate sanctioning practices for low- and moderate-level violations, especially among non-White clients. Further, upward departures are associated with clients subsequently increasing the severity of their misconduct (controlling for their general level of noncompliance overall and noncompliance within the past two weeks). The current study demonstrates the value of considering proportionality in sanctioning grids within problem-solving courts, from both a sanctioning and an equity point of view.

KEYWORDS

Sanction, proportionality, veterans treatment court

INTRODUCTION

One of the key components of problem-solving courts is to deliver sanctions in a way that aligns with deterrence theory. In particular, sanctions should be swift, certain, progressive (or graduated in response to continual noncompliance), and proportional to the severity of the offense (Taxman, Soule, & Gelb, 1999). Failure to adhere to these principles may lead to higher dropout rates in problem-solving courts and higher recidivism rates in the long term (Goldkamp, White, & Robinson, 2001; Kushner, Peters, & Cooper, 2014; Shaffer, 2011).

Given the potential iatrogenic effects emerging from sanctioning processes, there has been a considerable amount of attention given to the delivery of sanctions and their effects on clients' behavior within problem-solving courts. Shaffer's (2011) meta-analysis of 76 drug courts showed that programs that did not have a formal sanctioning system and did not swiftly respond to major infractions had higher recidivism rates than programs that had a standardized

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sanctioning system and swiftly imposed sanctions. These ideas of effective sanctioning have been further tested in the literature on swift, certain, and fair (SCF) sanctioning programs for probationers and parolees. Programs that emphasize swift and certain sanctioning have been shown to reduce substance use, probation revocation, recidivism, and reincarceration (DeVall, Lanier, & Hartmann, 2013; Hamilton, Campbell, van Wormer, Kigerl, & Posey, 2016; Snell, 2007).

While the literature has devoted a significant amount of attention to the effects of sanction swiftness and certainty, fewer studies have examined the element of proportionality and its relationship to clients' noncompliance. Proportionality is central to effective sanctioning because clients may escalate their offending behavior if they perceive that: (1) the sanctioning process is unfair or unequitable across participants, or

(2) if minor violations are punished the same as severe violations. In light of these considerations, the current study investigates: (1) how practitioners rank order common infractions within a problem-solving court, (2) if the imposed sanctions are proportional to the severity of the infraction, and (3) whether disproportionality in the sanctioning process leads to an escalation of client noncompliance (in terms of severity and quicker violation of program rules).

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EXISTING RESEARCH

Deterrence theory is the leading philosophy that guides the implementation of punishment or sanctions within the criminal justice system. This theory emerged from the work of Cesare Beccaria (1764) and Jeremy Bentham (1789), who argued that individuals derive benefits from criminal behavior, and thus that institutions could prevent or control criminal behavior by creating an effective system of punishment. This effective system of punishment would be grounded in the principles of certainty, celerity, severity, and proportionality. More specifically, punishment would effectively deter or modify behavior when: (1) the probability of receiving punishment or negative consequences approached near certainty ($p = 1.00$), (2) it was delivered shortly after commission of the offense, (3) punishment was severe enough to offset the benefits of the offense, and yet (4) punishment was proportional to the severity of the offense, so that the harshest punishments were reserved for the most severe offenses.

Many problem-solving courts may lean upon sanctioning as a way to deter criminal behavior and promote compliance, but studies have shown that clients who receive harsh sanctions often have worse outcomes than those who do not receive severe sanctions. For instance, Goldkamp and colleagues' (2001) analysis of drug treatment court participants in Portland, Oregon and Las Vegas, Nevada found that participants who received a sanction, especially a jail sanction, had a higher probability of arrest for any offense, drug and nondrug, controlling for offender demographics and criminal history. Thus, the effect of sanctioning on recidivism could not be explained by the defendant's criminogenic risk, or that more criminally inclined offenders were likely to receive a jail sanction and

be rearrested. Their results also showed that individuals who were jailed for noncompliance were also less likely to graduate from the program (12%–27%) than participants who did not receive a jail sanction (27–44%). Similarly, Brown, Allison, and Nieto's (2011) analysis of 573 drug court participants showed that receiving a jail sanction within the first 30 days of the program was subsequently associated with commission of a new crime, absconding, or repeatedly testing positive for illicit substances.

Despite these negative associations, other studies have shown that sanctioning does not negatively impact participants' success. Hepburn and Harvey's (2007) quasi-experimental study of the drug treatment court in Maricopa County found that the threat of legal punishment was not associated with the average length of time within the program and whether clients successfully completed the program. Similarly, a study of 68 clients in a felony-level drug treatment court showed that sanctioning was not related to program retention, termination, or dropout (Guastaferrero & Daigle, 2012); thus, the iatrogenic effect of sanctioning appears to be more nuanced than merely applying a sanction (Matejkowski, Festinger, Benishek, & Dugosh, 2011).

Beyond the effects of merely receiving a sanction and program outcomes, other studies have expanded upon the literature by investigating whether sanctions that are certain and progressive have an impact on clients' behavior (Kushner et al., 2014; Shaffer, 2011). Marlowe and colleagues (2005) found that the likelihood of producing negative drug screens and of graduating from the program were approximately 59% lower among the groups of participants who believed that their behavior would not be monitored or sanctioned (despite this perception changing across time); thus, clients need to believe their behavior will be monitored and responded to. Similar results were garnered from a study of 23 drug treatment courts, which found that recidivism rates were lower in courts that had a formal sanctioning policy and procedure, shared that procedure with the participants, and moderately adhered to the sanctioning policy (Zweig, Lindquist, Downey, Roman, & Rossman, 2012). Aside from increasing the certainty of punishment, courts have focused on using a graduated system of sanctions in which the first and second act of noncompliance may involve lower-level sanctions, such as writing an essay or increasing treatment, while subsequent violations will result in more punitive sanctions, such as curfew, electronic monitoring, jail, or termination (Arabia, Fox, Caughie, Marlowe, & Festinger, 2008). The hallmark study of graduated sanctions within the court system is an investigation of 160 felony drug pretrial defendants who were randomly assigned to either a standard docket or a graduated sanctions docket that followed a progressive sanctioning model in combination with judicial monitoring and drug testing (Harrell & Roman, 2001). The authors found that offenders on the graduated sanctions docket were less likely to test positive for illicit substances during pretrial (11% vs. 21%) or to be rearrested 12 months after sentencing (19% vs. 27%). These results provide evidence that a graduated sanctioning system, that is adhered to by staff and communicated to participants, may reduce criminal behavior both during and after the program.

The use of graduated sanctioning grids has been used extensively in probation and parole settings and can build upon researchers' understanding of sanctioning within problem-solving courts. SCF sanctioning models were popularized by Project HOPE and have been implemented in at least 28 states. Mirroring problem-solving courts' activities, Project HOPE and similar programs focus on: (1) explaining all rules and consequences to participants, (2) frequently monitoring compliance with rules through regular probation/parole meetings and random drug testing (e.g., at least 1-2 times per week), and (3) "swiftly" administering the sanction in response to

noncompliance. The conceptualization of swiftly administering sanctions varies across programs, with some SCF programs immediately imposing a sanction upon detection of noncompliance (Carns & Martin, 2011; Grommon, Cox, Davidson, & Bynum, 2013; Hawken & Kleiman, 2011; Hawken et al., 2016; Kunkel & White, 2013), others imposing sanctions within one to 96 hours of detection (Devall et al., 2013; Neal & Shannon, 2013), and still others administering sanctions nine to 15 days postviolation (Harrell, Mitchell, Merrill, & Marlowe, 2004; Lattimore et al., 2016; O'Connell, Brent, & Visher, 2016).

Overall, the research suggests that programs that immediately impose sanctions may be more effective (Hawken & Kleiman, 2011) than programs in which there is a lag between noncompliance and receipt of a formal sanction (Lattimore et al., 2016; O'Connell et al., 2016). The strongest evidence for this notion emerges from Grommon et al.'s (2013) study of moderate-risk parolees who were randomly assigned to one of three conditions: (1) an experimental group who had frequent, random drug testing (with instant results) and were immediately jailed for any positive drug screens or failing to report; (2) a control group who had frequent, random testing, but did not have instant drug test results or immediate sanctions; and (3) a control group who had neither frequent drug testing nor immediate sanctions. The results showed that the experimental group had fewer positive drug tests and lower recidivism rates at 6 months and 18 months than either control group. These positive findings stand in stark contrast to the null results from Delaware's Decide Your Time (O'Connell et al., 2016), Maryland's Break the Cycle (Harrell et al., 2003), and the HOPE Demonstration projects (Lattimore et al., 2016), where sanctions were formally imposed 9-15 days after the violation was detected.

Other structured sanctioning programs have focused on enhancing the proportionality of sanctioning, rather than increasing the swiftness of punishment. Washington's Swift and Certain (SAC) program put forth a series of graduated sanction for probation violations based upon the severity of the sanction and the number of prior sanctions. A quasi-experimental study of high-risk probationers found that SAC participants were less likely to be jailed (24% vs. 28%) or have a prison confinement (3.1% vs. 19.2%) after a violation, and had 20%–30% lower odds of a felony, violent, and/or property conviction at the 12-month follow-up, relative to a historical comparison group that was not subject to SAC procedures. A cost-benefit analysis of SAC showed a \$16 return on investment for every dollar invested in SAC (Hamilton et al., 2016). While Washington's SAC program produced reductions in crime for probationers, other proportionality grids have failed to reduce recidivism for parolees in Ohio (Martin & Van Dine, 2008; Steiner, Travis, & Makarios, 2008) and California (Turner, Braithwaite, Kearney, Murphy, & Haerle, 2012).

The evidence above suggests that sanctions may effectively prevent criminal behavior for some populations when sanctions are certain, swift, progressive/graduated, and proportional to the severity of the offense. The problem-solving court literature has consistently examined the effects of sanction certainty and progressiveness on clients' behavior and found them to be important elements to providing effective sanctions. Fewer studies have investigated whether disproportionality in sanctioning impacts clients' behavior. Disproportionality in sanctioning may exacerbate clients' noncompliance because: (1) individuals become defiant when they perceive sanctions as illegitimate or unfair (Sherman, 1993), or (2) individuals are not deterred from committing more serious violations if the consequences are the same for both minor and serious offenses.

In light of these considerations, the current study investigates the following questions:

1. How do staff rate the seriousness of violations within a problem-solving court?
2. Based upon staff members' ratings on the seriousness of violations, do they administer sanctions that are proportionate to the seriousness of these violations?
3. Does disproportionality in the sanctioning lead to clients' subsequently committing more serious infractions and in a shorter time frame?

METHODS

PARTICIPANTS

The data for the current study come from a felony-level, postplea, preadjudication veterans treatment court located in a Southeastern state. To be eligible for the court, potential clients must be at least 18 years of age and have: (1) a substance use disorder or mental health problems, as measured by the TCU Drug Screen V or Modified Mini Screener; (2) moderate or high criminogenic risk and needs, per the state probation's risk-needs assessment; (3) any military discharge status other than dishonorable; and (4) a charge of a class E felony or lower (excluding any sex, gang-involved, or violent offenses). The court has a capacity of 30, but typically operates with 20 clients or less. The average age of clients is 46.08 years of age, with 38% of clients self-identifying as African American, 62% being Caucasian, and 2.86% identifying as Hispanic. Approximately, 97% of clients are assessed as high-risk, high high-need clients. Descriptive statistics showed that 80% of clients who were not receiving disability entered the court unemployed, and 50% of all clients were homeless or living in a homeless shelter or transitional housing upon entry to the court. Almost 40% of clients have been terminated from the program with 83% of those terminated being removed for receiving new criminal charges. The court's policy states that participants can be automatically terminated from the program for committing a new criminal act of physical violation; making threats to VTC staff/mentors/other court participants; and/or are a public safety risk as determined by the chief probation officer, supervising probation officers, and the district attorney. A participant can possibly be terminated for repeated non-compliance or a new arrest.

The court is divided into a low-risk/high-needs track and high-risk/high-needs track. The low-risk track comprises four phases that take a minimum of 12 months to complete. The high-risk track takes a minimum of 16 months of complete and comprises five phases. All phases require weekly or biweekly contact with the probation officer and court coordinator, random drug testing, involvement in treatment or self-help groups, and communication with a mentor that is assigned by the court. Staff members would use NADCP and NDCI's list of sanctions and incentives when responding to clients' behavior, but this did not involve discussions of whether sanctions or incentives were proportional to the clients' behavior.

The current study uses three data sources to examine the proportionality of sanctioning within the court: (1) an online survey of the 12 staff asking them to rate the severity of 20 different offenses; (2) an incident-level dataset that captures all acts of client noncompliance from June 2015 to June 2018 to help determine whether staff are sanctioning proportionally to the severity of the offense, according to the NADCP grading of sanction severity ($n = 177$); and (3) an incident-level dataset of only subsequent violations to determine whether the sanctioning practices of the prior violation (i.e., disproportionality, use of jail, treatment referrals, delivered by the judge rather than

probation officer) impacted the time to the current violation and the severity of the current violation (n=150). The study was approved by the principal investigator's Institutional Review Board.

STAFF SURVEY

An anonymous survey was electronically distributed to 12 staff members on the treatment team, including the judge, prosecutor, defense attorney, court coordinator, probation chief, two probation officers, a law enforcement officer, a treatment provider, a clinical care coordinator, a veterans justice outreach specialist, and the mentor coordinator. These staff members were presented with a list of 20 common acts of noncompliance and the following instructions: "Please rank each act of noncompliance as a low-level/minor, moderate-level, or high-level/severe offense. Please disregard whether the act is a first-time or multiple-time offense—this will be considered at a later date. For the purposes of the survey, assume that it is a first-time offense." Sixty-seven percent of staff members completed the survey.

INCIDENT-LEVEL DATA OF ALL VIOLATIONS

The incident-level data of all violations included the following variables for each act of noncompliance (n = 177): (1) the act of noncompliance and whether it was rated as a minor-, moderate-, or high-level violation by staff per the staff survey; and (2) whether the resulting sanction was low, moderate, or severe per the National Association of Drug Court Professionals' Incentive and Sanctioning grid. For instance, verbal warnings and essays were categorized as low-level sanctions, while increased reporting and community service were considered moderate-level sanctions. High-level or severe sanctions included being ordered to report daily for five to seven days, electronic monitoring (including SCRAM and CAM), jail, and termination. A sanction was considered proportional when the severity of the sanction aligned with the staff members' perception of the severity of the offense. For instance, a proportional sanction would occur if a minor violation resulted in a low-level sanction, or a moderate-level violation corresponded to a moderate-level sanction. A sanction was conceptualized as disproportionate when the severity of the response did not parallel the severity of the violation (e.g., a severe sanction for a moderate- or minor-level offense, or a low-level sanction for a moderate- or high-level violation).

Two measures of disproportionality were used: (1) upward departures captured whether the sanction was one or two levels more severe than what was expected (e.g., a low-level sanction was expected but a moderate or severe sanction was imposed), and (2) downward departures tapped into whether the sanction was one or two levels below than what was expected (e.g., a moderate-level response was expected but the team administered a low-level sanction). The upward departures variable was coded as 1 = sanction was one or two levels more severe than expected, whereas 0 = sanction was proportional or was more lenient than expected. The downward departures variable was coded so that 1 = sanction was one or two levels more lenient than expected, whereas 0 = sanction was proportional or was more severe than expected.

This file also included several covariates that were used to explore the potential reasons for disproportionate sanctioning. Number of priors for the same offense and number of prior violations overall attempted to capture the clients' overall history of noncompliance for either the same offense or multiple types of offenses throughout their time in the court. Multiple violations for the same offense at this session (0 = no, 1 = yes) and multiple violations for different offenses at this session (0 = no, 1 = yes) took into account whether the client violated the same rule

multiple times since the last court session (e.g., three positive drug screens within the past week) or engaged in multiple forms of noncompliance within the past two weeks (e.g., a positive drug screen and violating curfew). The models also controlled for whether the sanctions were delivered by the judge (1) or a probation officer (0). There has been some discussion within the literature that sanctions imposed by a judge may be more effective than the same sanction was delivered by a probation officer (O'Connell et al., 2016). Also, the VTC probation officers would immediately impose a sanction approximately 10% of the time (outside of staffing), and thus their sanctioning behavior (under the state probation noncompliance grid) may not align with NADCP's conceptualization of a low, moderate, or severe sanction. Finally, the data included variables for clients' race (0 = White, 1 = non-White), age at the time of the violation, phase within the court (Phase 1 to 5), whether the defendant entered the court through a new felony offense or a probation violation on a felony or a misdemeanor or driving while intoxicated offense (1 = felony as the highest charge, 0 = misdemeanor or DWI was the highest charge), and whether the defendant was entering the court on a drug or alcohol charge (1 = drug or alcohol charge, 0 = other).

INCIDENT-LEVEL DATA OF SUBSEQUENT VIOLATIONS

The incident-level data of subsequent violations excluded all first-time violations and captured the sanctioning practices of the previous sanction (n = 150). These data were used to examine the research questions: (1) if the team disproportionately sanctioned for the previous act of noncompliance, were clients more likely to violate additional rules faster (than if the prior sanction was proportionate)? and (2) were clients likely to escalate their noncompliance in subsequent events (e.g., the client's first violation was a low-level act, whereas the next violation was a moderate or severe offense)? The dependent variables for these models included: days between sanctions and escalation of noncompliance. The data for days between sanctions was extracted from the biweekly staffing notes and the administrative data that recorded the dates of each sanction. Many times, the court administered sanctions at the biweekly court session, although there were times when probation officers would apply a sanction outside of the court session (such as taking into custody for a new crime). This dependent variable was a proxy for days between violations as the data for each specific type of violation (i.e., missing a treatment session) was not always available. Escalation of noncompliance was coded as: 1 = current violation (e.g., severe offense) was more serious than the immediate prior violation (e.g., moderate or minor offense), or 0 = current violation is less severe or same level of severity as the immediate prior violation.

This data file also included a number of exogenous variables that were used to predict the time to new offense and escalation of behavior. Upward departure and downward departure variables were included to capture whether the prior sanction was too severe or lenient. Additional covariates included: (1) whether the defendant entered the court through a new felony offense or a probation violation on a felony or a misdemeanor or driving while intoxicated offense (1 = felony, 0 = misdemeanor or DUI); (2) whether the defendant was entering the court on a drug or alcohol charge (1 = drug or alcohol charge, 0 = other); (3) a dichotomous variable to capture whether the judge (1) or a probation officer (0) administered the sanction; and (4) whether the prior response included a jail sanction (0 = no, 1 = yes) or the combination of a sanction (i.e., electronic monitoring) and a treatment response (0 = no, 1 = yes). Prior research has shown that higher-risk offenders, such as the clients in the current sample, respond best to a combination of restrictive sanctions and treatment responses (Martin & Van Dine, 2008). Finally, the models included controls for participants' race (0 = White, 1 = non-White) and age at the time of violation.

Table 1. Percentage of Staff Rating Violations as Low, Moderate, or Severe

	Low	Moderate	Severe
Low-level category			
Positive urinalysis for drugs	75.0	25.0	0.0
Positive EtG	75.0	25.0	0.0
Missing a treatment group	62.5	37.5	0.0
Moderate-level category			
Getting a traffic charge	12.5	75.0	12.5
Missing a probation meeting	25.0	75.0	0.0
Violating curfew	37.5	62.5	0.0
Associating with known drug users	37.5	62.5	0.0
Masking a drug screen	12.5	50.0	37.5
Possession of drugs or paraphernalia	12.5	50.0	37.5
Lying	37.5	25.0	37.5
Severe-level category			
Threaten a staff member with violence	0.0	0.0	100.0
Threaten a client with violence	0.0	0.0	100.0
Possession of a weapon	0.0	0.0	100.0
Defrauding a drug screen	0.0	12.5	87.5
Absconding	0.0	12.5	87.5
Failure to appear in court	0.0	25.0	75.0
Arrest for a nontraffic offense	0.0	25.0	75.0
Showing up to court under the influence	12.5	25.0	62.5
Leaving county or state without permission	0.0	37.5	62.5
Not completing prior sanction	12.5	37.5	50.0

RESULTS

STAFF MEMBERS' PERCEPTIONS OF VIOLATIONS

Table 1 shows staff members' perceptions of the severity of 20 common violations within the court. As shown in the table, there is considerable consensus on what constitutes a low-level violation (i.e., positive drug and alcohol screens) and some high-level violations. For instance, 75%–100% of staff members agreed that new criminal offenses, failure to appear in court, absconding, defrauding a drug screen, possessing a weapon, and threatening a staff member or client constituted high-level violations. Also, 75% of staff members rated missing a probation meeting and getting a traffic charge as moderate-level violations, and positive alcohol or drug screens were

considered low-level acts of noncompliance.

Despite these similarities, there was considerable disagreement regarding the severity of some violations. The most notable example is the violation of lying, which 37.5% of staff members rated as a low-level violation, 25% a moderate-level violation, and 37.5% a high-level violation. The heterogeneity in these ratings speaks to the staff members' difficulty in assessing whether this is a proximate or distal goal. In discussions with staff, some team members conceptualize lying as a component or survival tactic common to addiction, while other staff members perceive lying to be a proximate goal that clients can achieve early on in the program. These differences in opinion bear out in the data presented in Table 1. For the purposes of the analyses, lying was conceptualized as a moderate-level violation and all models were assessed for the impact of this decision (by either stratifying the analyses by specific type of violation or removing lying from the moderate category). Subsequent results were consistent with lying being conceptualized as a moderate-level violation.

PROPORTIONALITY OF STAFFS' SANCTIONING PRACTICES

Before turning to the proportionality of sanctioning practices, it is important to review the frequency of sanctions and offenses within the court. Descriptive statistics show that the majority of violations within the court are low-level infractions (62.71%), with the remainder being almost evenly split between moderate (19.21%) and severe violations (18.08%). The most common violations were missing a treatment group (29.14%) and testing positive for drugs (27.43%), both rated low-level violations by staff. Conversely, the most common sanctions within the court are severe sanctions (47.43%), followed by low-level (26.86%) and moderate-level sanctions (25.71%). The most common sanctions were jail (24.71% (severe)), verbal warning (12.07% (low)), electronic surveillance (9.20% (severe)), essay (9.20% (low)), community service (7.47% (moderate)), and increased reporting (7.47% (moderate)).

Table 2 displays a cross-tabulation of the severity of sanctions by the severity of infractions. The table shows a pattern of both proportionality (in regard to severe violations) and disproportionality (in terms of low- and moderate-level violations). The table shows that severe infractions are more likely to receive a severe sanction (81.25%) than a moderate- (15.63%) or low-level sanction (3.13%). In contrast, there is disproportionality in the sanctioning of moderate-level offenses, with the majority of moderate-level violations (61.76%) receiving a severe sanction such as electronic monitoring, jail, or termination. Also, almost two-thirds of low-level infractions result in something other than a low-level sanction.

A logistic regression model is used to explore the potential explanations for disproportionality in sanctioning. None of the exogenous variables are significantly related to the likelihood of downward departures in bivariate logistic regression models. These null findings may be a result of a small number of cases falling into the downward departure category ($n = 12$). Results show, however, that the odds of upward departures are 3.45 times higher for non-White clients ($p < .05$) and 1.38 times higher for participants with a greater number of prior violations for the same infraction ($p < .01$), controlling for the clients' demographics, their level of noncompliance in general, and their pattern of noncompliance within the past two weeks.

Given the upward departures for low- and moderate-level violations, zero-order Spearman's rho correlations are used to explore whether any of the independent variables help explain upward departures for these two categories

Table 2. Crosstabulation of Severity of Sanctions by Severity of Violations

	Low-level violation	Moderate-level violation	Severe-level violation
Low-level sanction	36.70%	17.65%	3.13%
Moderate-level sanction	30.28%	20.59%	15.63%
Severe-level sanction	33.03%	61.76%	81.25%

$$\chi^2 = 28.16, p < 0.001$$

Table 3. Logistic Regression of Escalation of Noncompliance on Type of Departure and Covariates

	b	OR	P
Upward departures	0.856	2.354	0.048
Downward departures	-1.062	0.345	0.346
Felony offense	0.860	2.365	0.231
Drug or alcohol offense	0.327	1.388	0.500
Judge administered sanction	-0.959	0.383	0.195
Prior response included jail	-0.893	0.409	0.137
Combination of sanction and treatment response	-0.055	0.946	0.919
Days between violations	-0.003	0.996	0.469
Non-White	-1.155	0.314	0.056
Age at time of violation	0.028	1.029	0.085

$$\text{Pseudo-R}^2 = 0.137$$

of violations. For low-level violations, upward departures are higher among clients who enter into the court with drug or alcohol violations ($r = .19, p = .03$), who have repeatedly violated the same rule within the court ($r = .25, p < .01$), and who have a greater number of violations overall ($r = .24, p < .01$). These findings may speak to the difficulty in responding to substance-using clients who repeatedly return to use and fail urinalysis tests. There is also a marginally significant correlation between being non-White and upward departures for low-level violations ($r = .16, p = .09$). For moderate-level violations, upward departures are related to whether the client incurs multiple violations for different offenses (at one court session) ($r = .37, p = .02$). Also, upward departures are less likely to occur for moderate-level violations when the judge delivers the sanction rather than the probation officer delivering the sanction ($r = -.40, p = .01$).

EFFECTS OF DISPROPORTIONALITY ON CLIENTS' SUBSEQUENT NONCOMPLIANCE

The last set of analyses use data from the incident-level data file of only subsequent violations. These analyses assess whether upward departures in sanctioning impact the timing of new sanctions and the escalation of clients' noncompliance. A negative binomial regression model is used to investigate whether departures are related to the number of days between sanctions. This model is chosen since the number of days between sanctions is positively

skewed with the standard deviation (SD = 49.86) being larger than the mean ($X = 46.24$). The results show that none of the independent variables are related to the timing of acquiring a new sanction.

For the second question, a logistic regression model is used to estimate the effects of upward departures on the escalation of noncompliance. The findings reveal that upward departures are positively related to the escalation of clients' noncompliance (Table 3). More specifically, the odds of escalating one's noncompliance is approximately two times higher among clients whom received a disproportionately severe sanction for their prior violation (OR = 2.23, $p = .037$). The effect of the upward departure variable persists despite controlling for clients' demographics, criminal history, number of days between sanctions, and the application of treatment or supportive services (OR = 2.35, $p = .048$).

DISCUSSION

The intellectual roots of today's sanctioning practices are grounded in Jeremy Bentham and Cesare Beccaria's work. While the field has staunchly adhered to the principles of swiftness, certainty, and severity, the principle of proportionality has been overshadowed in much of the discussion on how to punish and effectively control behavior. This study sought to contribute to this aspect of literature by examining the following questions: (1) how do staff members rate the severity of common violations within a problem-solving court? (2) to what degree are sanctions proportional to the severity of clients' infractions? (3) what may lead to disproportionate sanctioning for low- and mid-level violations? and (4) how does disproportionate sanctioning impact clients' behavior?

While the field has staunchly adhered to the principles of swiftness, certainty, and severity, the principle of proportionality has been overshadowed in much of the discussion on how to punish and effectively control behavior.

Overall, the results showed that there is considerable consensus as to what constitutes a low-level violation within the court. Despite this consensus, there is a great amount of heterogeneity in responding to low-level violations with sanctions being almost evenly split between low-, moderate-, and high-level sanctions. Part of the heterogeneity in responses to low-level violations was explained by clients' lack of compliance overall and their continual violation of the same rules. This makes sense from a programmatic perspective: The initial violation of a low-level rule may result in a warning or an essay, whereas the second violation results in a higher-level response such as community service or daily reporting. Observations from the court do indicate that team members tried to graduate sanctions, but this was not a formal policy that was shared with staff members and program participants.

Furthermore, the data revealed that there was some uncertainty on how to rate some moderate-level violations, which may have translated into disproportionate or severe sanctions for clients who committed moderate-level violations. In particular, staff members were split on whether to rate lying, possession of drugs or drug paraphernalia, and masking a drug screen as either a moderate- or high-level infraction. These violations most often resulted in a severe sanction (60%–100% of the time) and likely occurred when the client engaged in multiple forms of noncompliance in a short time frame and when the probation officer delivered the sanction rather than the judge.

It appears that when there is a lack of consensus on how to rate a behavior and how to respond (especially in the face of multiple violations), team members will resort to the highest-level sanctions (typically jail or quick dips).

...upward departures negatively impact clients' behavior by increasing the likelihood that they will escalate their misconduct.

As shown in the final part of the analyses, upward departures negatively impact clients' behavior by increasing the likelihood that they will escalate their misconduct. For instance, a client in Phase 2 was sanctioned with electronic monitoring (severe sanction) because they missed multiple treatment meetings that week (low-level violation). Within the next two weeks, they had received a criminal charge for driving with their license revoked (moderate-level violation) and were sanctioned with five days in jail (severe sanction).

One finding should be noted before discussing the limitations and policy implications of the study. The data suggest that there may be a lack of equity in sanctioning practices when comparing outcomes for non-White clients to White clients. Approximately 38% of the VTC clients are non-White, yet 58% of clients in the sanction data are non-White. Also, non-White clients were more likely to receive an upward departure ($OR = 3.45$) compared to White clients, controlling for the number of priors for the same violation, number of priors overall (to date), incurring multiple violations at the same time, phase of the program, age, whether they were a drug offender, and whether they were a felony offender. Thus, despite controlling for general patterns of noncompliance, non-White offenders received disproportionate punishments relative to White offenders. This conclusion differs from that of previous studies, which found that race was not associated with receiving a sanction (Callahan, Steadman, Tillman, & Vesselinov, 2013; Guastaferro & Daigle, 2012) or that White participants fared worse in some sanctioning outcomes than non-Whites (Shannon, Jones, Nash, Newell, & Payne, 2018). Yet, it should be noted that previous research has examined only whether one did or did not receive a sanction, and it has not investigated whether the characteristics of the sanctioning process—swift, certain, progressive, and proportional—vary across racial and ethnic groups. The current study's findings and those from Gallagher (2013) suggest that future research should continue to explore disparities in sanction processes across racial and ethnic groups.

The racial inequity in sanctioning practices are important because disproportionate sanctioning practices may facilitate a cascade of negative events that contribute to poorer outcomes of non-White defendants in the criminal justice system. If non-White participants are more likely to receive disproportionate sanctions, this may increase such clients' likelihood of: (1) escalating misbehavior in subsequent violations, (2) risking termination from the program, (3) receiving a suspended incarceration sentence, and (4) experiencing the collateral consequences of a criminal conviction and/or incarceration. Thus, problem-solving courts may inadvertently further contribute to the racial inequities seen within the criminal justice system. These hypotheses fit within the literature, which shows that non-White defendants are less likely to complete drug courts (Dannerbeck, Harris, Sundet, & Lloyd, 2006), more likely to be incarcerated for drug offenses (Brennan & Spohn, 2008), and thus more likely to experience the collateral consequences that result from a criminal conviction (Chin, 2002).

Figure 1. Menu-Style Sanctioning Grid

Directions: Staff should choose a treatment-oriented response and a sanction in response to a client's noncompliance. Team members should issue lower level sanctions before escalating to higher-level sanctions, unless the client has a history of noncompliance or there are aggravating circumstances. **Consider:** Client's risk/needs level, what phase they are in, is this a proximal or distal behavior, and overall level of compliance for that review period.

Lower level offenses	1 st offense	2 nd offense (of same behavior)	3+ offense (of same behavior)
<ul style="list-style-type: none"> • Positive drug screen(s) • Positive EtG(s) for alcohol • Miss treatment group(s) • Late to report or Coordinator, Probation, or treatment group 	<i>Treatment oriented response</i> <ul style="list-style-type: none"> • Remind of obligations • 3pg essay • Carey Guide • Behavior chain • Thinking report • Skill development • Contact with mento/sponsor 	<i>Treatment oriented response</i> <ul style="list-style-type: none"> • Make up missed treatment class • Attend one additional class/session 	<i>Treatment oriented response</i> <ul style="list-style-type: none"> • Reassessment • SAARPT or ADAPT • Inpatient/DART/Swain • 1st at Blue Ridge or similar halfway hour
	<i>Low level sanction</i> <ul style="list-style-type: none"> • Verbal warning from PO or CPPO • Call VJO or Coordinator to confirm treatment appointments for next 5 days • 4 extra CS hrs • 3 days curfew <i>High level sanction</i> <ul style="list-style-type: none"> • Meet w/ coordinator for 5 mornings for 1 week • Watch court for 5 days • 8 extra CS hrs • 5 days curfew 	<i>Low level sanction</i> <ul style="list-style-type: none"> • Call VJO or Coordinator to confirm treatment appointments for next 7 days • Suspend sanction (EM) • Reinstate probation fees • 8 extra CS hrs • 5 days curfew • Watch court for 5 days • One extra drug screen <i>High level sanction</i> <ul style="list-style-type: none"> • Meet w/ coordinator for 5 mornings too next 10 days • 16 extra CS hrs • 30 days EM • SCRAM 30 days • 7 Days curfew • Two extra drug screens • 24 hours in jail 	<i>Low level sanction</i> <ul style="list-style-type: none"> • Deny travel request • 16 extra CS hrs • Increase reporting court • 45 days EM • SCRAM 45 days • 7 days curfew • There extra drug screens • 48 hours in jail • Written warning <i>High level sanction</i> <ul style="list-style-type: none"> • 20 extra CS hrs • 60 days EM • SCRAM 60 days • 14 days curfew • Four extra drug screens • 72 hour quick dip • Final contract

While the current study expands upon previous research by empirically demonstrating that proportionality is important to behavior management in problem-solving courts, it has at least four limitations. First, the current study utilized data from a veterans treatment court that had only male participants, 97% of whom were high-risk, high-need clients. As such, these results may not generalize to other types of problem-solving courts or to veterans treatment courts that serve younger or more heterogeneous populations in terms of gender and criminogenic risk. Second, the court does not have a management information system that captures noncompliance when it occurs,

and so noncompliance often comes to light during the biweekly staffing. If the actual dates of noncompliance are not noted on the staffing notes, the number of days between acts of noncompliance are recorded based upon the date the act is discussed in team staffing. Inspection of the variable showed that 20% of incidents were recorded as occurring within 14 days of the last day of noncompliance, indicating that the specificity of this variable may be compromised in some respects. Third, various sanctioning behaviors were grouped together based upon NADCP's designations, thus obscuring the granular nature of sanctioning in the analyses. The grouping together of different sanctions—such as considering both electronic monitoring and jail as severe sanctions—may mask some of the nuances in sanctioning behavior. Also, the court would routinely attempt to graduate a sanction—such as issuing four hours of community service for a first-time offense, then eight hours for a second offense—yet the data only captured this as a moderate-level sanction. Finally, while the sample included data across three years, the sample was modest in size and smaller effects may not have been detected by traditional statistical tests. Power analyses showed that odds ratios would need to be at least 1.70 or higher in order to reach 80% statistical power, suggesting that some null effects could be a result of sample size.

In spite of these limitations, there are at least two broad implications that emerge from these findings. First, problem-solving court teams should assess whether their sanctioning practices are proportionate to the severity of violations occurring in the court. If sanctioning practices do not exhibit proportionality (as shown here), they should work to enhance proportionality through sanctioning grids and other structured decision-making tools. The current court here revised their sanctioning practices to align with the standards outlined by the National Institute of Corrections and the Center for Effective Public Policy (Carter, 2015). Some of the key changes included instituting a menu-style sanctioning grid (Figure 1), communicating this grid to all staff and participants, and creating policy to address key issues such as how to respond when multiple acts of noncompliance occur simultaneously and how probation officers should respond to acts of noncompliance within the scope of the state-level probation policies. Second, the current study showed a disproportionate percentage of non-White clients in the sanctioning data and a greater number of upward departures for non-White clients. Aside from monitoring equity in the use of the sanctioning grid, the data may point to a need to enhance services for non-White clients. Observational data from the court suggests that African American clients who abuse cocaine prior to entering the court often relapse and are terminated from the court due to continual relapse in later phases, after all treatment resources had been exhausted. This aligns with findings from Shannon et al. (2018), which showed that the association between race and treatment court completion became nonsignificant once cocaine use within the past 30 days and other factors were taken into account. One can speculate that non-White clients who use cocaine may continually relapse and receive sanctions for these behaviors because they are not receiving appropriate treatment. These behaviors may point to a need to explore medication assisted treatment for cocaine dependence (Kampman, 2005) and the use of culturally specific treatment providers (Gallagher & Nordberg, 2018) and treatments such as HEAT (Marlowe et al., 2018).

In conclusion, the current study illustrated that disproportionate sanctioning practices may correlate with clients escalating their behavior to more serious forms of noncompliance. Part of the disproportionality in sanctioning practices may stem from problem-solving court staff having differing opinions on what constitutes a moderate-level violation and how to respond to recurring low-level violations. It is hoped that staff members' consensus around the severity of offenses and the adoption of a structured sanctioning process will increase proportionality of sanctioning processes and eventually lead to equality in sanctioning outcomes across participants.

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