

final minutes/notes

Michigan Law Revision Commission Meeting

Thursday, February 13, 2014 ▪ 12:00 noon
Room 402/403 ▪ State Capitol Building
100 N. Capitol Avenue ▪ Lansing, Michigan

Members Present:

Tony Derezinski, Acting Chair
George Ward
John Strand
Judge William Whitbeck

Members Absent and Excused:

Richard McLellan, Chair
Senator Vincent Gregory
Representative Andrew Kandrevas
Representative Tom Leonard
Senator Tonya Schuitmaker

I. Convening of Meeting

Acting Chair Derezinski called the meeting to order at 12:00 noon.

II. Roll Call

The roll was taken. A quorum was not present.

III. Approval of December 11, 2013 Meeting Minutes

Acting Chair Derezinski noted that, unless one other member arrived to the meeting, a motion to approve the minutes of the December 11, 2013 meeting will be delayed until the next meeting due to the lack of a quorum.

IV. Criminal Sentencing and Procedures Project

The Acting Chair provided an overview of the Criminal Sentencing and Procedures Project and then called on Mr. Carl Reynolds, Senior Legal and Policy Advisor of The Council of State Governments, to begin the presentation. For more details, a copy of the CSG presentation is attached to these minutes. Mr. Reynolds noted that next week the CSG team will be making a joint presentation before the Senate Judiciary and Senate Appropriations Committees and another one before the House Judiciary and House Appropriations Committees. The final findings will be presented at another MLRC meeting to be determined.

V. Comments from Commissioners

Commissioner Ward shared a case that was brought to his attention by a family who he noted is in attendance at today's meeting. He explained that this case is a good example where sentencing discretion is greatly abused. Acting Chair Derezinski called on one of the family members present, Mr. Timothy Haak. Mr. Haak highlighted his family's personal experience with what he considers to be unfair sentencing practices and offered suggestions for the Commission to consider as it looks at changing the sentencing guidelines structure.

Commissioner Whitbeck questioned the premise of the current sentencing system and asked Mr. Reynolds to think about what the system means to accomplish.

The issue of supervision violations and recidivism rates was also discussed.

VI. Update on MLRC Projects

Acting Chair Derezinski called on Ms. Wilensky for an update on other MLRC projects. Ms. Wilensky explained that last May the Chair circulated a list of Commission priorities and she proceeded to provide a status report on each as follows:

- 1) To initiate the sentencing guidelines project. Status: In process.
- 2) Transnational corporate attorneys' project. Status: Legislation drafted and under review.
- 3) Open meetings act revisions. Status: Draft report being finalized.
- 4) Federal immigration reform. Status: Report has been prepared and will be presented to the Commission for review.
- 5) Court of Appeals case dealing with juvenile mandatory life sentences. Status: Legislation (Senate Bill 319) introduced, passed, and presented to the Governor.

Ms. Wilensky added that she will work with the Chair to determine dates for the next CSG presentation and a meeting when the above items along with a review of cases and the annual report will be on the agenda.

Commissioner Whitbeck inquired about status of the Commission's economic development statutes project. Ms. Wilensky indicated that she will add this to the list of items to discuss at a future meeting.

VII. Public Comment

The Acting Chair asked if there were any other public comments. Mr. Bruce Timmons inquired about the impact of plea bargains on sentencing. There were no other public comments.

VIII. Adjournment

Having no further business, the meeting was adjourned at 1:45 p.m.

(Approved at the March 19, 2014 Michigan Law Revision Commission meeting.)

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

Sentencing and Justice Reinvestment Initiative



February 13, 2014
Michigan Law Revision Commission

Carl Reynolds, Senior Legal & Policy Advisor
Shane Correia, Program Associate

Council of State Governments Justice Center and Our Justice Reinvestment Funding Partners

- National non-profit, non-partisan membership association of state government officials
- Engage members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence

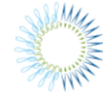
Justice Reinvestment:

a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.

Partner with Bureau of Justice Assistance and Pew Charitable Trusts



BJA
Bureau of Justice Assistance
U.S. Department of Justice



THE PEW
CHARITABLE TRUSTS

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Examination of Sentencing, Parole, and Probation is About Justice and Public Safety



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Three Part Framework and Understanding the Implications of Our Research in Michigan

Justice and Public Safety

Punishing Consistently	Reducing Criminal Behavior	Holding Offenders Accountable
<input type="checkbox"/> Fundamental to sentencing guidelines <input type="checkbox"/> Predictability in sentencing for both victim and the larger system and community <input type="checkbox"/> Proportionate punishment - similar offenses and offenders punished similarly	<input type="checkbox"/> 99% return to community, so reducing criminal behavior of primary importance <input type="checkbox"/> Research demonstrates better public safety is possible <input type="checkbox"/> Michigan is on a learning curve	<input type="checkbox"/> Key piece of effective supervision, i.e., recidivism reduction <input type="checkbox"/> Concepts are intuitive but barriers often exist <input type="checkbox"/> Michigan is on a learning curve

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Distinct Yet Overlapping Angles of Inquiry into Primary Principles of Justice and Public Safety



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Presentation Overview

- I. Recap of Sentencing Findings
- II. Reducing Criminal Behavior
- III. Holding Offenders Accountable

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Presentation Overview

Recap of Sentencing Findings

Potential for Sentencing Disparity "Built in"

- Most cases fall in cells with wide range of punishment types
- Minimum prison sentence length ranges very wide

Evidence of Disparity

- Geographical
- Similar Offenders in Single Cell
- Minimum prison sentence length

Reducing Criminal Behavior

Holding Offenders Accountable

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Punishing Consistently Means Proportionality and Reduced Disparity

Original Sentencing Commission Statute (1994 PA 445)

Emphasized Proportionality and Reduction of Disparity . . .

- Provide for protection of the public.
- An offense involving violence against a person shall be considered more severe than other offenses.
- Be proportionate to the seriousness of the offense and the offender's prior criminal record.
- Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.
- Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.

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Structure of Sentencing Guidelines Allows Limited or Broad Discretion Depending on Where a Case Falls

Sentencing Grid for Class F Offenses—MCL 777.67
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

Offender Level	A (0-10)	B (11-20)	C (21-30)	D (31-40)	E (41-50)	F (51-60)	Offender Range
I (0-10)	0	0	0	2	5	10	10-20
II (11-20)	0	0	0	5	10	12	12-24
III (21-30)	0	0	2	10	12	14	14-28
IV (31-40)	0	2	5	12	14	17	17-34

Intermediate

Allowable punishments:

- Up to 1 year in jail plus probation
- Jail only (1 year max)
- Probation only (5 year max)
- Fees/fines only

Straddle

Allowable punishments:

- Prison
- Up to 1 year in jail plus probation
- Jail only (1 year max)
- Probation only (5 year max)
- Fees/fines only

Prison

Allowable punishment:

- Prison

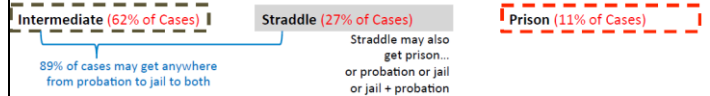
Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

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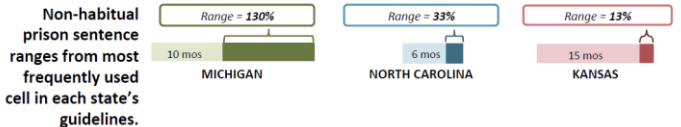
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Sentencing Grids Have Allowance for Disparity Built In

Most Grid Cells Offer Wide Range of Possible Punishments



Comparatively Wide Ranges for Minimum Prison Sentence Lengths



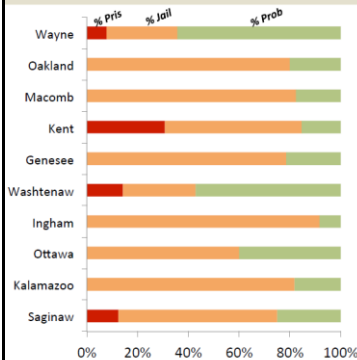
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections; Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012; Structured Sentencing Statistical Report FY 2011/12, NC Sentencing and Policy Advisory Commission; Analysis of KS Felony Sentencing Data by CSG Justice Center.

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Geography Clearly Affects Sentencing

2012 SGL Brand New Cases Sentenced in Grid E 'Straddle' Cells (Non Habitual) — Top 10 Counties by Population



- 6 of the 10 counties didn't use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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Actual Sentencing for Like Offenders Shows Very Different Dispositions

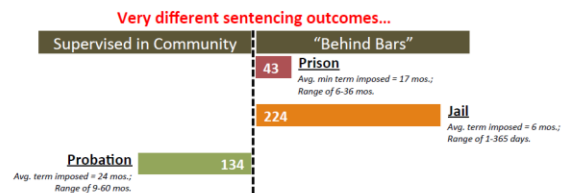
Sentencing breakdown of brand new cases in the 'E' grid Straddle cells (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103
II				359	141	69
III				77	26	
IV				69	36	
V				10	27	
VI				7	9	

Despite falling in the same cell on the same grid, defendants punished disparately:

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for additional prison time and/or parole supervision of varying length.

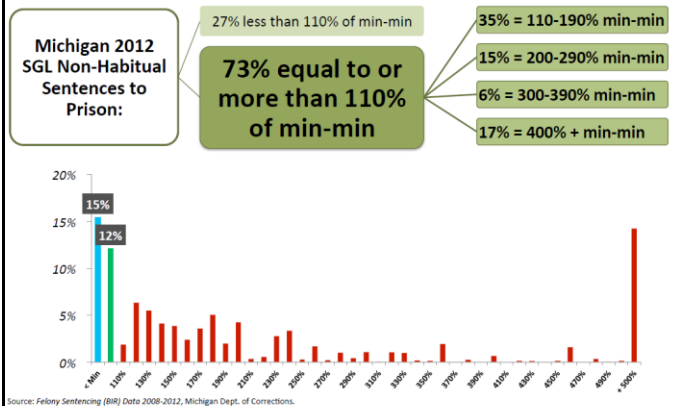


Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

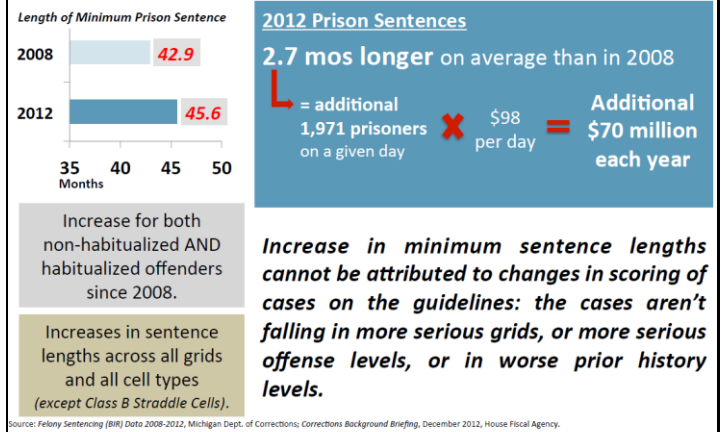
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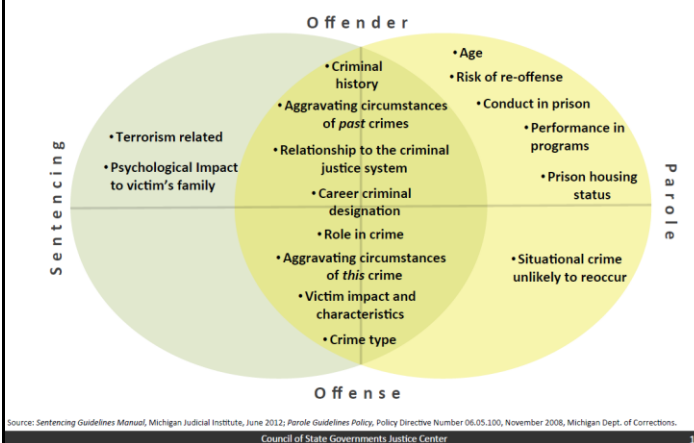
Actual Prison Sentences Demonstrate Use of Wide Discretion in Minimum Length Imposed



Minimum Prison Sentence Lengths Are Increasing With the Discretion Permitted



Preview: Parole and Sentencing Decisions Consider Many of the Same Factors – Is Consistency Affected?



Presentation Overview

Recap of Sentencing Findings

Reducing Criminal Behavior

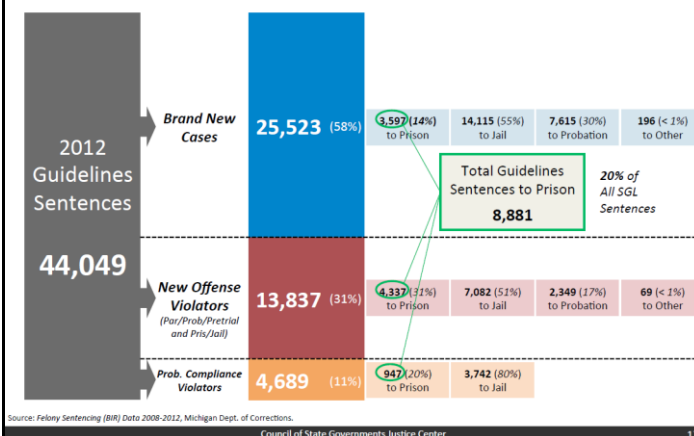
Why it Matters

Risk – Needs – Responsivity

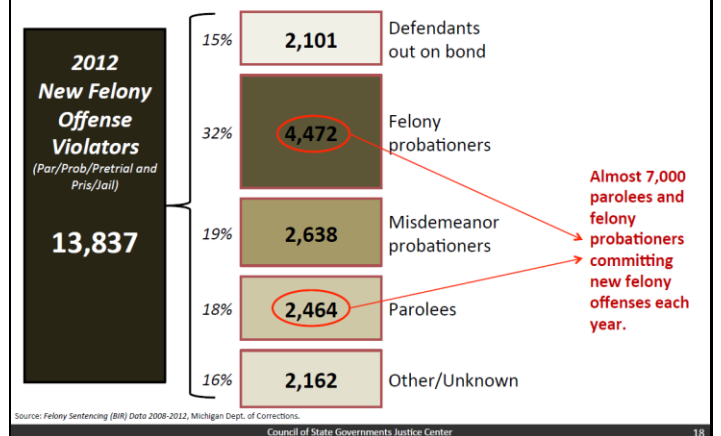
Fidelity and Results

Holding Offenders Accountable

Breakdown of Sentences Shows “Brand New” Versus Violators



Why It Matters in Michigan: One-Third of New Felony Offense Violators Are Felony Probationers



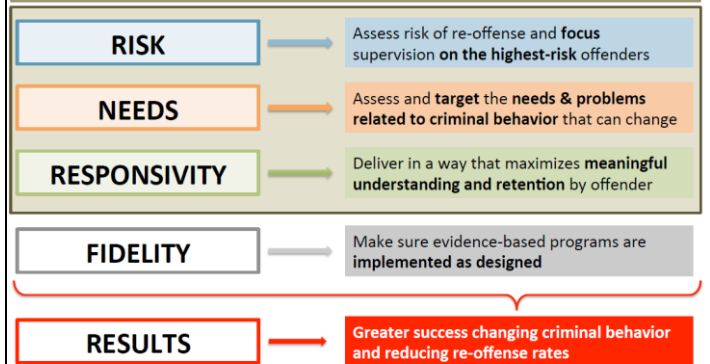
Knowledge on Improving Criminal Justice Outcomes Has Increased Dramatically Over the Last 20 Years

Academics and practitioners have contributed to this growing body of research

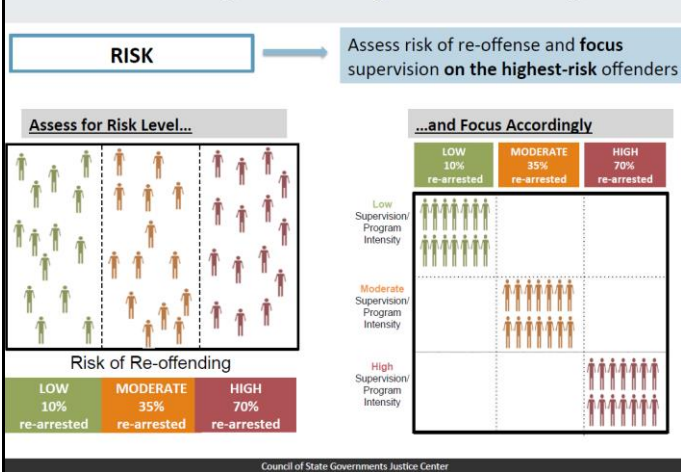
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"RNR" + Fidelity = Results

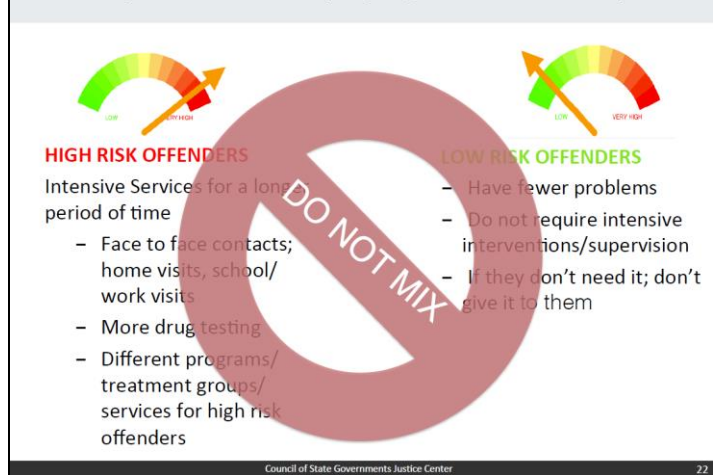
Proven Principles for Changing Criminal Behavior (RNR)



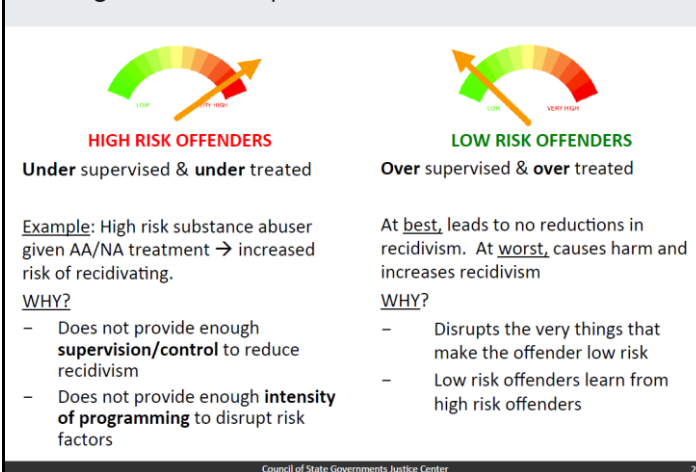
Risk Is About Sorting and Tailoring Resources to Higher-Risk



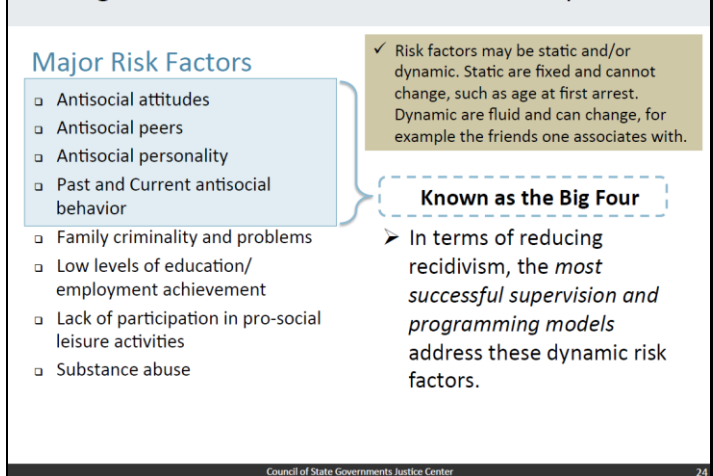
Risk Principle in Action: Keeping High and Low Risk Separate



Violating the Risk Principle Leads to Recidivism



Focusing On the Core Antisocial Risk Factors Is Key



"Need" Refers to Which Risk Factors Will Be Targeted

NEEDS

Assess and **target** the **needs & problems** related to criminal behavior that can change

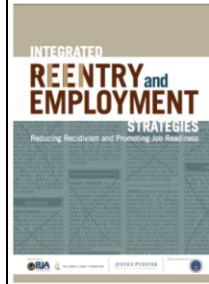
Translating Risk Factors to Need Factors

FACTOR	RISK	NEEDS
History of Antisocial Behavior	Early & continued involvement in a number of antisocial acts	Build noncriminal alternative behaviors in risky situations
Antisocial Personality	Adventurous, pleasure seeking, weak self control, restlessly aggressive	Build problem-solving, self-management & coping skills
Antisocial Cognition	Attitudes, values, beliefs & rationalizations supportive of crime, cognitive emotional states of anger, resentment & defiance	Reduce antisocial cognition, recognize risky thinking & feelings, build up alternatives, adopt a reformed or anti-criminal identity
Antisocial Associates	Close association with criminals & relative isolation from pro-social people	Reduce association with criminals, enhance association with pro-social people

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New Report on Integrated Reentry and Employment Underscores the Importance of the Big Four Risk Factors



Addressing the hypothesis that "offenders need a job to avoid recidivating."

Key Factors for Job Performance:

- Attitude on the job
- Valuation of work
- Self-control and self-regulation
- Problem-solving skills and coping mechanisms
- Skills (hard and soft) to succeed on the job

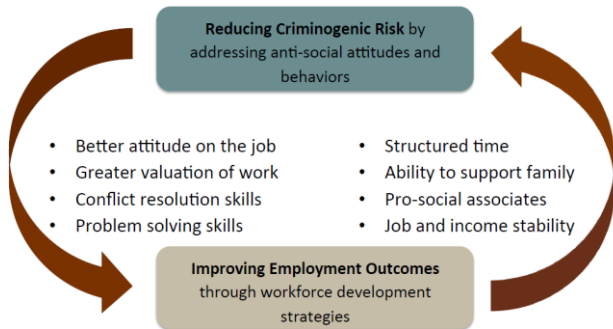
Key Criminogenic Risk Factors

- 1) Antisocial attitudes
- 2) Antisocial peers
- 3) Antisocial personality
- 4) Criminal history

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An Integrated Approach to Addressing Risk Factors and Job Readiness Results in Better Outcomes



Address the top risk factors to see improvements in employment readiness, and then actual, sustained employment

<http://csjusticecenter.org/reentry/the-reentry-and-employment-project/>

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Responsivity Dictates Skillful Program Delivery

RESPONSIVITY

Deliver in a way that maximizes meaningful understanding & retention

Responsivity Factors

INTERNAL RESPONSIVITY FACTORS

- Motivation
- Mental health: anxiety, psychopathy
- Maturity
- Transportation
- Cognitive deficiencies
- Language barriers
- Demographics

EXTERNAL RESPONSIVITY FACTORS

- Program characteristics
- Facilitator characteristics
- Program setting

Examples of Responsivity Barriers:

- Visual learning style in an "audio" program
- Illiterate offender in group with reading/writing requirements
- Single mother with no child care during program time

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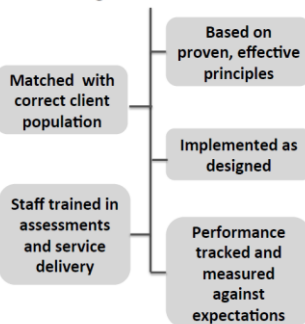
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When Quality Programs Are Implemented Well, the Research Confirms Principle of Focusing on Higher-Risk Individuals

FIDELITY

Make sure evidence-based programs are **implemented as designed**

Program Effectiveness



What works with offender programming?

Who: Programs that target high-risk individuals are more likely to have a significant impact on recidivism.

What: Certain programs are more effective than others - effectiveness can relate to the **type** of program and **where** it is delivered (in a prison vs. in the community).

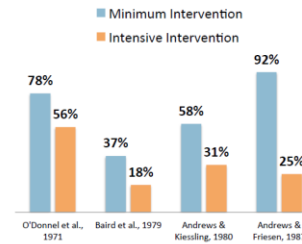
How Well: Assessing how well a program is executed can reveal whether or not a program has the capability to deliver evidence-based interventions.

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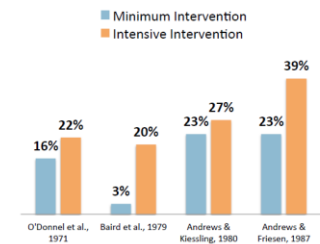
The Intensity of Services Can Have Positive or Negative Impacts on Recidivism, Depending on Risk

Intervention Effects on Recidivism among HIGH RISK Offenders



Intensive interventions led to **BETTER** recidivism outcomes for **HIGH** risk offenders, but....

Intervention Effects on Recidivism among LOW RISK Offenders



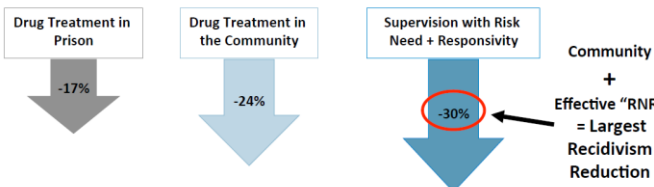
.... intensive interventions led to **WORSE** recidivism outcomes for **LOW** risk offenders.

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Community-Based Treatment and RNR Principles of Programming and Supervision Yield Best Outcomes

Research shows that programs delivered in the community have greater impacts on recidivism



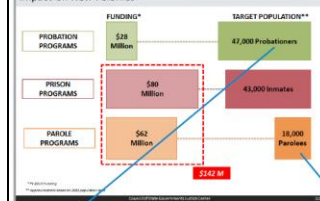
Source: Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). Return on investment: Evidence-based options to improve statewide outcomes, April 2012 (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy.

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Analysis Ongoing: Does Michigan Have Adequate Resources in Place to Reduce Criminal Behavior

Less Funding for Larger Probation Population with Large Impact on New Felonies



Gap Analysis

Based on the risk/needs profile of those being supervised in the community, it's possible to estimate the resources necessary to provide programming that addresses criminogenic risk factors and also substance abuse/mental health issues.

For those placed on probation:

- ☐ How many are higher-risk?
- ☐ Of the higher-risk, how many have substance abuse and/or mental health disorders?

For those released to parole:

- ☐ How many are higher-risk?
- ☐ Of the higher-risk, how many have substance abuse and/or mental health disorders?

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Presentation Overview

Recap of Sentencing Findings

Reducing Criminal Behavior

Holding Offenders Accountable

Why It Matters

Key Factors and Barriers

Examples of Success

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Supervision Violators Make Up Almost 60% of All Admissions to Prison – Compliance Violators Alone Account for a Third

Composition of Prison Admissions: 2008 – 2012



Source: Prison Admissions Data 2008-2012, Michigan Dept. of Corrections.

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Current Cost of Incarcerating Technical Violators Exceeds \$150M Annually

Avg. Annual Par. Tech. Violator Returns 2008-12

2,193

12.7 month average length of stay yields **2,321** average daily pop

At \$98 per day, annual cost to State =

\$83 Million

Avg. Annual Prob. Tech. Violator Revocations 2008-12

1,030

24.9 month average length of stay yields **2,137** average daily pop

At \$98 per day, annual cost to State =

\$76 Million

Source: Prison Admissions and Releases Data 2008-2012, Michigan Dept. of Corrections, Corrections Background Briefing, December 2012, House Fiscal Agency.

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Key Factors Associated with Successful Models of Swift and Certain Sanctioning

- ☐ Clear rules and violation responses so probationer is aware of expectations and consequences
- ☐ Strict monitoring
- ☐ Prompt sanction within days of detection
- ☐ Proportionate sanctions, tied to severity and risk
- ☐ Ability to bring violators into custody
- ☐ Compulsory treatment when appropriate

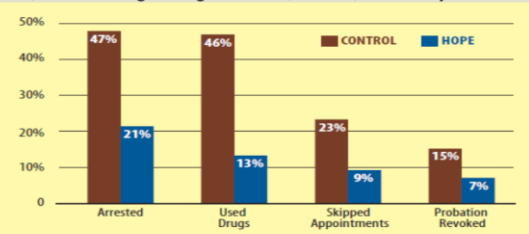
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Hawaii HOPE Reduces Re-Arrest, Drug Use, Jail Use

Hawaii HOPE

Intensive, random drug testing with swift, certain, and brief jail sanctions.

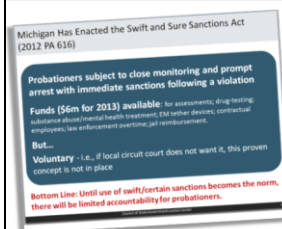


- Key principles of HOPE - **swift and certain probation violation response practices** - are being replicated with success in other jurisdictions.

Source: Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE, Hawken, Angela and Mark Kleiman, December 2009.
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Michigan's Swift & Sure Approach Modeled on HOPE



Judge Alm runs Hawaii HOPE from the 1st Circuit in Honolulu which accounts for about 2/3 of all felony probationers. So one judge impacts large volume.

- In fact, his one court has helped drive a statewide decline in probation revocations to prison.*

That sort of geographical concentration with one court is very hard to replicate.

- ☐ In other words, for the HOPE model to work, enough judges must adopt it for the desired systemic impacts.

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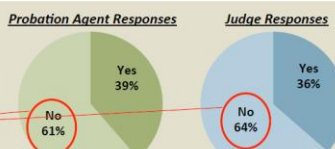
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Michigan's Swift & Sure Program Unfamiliar to Many Judges; Detention Responses Unavailable to Probation Officers

Almost half of Michigan judges don't know about the State's Swift & Sure Sanctions Program:

Are you familiar with SSSP?	
Yes	57%
No	43%

Do judges grant probation agents administrative authority to sanction probationers with brief jail stays in swift response to violations?



Almost 2/3 of respondents indicate quick jail-sanctioning authority not granted.

- Of the agents and judges responding yes, most (98% and 81% respectively) believe these sanctions result in improved probationer behavior.
- Judges who don't grant this authority are concerned about violation of due process and do not believe the authority exists.

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Challenges to Implementation of Supervision Practices Utilizing Swift & Sure Principles

Lack of Training

- Critical for judges, prosecutors, and supervision managers and agents to be well-informed about the principles and research behind swift/certain sanctioning

Judicial and Court Staff

- For models relying on court hearings for violation responses

Legal Structure for Administrative Responses

- Necessary for clarifying limited nature of sanctioning authorities available to agents, spelling out judicial oversight, and preservation of due process rights

Collaboration with Key Stakeholders

- Law enforcement resources to assist with arrest and detention

Drug testing

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Different Approaches to Swift and Sure Policies Have Yielded Positive Results in Other States

Georgia POM

Enabling probation officers to employ administrative sanctions & probationers to waive violation hearings **reduced jail time three-fold**, reduced time spent in court, and increased swiftness of responses to violations.

North Carolina: Justice Reinvestment Act of 2011

- Sweeping changes to sentencing, supervision and sanctioning practices— including risk/need assessments in targeting treatment & supervision
- Probation agents able to order "quick dip" stays in jail up to 3 days upon detecting a violation
- Since 2011:** probation revocations to prison are down by 40%, and the prison population has decreased by 9% (4,000 people).

Source: An Evaluation of Georgia's Probation Options Management Act, Applied Research Services, October 2007; Automated System Query (<http://websearch.doc.state.nc.us/ases/asqp/ASQ/>), North Carolina Dept. of Public Safety.

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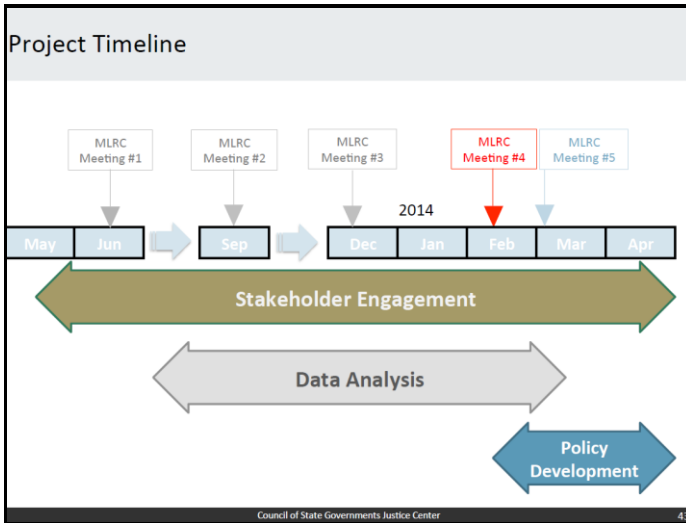
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Summary

- Discretion built into the system leads to major disparities in sentencing outcomes.
- Key steps and principles for changing criminal behavior:
 - Assess for **RISK** of re-offense and focus on higher-risk offenders
 - Assess and target the specific **NEEDS** related to criminal behavior
 - Be **RESPONSIVE** to risk & needs factors in delivering the services to offenders
 - Ensure that evidence-based programs are implemented correctly and monitored for results
- The principles of Swift & Certain resonate with Michigan practitioners and have been successfully implemented in a variety of ways in other states.

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Thank You



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