



# California Risk Assessment Pilot Project Training

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December 2, 2010

9:00 A.M.–5:00 P.M.

*Evidence-Based Sentencing to Improve Public  
Safety and Reduce Recidivism*

December 3, 2010 (for Yolo County)

8:00 a.m.–4:00 p.m.

*Use of Risk/Needs Assessment Information at  
Sentencing and Evidence-Based Responses to  
Probation Violations*

Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, California



JUDICIAL COUNCIL  
OF CALIFORNIA

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ADMINISTRATIVE OFFICE  
OF THE COURTS

# EVIDENCE-BASED SENTENCING TO IMPROVE PUBLIC SAFETY AND REDUCE RECIDIVISM

## California Risk Assessment Pilot Project Training Program

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CALIFORNIA RISK ASSESSMENT  
PILOT PROJECT TRAINING  
PROGRAM



JUDICIAL COUNCIL  
OF CALIFORNIA  
ADMINISTRATIVE OFFICE  
OF THE COURTS

**December 2, 2010**

San Diego Rooms, Lower Level  
Administrative Office of the Courts  
San Francisco, California

## Agenda

### **EVIDENCE-BASED SENTENCING TO IMPROVE PUBLIC SAFETY AND REDUCE RECIDIVISM**

Madeline (Mimi) Carter, Principal, Center for Effective Public Policy  
Mark Carey, President, The Carey Group  
Judge Richard Couzens (Ret.), Superior Court of Placer County  
Dr. Geraldine F. Nagy, Director, Travis County Adult Probation Department  
Judge Roger K. Warren (Ret.), Scholar-in-Residence, Administrative Office of the Courts

THURSDAY, DECEMBER 2

- |                       |   |
|-----------------------|---|
| 8:00–9:00 A.M.        | <b>Continental Breakfast</b>  |
| 9:00–10:30 a.m.       | <ul style="list-style-type: none"><li>▪ Introduction to Evidence-Based Sentencing: Self-Assessment, Definitions, Supporting Research, and the Purposes of Sentencing</li><li>▪ The Risk Principle</li><li>▪ The Needs Principle</li></ul>   |
| 10:30–10:45 a.m.      | <b>Break</b>  |
| 10:45 a.m.–12:15 p.m. | <ul style="list-style-type: none"><li>▪ The Needs Principle (continued)</li><li>▪ Actuarial Risk/Needs Assessment</li><li>▪ Pre-Sentence Reports</li><li>▪ Effective Use of Conditions of Probation</li><li>▪ Application of Risk and Needs Principles to a Typical Sentencing Scenario</li></ul> |
| 12:15–1:00 p.m.       | <b>Lunch</b>  |
| 1:00–2:15 p.m.        | <ul style="list-style-type: none"><li>▪ The Treatment Principle: Social Learning</li><li>▪ The Treatment Principle: Cognitive Behavioral Intervention</li><li>▪ The Treatment Principle: What Doesn't Work</li><li>▪ Evidence-Based Responses to Technical Violations Exercise</li></ul>          |
| 2:15–2:30 p.m.        | <b>Break</b>  |
| 2:30–3:45 p.m.        | <ul style="list-style-type: none"><li>▪ The Responsivity Principle: Stages of Change; Offender Motivation</li><li>▪ Application of Principles of Evidence-Based Sentencing to a Typical Sentencing Scenario</li></ul>   |
| 3:45–4:00 p.m.        | <b>Break</b>  |
| 4:00–5:00 p.m.        | Challenges and Opportunities in the Use of Risk Assessment Information at Sentencing and in Developing EB Responses to Violations of Probation  |
| 5:00 p.m.             | Adjourn   |

**Evidence-Based Sentencing to  
Improve Public Safety and  
Reduce Recidivism**

**California Risk Assessment Pilot  
Project Training Program  
December 2, 2010**

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**Unit 1: Introduction**

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**Objectives**

**At the conclusion of this program,  
you will be able to:**

- 1. Target those offenders who are most appropriate for recidivism reduction strategies;**
- 2. Identify the relevant offender characteristics to achieve effective sentencing outcomes;**
- 3. Use probation conditions effectively;**
- 4. Improve responses to violations of probation;**

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**Objectives (cont.)**

At the conclusion of this program, you will be able to:

- 5. Identify the components of effective probation supervision practices and treatment programs;
- 6. Reduce the risk of re-offense by facilitating the development of intrinsic motivation; and
- 7. Begin final planning to commence your pilot site operations.

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**Self-Assessment  
True or False**

- 1. The seriousness of the committing offense is more important than the offender's personal characteristics in predicting the likelihood of further crimes.
- 2. Jails and prisons are effective in changing offender behavior if the conditions are severe enough that offenders don't want to return.
- 3. The manner in which court proceedings are conducted is not a significant factor affecting offender recidivism.

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**Self-Assessment (cont.)**

- 4. Probation officers will be more effective if they have lower caseloads.
- 5. Programs like "Scared Straight" and Boot Camp are particularly effective for youthful offenders.
- 6. An offender doesn't need to be "motivated" in order for treatment to be successful.

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**Self-Assessment (cont.)**

- 7. The most cost effective strategy is to deliver treatment to the extremely high risk offender.
- 8. It is better to invest in treatment of low risk offenders than high risk offenders because their criminal tendencies are less hardened.

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**Self-Assessment (concluded)**

- 9. Most offenders don't handle stress well, so anxiety & stress reduction programs like yoga & meditation are helpful in reducing recidivism.
- 10. Intensive probation supervision tends to reduce recidivism better than regular probation supervision.

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**What Is EBS?**

- Evidence-Based Sentencing (EBS) practices are "sentencing" practices based on "corrections" principles of Evidence-Based Practice (EBP) used to reduce recidivism.
- EBP: professional practice supported by the "best research evidence:"
  - Rigorous evaluation (i.e. use of control groups)
  - Multiple studies
  - Systematic review (meta-analysis)

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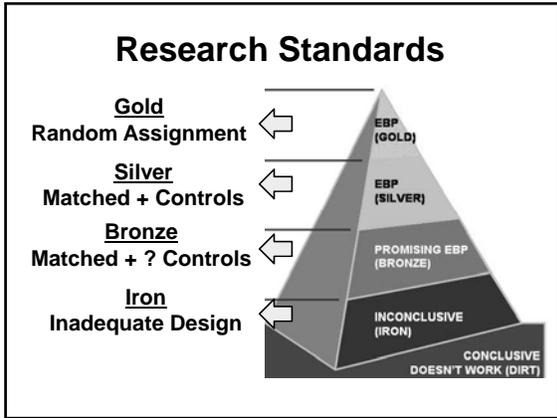
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- ### Washington Public Policy Institute Studies
- Meta-analysis of 571 studies
  - “Cautious” approach
  - Adult EB programs cut recidivism 10-20%
  - EB programs have benefit/cost ratio of 2.5:1
  - Moderate increase in EBP would avoid 2 new prisons, save \$2.1 billion, and reduce crime rate by 8%.

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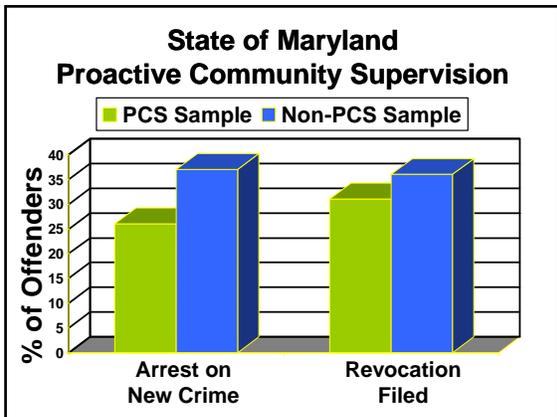
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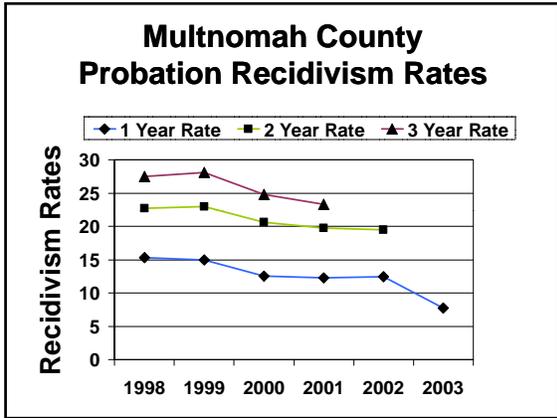
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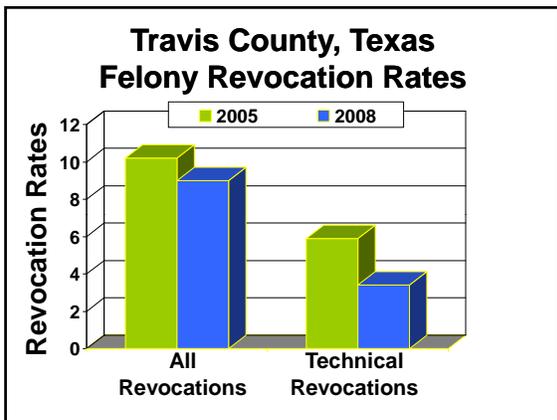
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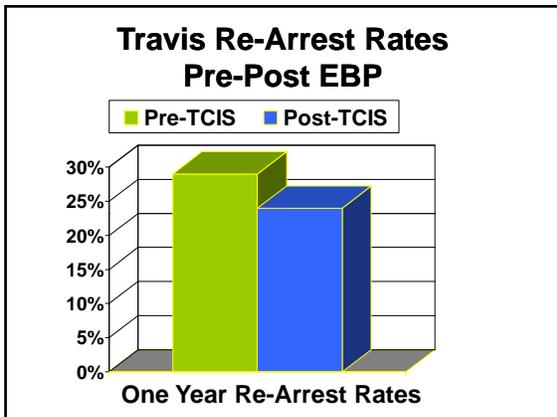
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## Purposes of Sentencing

- “Just deserts”: punishment proportionate to blameworthiness & the gravity of the crime
- Public safety
  - Rehabilitation
  - Specific deterrence
  - Incapacitation/control
  - General deterrence
- Restitution/restoration

} Recidivism reduction

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## Unit 2: The Risk and Needs Principles

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## Principles of EBP

1. Risk Principle  
Who
2. Needs Principle  
What
3. Treatment Principle  
What Works
4. Responsivity Principle  
How

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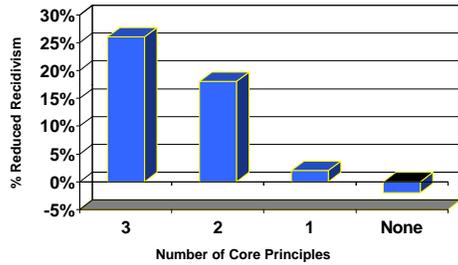
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### Impact of Adhering to Core Principles of Effective Intervention




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### Risk Principle (Who)

The level of supervision or services should be matched to the risk level of the offender: i.e., higher risk offenders should receive more intensive supervision and services

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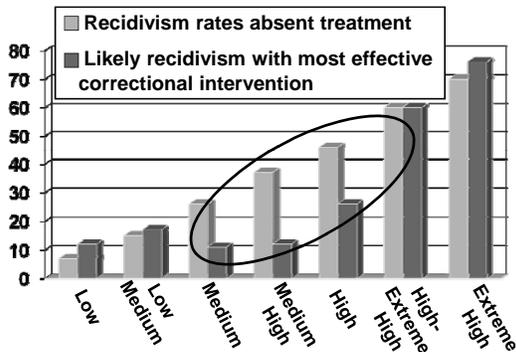
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### Potential Impact on Recidivism




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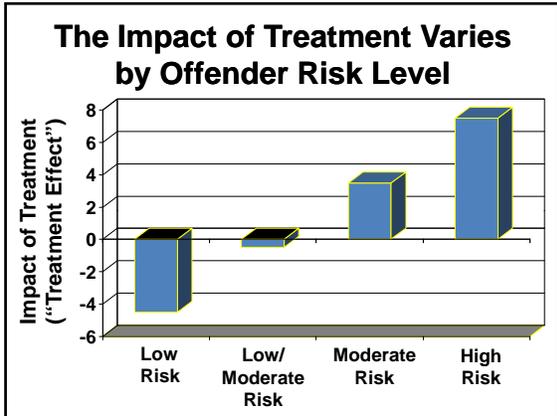
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### Travis Co., Texas: Impact of Supervision by Risk

Risk Level	% Rearrest		% Change in Rate
	Pre-TCIS 1/06-6/06 N = 1287	Post-TCIS 7/07-10/07 N = 614	
Low	26%	6%	-77%
Medium	26%	13%	-50%
High	34%	31%	-9%
Overall	29%	24%	-17%

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### Needs Principle (What)

The targets for interventions should be those offender characteristics that have the most effect on the likelihood of re-offending.

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### **Risk of Heart Attack**

1. Elevated LDL and low HDL levels
2. Smoking
3. Diabetes
4. Hypertension
5. Abdominal obesity
6. Psychosocial (i.e., stress or depression)
7. Failure to eat fruits and vegetables daily
8. Failure to exercise

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### **Allen Smith Case Summary**

- ✓ Read the case summary and identify 6 needs that are predictive of re-offending.
- ✓ Prioritize those criminogenic needs from most important to least important.
- ✓ Identify any needs that you consider non-criminogenic (not predictive of re-offending).

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### **Anti-Social Personality Pattern**

- Lack of self-control
- Risk taking
- Impulsive
- Poor problem solving
- Lack of empathy
- Narcissistic
- Anger and hostility

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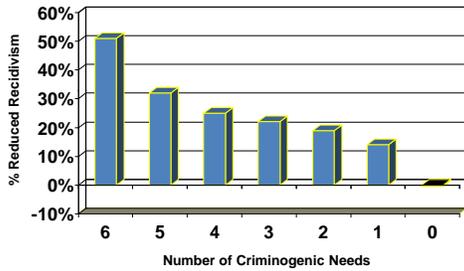
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### Targeting Multiple Criminogenic Needs




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### Risk/Needs Assessment

- 1<sup>st</sup> generation: subjective professional/clinical judgment
- 2<sup>nd</sup> generation: actuarial, static risk factors
- 3<sup>rd</sup> generation: actuarial, dynamic risk factors
- 4<sup>th</sup> generation: incorporates recommended interventions

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### Risk/Needs Assessment

- The engine that drives EBP and EBS
- General v. specialized tools
- Proprietary v. non-proprietary
- Validation, reliability, training, & cost
- Intended to inform not replace professional judgment
- Re-assessments

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### Use of Risk/Needs Assessment Information at Sentencing

- Identify appropriate level of supervision and services
- Identify dynamic risk factors and appropriate probation conditions
- Determine amenability to probation supervision or treatment
- Not to be used to determine the severity of the penalty

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### Setting Probation Conditions

- Target dynamic risk factors
  - Treatment conditions, e.g. successfully complete treatment program
  - Monitoring/control conditions, e.g., drug testing, intensive supervision
- Focus on most critical risk factors
- Provide framework for probation case plan
- Be realistic
- Provide flexibility to the PO

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LOW RISK	MEDIUM RISK	HIGH RISK
Lowest reporting requirements	Increased reporting requirements	Highest reporting requirements including field visits
No need for intensive discretionary programs	Discretionary programs depending on clinical determination of need	Use of surveillance programs, Most intensive cognitive based treatments
Caseload 500-1,000	Caseload 65-75	Caseload 10-15 Extreme High Risk, 65-75 High Risk

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## Pre-Sentence Reports

Motivation                      Amount of support                      Posture  
Age      Scars/tattoos      Race/ethnicity      Current emotional disposition  
Self esteem      Past supervision      Gender      Employment history      Degree of deference  
Military record      Parental influence  
Substance abuse      Physical attractiveness      Educational achievement  
Height/weight      Prior record      Physical health      Verbal intelligence  
Previous treatments      IQ      Medications      Previous abuse history  
Poor self control      Neighborhood      Instigator/follower  
Mental Health      Siblings      Prior successes      Finances  
Peers      Nationality      Level of violence      Attitude/beliefs  
Family name

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## Summary

1. Assess offender risk factors through use of actuarial risk/needs assessment tool and professional judgment.
2. Avoid significant intervention with low risk offenders.
3. Target moderate to high risk offenders.

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## Summary

4. Target criminogenic needs in setting conditions of probation, and in identifying appropriate programs.
5. Do not distract the offender and impede probation by imposing additional conditions of probation beyond those directly related to an offender's risk/needs.

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**Sentencing Scenario**

**Tony**

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**Purposes of Sentencing**

In sentencing an offender in the community, sentencing provisions intended to reduce recidivism must be successfully integrated with appropriate intermediate sanctions & behavioral controls to achieve other sentencing objectives.

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**Unit 3: The Treatment Principle  
(What Works)**

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**Conference of Chief Justices  
(Resolution No. 12)**

Judges should “educate themselves about the effectiveness of community based corrections programs in their jurisdictions,” and “advocate and ... make use of those programs shown to be effective in reducing recidivism.”

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**Treatment Principle**

The most effective services in reducing recidivism among higher risk offenders are cognitive behavioral interventions based on social learning principles.

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**Social Learning:  
Behaviors Have Consequences**

**Positive**

- Rewards
- Incentives
- Reinforcement

**Negative**

- Swift, certain, and proportionate (fair) sanctions
- Severe sanctions not necessary

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## Social Learning Involves....

- Role models
- Demonstration
- Role play
- Feedback
- Skill practice

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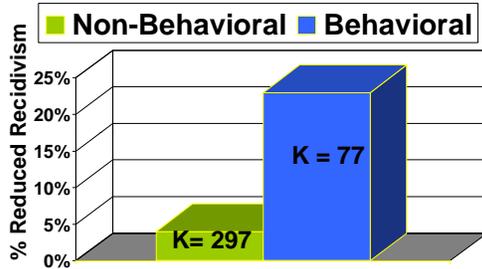
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## Behavioral v. Non-Behavioral



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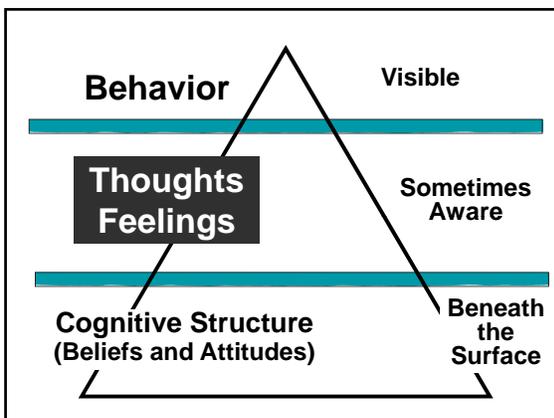
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### Cognitive Behavioral Programs

- Interrupt anti-social thinking patterns – restructure
- Create dissonance/ambivalence
- Provide skills to handle situations such as conflict management, problem solving

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### Cognitive Behavioral Approaches Based on Social Learning Theory

**Cognitive Restructuring**  
(What we think: content)

**Cognitive Skills Development**  
(How we think: process)

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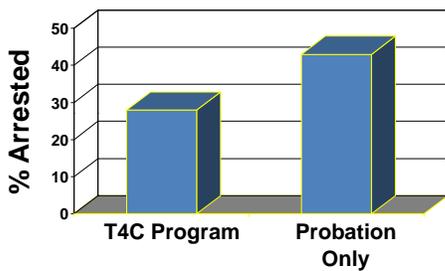
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### Recidivism Rates Adjusted for Risk, Gender, Race, Age, and Time at Risk



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### Implementing Effective Treatment Programs

1. Employ and train effective staff
2. Use the proper dosage/intensity
3. Involve the family and community
4. Provide aftercare
5. Monitor treatment through quality assurance

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### What Doesn't Work to Reduce Recidivism: Traditional Sanctions

- Punishment, sanctions, or incarceration
- Specific deterrence, or fear-based programs, e.g., Scared Straight
- Physical challenge programs
- Military models of discipline and physical fitness - Boot Camps
- Intensive supervision without treatment

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### Typical Effects of Sanctions-Based Programs

Program	Change in Recidivism
Intensive Supervision (no treatment)	0.0%
Electronic Monitoring	0.0%
Adult Boot Camps	0.0%
Juvenile Boot Camps	0.0%
Wilderness Challenge	0.0%
Intensive Supervision (Juveniles)	0.0%
Scared Straight	+6.1%

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**What Doesn't Work to Reduce  
Recidivism: Most Traditional Services**

- Shaming programs
- Drug education programs
- Drug prevention classes focused on fear or emotional appeal
- Non-action oriented group counseling

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**What Doesn't Work to Reduce  
Recidivism: Most Traditional Services**

- Bibliotherapy
- Freudian approaches
- Vague, unstructured rehabilitation programs
- Self-esteem programs
- Non skill-based education programs

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**Unit 4: The Principle of  
Responsivity, Stages of  
Change, and Offender  
Motivation  
(How)**

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### Responsivity Principle

Characteristics of the individual offender must be matched . . .

- To the intervention, treatment, program, or supervision, and
- To the personnel delivering the service to the offender

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### Responsivity Factors: Offender Characteristics

- Age
- Gender
- Culture
- Learning Style
- Intelligence
- Mental Health

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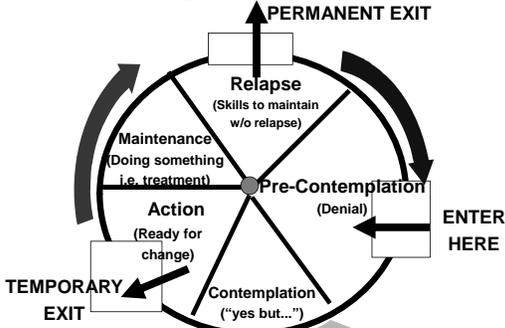
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### Stages of Change



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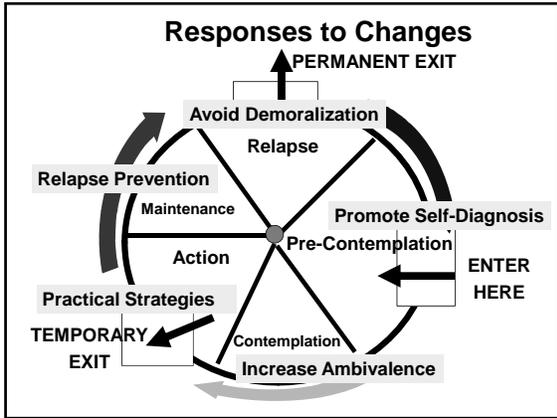
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**Promoting Offender Motivation**

- Coerced Treatment
- Extrinsic  $\rightarrow$  Intrinsic Motivation
- Engagement
- The Offender Is In Charge

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**Promoting Offender Motivation  
Procedural Fairness**

Improved compliance and motivation when the offender views the court process as "fair":

- Views bench as impartial
- Has an opportunity to participate
- Is treated with respect
- Trusts the motives of the decision maker

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**Promoting Offender Motivation  
Motivational Interviewing**

- Use open-ended questions
- Listen reflectively
- Develop discrepancy/dissonance
- Support self-efficacy
- Roll with resistance; deflection
- Avoid argument, lecture, shaming, threats, or sympathizing

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**Summary**

1. Treatment must be matched to the offender's individual characteristics.
2. Use the "Stages of Change" model
  - Useful tool for understanding offender readiness to change
  - Offers corresponding strategies to facilitate behavioral change
3. Intrinsic motivation is a critical requirement for offender behavioral change.

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**Summary**

4. The judge can be a change agent by treating the defendant fairly and encouraging the offender's engagement in the sentencing process.
5. Use "motivational interviewing" skills
6. Avoid threatening, lecturing, arguing, shaming, or sympathizing

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**Sentencing Scenario**

**Lydia**

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**Unit 5: Overcoming Challenges  
in the Use of R/A Information at  
Sentencing and in Developing  
EB Responses to Probation  
Violations**

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**Evidence-Based Sentencing to  
Improve Public Safety and  
Reduce Recidivism**

**California Risk Assessment Pilot  
Project Training Program  
December 2, 2010**

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## **Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism A Model Curriculum for Judges**

### **Glossary of Terms**

<b>Criminogenic</b>	Offender characteristics that affect the likelihood of future criminality
<b>Dynamic risk factors</b>	Characteristics of an offender that affect the likelihood of recidivism and that are subject to change through appropriate intervention.
<b>Interventions</b>	Planned activities with an offender for the purpose of reducing the risk of the offender's recidivism, including treatment programs, probation supervision strategies, and professional interactions
<b>Meta-analysis/meta-study</b>	An "analysis of analyses" or "study of research studies" in which all of the research (sometimes including previously unpublished research) on a certain topic is pulled together and analyzed to determine the existence of any consistent and significant findings based on a preponderance of all of the evidence resulting from those research studies that meet high professional research standards.
<b>Negative Reinforcement</b>	Withdrawal of a sanction as reinforcement or reward for pro-social behavior
<b>Recidivism</b>	In measuring sentencing effectiveness, recidivism is defined as a subsequent criminal arrest or conviction within a specified period of time. There is variation, often dependent on the availability of data, regarding whether all offenses or only felony offenses are considered, and the periods of time considered.
<b>Responsivity</b>	Matching the characteristics of the intervention and provider to certain characteristics of the individual offender
<b>Responsivity Factors</b>	Those offender characteristics that need to be "matched" to characteristics of the intervention and provider in order to obtain effective interventions, including, age, gender, culture, learning style, intelligence, literacy, mental health, change readiness, and motivation.
<b>Risk Factors</b>	Those characteristics of an offender that effect the likelihood of recidivism
<b>Static risk factors</b>	Characteristics of an offender that effect the likelihood of recidivism and that are constant or historical and cannot be changed, e.g., factors such as age, gender, number of prior arrests, prior convictions, age at first arrest, and alcohol/ substance abuse history.
<b>Target/targeting</b>	Focus/focusing interventions on certain offenders and offender characteristics

# Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism A Model Curriculum for Judges

## Bibliography

### General Resources

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D.A. Andrews & James Bonta, *THE PSYCHOLOGY OF CRIMINAL CONDUCT*, 4<sup>th</sup> ed. 337 (Anderson Publishing, 2006).

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There is much research on correctional interventions from which experts in the field have distilled principles of practice that correlate with reduced recidivism outcomes (“Evidence-Based Practice”). The following excerpt recognizes that “not all research is created equally” and provides the reader with some criteria with which to judge the quality of different types of research.

Excerpted from: Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention*, (Boston, MA: 2004) available online at <http://cjinstitute.org/files/evidencebased.pdf>.

## RESEARCH SUPPORT GRADIENT

### GOLD

- Experimental/control research design with controls for attrition
- Significant sustained reductions in recidivism obtained
- Multiple site replications
- Preponderance of all evidence supports effectiveness

### SILVER

- Quasi-experimental control research with appropriate statistical controls for comparison group
- Significant sustained reductions in recidivism obtained
- Multiple site replications
- Preponderance of all evidence supports effectiveness

### BRONZE

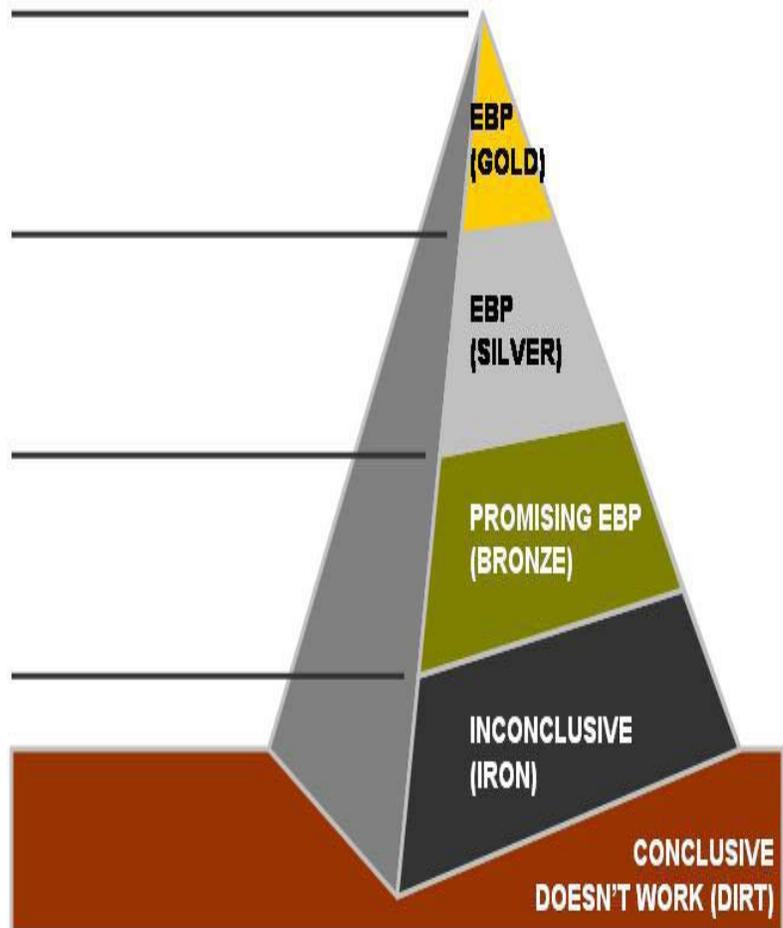
- Matched comparison group without complete statistical controls
- Significant sustained reductions in recidivism obtained
- Multiple site replications
- Preponderance of all evidence supports effectiveness

### IRON

- Conflicting findings and/or inadequate research designs

### DIRT

- Silver and Gold research showing negative outcomes



## **Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism A Model Curriculum for Judges**

### **Website List**

- **Washington State Institute for Public Policy**  
[www.wsipp.wa.gov](http://www.wsipp.wa.gov)  
Created by the Washington State Legislature to conduct practical, non-partisan evaluations of evidence-based offender treatment interventions in the State of Washington.
- **Center for the Study and Prevention of Violence, University of Colorado**  
[www.colorado.edu/cspv/](http://www.colorado.edu/cspv/)  
Provides information, offers technical assistance and conducts studies of the effectiveness of violence prevention and intervention programs.
- **The Corrections Institute, University of Cincinnati**  
<http://www.uc.edu/corrections/>  
Disseminates information on “best practices” to change offender behavior.
- **Institute of Behavioral Research at TCU**  
<http://www.ibr.tcu.edu/>  
Studies addiction treatment in community and correctional settings.
- **Campbell Collaboration**  
<http://www.campbellcollaboration.org/>  
International research network that studies the effects of interventions in social, behavioral, and educational arenas, including criminal justice.
- **National Criminal Justice Reference Service**  
<http://www.ncjrs.gov/index.html>  
Federally funded resource offering justice and substance abuse information to support research, policy, and program development worldwide.

## Allen Smith Case Summary

Allen Smith is 34 years old. He was first arrested at the age of 15 for car theft. He has 3 prior periods of probation for possession of a controlled substance 1-4 grams. He completed two 5-year probation sentences. However, his most recent probation (5 years) was revoked due to absconding and he served 18 months in the state department of corrections. He was released 3 years ago.

The instant offense is for breaking and entering and possession of stolen property. The other 3 co-defendants were convicted of the same offense. All 3 co-defendants are his friends and all have prior felony convictions. When asked about the offense, Allen said that “it was stupid.” When asked to elaborate, he blamed his co-defendant who had apparently given his name to the police investigator. He admits that they planned the burglary the previous day.

Allen is divorced and has 2 children. The children live with their mother in another state.

Allen is of above average intelligence but did not complete school (10<sup>th</sup> grade). He has been employed for the past 3 months in the produce department of a chain grocery store. Previously, he was employed “on and off” as a repairman. He states that he has always supported himself without any problem, but is unable to verify his income. When asked about school he said that he quit because of the teachers. One of his teachers describes him as impulsive and difficult to handle. Allen admits that he used marijuana while skipping school.

Allen states that he used drugs on and off until his early twenties, but has not used anything illegal for the past 8 years. His drug test was negative. Allen admits to using alcohol, but denies that he drinks regularly. He states that he only drinks when he is anxious or depressed.

Allen is diabetic, but is otherwise in reasonably good physical health. When asked about his mental health history, Allen states that he saw a psychologist after his first arrest as a juvenile, but he has no formal mental health diagnosis. He said he sometimes feels anxious and depressed when he thinks about his children. He says that he resents his wife, and doesn’t talk to her or visit the children because it is just not worth the hassle.

Allen was abandoned as a child and raised by his Aunt. He admits that he was just too much for his Aunt to handle. He says he used to love hanging out with his cousins, but they both work and he doesn’t have much in common with them now. His Aunt states that Allen is really a good boy, and that he probably needs someone to help him realize his good points and raise his self-esteem.

Allen says that he is not looking forward to probation and has done OK so far without help. His goal is to “stay out of trouble.” When asked how he is going to do that, he says, “Just watch my back.”

ATTORNEY FOR APPELLANT  
Michael B. Troemel  
Lafayette, Indiana

ATTORNEYS FOR APPELLEE  
Gregory F. Zoeller  
Attorney General of Indiana

ATTORNEYS FOR AMICI CURIAE  
[see attachment]

Henry A. Flores, Jr.  
Deputy Attorney General  
Indianapolis, Indiana

Patrick Harrington  
Tippecanoe County Prosecuting Attorney  
Lafayette, Indiana

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**In the  
Indiana Supreme Court**

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No. 79S02-0908-CR-365

ANTHONY MALENCHIK,

*Appellant (Defendant below),*

v.

STATE OF INDIANA,

*Appellee (Plaintiff below).*

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Appeal from the Tippecanoe Superior Court, No. 79D05-0711-FD-628  
The Honorable Les A. Meade, Judge

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On Transfer from the Indiana Court of Appeals, No. 79A02-0902-CR-133

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**June 9, 2010**

**Dickson, Justice.**

Following his plea of guilty to Receiving Stolen Property, a class D felony, and his admission to being a Habitual Offender, the defendant was sentenced to a total of six years, with two years suspended. The defendant appeals his sentence and presents two claims: (1) the trial court erroneously considered as an aggravating circumstance the numerical scores reported by the Tippecanoe County Probation Department after it conducted evaluations of the defendant using certain offender risk evaluation and assessment instruments; and (2) his sentence was inap-

appropriate and should be revised. The Court of Appeals rejected both claims and affirmed in a memorandum decision. Malenchik v. State, No. 79A02-0902-CR-133 (Ind. Ct. App. June 5, 2009). We granted transfer to address the first claim and invited supplemental briefs of the parties and *amici curiae*. As explained below, we hold that legitimate offender assessment instruments do not replace but may inform a trial court's sentencing determinations and that, because the trial court's consideration of the defendant's assessment model scores was only supplemental to other sentencing evidence that independently supported the sentence imposed, we affirm the sentence.<sup>1</sup>

The pre-sentence investigation report filed by the Tippecanoe County Probation Department<sup>2</sup> informed the trial court that the department had completed a Level of Service Inventory-Revised (LSI-R) covering "the areas of Criminal History, Education and Employment, Financial, Family, Accommodations, Leisure and Recreation, Companions, Alcohol and Drugs, Emotional and Personal Issues, and Attitudes and Orientation," and on which the defendant "scored a 41" and thus "falls into the High Risk/Needs category." Appellant's Supp. App'x "Green Volume I" at 8. The report also provided a more detailed breakdown of the evaluation. In addition, the report informed the trial court that the defendant had completed a Substance Abuse Subtle Screening Inventory (SASSI) that indicated he "has a high probability of having a Substance Dependence Disorder." *Id.*

On two occasions during the sentencing hearing, the judge referenced the LSI-R and the SASSI results:

You know I don't think I've seen a 20 year old here with the kind of criminal history you've developed. . . . [Y]ou've been through the system[;] it doesn't seem to make any

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<sup>1</sup> As to the defendant's claim of sentence inappropriateness and request for appellate sentence revision, we summarily affirm the decision of the Court of Appeals. Ind. Appellate Rule 58(A)(2).

<sup>2</sup> One exception to the mandatory statutory confidentiality of a pre-sentence report is "upon specific authorization by the court and the convicted person." Ind. Code § 35-38-1-13(b). This statutory confidentiality is referenced by Indiana Administrative Rule 9(G)(1)(viii). But case record information excluded from public access "may be made accessible if the information is declared by a court with jurisdiction over the case to be essential to the resolution of litigation." Ind. Admin. R. 9(G)(3). Because the defendant in this appeal is challenging his sentence and particularly the manner in which the trial court considered information in the pre-sentence report, we authorize and declare publicly accessible the defendant's pre-sentence report information discussed in this opinion.

changes. . . . [Y]our LSIR score is high. Your SASSI score is high with a high probability of substance dependence disorder. Your criminal history shows a complete disregard of other people and . . . an unwillingness or inability to change your behavior.

Appellant's App'x at 40.

You know what you're going to have to start climbing out of the hole and that's what we're talking about now. But Anthony, if you want to start climbing you're going to have to start telling the truth to yourself and to others. Once again, that's up to you. If you expect people to believe things like this, you know what, nobody is going to believe there is any change. Do you understand? All of this is based upon the character, the risk of recidivism, which is quite high according to the LSIR and the SASSI we've got a number of things that we need to do and frankly when you come out you'll get some treatment in the Department of Correction and then I want you on supervised probation so that we can move you into providers here in the community.

*Id.* at 67.<sup>3</sup>

The defendant contends that it was improper for the trial court to take into consideration the LSI-R score. He argues that consideration of this score was disapproved in Rhodes v. State, 896 N.E.2d 1193, 1195 (Ind. Ct. App. 2008), *trans. not sought*, that such models have not been recognized as scientifically reliable so as to qualify for admissibility under Indiana Evidence Rule 702, that the scoring models lack objective reliability, that they are not relevant to statutory aggravating circumstances, that they are unfairly discriminatory, that the use of the LSI-R test in this case impinged upon his right to counsel, that the use of scoring models conflicts with Indiana's constitutional requirement that the penal code be founded on principles of reformation and not vindictive justice, and that using such scores may lead to an unwise fundamental change in Indiana's sentencing system.

The State urges that an evidence-based tool such as the LSI-R may be utilized in the sentencing process if employed consistently with its proper purposes and limitations. The State asserts that the LSI-R has widespread acceptance, that it is widely recognized as valid and reliable,

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<sup>3</sup> As literally transcribed, the trial court's statement is somewhat garbled because of the absence of punctuation. It is unclear from the court reporter's transcription whether the judge's sentence ended after "quite high," with a new sentence beginning with "[A]ccording to . . .," or whether it ended with "SASSI," with a new sentence beginning with "[W]e've got a number . . . ." Thus we do not know whether the court was expressing that the risk of recidivism is "quite high according to the LSIR and the SASSI" or that "according to the LSIR and the SASSI, we've got a number of things that we need to do."

and that it does not intrude upon but rather serves as a legitimate and valuable contribution to the sentencing process.

We initially observe that the trial court's sentencing decision was clearly based on factors apart from the defendant's LSI-R and SASSI results. In the course of the sentencing colloquy, the judge emphasized that the defendant has a significant criminal history, was on probation at the time of the offense, has had two petitions to revoke probation in a prior case, has a history of disregarding others, has been unwilling to change his behavior, has a fundamental lack of honesty, and has a pattern of blaming circumstances rather than accepting responsibility. Appellant's App'x at 38, 40, 41, 42, 43, 61, 65, 66. The judge stated that he selected a sentencing program that would enable the defendant to complete his education in the Department of Correction, then to move from there first to supervised probation "so that we can move you into providers here in the community," and then into unsupervised probation. *Id.* at 67. The trial judge did not rely on either the LSI-R or SASSI as an independent aggravating factor in deciding to impose more than the advisory sentence.

The remaining issue is whether, and in what manner, a trial judge may consider results from the LSI-R, SASSI, or other similar assessment tools. Such instruments, often called "scoring models," are examples of "evidence-based practice" -- "professional practices that are supported by the best research evidence, consisting of scientific results related to intervention strategies . . . derived from clinically relevant research . . . based on systematic reviews, reasonable effect sizes, statistical and clinical significance, and a body of supporting evidence." Roger K. Warren, *Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*, 43 U.S.F. L. REV. 585, 597 (2009) (internal quotation marks omitted).

To determine the proper role, if any, of evidence-based practices in the assessment and management of penal consequences, we first note that Article 1, Section 18 of the Indiana Constitution implores: "The penal code shall be founded on the principles of reformation, and not of vindictive justice." Presumably mindful of this objective, the General Assembly has enacted a sentencing scheme requiring that before sentencing a defendant in a criminal case, a trial court

"must conduct a hearing to consider the facts and circumstances relevant to sentencing." Ind. Code § 35-38-1-3. For all felonies except those classified as class D felonies, the court may not sentence a convicted defendant until it considers a written pre-sentence report prepared by a probation officer. Ind. Code § 35-38-1-8. Such pre-sentence reports are also required before a trial court accepts a defendant's guilty plea. Ind. Code § 35-35-3-3; Reffett v. State, 571 N.E.2d 1227, 1229–30 (Ind. 1991). Among the information to be included in a pre-sentence report is "the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits." Ind. Code § 35-38-1-9(b)(2). In determining what sentence to impose, a trial court is guided by a non-exclusive statutory list of eleven aggravating and eleven mitigating circumstances. Ind. Code § 35-38-1-7.1. These criteria, however, "do not limit the matters that the court may consider in determining the sentence." Ind. Code § 35-38-1-7.1(c). Indiana's statutory sentencing scheme prescribes for each criminal offense a maximum and minimum sentence along with an "advisory" sentence. A court may "impose any sentence within the statutory range without regard to the existence of aggravating or mitigating factors," but it must provide a "reasonably detailed recitation of the . . . reasons for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 489, 490 (Ind. 2007). Trial judges are granted additional criminal sentencing discretion including the authority to impose or suspend all or part of a sentence subject to probation and to establish the conditions of probation. Ind. Code § 35-50-2-2(a), (c). They also may direct that a person's fixed term of imprisonment be served with the Indiana Department of Correction or permit placement in a community transition program. *See* Ind. Code §§ 35-38-1-24, 25.<sup>4</sup>

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<sup>4</sup> For the offense involved in the present case, Receiving Stolen Property as a class D felony, the legislature prescribes "a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years," plus a possible fine of up to ten thousand dollars. Ind. Code § 35-50-2-7(a). In addition, where such an offender is found to be a habitual offender, the sentence will be enhanced by an additional fixed term of not less than the one and one-half year advisory sentence and not more than four and one-half years (three times the advisory sentence). Ind. Code § 35-50-2-8(h). In the present case, the trial judge imposed a \$500 fine and a sentence of three years for the underlying offense enhanced by three additional years upon determining that the defendant was a habitual offender, for a total of six years, to be executed in the Indiana Department of Correction with credit for good time, with two years to be suspended with one year of supervised probation and one year of unsupervised probation upon specified conditions. Appellant's App'x at 70.

This considerable judicial flexibility permits the determination and management of penal consequences to be substantially tailored to each offender. While there remain valid concerns that equivalent offenders and offenses receive equivalent treatment at sentencing, "Indiana has never adopted a mechanical approach to sentencing, and we have not identified any inflexible system that did not raise more problems than it solved." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). We have thus expressed disapproval of "[a]ny effort to force a sentence to result from some algorithm based on the number and definition of crimes and various consequences." *Id.* But, this does not diminish the objective that an individualized penal consequence should be efficacious in achieving the goals of reformation and minimizing recidivism.

For this goal, the concept of evidence-based sentencing practices has considerable promise. The *amicus* brief of the Indiana Judicial Center informs the Court of the growing acceptance and use of evidence-based practices in seeking to reduce offender recidivism and to improve sentencing outcomes. In the 1970s, the Wisconsin Department of Corrections designed the Wisconsin Assessment and Classification System to measure the relative risk of offenders and the level of services offenders might need. In the mid-1990s, the National Institute of Corrections began promoting the use of offender assessment instruments based on evidence-based practices to identify the risk of, and to reduce, offender recidivism. The results of early criminal justice research led to the creation of "third-generation" risk assessment tools such as the LSI-R and the SASSI. Indiana has favorably considered risk assessment tools for the past fifteen years. Since 1995, the Judicial Conference has directed probation departments to assess the risk and needs levels of Indiana's criminal offenders under their authority to adopt minimum standards and recommendations for probation department operations. Ind. Code § 11-13-1-8. Indiana probation departments have utilized the Indiana Risk Assessment Instrument and the Indiana Adult Needs Assessment Instrument, which seek to "provide the trial court with information relevant to the offender's potential risk to the community and areas of need, allowing the [trial] court to address treatment services and individualized probation conditions in the sentencing order." Judicial Center Br. at 3.<sup>5</sup> Several local probation departments in Indiana recently began using the newer

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<sup>5</sup> Strong support for expanded use of these instruments is also evident from the April 23, 2010, action of the Board of Directors of the Indiana Judicial Conference in adopting policy recommendations for the widespread use of an expanded Indiana Risk Assessment System, as reviewed and approved by the Probation Officers Advisory Board and the Probation Committee of the Judicial Conference.

third-generation scoring tools. *Id.* at 4. The Judicial Center advises that, in comparison to Indiana's original scoring models, the third-generation risk assessment tools allow more adequate identification of criminogenic needs. *Id.* By identifying these criminogenic characteristics, an offender's specific factors can be addressed during his supervision or sentence and substantially decrease the likelihood of future criminal activity. Faye S. Taxman, Ph.D. et al., *Tools of the Trade: A Guide to Incorporating Science into Practice*, 3–4 (2004). The third-generation scoring models are well supported by empirical data and provide target areas to change an individual's criminal behavior, thereby enhancing public safety. Christopher T. Lowenkamp, Ph.D. & Kristin Bechtel, M.S., *The Predictive Validity of the LSI-R on a Sample of Offenders Drawn from the Records of the Iowa Department of Corrections Data Management System*, 71 FED. PROBATION 25, 27–29 (Dec. 2007).

The scoring models at issue in the present case, the LSI-R and the SASSI, are third-generation assessment tools. According to the Center for Criminal Justice Research at the University of Cincinnati, the LSI-R is currently being utilized within the United States to "guide sentencing decisions, placement in correctional programs, institutional assignments, and release from institutional custody." Christopher T. Lowenkamp & Edward J. Latessa, Ph.D., *Validating the Level of Service Inventory Revised in Ohio's Community Based Correctional Facilities* at 5, <http://www.uc.edu/CCJR/Reports/ProjectReports/OHIOCBCFLSI-R.pdf> (last visited June 9, 2010). Once completed, the LSI-R produces a summary risk score that is intended to predict an offender's likelihood of recidivism and to provide information useful in determining his rehabilitative needs. Judicial Center Br. at 4. The LSI-R has been used throughout Indiana by its community corrections agencies and its probation departments to assess an offender's risks and determine what services should be provided. *Id.* The SASSI scoring model "is a brief self-report, easily administered psychological screening measure" that includes items "to identify some individuals with alcohol and other drug problems who are unwilling or unable to acknowledge" substance abuse warning signs or symptoms. National Institute on Alcohol Abuse and Alcoholism, *Assessing Alcohol Problems: A Guide for Clinicians and Researchers* 591, available at [http://pubs.niaaa.nih.gov/publications/Assesing%20Alcohol/InstrumentPDFs/66\\_SASSI.pdf](http://pubs.niaaa.nih.gov/publications/Assesing%20Alcohol/InstrumentPDFs/66_SASSI.pdf) (last visited June 9, 2010).

Current scientific research provides strong support for the proposition that, in contrast to penal incarceration for higher risk offenders, "low-risk offenders should be excluded, as a general rule, from residential programs." Christopher T. Lowenkamp & Edward J. Latessa, *Increasing the Effectiveness of Correctional Programming Through the Risk Principle: Identifying Offenders for Residential Placement*, 4 CRIMINOLOGY & PUB. POLY 263, 284 (2005) (based on a study of 13,221 offenders); see also D.A. Andrews et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 CRIMINOLOGY 369, 370 (1990). "[A]cademic literature has demonstrated for decades [that] objective actuarial risk/needs instruments more accurately predict risk and identify criminogenic needs than the clinical judgment of officers." Scott VanBenschoten, *Risk/needs Assessment: Is This the Best We Can Do?* 72 FED. PROBATION 38, 38 (Sept. 2008). "[T]he primary reason to use a risk/needs tool is to help officers both identify which offenders need intensive intervention and what type of intervention is required." *Id.* The use of evidence-based risk instruments in assessing the suitability of sentencing scheme options is receiving strong encouragement. See, e.g., Roger K. Warren, *Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism*, 82 IND. L.J. 1307, 1311 (2007). One of these tools, the LSI, "assigns each offender to a risk category, so that an appropriate case management strategy can be put into place." Brenda Vose et al., *The Empirical Status of the Level of Service Inventory*, 72 FED. PROBATION 22, 23 (Dec. 2008). The LSI "is a theoretically and empirically based assessment instrument that is designed to enhance the supervision and effective treatment of offenders." *Id.* Other authorities describe risk assessment information as "critical in making a number of important sentencing determinations," including the following: "[1] [the] offender's suitability for diversion from prosecution; [2] [the] most appropriate conditions of probation to be imposed; [3] [the] offender's amenability to treatment; [4] [the] most appropriate treatment or level of supervision to be imposed; [5] [the] most appropriate sanction or behavioral control mechanism to be imposed; [6] [the] decision whether to revoke probation; and [7] [the] kind of sanction or additional treatment to be ordered upon a violation." Roger K. Warren, *Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs* at 3 (The Pew Charitable Trusts, May 2009).

The product description for the LSI-R provides the following description and explanation regarding intended use:

[It] is a quantitative survey of offender attributes and their situations relevant to level of supervision and treatment decisions. Designed for ages 16 and older, the LSI-R helps predict parole outcome, success in correctional halfway houses, institutional misconducts, and recidivism. . . . [It] can be used by probation and parole officers and correctional workers in jails, detention facilities, and correctional halfway houses to assist in the allocation of resources, help make decisions about probation and placement, make appropriate security level classifications, and assess treatment progress."

LSI-R: Level of Service Inventory-Revised, Product Description,

<http://www.mhs.com/product.aspx?gr=saf&prod=lsi-r&id=overview> (last visited June 9, 2010).

As explained in the user's manual, the LSI-R "is a way of systematically bringing together risk and needs information important to offender treatment planning and for assigning levels of freedom and supervision." D.A. Andrews, Ph.D. & James L. Bonta, Ph.D, *The Level of Service Inventory-Revised User's Manual* at 1 (2001). Administration of the LSI-R requires the probation officer or other test administrator to make several objective determinations (e.g., information regarding criminal history, education, and employment) and to make subjective evaluations on several areas of inquiry including performance and interactions at work, family and marital situation, accommodations stability and the level of crime in the neighborhood, participation in organized recreational activities and use of time, nature and extent of social involvement with companions, extent of alcohol or drug problems, emotional/psychological status, and personal attitudes. Many of the questions require the assessment administrator to designate whether the offender has "no need for improvement," "some room for improvement," "need for improvement," or "a very clear and strong need for improvement." *Id.* at 26–27.

While there may be strong statistical correlation of assessment results and the risk or probability of recidivism, the administrator's evaluation as to each question may not coincide with that of the trial judge's evaluation based on the information presented at sentencing. The nature of the LSI-R is not to function as a basis for finding aggravating circumstances, nor does an LSI-R score constitute such a circumstance. But LSI-R scores are highly useful and important for trial courts to consider as a broad statistical tool to supplement and inform the judge's evaluation of information and sentencing formulation in individual cases. The LSI-R manual directs that it is not "to be used as a substitute for sound judgment that utilizes various sources of infor-

mation." *Id.* at 3. Significantly, the manual explicitly declares: "This instrument is not a comprehensive survey of mitigating and aggravating factors relevant to criminal sanctioning and was never designed to assist in establishing the just penalty." *Id.*

The SASSI is a screening tool used to help "identify individuals [with] a high probability of having a substance dependence disorder." Franklin G. Miller & Linda E. Lazowski, *The SASSI Manual 2* (2d ed., The SASSI Institute 1999). The SASSI instrument scores provide information regarding the "severity of substance dependence, substance abuse, acknowledged substance misuse, the possible need for supervised detoxification, level of acknowledgement, emotional pain, risk of criminal behavior, and focus on others rather than self." *Id.* at 3. The SASSI Institute describes the information provided by the scores as providing "clinical information that can be of value in identifying treatment issues and in developing effective treatment plans." *Id.* at 13. But the SASSI is not designed to diagnosis a substance abuse disorder. It only seeks to identify persons with a *high probability* for substance dependence. *Id.* at 2. The SASSI has been analyzed across various demographics (e.g. education level, employment status, gender, age, ethnicity, marital status). *The SASSI Manual* at 39–50. The analysis shows that in all but one category<sup>6</sup> the SASSI is above 90% accurate despite variations in demographic variables or individual mental functioning. *Id.* at 50.

It is clear that neither the LSI-R nor the SASSI are intended nor recommended to substitute for the judicial function of determining the length of sentence appropriate for each offender. But such evidence-based assessment instruments can be significant sources of valuable information for judicial consideration in deciding whether to suspend all or part of a sentence, how to design a probation program for the offender, whether to assign an offender to alternative treatment facilities or programs, and other such corollary sentencing matters. The scores do not in themselves constitute an aggravating or mitigating circumstance because neither the data selection and evaluations upon which a probation officer or other administrator's assessment is made

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<sup>6</sup> Validity testing of the accuracy of SASSIs conducted in treatment settings has a significant difference across various treatment settings ranging from 85.3% to 98.2% accurate. The results show that the SASSI is highly accurate, averaging 95.2% accuracy, in treatment settings dealing with addictions, general psychiatric disorders, dual diagnosis settings, and vocational rehabilitation settings. But the SASSI accuracy is 85.3% accurate in treatment settings where the individual is receiving treatment as a sex offender. *The SASSI Manual* at 34, Table 11.

nor the resulting scores are necessarily congruent with a sentencing judge's findings and conclusion regarding relevant sentencing factors. Having been determined to be statistically valid, reliable, and effective in forecasting recidivism, the assessment tool scores may, and if possible should, be considered to supplement and enhance a judge's evaluation, weighing, and application of the other sentencing evidence in the formulation of an individualized sentencing program appropriate for each defendant.

But the legitimacy of sentencing consideration of evidence-based assessment results has been questioned by the Court of Appeals, not only in the present case but also in Rhodes, which the defendant cites to support his opposition to using the LSI-R test at sentencing. In Rhodes, the Court of Appeals affirmed the trial court's sentence but opined that the "use of a standardized scoring model, such as the LSI-R, undercuts the trial court's responsibility to craft an appropriate, individualized sentence" and that "it is an abuse of discretion to rely on scoring models to determine a sentence." 896 N.E.2d at 1195. We disagree. As noted above, there is a growing body of impressive research supporting the widespread use and efficacy of evidence-based offender assessment tools. The results of such testing can enhance a trial judge's individualized evaluation of the sentencing evidence and selection of the program of penal consequences most appropriate for the reformation of a particular offender. The fact that numerical results from such tools may reflect factors that are separately shown by other evidence at sentencing does not disqualify the test results as duplicative. Sentencing considerations are often shown by the presentation of multiple, separate items of evidence or are repeated in the probation department's pre-sentence report, but this doesn't render them objectionable as duplicative. We defer to the sound discernment and discretion of trial judges to give the tools proper consideration and appropriate weight. We disapprove of the resistance to LSI-R test results expressed by the Court of Appeals in Rhodes.

The defendant and some of the *amici* question the admissibility of assessment tool results at sentencing on grounds of alleged lack of scientific reliability under Indiana Evidence Rule 702. The Indiana Rules of Evidence, except with respect to privileges, do not apply in trial court sentencing proceedings. Ind. Evid. R. 101(c)(2); Dumas v. State, 803 N.E.2d 1113, 1120–21 (Ind. 2004); Thacker v. State, 709 N.E.2d 3, 9 (Ind. 1999); Jackson v. State, 697 N.E.2d 53, 55

(Ind. 1998). As noted by Judge Miller, however, "[t]his provision does not affect the accused's due process rights not to be sentenced on the basis of unreliable information." Robert Lowell Miller, Jr., 12 Indiana Practice Series, Indiana Evidence § 101.304, 11–12 (citing State v. Barkdull, 708 N.E.2d 58, 59 (Ind. Ct. App. 1999), *trans. not sought*). We explained in Dumas that sentencing proceedings are exempted from the rules of evidence "to provide the trial judge with the widest range of relevant information in reaching an informed decision. We presume the trial judge is aware of and knows the law, and considers only evidence properly before the judge in reaching a decision." 803 N.E.2d at 1121. *See also Yates v. State*, 429 N.E.2d 992, 993–94 (Ind. Ct. App. 1982), *trans. not sought* ("A trial judge may consider almost any relevant information in determining what sentence to invoke"). Given the extensive supporting research and ongoing evaluation as discussed above, we believe that assessment tools such as the LSI-R and the SASSI are sufficiently reliable to warrant consideration of their resulting scores and/or narrative assessments with the other relevant information presented to a trial court for purposes of sentencing. Such assessment instruments enable a sentencing judge to more effectively evaluate and weigh several express statutory sentencing considerations such as criminal history, the likelihood of affirmative response to probation or short term imprisonment, and the character and attitudes indicating that a defendant "is unlikely to commit another crime." Ind. Code § 35-38-1-7.1(a)(2), (b)(6)–(8). Furthermore, even apart from these statutory criteria, which "do not limit the matters that the court may consider in determining the sentence," Ind. Code § 35-38-1-7.1(c), the offender's scores and/or narrative assessment results may be considered by a trial judge in reaching an informed sentencing decision.

Urging the exclusion of the LSI-R on grounds that it is discriminatory, the defendant argues that a person's family disharmony, economic status, personal preferences, or social circumstances "should never bear any weight with a sentencing judge." Appellant's Supp. Pet. to Transfer at 10. Considerations such as these, however, are already required by statute to be presented for judicial consideration in every pre-sentence investigation report. Indiana Code § 35-38-1-9(b)(2) mandates that pre-sentence investigation reports include "the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits." Furthermore, supporting research convincingly shows that offender risk assessment instruments, which are substantially based on such personal and

sociological data, are effective in predicting the risk of recidivism and the amenability to rehabilitative treatment. See D.A. Andrews et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 CRIMINOLOGY 369 (1990); Christopher T. Lowenkamp & Edward J. Latessa, *Increasing the Effectiveness of Correctional Programming Through the Risk Principle: Identifying Offenders for Residential Placement*, 4 CRIMINOLOGY & PUB. POL'Y 263 (2005); Christopher T. Lowenkamp, Ph.D. & Kristin Bechtel, M.S., *The Predictive Validity of the LSI-R on a Sample of Offenders Drawn from the Records of the Iowa Department of Corrections Data Management System*, 71 FED. PROBATION 25 (Dec. 2007); Brenda Vose et al., *The Empirical Status of the Level of Service Inventory*, 72 FED. PROBATION 22 (Dec. 2008); but see James Austin, Ph.D. et al., *Reliability and Validity Study of the LSI-R Risk Assessment Instrument, Final Report submitted to the Pennsylvania Board of Probation and Parole* (Institute on Crime, Justice and Corrections at George Washington University, Jan. 9, 2003). Because of such established materiality, we discern no impropriety in LSI-R scores being considered as a supplemental source of information to assist a trial court in formulating the manner a sentence is to be served.

The defendant also argues that the use of the test results may impinge upon one's right to counsel because the scoring sheets used in the administration of the assessment are not provided to defense counsel prior to the sentencing hearing. A defendant is entitled to a copy of the pre-sentence report prior to his sentence being imposed. Ind. Code § 35-38-1-12(a)(2). Thus the defendant will be aware of any test results reported therein and may seek to diminish the weight to be given such test results by presenting contrary evidence or by challenging the administration or usefulness of the assessment in a particular case. Such assessment results may also serve as a basis for a defendant to seek a suspended sentence or other favorable sentencing conditions. As noted above, we find that the LSI-R and SASSI assessment tools and other similar instruments employed by probation departments have been sufficiently scrutinized to satisfy the reliability requirement for consideration by trial courts in sentencing proceedings.

We also reject the defendant's claim that the use of such assessment instruments is inconsistent with Article 1, Section 18 of the Indiana Constitution, which emphasizes the foundational importance of reformation as a goal of our penal code. We find the opposite. Such instruments

endeavor to provide usable information based on extensive penal and sociological research to assist the trial judge in crafting individualized sentencing schemes with a maximum potential for reformation.

We hold that the results of LSI-R and SASSI offender assessment instruments are appropriate supplemental tools for judicial consideration at sentencing. These evaluations and their scores are not intended to serve as aggravating or mitigating circumstances nor to determine the gross length of sentence, but a trial court may employ such results in formulating the manner in which a sentence is to be served.

### **Conclusion**

The results of an LSI-R or SASSI assessment are not in the nature of, nor do they provide evidence constituting, an aggravating or mitigating circumstance. In considering and weighing aggravating and mitigating circumstances shown by other evidence, however, trial courts are encouraged to employ evidence-based offender assessment instruments, including, where appropriate, the LSI-R or SASSI, as supplemental considerations in crafting a penal program tailored to each individual defendant. Neither the LSI-R nor SASSI results were used by the trial judge as an aggravating circumstance in this case, and the trial court did not err in considering the LSI-R and SASSI test results in formulating the defendant's program of penal consequences. Judgment affirmed.

Shepard, C.J., and Sullivan, Boehm, and Rucker, JJ., concur.

ATTORNEYS FOR AMICI CURIAE

INDIANAPOLIS BAR ASSOCIATION,  
CRIMINAL JUSTICE AND  
APPELLATE PRACTICE SECTIONS

Joel M. Schumm  
IU School of Law-Indianapolis  
Indianapolis, Indiana

Bryan H. Babb  
Bose McKinney & Evans LLP  
Indianapolis, Indiana

James J. Bell  
Bingham McHale, LLP  
Indianapolis, Indiana

Fred R. Biesecker  
Ice Miller LLP  
Indianapolis, Indiana

Carol A. Nemeth  
Price Waicukauski & Riley LLC  
Indianapolis, Indiana

Geoffrey G. Slaughter  
Taft Stettinius & Hollister LLP  
Indianapolis, Indiana

INDIANA PUBLIC DEFENDER COUNCIL

Larry Landis, Executive Director  
Indiana Public Defender Council  
Indianapolis, Indiana

INDIANA PROSECUTING ATTORNEYS COUNCIL

Richard J. Hertel, Chairman  
Indiana Prosecuting Attorneys Council  
Versailles, Indiana

Stephen J. Johnson, Executive Director  
Indiana Prosecuting Attorneys Council  
Indianapolis, Indiana

INDIANA JUDICIAL CENTER

Jane A. Seigel  
Jennifer A. Bauer  
Michelle C. Goodman  
Indiana Judicial Center  
Indianapolis, Indiana

PUBLIC DEFENDER OF INDIANA

Susan K. Carpenter  
Public Defender of Indiana

Steven H. Schutte  
Deputy Public Defender

Kathleen Cleary  
Deputy Public Defender  
Indianapolis, Indiana

**TRAVIS COUNTY ADULT PROBATION DEPARTMENT**  
**P. O. Box 2245, Austin, Texas 78768 (512) 854-4600**  
**DIAGNOSTIC REPORT-PSI**

<b>NAME (Last)</b> Miller	<b>(First)</b> Melanie	<b>(Middle)</b> R	<b>(Maiden)</b>	<b>COURT DATE</b> 09/06/07
Aka: Mary Miller		TRN	<b>CAUSE NO.</b>	
		TRS		
<b>SSN</b>	<b>APD</b>	<b>FBI NO.</b>	<b>SID NO.</b>	<b>DL NO.</b>
<b>MAILING ADDRESS</b>		<b>PHYSICAL ADDRESS</b> Same	<b>CITIZENSHIP</b> United States	
<b>PHONE NUMBER</b> 512-		<b>OTHER NUMBER</b> 512-		<b>ALIEN NO.</b> None
<b>PLACE OF BIRTH</b> Texas	<b>DOB</b> 09/19/1960	<b>AGE</b> 46	<b>SEX</b> Female	<b>RACE</b> Caucasian
<b>MARITAL STATUS</b> Single		<b>DEPENDENTS</b> 1		<b>EDUCATION</b> 10th grade
<b>MONTHLY INCOME</b> \$817.00		<b>MONTHLY EXPENSES</b> \$714.00		
<b>OFFENSE</b> FORGERY			<b>OFFENSE TYPE</b> State Jail Felony	
<b>PENALTY RANGE</b> 180 days - 2 years confinement, 2-5 years supervision, Fine up to \$10,000.			<b>OFFENSE DATE</b> 12/xx/06	
<b>CO-DEFENDANT</b> None			<b>DATE OF ARREST</b> 12/xx/06	
<b>PLEA</b> Has Not Pled		<b>CUSTODIAL STATUS</b> Personal Bond		<b>DATE OF PLEA</b> N/A
<b>DETAINERS/ CHARGES PENDING</b> None				
<b>PROSECUTOR</b>		<b>DEFENSE ATTORNEY</b>		<b>RESTITUTION</b> None
<b>SENTENCING JUDGE</b>		<b>COURT</b> xxth District Court		
<b>PROBATION OFFICER</b> DIAGNOSTIC UNIT			<b>PROBATION MANAGER</b> DIAGNOSTIC UNIT	

EXAMPLE: ES/HIGH RISK

MILLER, M.

9-08

**PRESENT OFFENSE NARRATIVE:**

On December xx, 2006, at approximately 2:15 pm, Austin Police Department (APD) Officer K. and Officer P. responded to a report of a forgery passing at ABC Cash Express located at 517 A Ave. Upon arrival they met with Mary Smith who stated that a female, identified as Melanie Miller, the defendant, was attempting to cash a fake 7-11 check worth \$2962.30. Mary called the Bank of America to confirm if the check was real. Bank of America told her that the account number on the check did not exist. Mary advised the defendant, who also presented a letter trying to prove that the check was good.

Mary added that the paper used for the check was regular paper, not paper that is consistent in the preparation of checks. She continued to state that the business has cashed valid 7-11 checks in the past and the check number was too small.

When Mary told the defendant and her cousin, identified as Esther Jones, that she was calling the police, the defendant and Jones got scared and left the scene. The defendant (and Jones) returned to the scene and explained to Officer K. and Officer P. how she got the check. The defendant stated that she enrolled herself in a Yahoo post for a Christmas job or to receive financial assistance for Christmas. She stated that she got paid in many ways, including gift cards and this check with number 0009999337. The defendant said that the check was delivered from Canada. The letter that came with the check was from Alliance Processing Center. It was an Award Notification Letter telling the defendant that she had won \$50,000 and that they were mailing her an assistance check of \$2962.30 to help her pay for tax and administrative expenses involved with her winnings. The defendant was upset and stated that she did not know that the check was not real.

The defendant stated that she did not know who sent her the check, and did not have an explanation for why the check was stated to be from Dallas, TX, but mailed from Canada. It should be noted that the phone number on the check returns to Ontario, Canada, not Texas.

**SUMMARY OF CRIMINAL HISTORY: (PRIOR RECORD)**

<b>DATE</b>	<b>ARRESTING AGENCY</b>	<b>OFFENSE</b>	<b>DISPOSITION</b>
06/00/80	PD, Austin, Texas	Credit Card Abuse	12/00/80, Three years probation
03/00/80 (Offense date)	SO, Travis County, Texas	Theft by Check	07/00/82, 20 days Travis County Jail
02/00/86 (Offense date)	PD, Austin, Texas	Burglary of Habitation	07/00/86, 10 years Shock Probation; 04/00/88, Revoked, 90 days Travis County Jail
10/00/87	PD, Austin, Texas	Theft	02/00/88, 60 days Travis County Jail

EXAMPLE: ES/HIGH RISK

MILLER, M.

9-08

11/00/87	PD, Austin, Texas	Theft	02/00/88, 60 day Travis County Jail
08/00/87 (Offense date)	PD, Austin, Texas	Forgery by Possession with Intent to Pass	01/00/88, Eight years TDCJ
11/00/94 (Offense date)	Park Police, Austin, Texas	Theft of Property	11/00/95, Four days Travis County Jail
01/00/95	PD, San Marcos, Texas	Criminal Mischief	03/00/95, Fined

Sources available to this department indicate that the defendant has been convicted of three prior felony offenses and served two prior terms of probation for Credit Card Abuse and Burglary of Habitation. There was no record found for the Credit Card Abuse probation. The Burglary of Habitation probation term was revoked on 04/00/88 due to committing the subsequent offense of Forgery by Possession with Intent to Pass on 08/00/87 and failure to report as directed.

**PENDING CASES:** None.

**VICTIM IMPACT STATEMENT:**

Victim: None

Loss: None

**SUMMARY EVALUATION SOCIAL INDICATORS:**

Based on the SCS protocol, the following shaded areas in the Potential Concern and Salient Problem categories indicate criminogenic risk factors placing this individual at greater risk of recidivating.

Domains	Not An Issue (NI)	Potential Concern (PC)	Salient Problem (SP)
<b>Criminal Thinking/ Orientation</b>	<i>First time offender. Pro-social</i>	<i>Negative environmental influences, peers etc. Escalating Criminal History</i>	<i>Lengthy criminal history. Entrenched criminal value system.</i> <ul style="list-style-type: none"> <li>● <b>Lived off prostitution.</b></li> <li>● <b>Nine prior offenses of theft, forgery, or burglary.</b></li> <li>● <b>One prior felony term of probation revoked.</b></li> </ul>
<b>Peer Relations</b>	<i>Generally positive and associations with non-offenders</i>	<i>Occasional association with other offenders</i>	<i>Gang member or associates with other offenders/drug dealers. Easily influenced</i> <ul style="list-style-type: none"> <li>● <b>Offenses were generally committed with accomplices.</b></li> <li>● <b>Pimps or people around her made her commit the offenses</b></li> </ul>

			<p>she has in her prior history.</p> <ul style="list-style-type: none"> <li>• Now isolates herself because she admits she is easily influenced by people.</li> <li>• Thinks she is really weak and does whatever anyone tells her to do.</li> </ul>
<b>Assaultive Behavior</b>	<i>No evidence of emotional instability or assaultive behavior</i>	<i>Single prior episode of assaultive behavior</i>	<i>Current or multiple episodes of assaultive behavior</i>
<b>Alcohol Use</b>	<i>None or Social.</i>	<i>Occasional abuse, some disruption of functioning</i>	<i>Frequent abuse, serious disruption</i>
<b>Drug Use</b>	<i>No Current Use</i>	<i>Occasional abuse, some disruption of functioning</i>	<i>Frequent abuse, serious disruption</i>
<b>Sexual Behavior</b>	<i>No evidence of inappropriate sexual behavior</i>	<i>Current or past statutory offense</i> <ul style="list-style-type: none"> <li>• <b>History of Prostitution</b></li> </ul>	<i>Current and/or multiple incidents, which have occurred in the last 5 years</i>
<b>Vocational/ Employment –Work Skills</b>	<i>Full-time employment and/or student/homemaker</i>	<i>Sporadic full and/or part-time employment history, including brief periods of unemployment</i>	<i>No employment record, unskilled, unmotivated, or involved in illegal activity</i> <ul style="list-style-type: none"> <li>• <b>Unemployed 50% of the time or more.</b></li> <li>• <b>Disabled for four years.</b></li> <li>• <b>History of unskilled labor.</b></li> <li>• <b>Longest job reported was five to six months long and she quit because she was pregnant with her son.</b></li> </ul>
<b>Family/ Marital Relations</b>	<i>Stable/ Supportive/ Effective Controls. No Abuse</i>	<i>Some Disorganization and Stress/ Marginal Controls. Prior Abuse.</i>	<i>Major Disorganization or Stress/Ineffective Controls. Current Abuse.</i> <ul style="list-style-type: none"> <li>• <b>In CPS custody since the age of eight.</b></li> <li>• <b>Mother was physically abusive.</b></li> <li>• <b>Recently found out her father is her mother's biological brother and that he raped her mother when she was 12 or 13 years of age.</b></li> <li>• <b>Reports being molested while in foster homes.</b></li> <li>• <b>Ran away from foster home at the age 16 and ended up on the streets.</b></li> <li>• <b>Was forced to prostitute</b></li> </ul>

EXAMPLE: ES/HIGH RISK

MILLER, M.

9-08

			<b>herself since the age 16.</b> <ul style="list-style-type: none"><li>● <b>Had several children and all but one have been placed under adoption.</b></li><li>● <b>Only son is 17 years of age now.</b></li><li>● <b>Married once in the 80's but marriage was annulled one week later.</b></li></ul>
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**Additional problem areas that may interfere with the individual's adjustment and/or compliance with probation.**

<b>Medical Health</b>	<i>Sound physical health</i>	<i>Handicap or illness that interferes with social functioning</i> <ul style="list-style-type: none"><li>● <b>Suffers from asthma and should be taking albuterol but has run out.</b></li><li>● <b>Recently suffered head trauma because a tree fell into her window and on her and was prescribed depakote for the pain.</b></li></ul>	<i>Serious or chronic illness</i>
<b>Residential</b>	<i>Self-Sufficient, Stable environment</i>	<i>Short-term periods of residential instability</i> <ul style="list-style-type: none"><li>● <b>Lived at current address for three years.</b></li><li>● <b>Lives with 17 year old son.</b></li><li>● <b>Has been stable for the past eleven years.</b></li><li>● <b>Was at Salvation Army homeless shelter with son eight years ago.</b></li><li>● <b>Grew up in 24 different foster homes until the age of 16 when she ran away and ended up on the streets.</b></li></ul>	<i>Chronic residence problems with frequent address changes homelessness, or shelter care</i>

<p><b>Education</b></p>	<p><i>Satisfactory – No Significant Learning Disabilities or Special Education, HS or GED and higher achieved education</i></p>	<p><i>Functioning below expected grade level or Learning Disability/Special Education. No GED or High School Diploma</i></p> <ul style="list-style-type: none"> <li>●Dropped out school during the tenth grade.</li> <li>●Received remedial education and had trouble learning.</li> <li>●Believes foster parents did not care about her education.</li> <li>●Obtained her GED in 1993 while on parole.</li> <li>●Does not remember how many times she was suspended from high school or why she was suspended.</li> </ul>	<p><i>Below grade 9 and/or Functionally illiterate</i></p>
<p><b>Financial Management</b></p>	<p><i>Current income exceeds expenses. Living within means</i></p>	<p><i>Questionable expenses, unstable income</i></p> <ul style="list-style-type: none"> <li>●Receives Social Security disability, food stamps, and TANIF for 17 year old son.</li> <li>●Offense committed for monetary gain.</li> <li>●Has \$103 left over after all expenses are paid.</li> </ul>	<p><i>Excessive debt, expenses exceed income. Inability to meet basic living needs</i></p>
<p><b>Mental Health Status</b></p>	<p><i>No Mental Health problems and/or diagnosis.</i></p>	<p><i>Mental Health problems that have been or are now being treated</i></p> <ul style="list-style-type: none"> <li>●Has active MHMR diagnosis since December 2005.</li> <li>●Currently receives services from the MHMR/ANEW program.</li> <li>●Currently on several psychotropic medications, that despite taking them, the defendant still has symptoms present.</li> <li>●Receives pension for psychiatric disability.</li> </ul>	<p><i>Significant Mental Health instability</i></p>

**CLASSIFICATION AND SUPERVISION GROUP:**

Initial Risk	SCS Score				
	SIS	SIT	ES	CC	LS
Low					
Medium					
High			XXX		

**This person is High Risk of recidivating and falls into the Environmental Structuring (ES) strategy group.**

**Characteristics:** These offenders make choices due to their inability to solve problems correctly and their naiveté and social gullibility. ES offenders tend to have below average mental capacity. They are often impulsive, because they are less capable of weighing the consequences of their behavior for either themselves or others. They have a low ability to perceive the motives and concerns of others and are easily led by more sophisticated individuals. Even though malice is rare in their motivation, offenders can become involved in assaultive offenses due to a lack of insight.

**Supervision Strategy:** Will require intensive supervision and referrals to enhance skill levels as well as improve interactions with others. Will also require collateral contacts with family members.

**URINE SPECIMEN RESULTS:**

Results from the urine specimen collected on 08/21/07; Tested Negative for THC, Cocaine, PCP, Amphetamines, Opiates Status: Negative; Assessment.

**SUBSTANCE ABUSE EVALUATION RESULTS:**

Based on Lack of current indicators, Travis County Adult Probation is recommending No need for treatment.

**CONDITIONS OF PROBATION:**

If placed under the supervision of the Travis County Adult Probation Department the following conditions would be appropriate:

**Treatment Conditions**

- Assign to Mental Health Specialized Caseload and participate in MHMR/ANEW for an assessment of services.
- Take Medicine as Prescribed.
- Do not participate in any clinical studies.

**“Off Grid” Conditions (Conditions that apply because of the special nature of the offense):**





Supreme Court of Illinois  
**ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS**  
**Probation Services Division**

**PRE-SENTENCE INVESTIGATION REPORT**

**I. COURT/OFFENSE INFORMATION**

Judicial Circuit: 25th  
 County: Midway  
 State's Attorney: Ronald Reinstein  
 Case Number: 07 CF 055

Judge: Donald Hudson  
 Defense Attorney: Robert Miller  
 Sentencing Date: 08/27/08

Offense: Possession of a Controlled Substance  
 Date of Offense: 07/07/08  
 Date of Arrest: 07/07/08

Official Version of Offense: The defendant was found sleeping by Officer Smith in the downtown business district at 4:20 a.m. When Officer Smith attempted to awaken him, the defendant became combative. The defendant was then detained to investigate for public intoxication and identify the defendant. A cursory search was completed for safety reasons, resulting in the recovery of a white powdery substance in his back right pocket which field tested positive for cocaine. The defendant was then placed under arrest for possession of a controlled substance and transported to the county jail for processing.

Status Since Arrest: Michael Black has been incarcerated at the Midway County Jail since his arrest on 07/07/08.

**II. DEMOGRAPHIC INFORMATION**

Name: Michael Black  
 Address: Midway County Jail, 212 Main St.  
 City/State/Zip Code: Midtown, IL, 62345  
 Phone/Cell Phone: none  
 Date of Birth: 4/16/1959  
 Place of Birth: Midtown, IL  
 Driver's License Number: M734-7231-520  
 Citizenship: US  
 Social Security Number: 426-69-2856

Alias/Maiden Name: Mike  
 Height: 6'1  
 Weight: 230  
 Eyes: Brown  
 Hair: Brown  
 Gender: Male  
 Scars/Tattoos: Scars on neck and both wrists

### III. CRIMINAL RISK/NEED AND PROTECTIVE FACTORS

#### History of Delinquency and Criminality

Michael's first offense occurred at the age of 13, when he received a continuance under supervision (CUS) for shoplifting. The CUS was successfully completed. At age 16, Michael was adjudicated for possession of marijuana, and placed on probation for one year, which he completed without incident. At age 26, Michael was convicted of retail theft and sentenced to one year of conditional discharge (CD). The CD was successfully completed. Michael was convicted and sentenced to two years probation for disorderly conduct and aggravated assault of a peace officer at age 35. This probation term was revoked for a failure to comply with the recommended inpatient treatment and he was sentenced to 6 months in jail. Michael has no other prior convictions; however, he has spent the night in jail on 3 occasions for disorderly conduct arrests. Currently, Michael is at the Midway County Jail awaiting sentencing after being convicted of Possession of a Controlled Substance (Cocaine).

#### Substance Use/Abuse

Michael's history of substance use began at the age of 13, when he first began using alcohol. At 14 he first started using marijuana, and at 16 began using cocaine. At age 16 marijuana was found in Michael's school locker and he was adjudicated for the offense of possession of marijuana. Michael's pattern of serious substance abuse began with the death of his mother when he was 16. Since that time, he has had periods of reduced usage, but uses more frequently in times of stress.

He has attempted treatment on three separate occasions, but left against staff advice each time. His family physician advised that he stop drinking alcohol due to the potential for liver problems. For the past 9 months, Michael's health has been diminishing significantly due to his substance use. Michael has admitted that his possession of illegal substances is wrong, and recognizes that he needs support to be successful with future treatment attempts.

Prior to his current incarceration, his free time was consumed looking for and using alcohol, marijuana, and cocaine, or with other chronic alcohol and drug abusers. All of the money Michael makes by doing day labor or collecting aluminum cans for recycling is spent on alcohol, marijuana, and cocaine.

Michael admits that his substance use contributed to at least one failed relationship.

Michael's current conviction is for Possession of a Controlled Substance. He was under the influence of alcohol at the time of the arrest and had no memory of the circumstances due to his intoxication.

Associates/Companions

Michael has many acquaintances with criminal records, most of whom use illegal substances. He stated that prior to his current incarceration, most of his free time was spent with other chronic drug and alcohol abusers. He has one friend from high school that is close with his family, who encourages Michael to stay clean and work on obtaining his certificate to become a mechanic.

Attitudes/Values

Michael continues to feel ambivalent regarding his substance abuse. He admits that it was wrong to have the cocaine, and recognizes that he will need support to be successful in treatment. He also realizes that he has failed treatment in the past. Michael is unable to articulate any concrete plans on how to live a “conventional” lifestyle, although he expresses the desire to do so.

Family/Marital

Michael is single, and has no children. His last significant relationship ended a few years ago when his girlfriend tired of supporting him and tolerating his drug use. He stated that he is interested in having a relationship, but recognized that his current circumstances make that unlikely. Michael’s mother passed away when he was 16 years old, and has had considerable difficulty coping with this loss. He does not have a close relationship with his father, but does report being close with his two sisters. They stated that they are willing to support Michael if he discontinues his substance abuse, but are skeptical of any promises he makes to stay clean. None of Michael’s close relatives have been involved in the legal system.

Education/Employment

Michael was expelled from Central High School as a sophomore, when marijuana was found in his locker. He stated that until his expulsion, he loved school, had average grades, and had no disciplinary record. Michael was then required to attend Midway Alternative School, but dropped out during his senior year.

Michael has a history of maintaining part time employment for short periods of time. He was fired from his most recent employment at the Amoco gas station after money was found to be missing from the cash register. Prior to his incarceration, he occasionally worked as a day laborer, or collected aluminum cans for recycling.

Michael stated that he is interested in earning his certificate as an auto mechanic.

Emotional/Personal

Michael continues to have considerable difficulty coping with his mother's death. He has been diagnosed with depression, but is not currently attending counseling or taking the prescribed medication.

Housing (Accommodation)

Currently Michael is in Midway County Jail. He was homeless for much of the year prior to this incarceration. While living on the street, he would sleep in areas heavily populated with IV drug use and prostitution. Michael also spent some time with friends who occasionally allowed him to sleep on their sofas. His last stable housing arrangement was with a girlfriend, who threw him out after a few years.

Financial

Michael has no form of regular income. He reports that he borrows money from his friends and family members, and still owes money to them. He uses the money he makes from day labor jobs and recycling aluminum for alcohol, marijuana, and cocaine.

Recreation/Leisure

Michael has no structured activities. He stated that most of his free time was spent trying to find drugs and spending time with people who use drugs and alcohol.

#### **IV. VICTIM IMPACT STATEMENT**

None

#### **V. DEFENDANT'S STATEMENT**

Your honor, I am sorry for breaking the law. I know it was wrong to have the cocaine but I have struggled with this addiction for a very long time. Please give me a chance to show you that I can get clean if I have some help. I have been in jail for over a month and I have had a lot of time to think about my life. I don't want to go back to jail and I don't want these drugs to keep making me sick. I am sorry for what I did. Thank you for your time. Signed, Michael Black.

## VI. CO-DEFENDANT'S STATEMENT

Not applicable

## VII. SUMMARY

### Protective Factors

- 1) Michael has expressed the desire to attend treatment, and recognizes its importance.
- 2) Michael has two sisters who are willing to support him if he is able to discontinue his substance use.
- 3) Michael's friend, Brett, has encouraged him to stay clean and to obtain his mechanic certificate. He is a positive support and influence for Michael

### Risk Factors

- 1) Abuse of alcohol, cocaine, and marijuana
- 2) Lack of suitable living arrangements
- 3) Michael has been diagnosed with depression and continues to struggle with his mother's death. He is not taking medication, nor attending counseling.

### Targeted Interventions and Supervision Strategies/Available Resources

- 1) Alcohol and drug evaluation and recommended cognitive-behavioral intervention
- 2) Psychological assessment and recommended treatment
- 3) Drug and alcohol testing
- 4) Immediate referral to PADS (Public Action to Deliver Shelter), and referral to Salvation Army for longer term housing solution

### Conclusions

Michael's drug and alcohol abuse have been contributing factors to much of his involvement with the legal system, and the cause of problems in other areas of his life. Michael is unemployed, and until his current incarceration, was living on the street. All but one of his friends and acquaintances abuse drugs and/or alcohol, and frequent the places where Michael spends his time. He has attempted treatment for his alcohol and drug use in the past on three occasions, but left against the advice of counselors each time. He now states that he will need help to be able to successfully complete treatment. Dealing with his mother's death has been difficult for Michael, and although he was diagnosed with depression and prescribed medication, he has not continued counseling nor taken the medication. If the Court were to sentence Michael to a term of probation, the targeted interventions and supervision strategies listed above, as well as a high level of supervision, would be priorities in working with him.

Report Prepared By: Theo Carter, Midway County Probation Officer

Date: 8/11/08



Coconino County Adult Probation Department  
 Presentence Report - Offender Screening Tool Results  
 State of Arizona v. DIAZ, ARTHUR KEVIN - 20080441

**RISK/NEED ASSESSMENT:**

Based on the Offender Screening Tool (OST), the following is an assesment of the defendant's risk to reoffend and criminogenic needs. There are 10 categories, or domains, assessed in the OST. Domains that do not contribute to the defendant's overall risk to reoffend, or represent a criminogenic need area for the defendant do not require intervention. Domains that contribute to the defendant's overall risk to reoffend and criminogenic needs may require intervention. Domains that significantly contribute to the defendant's overall risk to reoffend and criminogenic needs must be addressed when developing community supervision strategies. The OST is a standardized, statewide, validated tool approved by the Administrative Office of the Courts (AOC).

**Risk Level: High Risk**

**Domains that Do Not Contribute to Overall Risk to Reoffend or Criminogenic Needs Level**

Domain			Summary
<b>*The Physical/Medical Health category has been identified as a responsivity factor and is not shown to impact risk level*</b>			
I. Physical/Medical Health*			<ul style="list-style-type: none"> <li>• The defendant reports that his ruptured disc in his back prevents him from working</li> <li>• Client indicates that he requires constant pain meds to control pain</li> </ul>
V. Residence			<ul style="list-style-type: none"> <li>• The defendant is in a positive, supportive living arrangement.</li> </ul>
VI. Alcohol			<ul style="list-style-type: none"> <li>• The defendant has no alcohol history, no reported problems</li> </ul>

**Domains that May Contribute to Overall Risk to Reoffend or Criminogenic Needs Level**

Domain			Summary
II. Vocational/Financial			<ul style="list-style-type: none"> <li>• The defendant reports that his ruptured disc in his back prevents him from working.</li> </ul>
IV. Family and Social Relationships			<ul style="list-style-type: none"> <li>• The defendant has no family relationships.</li> <li>• The defendant spends his time with individuals with felony records.</li> </ul>
VIII. Mental Health			<ul style="list-style-type: none"> <li>• The defendant reports that he attempted suicide 5 years ago, but has been treated and is stable at present.</li> </ul>

**Domains that Significantly Contribute to Overall Risk to Reoffend or Criminogenic Needs Level**

Domain			Summary
VII. Drug Abuse			<ul style="list-style-type: none"> <li>• The defendant reports using meth and cocaine</li> </ul>

Coconino County Adult Probation Department  
 Presentence Report - Offender Screening Tool Results  
 State of Arizona v. DIAZ, ARTHUR KEVIN - 20080441

			two or three times per week for the past two years.
IX. Attitude			<ul style="list-style-type: none"> <li>• The defendant feels that the judge was unfair with his 3 year sentence.</li> <li>• The defendant feels that the probation department should have no say over his actions.</li> </ul>
X. Criminal Behavior			<ul style="list-style-type: none"> <li>• Age 14 at first arrest.</li> <li>• Felonies.</li> </ul>
III. Education			<ul style="list-style-type: none"> <li>• The defendant was suspended from school three times</li> </ul>

<b>Risk Level: High Risk</b>
------------------------------

## **Sentencing Scenario No. 1**

### **Tony**

The defendant, Tony Jones, entered Quality Clothing and attempted to leave the store with an expensive leather jacket concealed under a large parka that the defendant was wearing. When the security guard attempted to stop the defendant, the defendant punched and threatened the security guard. The security guard was eventually able to restrain the defendant until local law enforcement arrived and the defendant was placed under arrest for grand larceny and assault. The defendant has been in custody for 90 days, and pleads guilty to the charges, with the understanding that he will not be sentenced to prison at the outset (but could later upon any revocation of probation.)

Jones is 28 years old. He was first involved in the criminal justice system at age 13 on an adjudication for battery. He was placed on probation for 12 months. During the term of his juvenile probation, Jones was arrested for criminal trespass to property and disorderly conduct. Jones' probation was revoked but he was reinstated on probation for a term of 24 months which he successfully completed. The offense for which Mr. Jones is currently being sentenced represents his third adult conviction. He has prior adult convictions for commercial burglary and misdemeanor auto theft. He successfully completed probation for those offenses three years ago.

Mr. Jones is before you for sentencing without any pre-sentence investigation or report. The prosecutor asks for a year in the county jail, electronic monitoring, and intensive probation supervision. The defense attorney agrees to intensive supervision but objects to electronic monitoring and asks for time served.

**What further information, if any, do you want?**

**What probation conditions, if any, would you impose?**

**What would your sentence be?**

## **Sentencing Scenario No. 1A**

### **Tony (cont.)**

**Assume that instead of sentencing the defendant you had released the defendant on bail and referred the matter for a pre-sentence report which discloses the following additional information:**

Mr. Jones reports that he first used marijuana and alcohol at the age of 13 in an attempt to “fit in with the other kids,” and he states that he has not used marijuana in several years, but does drink alcohol on weekends. There is no history of substance abuse. Jones reports having two separate groups of friends, one of which never gets into trouble, while the other has been actively involved in the criminal justice system. During his probation interview, Mr. Jones reported that he believes shoplifting “is a minor offense” and that the security guard had “started” the altercation by physically restraining him as he was trying to leave the store.

Mr. Jones reports having a positive relationship with both of his parents. None of Mr. Jones’ immediate family members have a criminal history. He is a high school graduate with a history of behavior problems throughout high school that included disruptive classroom behavior and numerous physical altercations with other students. He reports no mental health issues. He does not have a stable housing pattern, moving back and forth between the homes of his friends and his parents. He is currently unemployed and has no means of income.

Mr. Jones is currently not involved in any structured activities. He reports that most of his free time is spent “hanging out” with his friends and going to bars. He also spends time at a friend’s apartment playing video games and listening to music. He indicated he could make better use of his time and expressed an interest in going to college. He would also like to start his own business.

**What are the dynamic risk factors?**

**What are the strengths?**

**What is your assessment of the risk of re-offense?**

**What further information, if any, do you want?**

**What probation conditions, if any, would you impose?**

**What would your sentence be?**

# **CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS**

## **Resolution 12 In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism**

WHEREAS, the public desires and deserves criminal justice systems that promote public safety while making effective use of taxpayer dollars; and

WHEREAS, despite increasing use of incarceration and greater spending on corrections, recidivism rates have continued to escalate; and

WHEREAS, the judiciary, consistent with its obligation to provide just and effective punishments for criminal offenders, has a vital role to play in ensuring that criminal justice systems work effectively and efficiently to protect the public by reducing recidivism and holding offenders accountable; and

WHEREAS, the best research evidence has shown that use of validated “offender risk and need assessment tools” is critical in reducing recidivism;

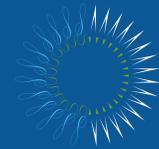
NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support state efforts to adopt sentencing and corrections policies and programs based on the best research evidence of practices shown to be effective in reducing recidivism; and

BE IT FURTHER RESOLVED that the Conferences urge each chief justice and state court administrator to work with members of the executive and legislative branches as appropriate to promote policies and practices that place properly identified offenders in corrections programs and facilities shown to be effective in reducing recidivism; and

BE IT FURTHER RESOLVED that the Conferences urge all members of the judiciary to educate themselves about the effectiveness of community-based corrections programs in their jurisdictions and to advocate and, when appropriate, make use of those programs shown to be effective in reducing recidivism.

Adopted as proposed by the Conference of Chief Justices Board of Directors and the Conference of State Court Administrators Policy and Liaison Committee on August 1, 2007.

JANUARY 2010



THE  
**PEW**  
CENTER ON THE STATES

# The Impact of Hawaii's HOPE Program on Drug Use, Crime and Recidivism



## The HOPE Program

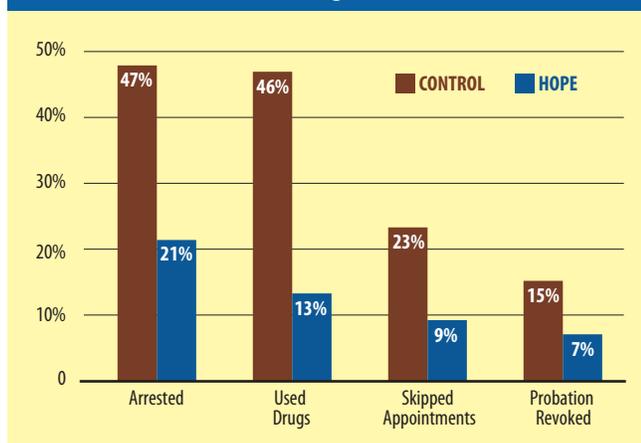
Launched in 2004, Hawaii's Opportunity Probation with Enforcement (HOPE) program aims to reduce crime and drug use among criminal offenders. HOPE identifies probationers who are likely to violate their conditions of community supervision; notifies them that detected violations will have consequences; conducts frequent and random drug tests; responds to detected violations (including failed drug tests and skipped probation meetings) with swift, certain and short terms of incarceration; responds to absconding probationers with warrant service and sanctions; and mandates drug treatment upon request or for those probationers who do not abstain from drug use while on the testing and sanctions regimen.

By 2009, more than 1,500 probationers (one in every six felony probationers in Oahu) were enrolled in HOPE. The Public Safety Performance Project of the Pew Center on the States and the National Institute of Justice of the U.S. Department of Justice collaborated to produce this summary of an evaluation conducted to assess HOPE's effectiveness.

## Results

In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48 percent fewer days of incarceration than the control group (Exhibit 1).<sup>1</sup>

Exhibit 1. HOPE Program Outcomes



## Evaluation Structure

Adult probation officers in Honolulu identified 507 men and women on probation who showed an elevated risk of violating probation conditions based on a widely used risk assessment instrument and prior behavior while under supervision. Office supervisors deemed 493 of these probationers eligible.<sup>2</sup> In October 2007, random assignment by computer placed 330 probationers (two-thirds of

In this  
Brief:

What is the HOPE  
Program?

The Impact on Drug  
Use, Crime and  
Recidivism

How was the Evaluation  
Structured?

the eligible group) into HOPE (the “treatment group”) while 163 remained on probation-as-usual (the “control group”). This randomized controlled trial followed an intent-to-treat design: all probationers assigned to the treatment group were included in the evaluation regardless of what occurred after assignment. Due to randomization, the treatment and control groups were not statistically different in terms of age, sex, race or ethnicity, assessed risk level and criminal history (Exhibit 2).<sup>3</sup>

The evaluation was conducted by Dr. Angela Hawken of Pepperdine University, with funding from the National Institute of Justice. The full evaluation report is available online at <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

Additional research could focus on which program components are most important, what types of offenders respond best, and whether the outcomes are sustained after probation supervision ends.

*Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.*

*NIJ is the research, development and evaluation agency of the U.S. Department of Justice and is dedicated to researching crime control and justice issues.*

Exhibit 2. HOPE Program Demographics <sup>3</sup>		
	HOPE	Control
Average age (median)	36.1 (35.2)	35.4 (34.4)
Male	75%	71%
Asian/Polynesian	65%	64%
Caucasian	16%	14%
Black	5%	3%
Portuguese	1%	2%
Puerto Rican	1%	1%
Other or Unknown	11%	14%
Percent assessed high risk	46.7%	44.1%
Average prior arrests (median)	17 (13)	16.4 (12)
Most serious prior charge: drug	35%	33%
Most serious prior charge: property	30%	34%
Most serious prior charge: violent	22%	22%
Most serious prior charge: other	14%	11%

<sup>1</sup> All reported differences across groups are significant at the .01 level. To determine the rate of skipped appointments, the evaluator calculated the percent of skipped appointments for each probationer and then averaged those percentages. The same method—giving equal weight to each probationer—was used for rate of detected drug use. Using another method, she also calculated the rates for total skipped appointments divided by total appointments (control group = 18 percent, HOPE = 5 percent) and total positive drug screens divided by total drug screens (control group = 41 percent, HOPE = 9 percent). Because of the one-year observation period, figures for days incarcerated include both served and sentenced days in both jail and prison. If not all sentenced days are served, then the percentages may change for both HOPE and control probationers.

<sup>2</sup> The 14 excluded probationers included 10 who had been transferred or were preparing to transfer to another unit; two who were pending deportation; one who was deceased; and one who was pending transfer to drug court.

<sup>3</sup> Baseline HOPE and control group statistics are not significantly different at the .05 level.



The Pew Center on the States is a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life.

[www.pewcenteronthestates.org](http://www.pewcenteronthestates.org)

*Evidence-Based Sentencing Practices  
to Reduce Recidivism*

Excerpts from the  
**RISK-BASED PROGRESSIVE SANCTIONS AND  
INCENTIVES MODEL IN TRAVIS COUNTY**



**Dr. Geraldine F. Nagy**  
**DIRECTOR**

August 2007

Revised April 2, 2008

## SUMMARY

The mission of the Travis County Adult Probation Department is to impact the community by making it safer and changing the lives of those placed under its supervision.

This document provides an overview of the key procedures for the application of a Risk-Based Progressive Sanctions Model for technical violations in Travis County.

In the Risk-Based Progressive Sanctions Model the response to a technical violation depends, in part, on the offender's risk of re-offending. Each offender is classified into one of three subcategories: Red (High), Blue (Medium) and Yellow (Low). These classifications are based on the results of a comprehensive assessment process using the Wisconsin Risk Assessment and SCS.

Next, "Guidelines for Progressive Sanctions" were developed by separating control and treatment conditions, ordering them from least severe to most severe, and assigning numbers to each type of violation. The number assigned refers to a menu of options available to address the violation for an offender at that particular risk-level. In order to also assure a consideration of the **probated offense**, two sets of "Guidelines for Progressive Sanctions" were developed: The first set outlines the sanctions for the General Population of probationers (Table 1); the second outlines the responses for Violent, Sex-Offender, and DWI Offenders (Table 2).

The numbers in the Guidelines designate the appropriate response for a **FIRST-TIME** violation, and range from "1" designating the least severe sanction level to "4" designating the most severe sanction level. The options for each of the 4 possible sanctions levels are shown in the Violations Response Table (Table 3). The appropriate sanction is then selected from the menu corresponding to the number designated in the Guideline.

The Model also includes progressive incentives when offenders accomplish certain benchmarks in their probation supervision (Table 4).

## DEFINITION OF YELLOW, BLUE, RED RISK/SUPERVISION LEVELS

The Travis County CSCD Risk-Based Progressive Sanctions & Incentives Model is part of a broad organizational initiative, referred to as Travis Community Impact Supervision (TCIS). All felons and maximum-risk misdemeanors will receive a complete “diagnostic package” including the Wisconsin Risk-Assessment, SCS protocol, SAE, and a mental health screen. In pre-sentence cases this information will be used to develop the PSI including recommendations of conditions of supervision. In all cases, this information will be used by officers to determine supervision goals and methods, and responses to technical violations should they occur.

Since assessment plays such a significant role in TCIS from pre-sentence, through supervision to discharge, the Department completed a 6-week study designed to: 1) validate the Wisconsin Risk-Assessment and 2) profile the Travis County CSCD offender population. To achieve the first goal, all offenders were assessed using the Wisconsin and matched with DPS arrest data and TDCJ incarceration data. The risk assessment, as expected, showed significantly higher arrest rates and incarceration rates for higher risk offenders. To achieve the 2<sup>nd</sup> goal a matrix was used. The following charts show the Travis offender population.

**Percentage of All Felony Offenders in Each Risk/SCS Group**

	SI-S	SI-T	ES	CC	LS
Minimum	7.1%	7.1%	.4%	.9%	.9%
Medium	9.7%	14.5%	2.6%	7.9%	3.5%
Maximum	4.0%	7.1%	3.5%	21.1%	9.7%

**Percentage of All Misdemeanant Offenders in Each Risk/SCS Group**

	SI-S	SI-T	ES	CC	LS
Minimum	25.4%	13.6%	0%	.6%	0%
Medium	16.5%	14.1%	1.3%	2.8%	.9%
Maximum	4.1%	6.2%	1.5%	9.8%	3.2%

The colors in the above charts will be used to determine the most appropriate response to violations as shown in Tables 1 & 2. As can be seen, the large majority of felons fall into the red category, with most being high risk (45%). It should be noted that “overrides” were not allowed in the study.

**TABLE 1: GUIDELINES FOR PROGRESSIVE SANCTIONS (1<sup>st</sup> Violation)**

**These Guidelines will not be used for Absconders, Subsequent Offenses, cases that pose a risk to public safety and require a RUSH VR, or any cases with specific directives at sentencing from the Court regarding sanctions for violations of Conditions.**

**Control Condition Violation**

		Gen. Pop. Probationer		
Low Severity	Failure to pay fees (i.e., fine, court costs, probation fees, DPS fees, special program fees)	1	1	1
	Failure to work community service hours	1	1	1
	Failure to attend Alcohol Education/Traffic Safety classes (DWI School)	2	1	1
	Failure to attend a DWI school for repeat offenders	2	1	1
	Failure to attend Drug Offender Education classes	2	1	1
	Failure to attend GED classes	2	1	1
	Failure to work at suitable employment	2	1	1
	Failure to pay Restitution (auto VR 331 <sup>st</sup> and 403rd if arrears exceed \$1500)	2	2	1
	Failure to support your dependant(s)	2	2	1
	Failure to attend and complete Anger Management classes, Parenting Classes; Theft classes; Cognitive classes	2	2	1
	Failure to designate your current place of residence	2	2	1
	Failure to receive prior permission to change your address	2	2	1
	Failure to be present for scheduled home visit	2	2	1
	Failure to report (Missed Appointments - not for absconders!)	2	2	1
	Buying, selling, possessing, or consuming an alcoholic beverage or any substance for the purpose of intoxication	3	2	1
Entering an establishment where alcoholic beverages are sold	3	2	1	
Failure to submit to a Breath analysis or Urinalysis	3	2	2	
Positive Urinalysis or BAC (VR for alcohol only if + via II violation or PI arrest, VR for all drugs except THC - 331 <sup>st</sup> ; VR + BAC Felony DWI 403rd; VR 2nd + UA 403rd)	3	2	2	
Failure to avoid gang members or persons / places of disreputable character	3	2	2	
Failure to attend and complete a Specialized Program (i.e., Gang, Sex Offender, Domestic Violence, Child Abuse, High Risk, MHMR)	3	3	N/A	
<b>Confirmed</b> Non-compliance with Ignition Interlock	N/A	N/A	N/A	
Failure to Install or non-compliance with SCRAM	N/A	N/A	N/A	
Failure to Install Ignition Interlock	N/A	N/A	N/A	
Non-compliance with EM	N/A	N/A	N/A	
Failure to avoid contact with the victim in probated case	4	4	4	
Failure to stay away from child safety zone	4	4	4	
Possession of a firearm or prohibited weapon	4	4	4	
Failure to report at Jail Commitment or Community Corrections Facility	4	4	4	
High Severity				

**Violent, Sex & DWI offenders are addressed in next guidelines.**

**Treatment Condition-Violation: Actively in treatment, awaiting placement, or in aftercare**

Low Severity	Failure to attend AA/NA Meeting	1	1	1
	Failure to attend cognitive classes	1	1	1
	Failure to participate in assessment and testing	2	1	1
	Positive Urinalysis or BAC as treatment requirement (VR for alcohol only if + via II violation or PI arrest, VR for all drugs except THC - 331 <sup>st</sup> ; VR + BAC Felony DWI 403rd; VR 2nd + UA 403rd)	2	1	1
	Failure to participate and complete out patient counseling	2	2	1
Failure to participate in specialized caseload	3	2	N/A	
Failure to participate in aftercare program	3	2	2	
Failure to participate and complete in-patient treatment	3	3	3	
Termination from SMART (or other CCF) program due to non-compliance	4	4	N/A	
Termination from SAFPF program due to non-compliance	4	4	N/A	
High Severity				

**In pre-TCIS cases or cases without a Diagnostic report use RISK ONLY**

High  
Medium  
Low

**TABLE 2: GUIDELINES FOR PROGRESSIVE SANCTIONS OFF THE GRID (1<sup>st</sup>)**

**These Guidelines will not be used for Absconders, Subsequent Offenses, cases that pose a risk to public safety and require a RUSH VR, or any cases with specific directives at sentencing from the Court regarding sanctions for violations of Conditions.**

**Control Condition Violation**

		Violent Probationer			Sex Offender			DWI Probationer		
Low Severity	Failure to pay fees (i.e., fine, court costs, probation fees, DPS fees, special program fees)	1	1	1	1	1	1	1	1	1
	Failure to work community service hours	2	1	1	1	1	1	1	1	1
	Failure to attend Alcohol Education/Traffic Safety classes (DWI School)	N/A	N/A	N/A	N/A	N/A	N/A	2	1	1
	Failure to attend a DWI school for repeat offenders	N/A	N/A	N/A	N/A	N/A	N/A	2	1	1
	Failure to attend Drug Offender Education classes	N/A	N/A	N/A	N/A	N/A	N/A	2	1	1
	Failure to attend GED classes	2	2	1	2	1	1	2	1	1
	Failure to work at suitable employment	2	2	1	2	1	1	2	1	1
	Failure to pay Restitution (auto VR 331 <sup>st</sup> & 403rd if arrears exceed \$1500)	3	2	2	2	2	1	2	1	1
	Failure to support your dependant(s)	2	2	1	2	2	1	2	1	1
	Failure to attend and complete Anger Management classes, Parenting Classes; Theft classes; Family Violence classes, Cognitive classes, DWI Panel	3	3	2	2	2	1	2	2	1
	Failure to designate your current place of residence	3	3	2	3	2	2	2	2	1
	Failure to receive prior permission to change your address	3	3	2	3	3	2	2	2	1
	Failure to be present for a scheduled home visit	3	3	2	3	3	2	2	2	1
	Failure to report	3	3	2	3	2	2	3	2	1
	Failure to follow curfew hours	3	3	3	3	2	2	3	2	2
	Buying, selling, possessing, or consuming an alcoholic beverage or any substance for the purpose of intoxication	3	3	3	3	2	2	3	2	2
	Entering an establishment where alcoholic beverages are sold	3	3	3	3	2	2	3	2	2
	Failure to submit to a Breath analysis or Urinalysis	3	3	3	2	2	2	3	2	2
	Positive Urinalysis or BAC requirement (VR for alcohol only if + via II violation or PI arrest, VR for all drugs except THC - 331st; VR + BAC Felony DWI 403rd; VR 2nd + UA 403rd)	3	3	3	2	2	2	3	3	2
	Failure to avoid gang members or persons / places of disreputable character	3	3	3	4	3	3	3	3	2
Failure to attend and complete a Specialized Program (i.e., Gang, Sex Offender, Domestic Violence, Child Abuse, High Risk, MHMR)	3	3	3	4	4	3	3	3	2	
<b>Confirmed</b> non-compliance with Ignition Interlock	N/A	N/A	N/A	N/A	N/A	N/A	4	4	4	
Failure to install Ignition Interlock, Electronic Monitoring or SCRAM	4	4	4	4	4	4	4	4	4	
<b>Confirmed</b> Non-compliance with SCRAM	4	4	4	4	4	4	4	4	4	
High Severity	Non-compliance with EM or GPS	4	4	4	4	4	4	4	4	4
	Non-compliance to sex offender computer monitoring	N/A	N/A	N/A	4	4	4	N/A	N/A	N/A
	Failure to avoid contact with the victim in probated case	4	4	4	4	4	4	4	4	4
	Failure to follow special Sex Offender rules or conditions	N/A	N/A	N/A	4	3	3	N/A	N/A	N/A
	Failure to register as a Sex Offender	N/A	N/A	N/A	4	4	4	N/A	N/A	N/A
	Failure to stay away from child safety zone	N/A	N/A	N/A	4	4	4	N/A	N/A	N/A
	Possession of a firearm or prohibited weapon	4	4	4	4	4	4	4	4	4
	Violation of any Protective Order	4	4	4	4	4	4	N/A	N/A	N/A
Failure to report at Jail Commitment or Community Corrections Facility	4	4	4	4	4	4	4	4	4	

**Treatment Condition-Violation: Actively in treatment, awaiting placement, or in aftercare treatment.**

Low Severity	Failure to attend AA/NA Meeting	1	1	1	1	1	1	2	1	1
	Failure to attend cognitive classes	2	1	1	2	1	1	2	1	1
	Failure to participate in assessment and testing	2	1	1	2	1	1	2	2	1
	Positive Urinalysis or BAC as treatment requirement (VR for alcohol only if + via II violation or PI arrest, VR for all drugs except THC - 331st; VR + BAC Felony DWI 403rd; VR 2nd + UA 403rd)	3	2	1	2	2	1	2	2	1
	Failure to attend drunk driving panel	3	2	2	2	2	1	3	3	2
	Failure to participate and complete out patient counseling	3	2	2	2	2	2	3	2	2
	Failure to participate in specialized caseload	3	3	3	4	4	4	3	3	3
	Failure to participate in aftercare program	3	2	2	2	2	2	3	3	2
	Failure to participate and complete in-patient treatment	3	3	3	3	3	2	3	3	3
	Failure to participate and complete BIPP treatment	4	4	4	N/A	N/A	N/A	N/A	N/A	N/A
High Severity	Termination from Sex Offender treatment	4	4	4	4	4	4	4	4	4
	Termination from SMART or other CCF program due to non-compliance	4	4	4	4	4	4	4	4	4
	Termination from SAFPF program due to non-compliance	4	4	4	4	4	4	4	4	4

Revised April 2, 2008

In pre-TCIS cases or cases without a Diagnostic report use RISK ONLY. SO: Static

High  
Medium  
Low

**Table 3  
VIOLATION RESPONSE TABLE**

(LEAST SEVERE)	<b>Level 1 Sanctions</b>	Behavioral Contract	PO has authority to choose from Level 1 or 2 Sanctions without Supervisory approval so long as PO follows Guidelines for Graduated Violations and sanction does not involve jail time.
		Offender writes a letter of apology to victim	
		Offender submits itinerary	
		Verbal admonishment by the PO	
		Verbal admonishment by the Senior Probation Officer	
		Verbal admonishment by the Supervisor	
		Letter of Reprimand	
		Increased reporting to PO/Field Visits for specified amount of time	
		Financial Budget with receipts to verify income and expenses	
		Community service hours with Department Work Crew	
		Increase number of NA or AA meetings attendance	
		Referral to counseling or psychological evaluation	
		Second referral to alcohol or drug education program	
		More restrictive curfew	
		<b>Level 2 Sanctions</b>	
Referral to GED			
Referral to TAIP			
Referral to Anger Management Counseling			
Referral to Family Violence Counseling			
Referral to Cognitive Program			
Referral to Parenting Classes			
Referral to Psychological evaluation			
Referral to TAIP or MHMR assessment			
Increase in outpatient treatment level			
Increase length of treatment/cognitive program			
Increase in number of community service hours			
Increase frequency of alcohol and drug testing			
Increase frequency of home, field, collateral or treatment contacts by PO			
<b>Level 3 Sanctions</b>	Placement on Specialized Caseload		<b>Violation Report with Revocation Review Committee</b>
	Electronic Monitoring		
	Sex Offender Computer Monitoring		
	Inclusion of the SCRAM device		
	Residential treatment		
	Extension of Probation term		
	Add additional fine for conversion of CSR @ \$10.00 per hour		
	Amend conditions with added restrictions/ requirements/interventions/referrals		
	Inclusion of Ignition Interlock System		
	Inclusion of driving restriction		
	Increase in number of community service hours		
	Verbal admonishment by Judge (Summons)		
	Placement in SMART or other CCF		
1- 3 day jail commitment (Bench Warrant)			
<b>Level 4 Sanctions</b>	Issuance of a Bench Warrant	<b>Violation Report with Revocation Review Committee</b>	
	Placement in High Risk Regular Caseload w/ Zero Tolerance		
	Extension of Probation term		
	Placement in the Residential Substance Abuse Treatment		
	Placement into the Intermediate Sanction Facility		
	Jail Time as a condition of probation		
	Placement into the SAFPF		
	Placement into the SAFPF Relapse Program		
	Placement in the State Boot Camp		
	Automatic Motion for Revocation/Adjudication		

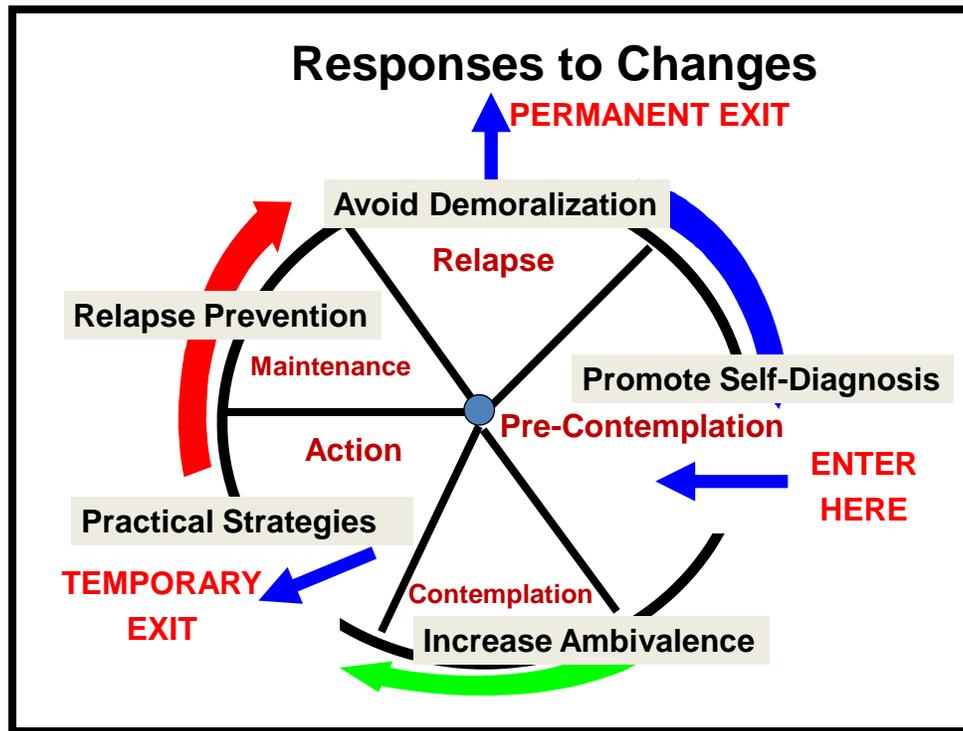
Recommendations outside of guidelines for level 3 or level 4 must be staffed and approved by the Court via a modification of conditions

**TABLE 4: GRADUATED INCENTIVES TABLE**  
**EFFECTIVE DATE: May 15, 2008 – NOT RETROACTIVE**

QUALIFIERS	INCENTIVE	EXPLANATION
<b>LEVEL 1 INCENTIVES</b>		
<ul style="list-style-type: none"> <li>• Completion of college-level courses or vocational program</li> </ul>	Recognition by Unit Staff	The unit will hold an informal ceremony where the offender is recognized by the CWM and officers.
<ul style="list-style-type: none"> <li>• Obtain and maintain verifiable full-time employment for 3 months</li> <li>• Observable behavior stabilization (Mental Health Cases)</li> <li>• Consistent reporting for office visits for 6 months</li> <li>• Improved reporting for office visits for 3 months (for special populations)</li> <li>• Passing polygraphs</li> </ul>	Accolades from PO's Supervisor or Administrator	The Probation Officer will arrange for the offender to meet with the Supervisor or Administrator to acknowledge the accomplishment. This may include the offender receiving a small snack or a "well done" card or similar tangible item – determined by the particular unit manager to which the case is assigned.
<ul style="list-style-type: none"> <li>• Provide proof of employment search</li> </ul>	CSR credit per application	The offender will receive 2 hrs CSR credit for each in-person application and 1 hour CSR credit for each on-line application.
<ul style="list-style-type: none"> <li>• Reports for and completes Substance Abuse Assessment</li> <li>• Reports for and completes Psychological Evaluation</li> <li>• Reports for and completes Family Violence Assessment</li> <li>• Participation in SCS interview as part of PO training</li> </ul>	5 hours CSR credit	The offender will receive 5 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Mentoring activities</li> <li>• Speaking engagements (e.g. gang awareness, recovery conferences, Department staff mtgs)</li> <li>• Tutoring other offenders in GED, Cognitive Mentoring</li> <li>• Volunteering at child's school</li> <li>• Participation in a community activity or completion of an exceptional deed such as a heroic act/service (must be authorized by CWM)</li> </ul>	Certificate of Achievement <b>or</b> 5 hours CSR credit	The offender will be presented with a certificate of achievement by the Probation Officer.  The offender will receive 5 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Completion of parenting classes (not a condition)</li> <li>• Completion of Work Source classes (not a condition)</li> </ul>	Recognition by Unit Staff <b>or</b> 10 hours CSR credit	The unit will hold an informal ceremony where the offender is recognized by the CWM and officers <b>or</b> The offender will receive 10 hours credited toward CSR.
<b>LEVEL 2 INCENTIVES</b>		
<ul style="list-style-type: none"> <li>• Offenders determined to be indigent based on the completion of a Financial Questionnaire</li> </ul>	CSR in lieu of Fines	The offender will be allowed to have fines converted to CSR at the rate of \$10.00 for every 1 hour of CSR
<ul style="list-style-type: none"> <li>• Offenders determined to be gainfully employed or to have physical limitations but current on fees</li> </ul>	Fine in lieu of CSR	The offender will be allowed to have CSR converted to additional Fine at the rate of \$10.00 per 1 hour of CSR
<ul style="list-style-type: none"> <li>• Completion of Special CSR Projects (Food Bank, School Supply Drive, Box Fan Drive, etc.)</li> </ul>	CSR credit for \$ spent	The offender will receive 1 hour credited toward CSR for every \$5.00 spent on special CSR projects/drives
<ul style="list-style-type: none"> <li>• Completion of Achieve Program</li> </ul>	Up to 50 hours CSR credit	Amount of CSR hours credited dependant on number of modules completed as determined by the Probation Officer.
<b>LEVEL 3 INCENTIVES</b>		
<ul style="list-style-type: none"> <li>• Completion of Cognitive Classes</li> </ul>	CSR Credit	The offender will receive 50 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Attainment of GED</li> </ul>	Recognition by Unit Staff <b>and</b> CSR credit	The unit will hold an informal ceremony where the offender is recognized by the CWM and officers <b>and</b> the offender will receive 60 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Completion of Substance Abuse Treatment: Residential – Contract vendor, SMART (5 months) or completion of an alternative CCF residential placement</li> </ul>	Letter of Recognition signed by Director <b>and</b> CSR Credit	The Probation Officer will present the offender with a signed letter of recognition from the Director, <b>and</b> the offender will receive 60 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Completion of treatment that is not a condition of probation (must be authorized by the CWM)</li> <li>• Completion of SAFFP Transitional Treatment Center or Substance Abuse Treatment Aftercare ( SMART or contract vendor)</li> </ul>	Letter of Recognition signed by Director <b>and</b> CSR Credit	The Probation Officer will present the offender with a signed letter of recognition from the Director, <b>and</b> the offender will receive 75 hours credited toward CSR.
<ul style="list-style-type: none"> <li>• Completion of Substance Abuse Treatment: Intensive Outpatient (60 hours)</li> <li>• Completion of BIPP</li> </ul>	Letter of Recognition signed by Director and CSR Credit	The Probation Officer will present the offender with a signed letter of recognition from the Director, <b>and</b> the offender will receive 75 hours credited toward CSR. The offender will receive 15 hours credit toward CSR for perfect IOP attendance.
<ul style="list-style-type: none"> <li>• Completion of Sex Offender Treatment</li> </ul>	Letter of Recognition signed by Director <b>and</b> CSR Credit	The PO will present the offender with a signed letter of recognition from the Director, <b>and</b> 30 hours will be credited toward CSR for each year of treatment completed, without documented non-compliance, for a maximum 3 years, with 10 additional CSR hours credited upon graduation.
<b>LEVEL 4 INCENTIVES</b>		
<ul style="list-style-type: none"> <li>• Low-risk offenders (as defined by the Risk and Needs Assessment) who have an extensive reporting history and no technical violations within the last two years</li> </ul>	Lowered Reporting Requirements	The Officer will allow qualifying offender to report once every 90 days in person and by mail the two months in between. Permission from the Court will be obtained, where applicable.
<ul style="list-style-type: none"> <li>• Offenders on deferred or regular prob. who have completed 1/2 of their sentence, <b>never been assessed as high risk during their current supervision</b>, completed all classes/ pgms, current with sup. fees and pd in full all restitution and court costs. (Not for neg. plea cases in the 331st or have any criminal history other than DWLS or traffic – 403<sup>rd</sup>)</li> </ul>	Offender may be allowed to discharge early from probation	The Officer will initiate a recommendation to the court for early discharge for qualifying probationers (with victim notification if applicable).



## Stages of Change



In making behavioral changes we (and offenders specifically) go through well-documented stages. (Take efforts to lose weight or quit smoking as common examples) (The underlined portions below are the appropriate responses by the change agent to the offender at each respective stage).

1. Pre-contemplation—the offender does not yet believe or accept that there is a problem, ignores evidence to the contrary, and does not want to change. Attempting to engage the offender in some reflection and self-diagnosis is often the best approach.
2. Contemplation—the offender has begun to seriously contemplate change but is ambivalent and has not made a commitment to do so. The change strategy at this stage is to highlight the reasons to change and risks of not doing so, strengthen the offender’s confidence in her or his ability to do so (e.g., by imagining what their changed state might be), provide positive feedback, refer to the success of others, and express optimism.
- 3 & 4. Determination and Action--the offender is planning to change, then beginning to make that intention public, then actively taking steps to modify his or her behavior, underlying thinking and attitudes, or environment. At this stage the offender is reassessing key aspects of her or his life and beginning to make some changes. The best strategy at this stage is to help the offender formulate a menu of options, or a clear plan with realistic goals and rewards and identifiable risks; emphasize the offender’s choices; be positive; emphasize the success of others; reinforce the steps the offender is taking.
5. Maintenance—the offender is maintaining progress in changing behaviors. The objective here is to ensure that change is maintained and that relapse does not occur. The desired treatment approach is to help the offender discover and apply strategies to prevent relapse.
6. Relapse—the offender returns to old patterns of behavior. The treatment strategy is to reevaluate and help the offender reengage in the stages of contemplation, determination, and action while avoiding demoralization.

Adapted from: Prochaska & Diclemente.

## **Motivational Interviewing For Judicial Officers**

Adapted from William Miller and Stephen Rollnick, *Motivational Interviewing, Second Edition*  
© 2002 The Guilford Press. Adapted and reprinted with permission of The Guilford Press.  
By Judge Bailin, Twentieth Judicial District, Boulder, Colorado

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Although notions about retribution and punishment still prevail in sentencing practices, the paramount purpose of sentencing of most people should be rehabilitation. Therefore, judges should focus on what is most likely to maximize rehabilitation, which is essentially behavior change. The more motivated a defendant is to change, the more likely he or she is likely to change. Judges can begin and support the process of behavior change by adopting motivational interviewing methods.

According to *Motivational Interviewing with Criminal Justice Populations*, Ginsburg, Mann, Rotgers, and Weekes, p. 336, Motivational Interviewing, Preparing People for Change, Second Edition, Miller & Rollnick:

- According to SDT [self-determination theory], change agents can create environments supportive of intrinsic motivation to change by addressing three basic human needs: (1) the need for personal autonomy or experiencing one's behavior as determined by oneself and under one's own control rather than the control of external forces; (2) the need for relatedness or believing that others value and respect one's thoughts, beliefs, and feelings as part of a supportive, caring group; and (3) the need for competence or coming to believe that one's behavior is efficacious in producing desired outcomes.
- Motivational interviewing is a directive, client-centered interaction style for eliciting behavior change by helping clients to explore and resolve ambivalence. The examination and resolution of ambivalence is its central purpose, and the judicial officer is intentionally directive in pursuing this goal.
  - MI is a new paradigm for interacting with defendants, respondent parents, and juveniles (hereinafter "clients").
  - Our goal is to change anti-social behavior by changing attitudes, values, beliefs, lifestyle, peer associations, and educational and employment status.
  - The goals of MI are to cause the clients to identify and amplify discrepancies between their current behavior and their broader goals by helping them identify the difference between where they are and where they want to be.
  - The Five Stages of Change are:
    1. Precontemplator – I don't have a problem.

2. Contemplator – Maybe I have a problem.
3. Determination – I have a problem and I am making a plan.
4. Action – I have a problem and am taking steps to solve it.
5. Maintenance – I had a problem and have been taking steps to solve it for six months.
6. Relapse and Recycle.

- Judicial officers can facilitate movement through the stages of change even with a five minute interaction in court.

- Four elements of MI

- a. Express empathy

Accept and understand the client's perspective without judging, criticizing or blaming. Acceptance facilitates change.

- b. Roll with resistance

Reluctance and ambivalence are natural. The judicial officer does not impose new views or goals. The client should generate the solutions to problems. Don't argue with the client or confront head-on. Arguments are counterproductive. If the client is ambivalent about an issue and you firmly take one side of it, the client will defensively take the other side. Resistance is a signal to change strategies. "Yes, but..."

- c. Develop discrepancy

Create and amplify, in the client's mind, a discrepancy between present behavior and important personal goals. Awareness of consequences is important. The client should present arguments for change.

- d. Promote self-efficacy & change

Belief in the possibility of change is an important motivator. The client is responsible for choosing and carrying out personal change, and must feel able to do so.

- In order to use MI judicial officers should keep in mind the following:
  - a. Talk less. The more the client talks, the more information you will get and the more he will be expressing his own feelings. Try talking less than half of the time.
  - b. Use open ended questions and reflective listening. Use “what” or “how” or “I want to understand” or “Tell me about” to start sentences; not “why did you ” or “don’t you understand.” Reflective listening can be simply repeating the statement made: “I am angry about going to counseling.” “It sounds like you are angry about going to counseling.” It is also paraphrasing, getting the gist, reflection of the feeling in the statement, and restating the meaning. “So part of you is thinking about having a better relationship with your wife you stop drinking in the evening after work and part of you is thinking that your buddies at work might be offended by your refusal to drink with them.”
  - c. Acknowledge ambivalence about change. Ignoring the fact that the client is receiving some benefits from the anti-social behavior is fatal to your understanding why he continues to abuse drugs and alcohol or engage in any sort of anti-social behavior. Ambivalence is sometimes called lack of resolve. You are trying to tip the balance in favor of change.
  - d. Do not identify the area of needed change for the client. It is the client’s job to identify the problem, articulate his ambivalence about change, and resolve his ambivalence. We can’t resolve a person’s ambivalence about

change by pointing out the need to do so and ignoring his ambivalence.

(See Ambivalence Grid below)

- e. Encourage clients to come up with reasons for change. Encourage them to come up with their own solutions.
- f. Do not use coercion, persuasion, constructive confrontation, or use of external negative consequences (e.g. you will lose your job) to attempt to cause change, because such methods do not work. In fact, even helpful-sounding persuasion (“Don’t you see that you are harming your children and I want you to be a good father”) has been shown to increase client resistance and decrease the probability of change.
- g. Do not aggressively confront the person. Confrontation is counterproductive and will either increase resistance or push clients into trying to make changes for which they are not ready. We then respond by stating that the client is “in denial” or “resistive to treatment.” This then produces more sanctions and aggressive language from the court. People who do not feel good about themselves do especially badly when confronted.
- h. Go slowly and be patient. Court can be a busy place, but clients will not answer quickly or exactly as you wish them to.
- i. Use language that is consistent with the client’s stage of change.  
Cheerleading for a client who doesn’t think he has a problem will cause him to become more resistant to change. “I know you can do it!”  
Response from client: “Do what? I don’t need help. Leave me alone.”

- j. Always treat clients with respect and dignity even when they seem challenging.
- k. Do not get caught up in your concern that they haven't achieved the objectives you want them to achieve – “you aren't doing what you were supposed to be doing!”. Blame doesn't work.
- l. Treat relapse as a return to the thought process that allows use. It can be a time of hopelessness and demoralization. Treat it as an opportunity to motivate change rather than an opportunity to punish.
- m. Affirm for clients that they always have a choice to comply or not to comply. Obviously there will be consequences for failing to comply, but they still have the choice. Implying that the client does not have a choice will increase resistant behavior dramatically.
- n. Don't act like an expert: the client is the expert in his own life.
- o. Don't get into a battle for control. Let the client control the game.
- p. Don't label people: mentally ill, alcoholic, drug addict, etc. This increases resistance.
- q. Don't agree with a client who offers reasons for change. Strangely, this forces the client to protect her current way of behaving. Simply acknowledge that the client has offered reasons to change. Praise the thought process not the content.

- r. State the current status of the client; express that the choice is the client's, express hope that the client will develop a plan; express empathy through reflective listening; identify something positive and affirm it.
- s. Explore the client's level of confidence and commitment to the next stage from 1-10 and obtain a commitment to compliance.

Ambivalence Grid

Benefits of Problem Behavior	Consequences of Problem Behavior
Benefits of Change	Consequences of Change

The principles of Motivational Interviewing explain the “why” behind the skills and strategies we use. In their more recent book, *Motivational Interviewing in Health care*, Miller, Rollnick and Butler (2008) describe the following principles: **R**esist the Righting Reflex, **U**nderstand and explore the person’s own motivations, **L**isten with empathy, and, **E**mpower the client.

**1. Resist the Righting Reflex**

Resist the urge to make arguments to change *for* our clients; instead, allow the clients to make arguments for change. Unfortunately, telling people what to do results in their making arguments (either inside their head or aloud to you) against what you are saying, and therefore against change. We know that what we say out loud has an influence on what we actually do, so the result of this interaction would actually be to strengthen the negative behavior instead of supporting change.

**2. Understand and explore the person’s own motivations**

Motivation to change surfaces when there is a discrepancy between current behavior or situation and desired goals. Motivation in the client is not developed by conveying discrepancy between the client’s current behavior and where the *Judge* thinks the client should be based on the *Judge’s* goals and values. The client needs to be the one perceiving this discrepancy, meaning it needs to come from their own perception of how their current behavior is inconsistent with their own (not the Judge’s) goals and values. Therefore, the Judge needs to take an active part in helping the client articulate and explore their own reasons and

desires to change, their goals and values, and the **behavioral gap** between their current behavior and where they would like to be.

### 3. Listen with Empathy

A core part of MI is listening and conveying empathy to the client. It is based on the belief that when a client feels accepted and understood, they feel safe, supported and empowered enough to change. Listening with empathy is not the same as agreeing with the client, nor is it approving their behavior. It is conveying to the client that you have understood what they are saying, their feelings and their perceptions in a way that increases their own understanding of what they are saying.

### 4. Empower the client

Empowering the client means helping the client believe that he/she can actually be successful at making a change. This belief in one's ability to do something, also called self-efficacy, is a strong predictor of a successful outcome. Interestingly enough, another predictor of outcome is the Judge's optimism and expectations about the client's ability and likelihood to change. So empowering clients not only means helping clients find their confidence in their ability to change, it also means conveying to clients our belief in the possibility of their being successful at change.

Judges should avoid blaming, shaming, discounting, arguing with, confronting, labeling, and belittling defendants. Judges should ask open ended questions, affirm the defendants' conduct and views whenever appropriate, reflect back the defendants' comments, and summarize.

Judges can help defendants explore what is called the decisional balance: what was good about the criminal/substance abusing life, what was bad about it, what is good about a non-criminal life/substance abusing life, what is bad about it. This helps the defendants see the discrepancy between the life they have and life they want, but also helps them identify the ambivalence that accompanies their choice not to change.

Defendant statements in favor of change, also called "change talk", are correlated with actual behavior change. Categories of defendant change talk include expressing a desire to change, making statements that support ability to change, providing reasons to change and expressing a need to change. Judges can seek to recognize when a defendant is offering change talk, and can respond by asking the defendant to elaborate on the change talk (e.g., tell me more about that; give me an example of that) or reflecting it back to the defendant. Judges can also elicit responses from defendants regarding their commitment to change and their understanding that they are responsible for their own change process with support from others. It is these commitment statements (e.g., I will, I plan to...) that strongly increase the likelihood of actual behavior change.

In summary, our focus should be on eliciting verbalizations of change from the clients. If the judge stays focused on attempting to get the client to vocalize the desire, ability, need, or reason for change, he or she has moved the client toward actually changing.

*Adapted from William Miller, Motivational Interviewing, by Judge Bailin 2006*

## **Sentencing Scenario No. 2**

### **Lydia**

Lydia Barnes is a thirty-six year old female who has been in and out of substance abuse treatment most of her life. She is growing tired of the lifestyle but feels hopeless in changing it. After getting into a fight with her boyfriend, she got drunk and ran into a car. An eight year old boy who was a passenger in the other car suffered a broken wrist and facial lacerations. Barnes was convicted of drunk driving causing injury.

Ms. Barnes has a number of prior offenses including a drunk driving charge, one felony drug possession, one felony forgery, and a misdemeanor assault. She had been crime free for five years until this charge. She has a sixth grade education and cannot read or write well enough to get most jobs but she is very interested in changing that, with an ultimate goal of becoming a nurse. She has been in and out of jobs, never holding one for longer than four months. She has a strong support system with her boyfriend of six years and her sister. She has one child who is living in a foster home. Lydia has been diagnosed with depression and PTSD. She has a feisty disposition and is outgoing and sometimes aggressive. She loves being the center of attention. Her substance abuse allows her to forget an untreated sexual assault that occurred when she was fifteen.

**What are the dynamic risk factors?**

**What are the strengths?**

**What is your assessment of the risk of re-offense?**

**What is your assessment of the defendant's readiness to change and motivation?**

**Would you seek to influence the defendant's change readiness and motivation?  
If so, how?**

**What would you expect from the probation officer if Lydia is placed on probation?**

**What probation conditions, if any, would you impose?**

**What would your sentence be?**

## **Sentencing Scenario No. 2A**

### **Lydia (Cont.)**

**Assume that 90 days after granting probation Ms. Barnes is returned to court upon any of the following admitted violations of probation:**

1. failing to report to her PO; or
2. changing residence without notification; or
3. failing to report to the court-ordered literacy, vocational training, or mental health treatment program(s); or
4. positive drug test for alcohol or cocaine; or
5. absconding; or
6. driving without a license; or
7. new drunk driving or drug possession charge.

**What would the most appropriate response be?**

**What if she were returned one year later (rather than 90 days later ) on any of the above violations, and until recently she had successfully complied with all probation conditions including participation in all court-ordered programs? What would the most appropriate response to the violations be?**

## Self-Assessment Answer Sheet

1. The seriousness of the committing offense is more important than the offender's personal characteristics in predicting the likelihood of further crimes.

**ANSWER:** False. Some offenses are more highly associated with the likelihood of further criminality than others (e.g., auto theft, and non-violent crimes generally), but the seriousness of the committing offense is not a substantial risk factor. The major dynamic risk factors are discussed in Unit 2.

2. Jails and prisons are effective in changing offender behavior if the conditions are severe enough that offenders don't want to return.

**ANSWER:** False. Neither incarceration nor the severity of incarceration is effective in reducing post-incarceration recidivism.

3. The manner in which court proceedings are conducted is not a significant factor affecting offender recidivism.

**ANSWER:** False. Procedural fairness and the nature of the relationship between those in authority and the offender are significant factors affecting the likelihood of recidivism.

4. An offender doesn't need to be "motivated" in order for treatment to be successful.

**ANSWER:** False. An offender does not need to be highly motivated at the outset to benefit from treatment. Individuals who are coerced into treatment can be quite successful in the end. However, this success can only occur if in the course of treatment the offender acquires the intrinsic motivation to change his/her behavior.

5. Probation officers will be more effective if they have lower caseloads.

**ANSWER:** False. High caseloads interfere with a probation officer's ability to properly supervise higher risk offenders, but lower caseloads will not result in more effective supervision unless the supervision services otherwise comply with EBP.

6. Programs like "Scared Straight" and Boot Camp are particularly effective for youthful offenders.

**ANSWER:** False. These programs are not per se effective in reducing recidivism. They are only effective if they also contain an evidence-based treatment component.

7. The most cost effective strategy is to deliver treatment to the extremely high risk offender.

**ANSWER:** False. The extremely high risk offender is not amenable to treatment, and only extremely intensive and highly costly treatment, if any at all, may be effective. It is

more cost effective to focus services on medium and high risk offenders.

8. It is better to invest in treatment of low risk offenders than high risk offenders because their criminal tendencies are less hardened.

**ANSWER:** False. Low risk offenders may have less hardened criminal tendencies, but it is more cost effective to focus on those offenders who present a higher risk of recidivism.

9. Most offenders don't handle stress well, so anxiety & stress reduction programs like yoga & meditation are helpful in reducing recidivism.

**ANSWER:** False. Anxiety and stress are not criminogenic factors and programs to reduce anxiety and stress will not therefore reduce recidivism.

10. Intensive probation supervision tends to reduce recidivism better than regular probation supervision.

**ANSWER:** False. The research shows that intensive probation services do not reduce recidivism, unless they are combined with an evidence-based treatment component.

Roger K. Warren  
Scholar-in-Residence  
Administrative Office of the Courts  
November 1, 2010

## **Twenty Evidence-Based Sentencing Practices To Reduce Recidivism**

- 1. Avoid significant intervention with low risk offenders.**
- 2. Target significant interventions on moderate to high risk offenders.**
- 3. The individual offender's specific dynamic risk factors (criminogenic needs) should be identified through use of validated actuarial risk/needs assessment tools and professional judgment.**
- 4. Conditions of probation, behavioral controls, and offender treatment programs should target the individual offender's specific dynamic risk factors.**
- 5. Only those conditions of probation that are directly related to the individual offender's dynamic risk factors, or to other significant sentencing objectives, should be imposed. The conditions of probation establish the framework for the probation agency's development of an appropriate case management plan. The imposition of other probation conditions distracts and impedes both the probation agency and the offender. Probation conditions should provide maximum flexibility to the probation officer.**
- 6. Cognitive behavioral programs rooted in social learning theory are the most effective in reducing recidivism among higher risk offenders.**
- 7. Offenders will tend to behave in ways that result in the most rewards and fewest punishments.**
- 8. Rewards are more effective than sanctions. Use positive reinforcement as well as negative consequences.**
- 9. Changing an offender's chronic anti-social thinking and behavior often does not happen overnight. Frequently, the offender must learn new skills and acquire new abilities. Periodic relapse is also common.**
- 10. Treatment must be individually determined because the nature, dosage, and intensity of treatment must be responsive to the offender's personal characteristics.**

**Twenty (20) Evidence-Based Sentencing Practices  
To Reduce Recidivism (continued)**

- 11. Treatment programs must provide continuity of care. To the extent possible, the offender's family and community should be involved in the offender's treatment.**
- 12. As recommended by the Conference of Chief Justices, judges should educate themselves about the effectiveness of the community-based corrections programs in their jurisdictions in reducing recidivism, and, when appropriate, utilize those programs shown to be effective.**
- 13. The offender's successful compliance with all conditions of probation should be, and be seen as, the shared goal of the court, offender, supervising probation agency, and all program providers.**
- 14. All violations of probation should be responded to promptly, fairly, and with certainty.**
- 15. In responding to violations, use a graduated continuum of sanctions, services, and behavioral controls.**
- 16. The most appropriate response to a particular violation of probation depends on the severity of the violation, the extent of prior compliance, and the offender's adjusted level of risk.**
- 17. The judge can be an agent of positive change by encouraging the offender's engagement in the change process. Intrinsic motivation is a critical precondition for offender behavioral change.**
- 18. The judge should be aware of the "stages of change" model which is a useful tool for understanding the offender's readiness to change and the corresponding strategies that have proven most effective in facilitating behavior change.**
- 19. When appropriate, the judge should also consider use of "motivational interviewing" techniques (e.g., reflective listening, developing discrepancy, use of open-ended questions, promoting self-efficacy, and deflecting resistance.) The judge should avoid threatening, lecturing, arguing, shaming, or sympathizing with the offender.**
- 20. To achieve multiple sentencing objectives (e.g., risk reduction, punishment, and behavioral control), treatment provisions must be successfully integrated with intermediate sanctions and behavioral controls.**



<b>CASE MANAGEMENT</b>	<p><b>3. How do you separate offenders by risk level?</b> ① ② ③ ④ ⑤</p>
	<p><b>An Evidence Based Response:</b> We have specialized caseloads based on risk level. (Note: this is harder to do in rural areas.) Certain officers handle the extreme high risk offenders. Their caseloads are very low (such as 15-30 adults per officer and 10-15 juveniles per officer). These offenders are not responsive to programming. Officers must monitor them very closely, seeing them multiple times per week, providing external controls, and partnering with law enforcement and the community. The low risk offender does not need much (if any) face to face time. They are generally self-correcting. The officers in charge of this low risk population manage very large caseloads (ranging from 200 to 1,000 per officer) and use techniques such as administrative supervision, banked caseloads, large group reporting, phone and/or mail monitoring, automated phone and/or kiosks. The officers who specialize in medium/high risk cases have caseloads in the 65-75 range for adults and 30-35 for juveniles. They spend as much face to face time as they can and provide many opportunities to address their criminogenic needs. These offenders are best suited for cognitive behavioral programs. Finally, we take extra precautions not to mix risk levels in our lobby/waiting rooms and programs.</p>
	<p><b>4. How do you know that staff is targeting criminogenic needs in their one on one sessions and program referrals?</b> ① ② ③ ④ ⑤</p>
	<p><b>An Evidence Based Response:</b> This is a heavy emphasis for us. We know that if we spend our time on non-criminogenic areas we will not see any reduction in recidivism. Each officer is expected to use a case plan where at least the top four criminogenic needs are addressed. While they need not all be addressed at once, some successful intervention must occur during the time under supervision. Medium and high risk offenders come to us with a cluster of criminogenic needs, not just one or two. Therefore to be successful, we must address at least the top four needs. Some of these can be handled in-house through the officer's sessions. Others require a formal program. Furthermore, the sequencing is important. We train our staff on which criminogenic needs should be addressed first. For example, if we help an offender get a job before we address his/her anti-social attitudes/beliefs or increase their behavioral management skills, he/she will likely fail on the job.</p>
	<p><b>5. What system is in place for offender rewards and incentives for compliance and progress? What sanctions are employed for non-compliance?</b> ① ② ③ ④ ⑤</p>
	<p><b>An Evidence Based Response:</b> We know that incentives are much more powerful motivators than disincentives. We also know that what is an incentive to one individual may not be for another. The provision of incentives and rewards reinforces the idea that a person who follows societal norms should expect to receive something of meaning (not all the time, but much of the time). Therefore, we try to replicate the real world of rewards and incentives through praise, reduced reporting, letters of support, certifications, early discharge, supportive comments to significant others, etc. We have devised a written system of rewards that each officer is encouraged to use. While rewards and incentives are powerful shapers of behavior, we also must balance that with a graduated list of sanctions for non-compliance and poor behavior. Misconduct is not overlooked but is responded through informally or formally depending on the severity of conduct and type of offender. A written list of graduated sanctions is provided to the officers and supervisory sign-off required. Jail is on the list for higher severity misconduct and/or high risk offenders but it is used sparingly and with purpose, taking into account public safety and level of impact on the offender.</p>
<p><b>6. What do you do with non-motivated offenders?</b> ① ② ③ ④ ⑤</p>	

	<p><b>An Evidence Based Response:</b> We view motivation as a changeable condition for the majority of offenders (with the extreme high risk as the possible exception). Certain interventions and officer skills can increase motivation which increases the likelihood of program completion and sustainability. We view our job of getting offenders treatment-ready as one of the most important things we can do since long term treatment outcomes improve as the offender's motivation level increases. All direct service staff have been trained in motivational interviewing techniques. This gives them the skill to increase the offender's ambivalence and then commitment to take action. For those offenders who are not motivated and will not respond to one-on-one case management we do one of two things: we monitor them closely while we watch for their life circumstances to change (such as losing a job/freedom due to continued poor decision making) or we will place them into a structured, pre-contemplative group. This group uses a structured curriculum and is designed to increase motivation, not to "do therapy." If the offender responds well to the curriculum and increases their motivation we will then place the individual in a treatment program. A few programs (not many) build in a procedure to increase a participant's motivation once placed. We will refer a non-motivated offender to programs only when they contain this feature.</p>
	<p><b>7. How are treatment programs selected for offenders?</b>      ①   ②   ③   ④   ⑤</p> <p><b>An Evidence Based Response:</b> We use the risk, need, and responsivity principles to place offenders. We will limit any kind of programming for low risk offenders as this programming is not likely going to reduce risk of reoffense any further than the very act of getting arrested and convicted. We will not use programs for the extreme high risk as they will not respond favorably and will likely disrupt the work of others. We will limit most of our treatment programs to the medium and high risk offenders. Applying the need principle means that we will place these medium and high risk offenders in programs that are designed specifically to address their criminogenic needs. Each program should have a specific set of criminogenic needs that it addresses. Officers will place offenders in those programs that target the specific criminogenic needs of the referred offender. Finally, responsivity suggests that some programs work better with certain offenders and matching these characteristics is important for good results. For example, an offender with a low IQ will not do well in a traditional cognitive behavioral group without assistance even if he/she is medium or high risk. A female offender, especially one with previous victimization in her background will need a female specific program. We therefore seek programs that match up with the individualized offender risk, needs, and responsivity factors.</p>
<b>PROGRAMS</b>	<p><b>8. How do you know the programs to which you refer offenders are working as they should?</b>      ①   ②   ③   ④   ⑤</p> <p><b>An Evidence Based Response:</b> We seek to use only those programs that are evidence based and clear about which criminogenic and responsivity needs they can meet. To ensure that this happens we have a staff member who works with our community based organizations to clarify what we need and what kind of services they should provide. The staff member monitors the programs through a variety of techniques including on-site observation. We have created a preferred provider list for our officers. Those programs on the preferred provider list have met our standards as being evidence based. In addition, we provide technical assistance for the community based organizations to provide process and outcome measures. Some of the programs have been using the CPAI (Correctional Program Assessment Inventory) which measures the level to which the program contains the research based features known to reduce recidivism.</p>

	<p><b>9. What kind of cognitive behavioral programs are in place?</b> ① ② ③ ④ ⑤</p> <p><b>An Evidence Based Response:</b> We have built a continuum of cognitive behavioral programs in order to meet the varied needs of the offenders. We have a need for programs that are responsive to women, different cultures, different ages, and varying motivation levels. In addition, the risk and need tool indicates that offenders may need varying intensities/dosages and types of cognitive behavior. Therefore, we have built a series of programs that contain cognitive restructuring (changes the way offenders think and examines their belief system), cognitive skills (building concrete problem solving skills), and life skills (assisting with coping with life’s daily demands). All of the cognitive behavioral programs are behavioral in nature (i.e., they contain experiential learning and use of role plays and assignments).</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>TRAINING &amp; STAFF DEPLOYMENT</b></p>	<p><b>10. What evidence based practices training do staff receive?</b> ① ② ③ ④ ⑤</p> <p><b>An Evidence Based Response:</b> All direct service staff are trained on the foundational principles of evidence based practices (risk, need, and responsivity) followed by training on motivational interviewing (two day skill training), use of assessment, effective case management, supervision strategies, and effective programming. Some staff also receive cognitive behavioral interventions depending on their job type. Booster training is provided periodically as a means of refreshing knowledge and skills.</p>
	<p><b>11. How are staff members placed in the agency?</b> ① ② ③ ④ ⑤</p> <p><b>An Evidence Based Response:</b> We attempt to match officer characteristics with corresponding offender typology and the specific job requirements in the same way we look to match offender characteristics with the program referral (i.e., the principle of responsivity). Staff members who are street savvy and who prefer to flex their working hours to evenings and weekends manage the extreme high risk caseloads. Staff members who are well organized and who work well with technology handle the large caseloads of low risk offenders. And, medium and high risk offenders are placed on caseloads of officers who possess skills and temperament conducive to changing offender behavior. These skills/temperament include features such as comfort with authority, engaging, supportive, able to set limits, verbal acuity, and flexible. Some agencies use assessment tools (such as the CMC-Client Management Classification) to identify offender typologies and assign officers accordingly. We are considering adding this feature.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>FIDELITY &amp; EVALUATION</b></p>	<p><b>12. What data do you give your officers to help them improve their effectiveness?</b> ① ② ③ ④ ⑤</p> <p><b>An Evidence Based Response:</b> Each officer is provided data on his or her caseload on a monthly basis. The data is provided in graph form and is easy to read. It includes the key success factors such as (examples) the number/percent of the caseload that is in treatment, has a case plan in operation, has the top 4 criminogenic needs being addressed, is employed, and has increased or decreased the risk/need scores. The officer receives a running total of this data to see trends. Furthermore, he/she receives a report on how the caseload percentages compare to the agency average in each category. If an officer has an unusually high or low mark a review is conducted to see what might be contributing to those scores. Officers who continually receive scores above the agency average provide coaching and training to peers. Managers review the data to problem solve and improve quality. A structured review process is scheduled each month to analyze a subset of the data. Targets for specific outcomes are set each year. Feedback on the effectiveness of various programs is provided to the courts and county administration.</p>

**13. How do you know the risk/need tool is working properly? How do you know that the EBP knowledge and techniques you have put in place are working once staff are trained?** ① ② ③ ④ ⑤

**An Evidence Based Response:** We know that if we don't put quality assurance mechanisms in place our adherence to the model and outcomes will deteriorate. As a result, we do a number of things. We have set up a quality assurance committee made up primarily of line staff. Its job is to review the quality of the work being performed and to provide booster training and coaching for their peers. A quality plan is put in place each year. This plan includes features such as booster training for staff around assessment tools, motivational interviewing, case planning, and cognitive behavioral interventions. Peer review tools are provided so that staff can receive ongoing feedback on how well they are managing their cases. These tools usually consist of checklists that a peer or supervisor uses when observing an interaction. In addition, staff submits a video or audio tape of a client session at least annually to a reviewer for feedback on how to improve interviewing skills. We hold annual inter-reliability sessions whereby a small group of officers review the facts of a case and score the assessment tool. Differences in scoring should be small and inconsequential. If the differences are high, then additional training and review is provided. Office-wide data around the key success factors are reviewed with staff on an ongoing basis (at least quarterly) and improvements sought based on the data results.

# Arming the Courts with Research:

## 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs

Public Safety Policy Brief

No. 8 | May 2009



## Introduction

**O**ver one million felony offenders are sentenced in state courts annually, accounting for 94 percent of all felony convictions in the United States.<sup>1</sup> Sixty to 80 percent of state felony defendants are placed on probation, fined or jailed in their local communities.<sup>2</sup> Although the United States has the highest incarceration rate in the world, there are nearly three times more offenders on probation than in state prisons.<sup>3</sup> Recidivism rates among these felony defendants are at unprecedented levels.<sup>4</sup> Almost 60 percent have been previously convicted and more than 40 percent of those on probation fail to complete probation successfully.<sup>5</sup> The high recidivism rate among felons on probation pushes up state crime rates and is one of the principal contributors to our extraordinarily high incarceration rates. High recidivism rates also contribute to the rapidly escalating cost of state corrections, the second fastest growing expenditure item in state budgets over the past 20 years.<sup>6</sup>

For many years, conventional wisdom has been that “nothing works” to change offender behavior—that once an offender has turned to crime little can be done to help turn his or her life around. Today, however, there is a voluminous body of solid research showing that certain “evidence-based” sentencing and corrections practices do work and can reduce crime rates as effectively as prisons at much lower cost.<sup>7</sup> A comprehensive study by the Washington legislature, for example, showed that greater use of these evidence-based practices would reduce Washington’s crime rate by 8 percent while saving taxpayers over \$2 billion in additional prison construction.<sup>8</sup> As the United States faces the prospect of its deepest and longest recession since the Great Depression, we cannot afford to ignore the opportunity to reduce offender recidivism and resulting high crime rates through use of these cost-effective evidence-based practices. [🏛️](#)



The Pew Charitable Trusts  
901 E Street NW, 10th Floor  
Washington, DC 20004  
[www.pewtrusts.org](http://www.pewtrusts.org)

#### ABOUT THIS BRIEF

The 10 strategies outlined in this brief are adapted from a longer paper by Roger Warren that was originally published in a special 2007 issue of the *Indiana Law Journal*, entitled “Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism.”

If implemented, the 10 strategies would allow states to reduce their crime rates while conserving state resources to meet other important needs.

#### ABOUT THE AUTHOR

This document was written for the Pew Center on the States’ Public Safety Performance Project by Roger K. Warren, president emeritus of the National Center for State Courts (NCSC). Judge Warren served for twenty years on the Superior Court in Sacramento, California, and then for over eight years as president of the NCSC in Williamsburg, Virginia. Today, he is scholar-in-residence with the Judicial Council of California while continuing to act as a principal consultant to the NCSC, a partner organization in the Public Safety Performance Project.

#### ABOUT THE PROJECT

In 2006, the Pew Center on the States launched the Public Safety Performance Project to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

The Pew Charitable Trusts applies the power of knowledge to solve today’s most challenging problems. The Pew Center on the States identifies and advances effective policy approaches to critical issues facing states.

## 1. Establish Recidivism Reduction as an Explicit Sentencing Goal

Promoting the reduction of recidivism should be an explicit goal of state sentencing policy. Indeed, the failure of mainstream sentencing policies to address offender drug abuse and addiction, mental illness, domestic violence, and low-level “quality-of-life” crime has motivated many state judges, prosecutors, and corrections officials to establish specialized “problem-solving” courts over the past 20 years to reduce recidivism. Legislative and executive branch policy makers and sentencing commissions should include recidivism reduction as a clearly stated purpose of state sentencing policy. State judiciaries should follow the lead of the Oregon Judicial Conference in requiring sentencing judges to consider the likely impact of potential sentences on reducing future criminal conduct.

The goal of recidivism reduction is to reduce crime, not just to rehabilitate offenders. It includes both effective treatment services—programs proven to reduce reoffending—and swift and effective use of graduated sanctions. It highlights the importance of holding offenders more strictly accountable than we do now for compliance with court orders and conditions of supervision. It is not “soft” on crime. It is not an alternative to punishment. Every offender deserves to be fairly punished. At the same time, every sentence should also seek to reduce the risk of the offender’s re-offense and further victimizations.

## 2. Provide Sufficient Flexibility to Consider Recidivism Reduction Options

State sentencing statutes, rules, and guidelines should provide sufficient flexibility so that sentencing judges can craft orders designed to reduce the risk of recidivism in appropriate cases, and should avoid overly broad, strict, or arbitrary sentencing mandates that interfere with more appropriate sentencing options. Principal examples of interfering mandates are provisions that prohibit judges from granting probation, require disproportionately long periods of incarceration, or set mandatory minimum terms of imprisonment where neither the seriousness of the particular offense nor the risk factors presented by the particular offender warrant such restrictions.

The research indicates that whether a particular offender is an appropriate candidate for recidivism reduction cannot accurately be assessed relying solely on the type of offense committed and the offender’s prior criminal history. Individual offender characteristics must also be taken into consideration. This means shorter or probationary sentences for some offenders, and perhaps longer prison terms for others.



### 3. Base Sentencing Decisions on Risk/Needs Assessment

Actuarial risk/needs assessment tools use hard data about past cases to identify the offender characteristics most closely associated with the likelihood of future criminality. When “validated” through testing on a known correctional population, they are much more accurate than human judgment in predicting the risk of an offender’s recidivism.<sup>9</sup> Use of accurate risk assessment information is critical in making a number of important sentencing determinations, including consideration of the:

- offender’s suitability for diversion from prosecution;
- most appropriate conditions of probation to be imposed;
- offender’s amenability to treatment;
- most appropriate treatment or level of supervision to be imposed;
- most appropriate sanction or behavioral control mechanism to be imposed;
- decision whether to revoke probation; and
- kind of sanction or additional treatment to be ordered upon a violation.

Incorporation of actuarial risk assessment information into pre-sentence reports may be the best way, but not necessarily the only way to communicate offender risk information to the court. Offender-based sentencing information systems can be created, for example, to maintain records on the criminal histories, offender characteristics, and program outcomes of sentenced offenders. Such systems can then provide an actuarially sound assessment of the likelihood that a similar offender will re-offend under various sentencing scenarios.<sup>10</sup>

### 4. Require Community Corrections Programs to be Evidence-Based

In many communities, the most formidable barrier to effective sentencing is the absence of state policy, financial or technical support for the development and operation of evidence-based treatment programs that are effective in reducing recidivism. In 2003, Oregon addressed this issue by adopting a statute that required that at least 25 percent of the Oregon Department of Corrections’ funding in 2005-2007 be used to support evidence-based programs. The statute further required that the department spend 50 percent of its program funding on evidence-based programs in 2007-2009, and 75 percent commencing in 2009.<sup>11</sup>

In 2005, the Washington Legislature directed its Institute for Public Policy to study the net short-run and long-run fiscal savings to state and local governments of implementing evidence-based treatment and corrections programs. The Institute found that the adult, out-of-custody, evidence-based programs reduced recidivism by up to 17 percent and resulted in net benefits to taxpayers and victims ranging from \$4,359 to \$11,563 per participant.<sup>12</sup> Based on the Institute’s report, the Legislature later directed that the state’s evidence-based programs be expanded and put its additional prison construction plans on hold.

An initial task for policy makers may be to obtain a review of the existing programs in their communities. Such a review would include identifying the types of offenders for which the programs were designed and assessing whether the programs actually have the intended types of offenders in them. Key performance information about the programs should include the percentage of offenders who enroll in and successfully complete the programs, and most importantly the programs’ success rates in achieving program objectives such as reducing recidivism or drug use, or increasing employability. Finally, policy makers may want an assessment of modifications that may be needed to bring the programs into greater compliance with the research on what works to reduce recidivism.



## 5. Integrate Services and Sanctions

Research unequivocally demonstrates that in the absence of effective treatment, traditional criminal sanctions such as incarceration and intensive probation supervision do not reduce recidivism beyond the period of the offender's confinement, restraint or surveillance.<sup>13</sup> In fact, incarceration and other sanctions slightly increase the likelihood of recidivism.<sup>14</sup> Nevertheless, such sanctions may be appropriate to achieve other sentencing objectives, such as punishment, general deterrence or incapacitation. In cases involving the most violent and serious crimes, or extremely high risk offenders, those other sentencing goals may override the objective of recidivism reduction and call for imprisonment.

Punishment also can be an important sentencing objective in cases involving lower-risk defendants who have committed nonviolent or less serious crimes. In many such cases, however, sentences seeking to reduce the risk of recidivism can and should provide appropriate punishment and offender control in the form of an "intermediate sanction" less severe than incarceration but stricter than standard probation. To achieve multiple sentencing objectives—recidivism reduction, punishment and offender restraint—targeted treatment services should be integrated with stricter controls, such as custody in a day-reporting or work-release facility, electronic monitoring or intensive supervision.

## 6. Ensure Courts Know About Available Sentencing Options

Effective recidivism reduction strategies require that sentencing judges, prosecutors, and defense lawyers have access to reliable data and information, not only about the offender and the offense, but also about the community corrections programs that are available and suitable. Information about available corrections programs should describe the types of offenders, levels of risk, and specific criminal risk factors that the programs are intended to address. Courts also should have performance data describing the programs' levels of success in reducing recidivism for various categories of offenders.

## 7. Train Court Officers on Evidence-Based Practice (EBP)

Unless sentencing judges, probation officers, prosecutors, and defense attorneys are knowledgeable about the research on EBP and skilled in applying its principles in day-to-day sentencing and corrections decision-making, they will be unable to fully and properly implement recidivism reduction strategies. States' judicial and legal education curricula should include presentation and discussion of the research on EBP, as well as an opportunity to apply the principles of EBP in designing appropriate sentencing and corrections dispositions in a variety of situations. The curricula should also emphasize the important roles of the respective principals, especially the probation officer and judge, in the offender behavior-change process and the need for effective cooperation and collaboration among criminal justice agencies. Finally, the curricula should encourage adoption of the other state and local recidivism reduction policy initiatives outlined here.

A core judicial education curriculum has already been developed by corrections and sentencing experts with the assistance of professional educators, and is being adapted for use in several jurisdictions.<sup>15</sup> Courts can incorporate the model curriculum into their existing state and local professional education programming.

## 8. Encourage Swift and Certain Responses to Violations of Probation

Responses to violations of probation, whether by the court or a probation agency, should be immediate, certain, consistent, and fair. Sanctions should vary depending on the severity of the violation, the probationer's adjusted level of risk in light of the infraction, and the extent of motivation, cooperation, and success the probationer has demonstrated in complying with other terms and conditions of probation.



Selecting an appropriate response requires weighing the relative importance of at least three discrete probation objectives: (1) making sanctions proportionate to the seriousness of the violation to hold the offender accountable for his or her behavior; (2) asserting sufficient control over the offender's future behavior to properly manage the risk that the probationer presents to the safety of the community; and (3) facilitating the offender's continued progress in changing behavior to achieve ongoing compliance, successful completion of probation, and future law-abiding behavior.

Probation agencies and courts should have a broad range of graduated sanctions and services available to respond to violations of probation. Technical violations not involving new criminal conduct should not regularly result in revocation or removal from the community. What is required is a thoughtful assessment of the likelihood of success in continuing to manage offender risk within the community without incurring further criminal behavior in light of the seriousness of the violation. The court and probation agency must achieve a clear, consistent, and shared understanding about how these factors and objectives will be weighed by the court and the department, and agree on a sanctioning process that ensures violations are met with responses that are swift, certain and proportionate.

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## 9. Use Court Hearings and Incentives to Motivate Offender Behavior Change

The research on EBP demonstrates that it is not only the content of the sentencing decision that matters in reducing the risk of recidivism, but also the manner in which the court interacts with the offender. Although many criminal offenders are initially coerced into treatment, the ultimate goal is to develop offenders' intrinsic motivation to change. Such motivation is strongly influenced by offenders' interpersonal relationships, especially with probation officers, judges, and other authority figures.

The judge is an important role model. Studies in the field of procedural justice show that when

criminal defendants view court processes as fair and feel as though they have been treated with respect by caring and well-intentioned judges, they are more likely to cooperate with legal authorities and voluntarily engage in law-abiding behaviors.<sup>16</sup>

There are several ways in which judges can help offenders begin to change their behavior. They can provide incentives and positive reinforcement for pro-social behavior and encourage offenders to engage and interact in the sentencing process and decision through the constructive use of open-ended questions—those that promote conversation and can't be dispatched with a simple "yes" or "no" answer. As much as possible, judges should avoid negative interactions. Threatening, arguing, lecturing, blaming, or shaming offenders often merely produces resistance and is counter-productive. Judges also can encourage offenders, in open court, to state their desire and commitment to change their anti-social behaviors.

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## 10. Promote Effective Collaboration among Criminal Justice Agencies

Effective implementation of state and local sentencing and corrections policies to achieve reduction in recidivism requires close cooperation between the court, probation agencies, and treatment providers. It also requires effective collaboration with the prosecution and defense.

Prosecution charging, plea bargaining, and probation violation policies may obstruct judicial and corrections efforts to maximize the effectiveness of sentencing outcomes in reducing recidivism. In many jurisdictions, for example, sentences result from plea bargaining processes in which the prosecution and defense reach agreement on the sentence to be recommended to the court. Such agreements rarely, if ever, consider evidence of the likely impact of the stipulated disposition on the offender's future criminality, or the impact on recidivism of other alternative dispositions. If unaddressed, defense counsel concerns, such as those about the proper use of



risk assessment information, can also impede recidivism reduction efforts.

The need for policies promoting inter-agency collaboration in the criminal justice system is neither new nor unique to the field of recidivism reduction. Over the past 15 years in particular, state courts have often led collaborative inter-agency criminal justice policy teams in successful efforts to improve sentencing effectiveness through the creation and operation of drug courts, domestic violence courts,

and other problem-solving courts. The teams also have successfully addressed issues of criminal justice planning, substance abuse, jail and juvenile detention facility overcrowding, intermediate sanctions, security and emergency preparedness, domestic violence, foster care reform, and delinquency prevention.

New efforts focused on broader recidivism reduction strategies can bear similar fruit, helping to better manage public funds while advancing the twin goals of crime reduction and justice. [i](#)

## Notes

<sup>1</sup> Matthew R. Durose & Patrick A. Langan, Bureau of Justice Statistics, *State Court Sentencing of Convicted Felons, 2002*, Tbl.1.1 (2005)

<sup>2</sup> Compare Criminal Justice Statistics Center, California Department of Justice, *Crime in California 2006*, 70, table 37, with Durose & Langan, *supra* note 1, at Tbl.1.2.

<sup>3</sup> Lauren E. Glaze & Thomas P. Bonczar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2007*, 2 (2008); Pew Center on the States, *One in 100: Behind Bars in America*, 29 (Washington, D.C.: The Pew Charitable Trusts, February 2008).

<sup>4</sup> See, e.g., Thomas H. Cohen and Brian A. Reaves, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2002*, iii, 13 (2006) (comparison of prior arrest records of felony defendants in 1992 and 2002); Patrick A. Langan & David J. Levin, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, 1 (2002) (comparison of re-arrest records of inmates released in 1983 and 1994); Robyn L. Cohen, Bureau of Justice Statistics, *Probation and Parole Violators in State Prison, 1991* (1995) (comparison of percentages of state prison inmates who were on probation or parole at the time of current arrests in 1974 and 1991); Thomas P. Bonczar & Lauren E. Glaze, Bureau of Justice Statistics, *Probation and Parole in the United States, 1998*, 4, 7 (1999) and Lauren E. Glaze & Thomas P. Bonczar, Bureau of Justice Statistics, *Probation and Parole in the United States 2005*, 6, 9 (2006) (comparison of successful probation and parole completion rates in 1990 and 2005).

<sup>5</sup> Cohen & Reaves, *supra* note 4, at 12; Glaze & Bonczar, *supra* n. 3, at 7.

<sup>6</sup> Figures from the National Association of State Budget Officers, cited in Pew Center on the States, *One in 31: the Long Reach of American Corrections* (Washington, D.C.: The Pew Charitable Trusts, March 2009).

<sup>7</sup> See, e.g., Steve Aos, Marna Miller & Elizabeth Drake, Washington State Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (2006)

<sup>8</sup> *Id.*

<sup>9</sup> D.A. Andrews, James Bonta, J. Stephen Wormith, “The Recent Past and Near Future of Risk and/or Need Assessment,” 52 *Crime and Delinquency* 7, 12-13 (January 2006).

<sup>10</sup> The Oregon legislature, for example, has declared that reduction of criminal behavior is a dominant measure of the performance of its criminal justice system, and required criminal justice agencies to share data to facilitate the display of correlations between dispositions and future criminal conduct. Oregon’s Multnomah County courts have constructed electronic sentencing support tools that display for judges and advocates the recidivism outcomes for a variety of dispositions of similar offenders sentenced for similar crimes.

<sup>11</sup> 2003 Or. Laws Ch. 669. See also, Pew Center on the States, *Policy Framework to Strengthen Community Corrections* (December 15, 2008) at [www.pewpublicsafety.org](http://www.pewpublicsafety.org).

<sup>12</sup> Aos, et. al., *supra* note 8.

<sup>13</sup> See, e.g., Paula Smith, Claire Goggin & Paul Gendreau, Center for Criminal Justice Studies, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002)

<sup>14</sup> *Id.*, at 10.

<sup>15</sup> As part of the Pew Center on the States’ Public Safety Performance Project, the National Center for State Courts, National Judicial College, and Crime and Justice Institute have recently developed a model national judicial education curriculum on evidence-based sentencing. Judicial education programs on EBP have recently been conducted in a number of states, including Arizona, California, Idaho, Illinois, Indiana, Kansas, Minnesota, New Hampshire, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

<sup>16</sup> See, e.g., Tom R. Tyler & Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (2002).

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In 2006, the Pew Center on the States launched the Public Safety Performance Project (PSPP) to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

[www.pewcenteronthestates.org](http://www.pewcenteronthestates.org)

## **MARK CAREY**

**Mark Carey** is the President of The Carey Group (TCG), a national consulting firm that provides training and technical assistance for justice and correctional professional and community groups. He has served as the Deputy Commissioner of Community and Juvenile Services in the Minnesota Department of Corrections from 1999 to 2003, the Director of Dakota County Community Corrections, the Director of Dodge-Fillmore-Olmsted County Community Corrections and as the warden of MCF-Shakopee, the only state women's prison in Minnesota. He has over twenty years of experience in the correctional field serving as a counselor, probation/parole officer, planner, administrator, and consultant. He taught juvenile justice at the Community College in Rochester, Minnesota, and has published over a dozen articles and two books.

Mr. Carey was President of the American Probation and Parole Association from 2005 to 2007. He has served as President and Chair for a number of Associations and Task Forces, and frequently is requested as a speaker and trainer. He has been on the American Probation and Parole Association (APPA) Board of Directors since 1997. In 1996 he received APPA's Sam Houston University Award. In 1993, he was selected as the Corrections Person of the Year by the Minnesota Corrections Association.

Mr. Carey was the project coordinator for the State of Illinois under the National Institute of Corrections/Crime and Justice Institute evidence based practices initiative, a three year effort that sought to demonstrate recidivism reduction in two states (Illinois and Maine). Mr. Carey is involved in numerous federal, state, and local projects in an effort to advance evidence based decision making.

## **Madeline (Mimi) Carter**

**Madeline (Mimi) Carter** has been a Principal with the Center for Effective Public Policy for the past 18 years. Ms. Carter has managed numerous national, state and local projects on a variety of topics including implementing evidence-based practices, advancing effective prisoner reentry strategies, developing policy and guidelines to respond to probation and parole violations, establishing and maintaining multi-disciplinary collaborative teams, and working with special populations including women offenders and sex offenders.

In 1996, under funding from the U.S. Department of Justice and its collaborating partners, Ms. Carter established the Center for Sex Offender Management (CSOM); she has served as its director ever since. Currently, Ms. Carter serves as the Project Director for the National Institute of Corrections' *Evidence-Based Decision Making in Local Criminal Justice Systems* project; is working closely with several state corrections agencies on offender reentry; is the Project Director of a National Institute of Corrections initiative designed to develop a *Gender Responsive Management and Assessment Protocol* for jails and prisons serving women offenders; is the Lead Consultant assisting the California Department of Correction and Rehabilitation, Division of Adult Parole Operations, to implement evidence-based practices in parole supervision and a decision making instrument to guide responses to parole violations; is working with the Colorado Department of Corrections' Division of Parole and the Colorado Administrative Office of the Courts' Probation Division to develop structured responses to probation and parole violations; and is working with numerous states and localities on issues related to the more effective management of adult and juvenile sex offenders.

Prior to joining the Center, Ms. Carter spent a decade in government working for the Montgomery County (Maryland) Department of Correction and Rehabilitation, serving as Resident Supervisor, Correctional Counselor, and Lead Screener for the Pre-Release Center, and overseeing the establishment and operations of the screening unit of the Pre-Trial Services agency. Ms. Carter holds a Bachelor's and a Master's degree in Criminal Justice Administration from the American University. She has published more than 25 journal articles and practitioner handbooks.

## Hon. J. Richard Couzens

**HON. J. RICHARD COUZENS** was appointed to the Placer County Superior Court in May 1980, where he served until his retirement in January 2005. He continues to serve full-time with the Assigned Judges Program. Previously he was elected as the judge of the Lincoln Justice Court from 1977 to 1980, and the Auburn Justice Court from 1978 to 1980.

Judge Couzens received his Juris Doctor degree from the University of California at Davis. He served as staff writer for the U.C.D. Law Review in 1967 to 1968, and Editor-in-Chief in 1968 to 1969. He was the project supervisor and editor of “Review of Selected 1968 Code Legislation,” published by the California Continuing Education of the Bar.

Judge Couzens served as law clerk to Chief Justices Roger J. Traynor and Donald R. Wright of the California Supreme Court from 1969 to 1970. Thereafter he had a general civil and criminal practice in Auburn, Placer County, until his election to the court in 1978.

He was a member of the California Judicial Council from 1996 to 2000, and the California State – Federal Judicial Council from 2000 to 2005. He served as a member of the Criminal Law Advisory Committee to the California Judicial Council from 1992 to 1995, serving as its chair from 1994 to 1995. He has also served as a member of the project planning team for the “Developing Effective Practices in Criminal Caseload Management Project,” 2004 – 2005; member, Advisory Committee on Criminal Delay Reduction, 1990 – 1992; member, California Council for Interstate Adult Offender Supervision, 2003 – 2005; and member, Advisory Committee on Uniform Delay Reduction Program Rules for Volunteer Courts, 1989 – 1990. He served as on-site supervising judge of the Riverside County Felony Caseload Reduction Project, 2007 to 2008.

Judge Couzens has been a faculty member of the B.E. Witkin Judicial College from 1995 to the present, teaching on subjects related to the criminal law, primarily in the area of felony sentencing, sex crimes and the Three Strikes law. He was taught at many specialty institutes sponsored by the Center for Judicial Education and Research (CJER), including the Criminal Law Institute, Juvenile Law Institute, Appellate Institute, Cow County Judge’s Institute, Research Attorney Institute, and Advanced and Basic Criminal Law.

He is a member of Board of Trustees, National Association of Youth Courts, 2006 – present (President’s Distinguished Service Award, 2008; President, 2009 – present); and is a member of Board of Trustees, California Association of Youth Courts, 2006 – present (president, 2006 – present). He was a member, Governor’s Working Group on Juvenile Justice System Reform, 2004 – 2005; a member, California Attorney General Task Force on Standards for Preservation of Biological Evidence, 2001 – 2002; and faculty member, National Council of Juvenile and Family Court Judges, Reno, Nevada, Sexual Predators, 2001.

## **Hon. J. Richard Couzens**

Judge Couzens is the co-author of “California Three Strikes Sentencing” and “Sex Crimes: California Law and Procedure,” published by The Rutter Group. He was a columnist, “Three Strikes Network” and “Crime and Punishment,” in *Court News*, and *California Courts Review*, published by the Administrative Office of the Courts, 1996 to 2008.

He received the "Certificate of Distinguished Service," presented by the Chief Probation Officers Association of California in 1987 for service to the juvenile justice system; Outstanding Citizen Award, presented by the National Association of Social Workers, Sacramento Local Unit, March, 1994, for services to the juvenile justice system; and 2000 Criminal Justice Award, Child Abuse Prevention Council of Placer County, for service to Placer County children and families. He was named the Jurist of the Year in 2008 by the California Judicial Council. He received the President's Distinguished Service Award in 2008 from the National Association of Youth Courts. He was given the “J. Richard Couzens Access to Justice Award,” in 2010 by the Placer County Bar Association.

## **GERALDINE F. NAGY**

Dr. Nagy was appointed Director of the Travis County Community Supervision and Corrections Department (Adult Probation) and Pretrial Services on January 1, 2005. Prior to her appointment, Dr. Nagy held the position of Deputy Director for the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) where she focused on bringing evidence-based practices to community corrections programs statewide.

As Director of the Probation Department, Dr. Nagy has led efforts to work with numerous agencies and local stakeholders to reengineer the operations of the department to support more effective supervision strategies and to strengthen probation by using an Evidence-Based Practices (EBP) model. Her current focus is to fine-tune the policies adopted and to promote “fidelity” in implementation.

In Pretrial Services, Dr. Nagy has coordinated a strategic planning process to align services and internal processes towards Legal and Evidence Based Practices (LEBP). The current focus is on conducting the initial bond interview along with a validated risk assessment and enhancement of various case management programs which better align with LEBP.

Dr. Nagy is a member of several national advisory boards and work groups regarding evidence-based sentencing and local decision making and most recently worked with the National Center for State Courts to develop training for the judiciary on these topics.

## **ROGER K. WARREN**

Judge Roger K. Warren (Ret.) serves as Scholar-in-Residence with the California Administrative Office of the Courts. He is President Emeritus of the National Center for State Courts (NCSC) where he served as President from 1996 until 2004. He also currently serves as Director of the NCSC's national sentencing reform project and as principal consultant to the NCSC partnership with Pew Charitable Trusts' Public Safety Performance Project. He is also Chair of the Board of Directors of Justice at Stake, Inc.

Judge Warren is the author of several works on evidence-based sentencing, including *Evidence-Based Sentencing: the Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*; *The Most Promising Way Forward: Incorporating Evidence-Based Practice into State Sentencing and Corrections Policies*; and *Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs*. He is the principal author of the NCSC model judicial education curriculum on evidence-based sentencing and has conducted evidence-based practice training programs for judges and other criminal justice professionals in many states and for the American Judges Association, Association of Paroling Agencies International, National Association of Sentencing Commissions, and the American Probation and Parole Association.

Previously, Judge Warren served as a trial judge in Sacramento, California for twenty years, serving as the Presiding Judge of the Superior Court in 1991 and 1992. He created Sacramento's pre-trial release program, and was the Founder and First Chair of the Sacramento Probation Oversight Committee, the Sacramento Intermediate Punishments Committee, and the Sacramento Criminal Justice Cabinet. He also served on the National Advisory Board to the National Institute of Corrections Project on the Use of Intermediate Sanctions. As Presiding Judge of the Sacramento Juvenile Court, Judge Warren founded Sacramento's Multi-Disciplinary Child Interview Center, Sacramento Court Appointed Special Advocates (CASA), and Sacramento Child Advocates, Inc., the non-profit professional corporation responsible for providing legal representation to minors in all Sacramento abuse and neglect proceedings.

Judge Warren was appointed by the Chief Justice of California to serve as the judicial branch representative on the California Constitution Revision Commission and as a member of the California Judicial Council where he chaired the Council's Planning Committee and was the Founding Chair of the statewide Trial Court Presiding Judges Committee.

He is the recipient of numerous awards including from the American Judges Association, National Judicial College, Justice Management Institute, National Conference of Court Public Information Officers, and National Association of State Judicial Educators. During his tenure with the California courts, Judge Warren received the California Jurist of the Year award in 1995, and Sacramento Judge of the Year awards in the years 1987, 1993 and 1994.

Upon his retirement from the Sacramento courts, Sacramento juvenile justice agencies created the "Judge Roger K. Warren Unity Award," which is presented annually in his honor to recognize an individual's outstanding efforts to promote collaboration among the public and private agencies serving children in Sacramento.

Prior to his appointment to the bench, Judge Warren was the Executive Director of Northern California Legal Services. He graduated from Williams College and following a Fulbright Fellowship to Iran received a MA Degree in Political Science and JD degree from the University of Chicago where he served as an editor of the University of Chicago Law Review.