JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

Sentencing and Justice Reinvestment Initiative

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Michigan Law Revision Commission

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

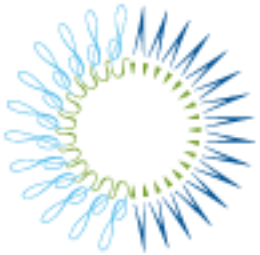
- National non-profit, non-partisan membership association of state government officials
- Engage members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence

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

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

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

Justice and Public Safety

Punishing Consistently

- Fundamental to sentencing guidelines
- Predictability in sentencing for both victim and the larger system and community
- Proportionate punishment - similar offenses and offenders punished similarly

Reducing Criminal Behavior

- 99% return to community, so reducing criminal behavior of primary importance
- Research demonstrates better public safety is possible
- Michigan is on a learning curve

Holding Offenders Accountable

- Key piece of effective supervision, i.e., recidivism reduction
- Concepts are intuitive but barriers often exist
- Michigan is on a learning curve

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

Overlapping nature a critical feature...

- If punishments are inconsistent, how can accountability be effective?
- If accountability is weakened, how will criminal behavior be influenced?
- If system does not support reductions in criminal behavior, what are we doing?

Presentation Overview

I. Recap of Sentencing Findings

II. Reducing Criminal Behavior

III. Holding Offenders Accountable

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

Punishing Consistently Means Proportionality and Reduced Disparity

Original Sentencing Commission Statute (1994 PA 445) Emphasized Proportionality and Reduction of Disparity . . .

(*i*) Provide for protection of the public.

(*ii*) An offense involving violence against a person shall be considered more severe than other offenses.

(*iii*) Be proportionate to the seriousness of the offense and the offender's prior criminal record.

(*iv*) 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.

(*v*) Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.

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))

OV Level	PRV Level												Offender Status
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4
II 10-34 Points	0	6*	0	9*	0	17*	5	23	10	23	12	24	
		7*		11*		21		28		28		30	HO2
		9*		13*		25		34		34		36	HO3
		12*		18*		34		46		46		48	HO4
III 35-74 Points	0	9*	0	17*	2	17*	10	23	12	24	14	29	
		11*		21		21		28		30		36	HO2
		13*		25		25		34		36		43	HO3
		18*		34		34		46		48		58	HO4
IV 75+ Points	0	17*	2	17*	5	23	12	24	14	29	17	30	
		21		21		28		30		36		37	HO2
		25		25		34		36		43		45	HO3
		34		34		46		48		58		60	HO4

Intermediate

Broad punishment type discretion

Allowable punishments:

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

Straddle

Very broad punishment type discretion

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

Very limited punishment type discretion

Allowable punishment:

- ❑ Prison

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

Sentencing Grids Have Allowance for Disparity Built In

Most Grid Cells Offer Wide Range of Possible Punishments

Intermediate (62% of Cases)

Straddle (27% of Cases)

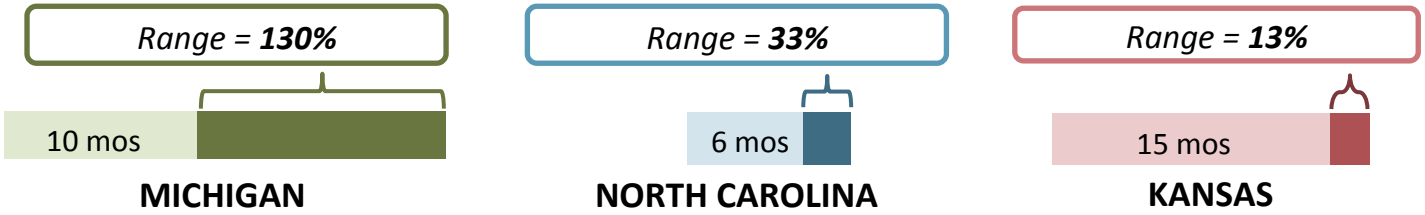
Prison (11% of Cases)

89% of cases may get anywhere from probation to jail to both

Straddle may also get prison… or probation or jail or jail + probation

Comparatively Wide Ranges for Minimum Prison Sentence Lengths

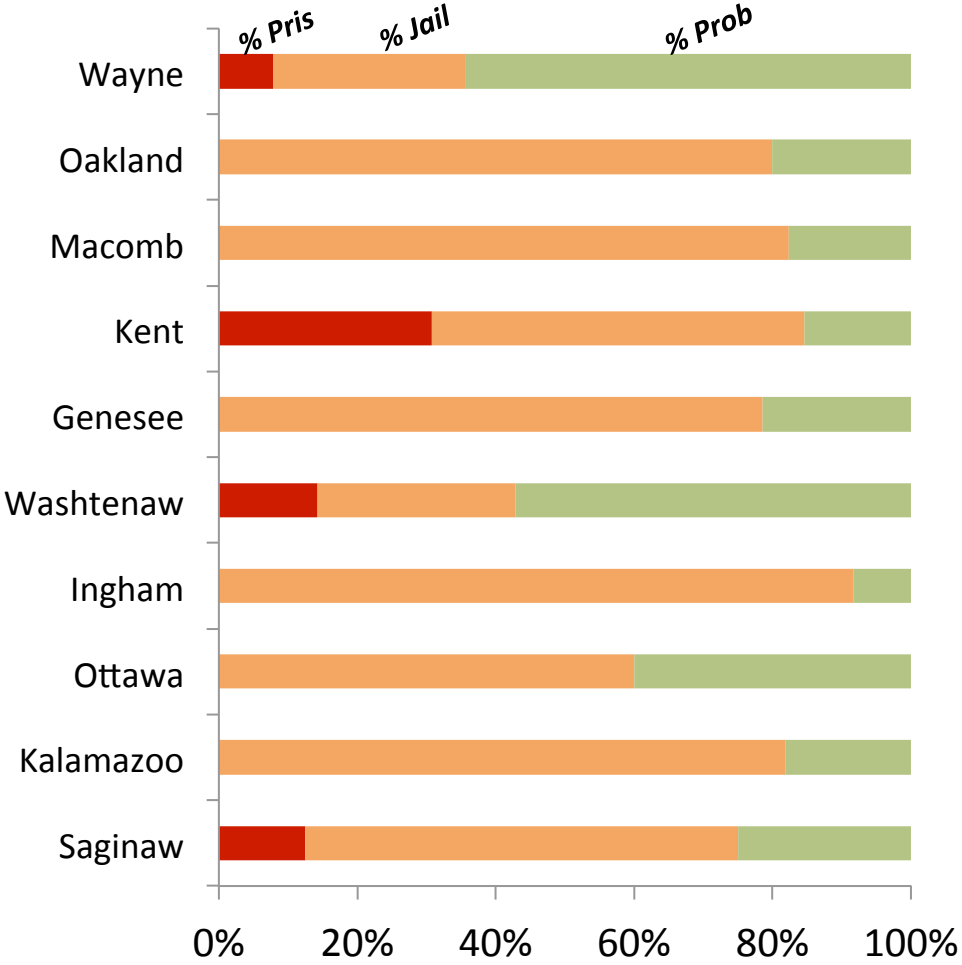
Non-habitual prison sentence ranges from most frequently used cell in each state's guidelines.



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..

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.

Actual Sentencing for Like Offenders Shows Very Different Dispositions

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

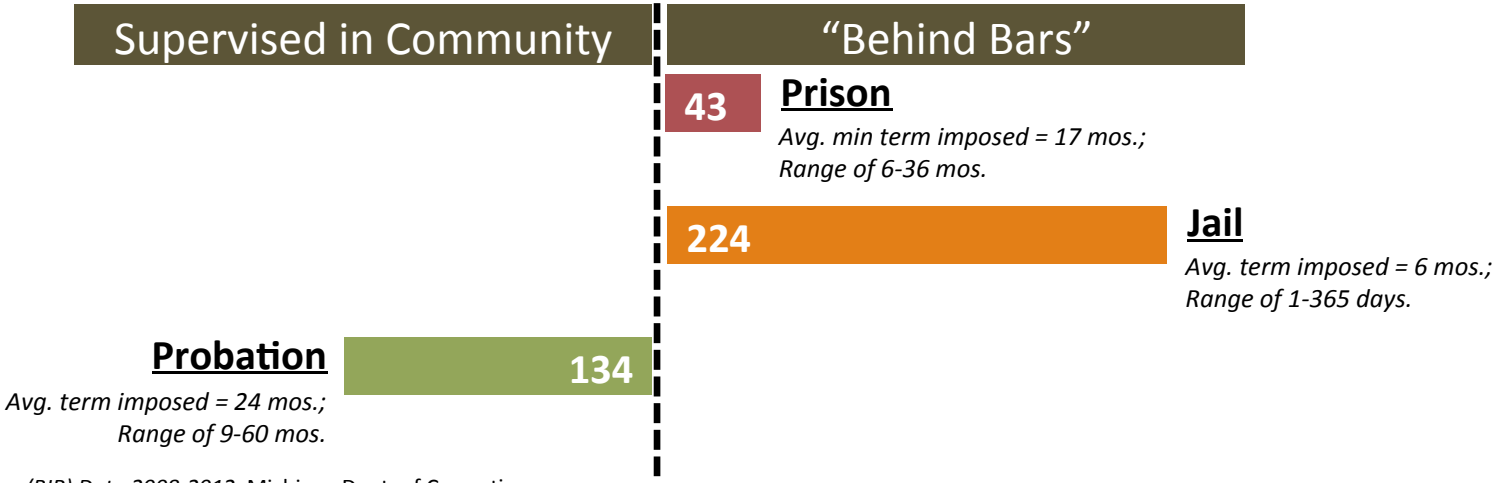
Total 2012 Sentences = 1,463

	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.

Very different sentencing outcomes…



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

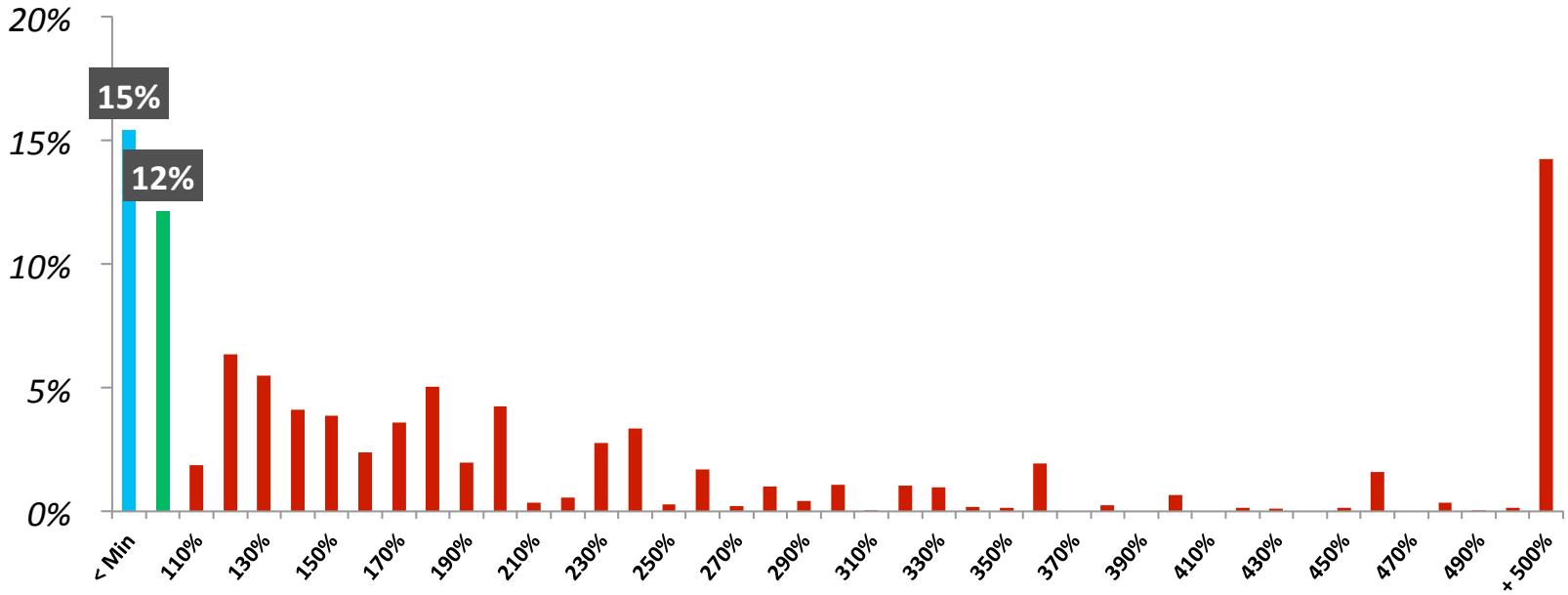
Actual Prison Sentences Demonstrate Use of Wide Discretion in Minimum Length Imposed

Michigan 2012 SGL Non-Habitual Sentences to Prison:

27% less than 110% of min-min

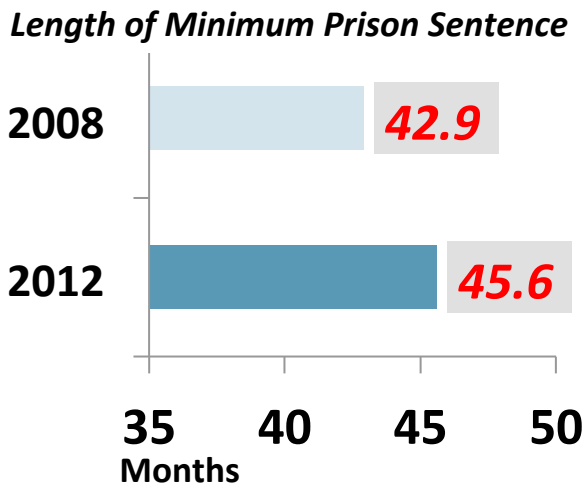
73% equal to or more than 110% of min-min

- **35% = 110-190% min-min**
- **15% = 200-290% min-min**
- **6% = 300-390% min-min**
- **17% = 400% + min-min**



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

Minimum Prison Sentence Lengths Are Increasing With the Discretion Permitted



Increase for both non-habitualized AND habitualized offenders since 2008.

Increases in sentence lengths across all grids and all cell types *(except Class B Straddle Cells)*.

2012 Prison Sentences

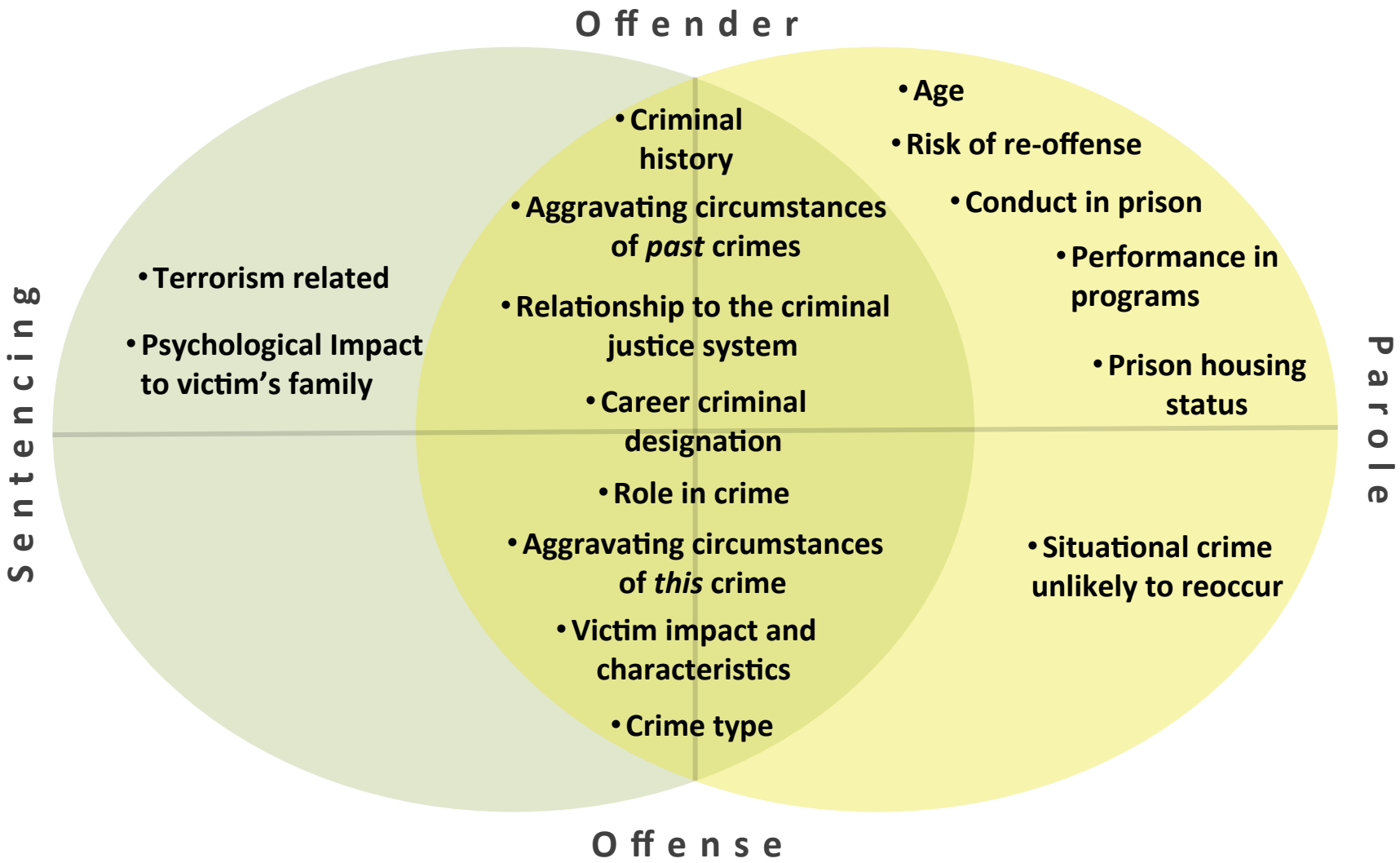
2.7 mos longer on average than in 2008

= additional 1,971 prisoners on a given day × $98 per day = **Additional $70 million each year**

Increase in minimum sentence lengths cannot be attributed to changes in scoring of cases on the guidelines: the cases aren't falling in more serious grids, or more serious offense levels, or in worse prior history levels.

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections; *Corrections Background Briefing*, December 2012, House Fiscal Agency.

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



Source: *Sentencing Guidelines Manual*, Michigan Judicial Institute, June 2012; *Parole Guidelines Policy,* Policy Directive Number 06.05.100, November 2008, Michigan Dept. of Corrections.

Presentation Overview

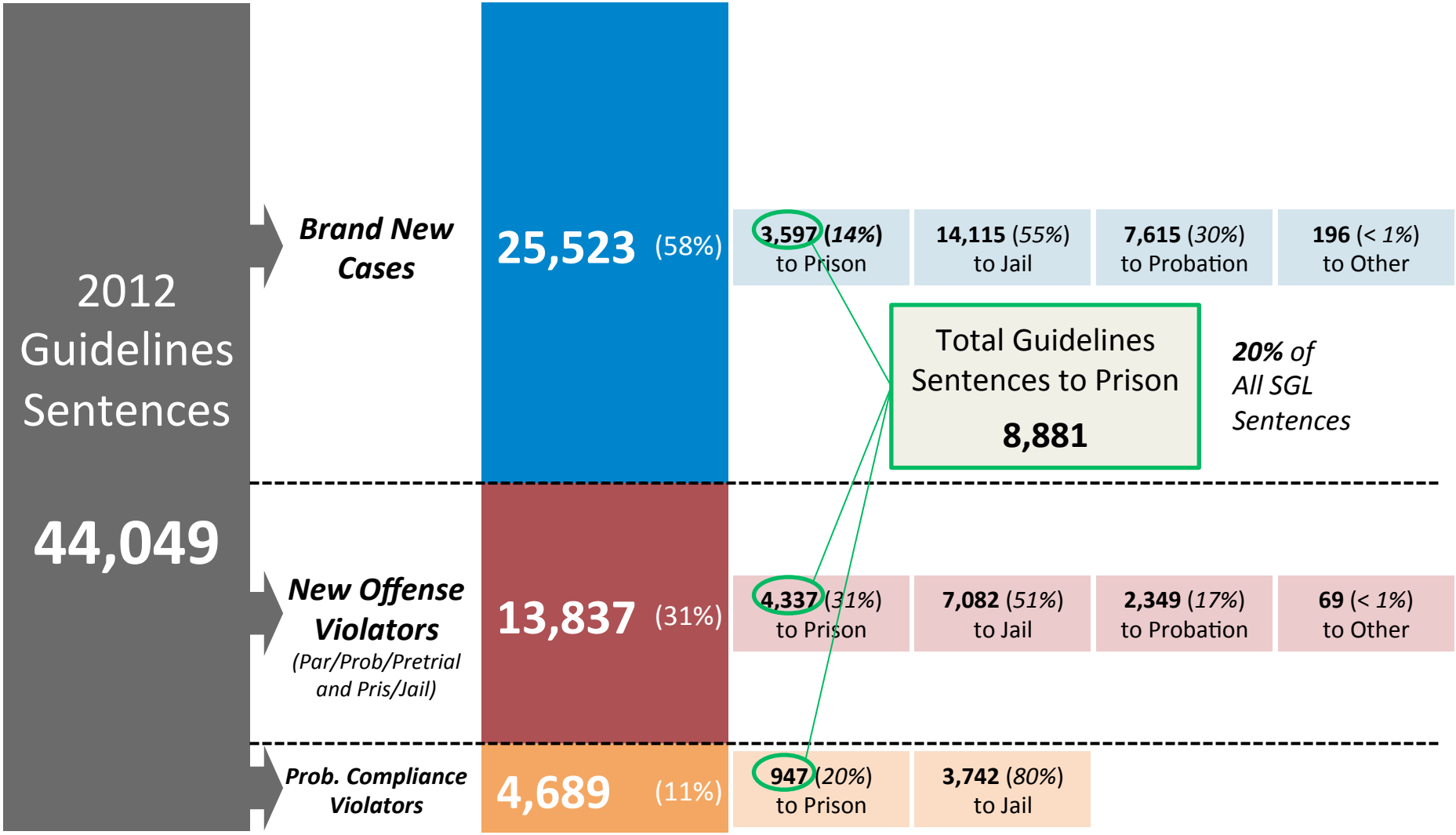
Recap of Sentencing Findings

Reducing Criminal Behavior

- Why it Matters
- Risk – Needs – Responsivity
- Fidelity and Results

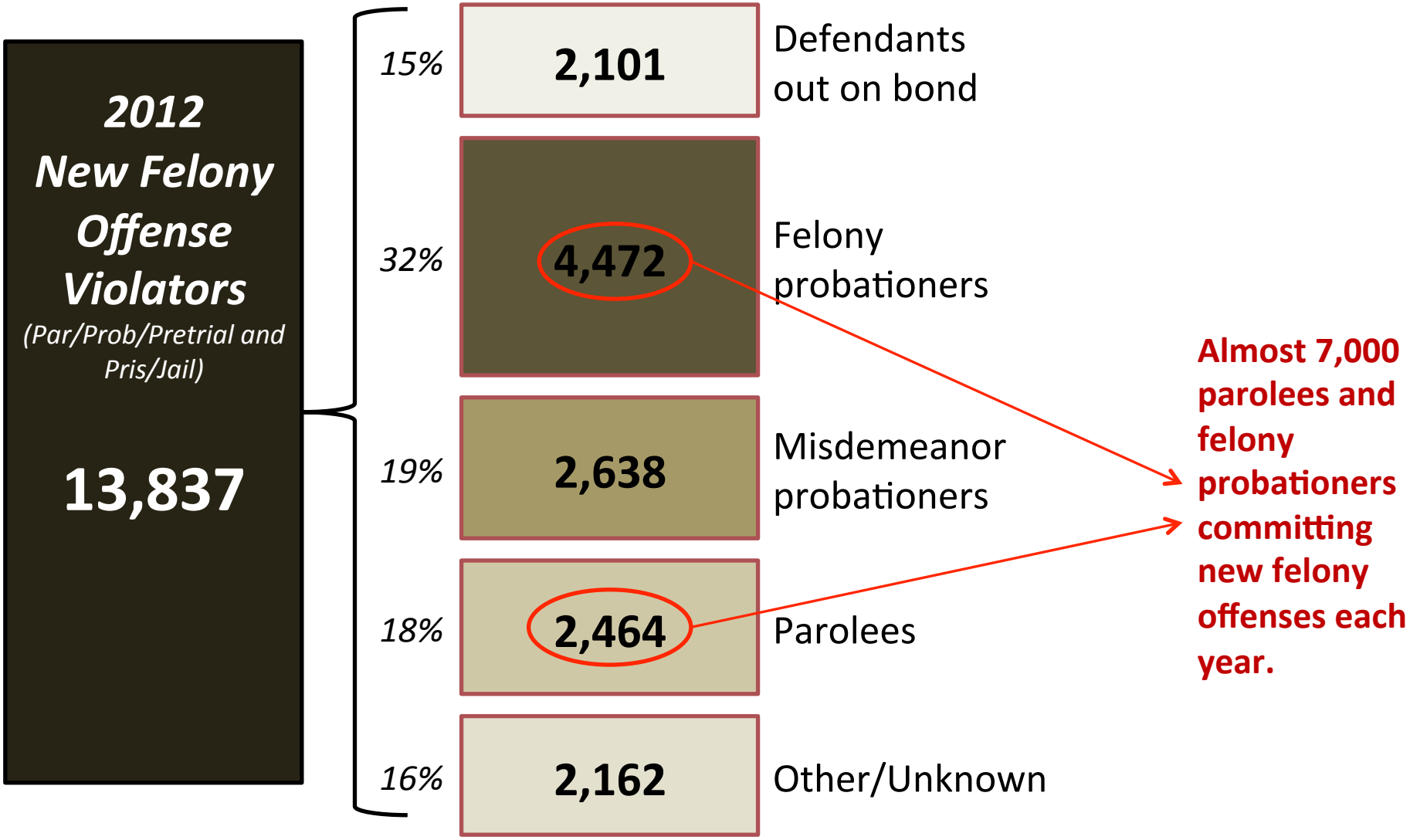
Holding Offenders Accountable

Breakdown of Sentences Shows "Brand New" Versus Violators



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

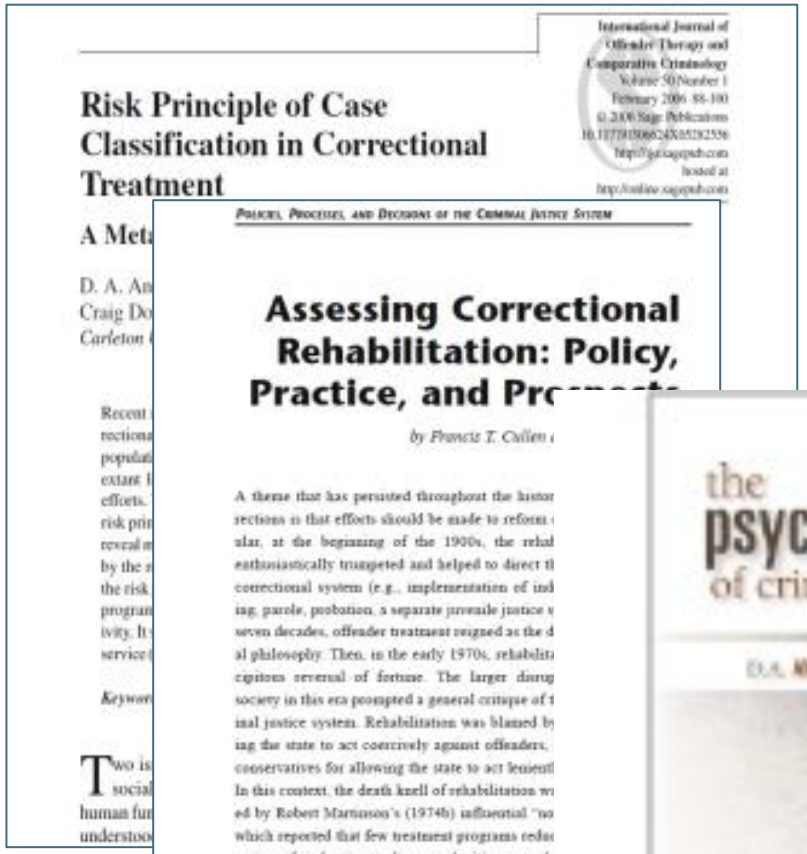
Why It Matters in Michigan: One-Third of New Felony Offense Violators Are Felony Probationers

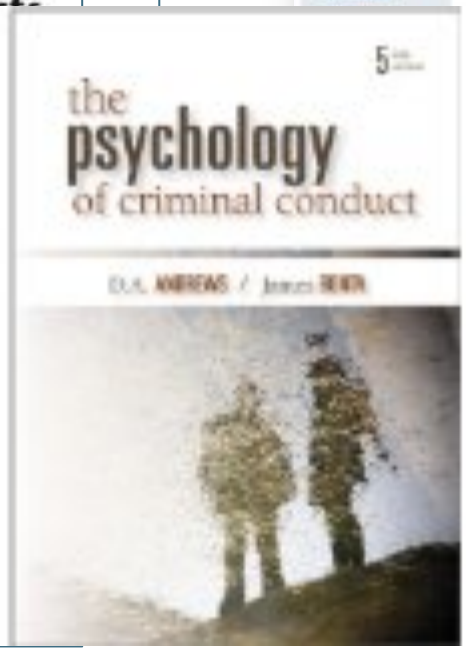


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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





"RNR" + Fidelity = Results

Proven Principles for Changing Criminal Behavior (RNR)

RISK → Assess risk of re-offense and **focus** supervision **on the highest-risk** offenders

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

RESPONSIVITY → Deliver in a way that maximizes **meaningful understanding and retention** by offender

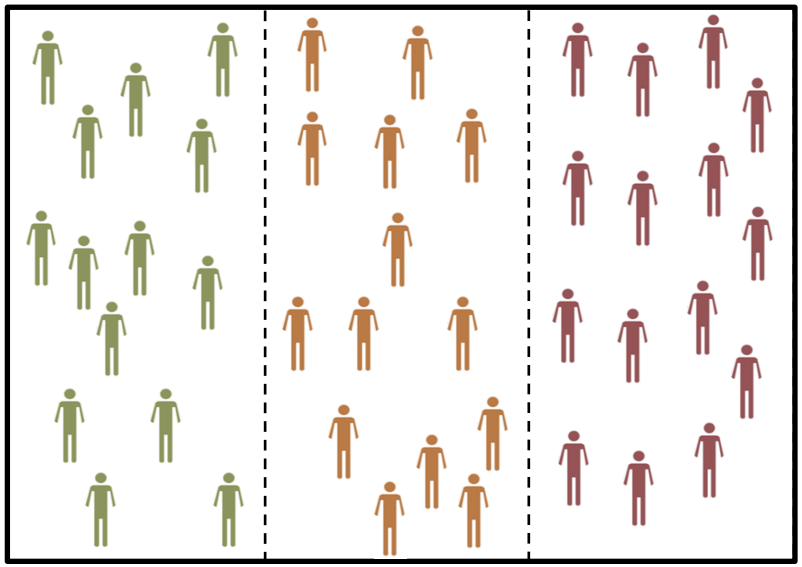
FIDELITY → Make sure evidence-based programs are **implemented as designed**

RESULTS → **Greater success changing criminal behavior and reducing re-offense rates**

Risk Is About Sorting and Tailoring Resources to Higher-Risk

RISK → Assess risk of re-offense and **focus** supervision **on the highest-risk** offenders

Assess for Risk Level…



Risk of Re-offending

LOW 10% re-arrested	MODERATE 35% re-arrested	HIGH 70% re-arrested

…and Focus Accordingly

	LOW 10% re-arrested	MODERATE 35% re-arrested	HIGH 70% re-arrested
Low Supervision/ Program Intensity			
Moderate Supervision/ Program Intensity			
High Supervision/ Program Intensity			

Risk Principle in Action: Keeping High and Low Risk Separate

HIGH RISK OFFENDERS

Intensive Services for a longer period of time

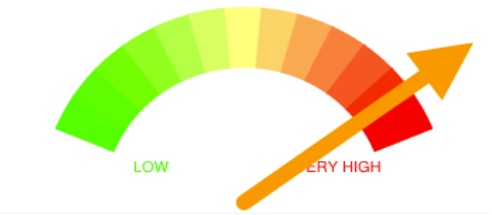
- Face to face contacts; home visits, school/ work visits
- More drug testing
- Different programs/ treatment groups/ services for high risk offenders

LOW RISK OFFENDERS

- Have fewer problems
- Do not require intensive interventions/supervision
- If they don't need it; don't give it to them

DO NOT MIX

Violating the Risk Principle Leads to Recidivism



HIGH RISK OFFENDERS

Under supervised & **under** treated

Example: High risk substance abuser given AA/NA treatment → increased risk of recidivating.

WHY?

- Does not provide enough **supervision/control** to reduce recidivism
- Does not provide enough **intensity of programming** to disrupt risk factors

LOW RISK OFFENDERS

Over supervised & **over** treated

At best, leads to no reductions in recidivism. At worst, causes harm and increases recidivism

WHY?

- Disrupts the very things that make the offender low risk
- Low risk offenders learn from high risk offenders

Focusing On the Core Antisocial Risk Factors Is Key

Major Risk Factors

- Antisocial attitudes
- Antisocial peers
- Antisocial personality
- Past and Current antisocial behavior
- Family criminality and problems
- Low levels of education/ employment achievement
- Lack of participation in pro-social leisure activities
- Substance abuse

✓ Risk factors may be static and/or dynamic. Static are fixed and cannot change, such as age at first arrest. Dynamic are fluid and can change, for example the friends one associates with.

Known as the Big Four

➢ In terms of reducing recidivism, the *most successful supervision and programming models* address these dynamic risk factors.

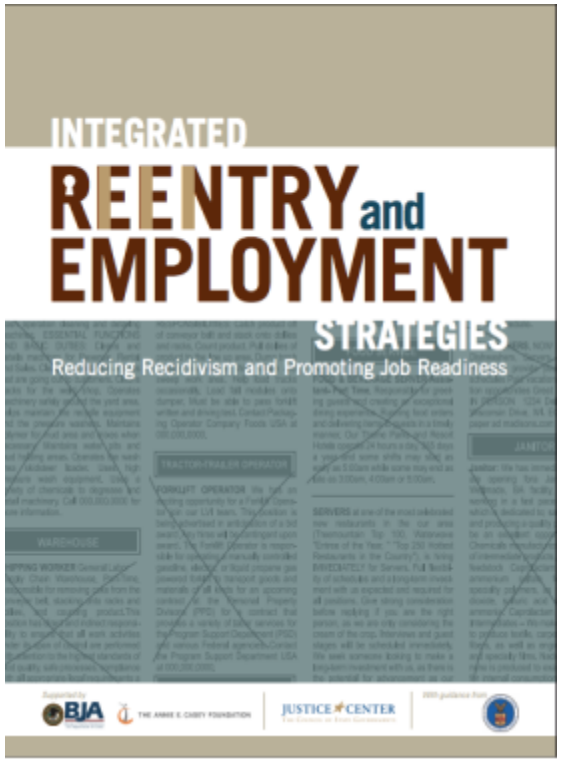
"Need" Refers to Which Risk Factors Will Be Targeted

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

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

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

Reducing Criminogenic Risk by addressing anti-social attitudes and behaviors

- Better attitude on the job
- Greater valuation of work
- Conflict resolution skills
- Problem solving skills

- Structured time
- Ability to support family
- Pro-social associates
- Job and income stability

Improving Employment Outcomes through workforce development strategies

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

http://csgjusticecenter.org/reentry/the-reentry-and-employment-project/

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 REPONSIVITY 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

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

- **Matched with correct client population**
- **Based on proven, effective principles**
- **Implemented as designed**
- **Staff trained in assessments and service delivery**
- **Performance tracked and measured against expectations**

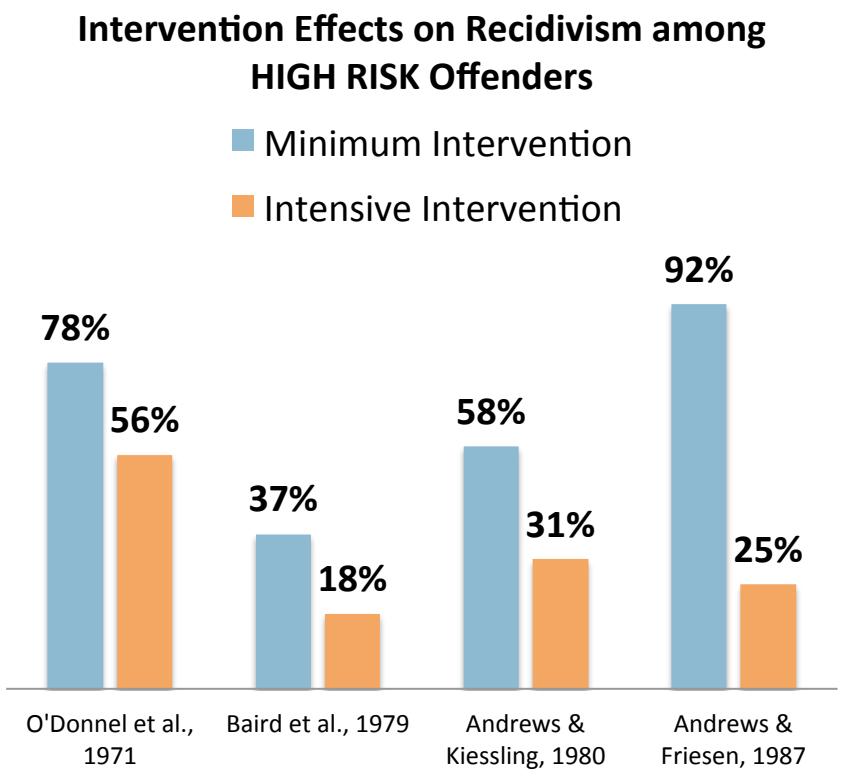
What works with offender programming?

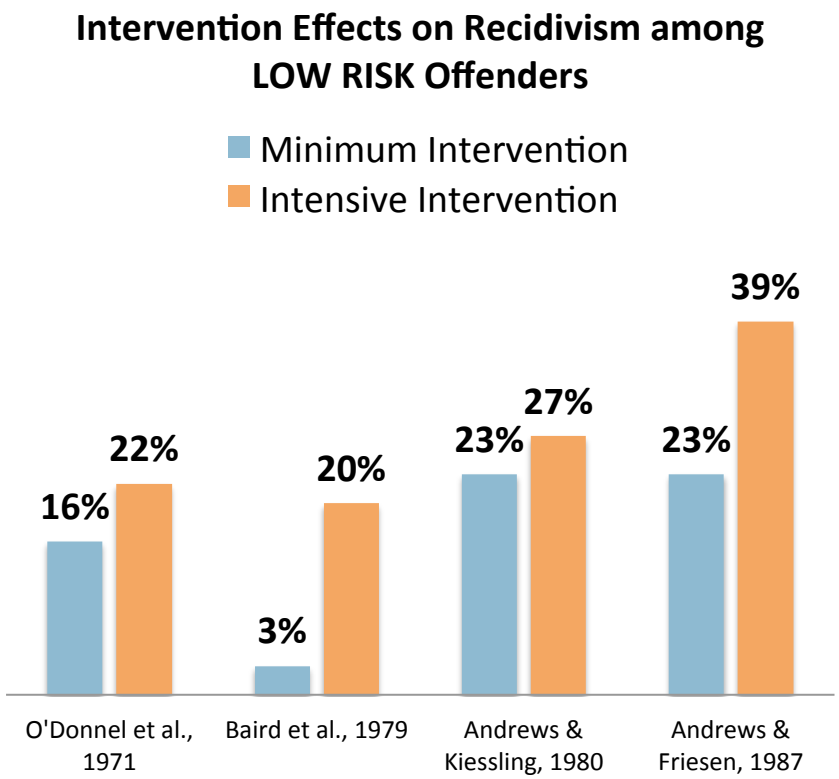
Who:
Programs that target high-risk individuals are more likely to have a significant impact on recidivism.

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.

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



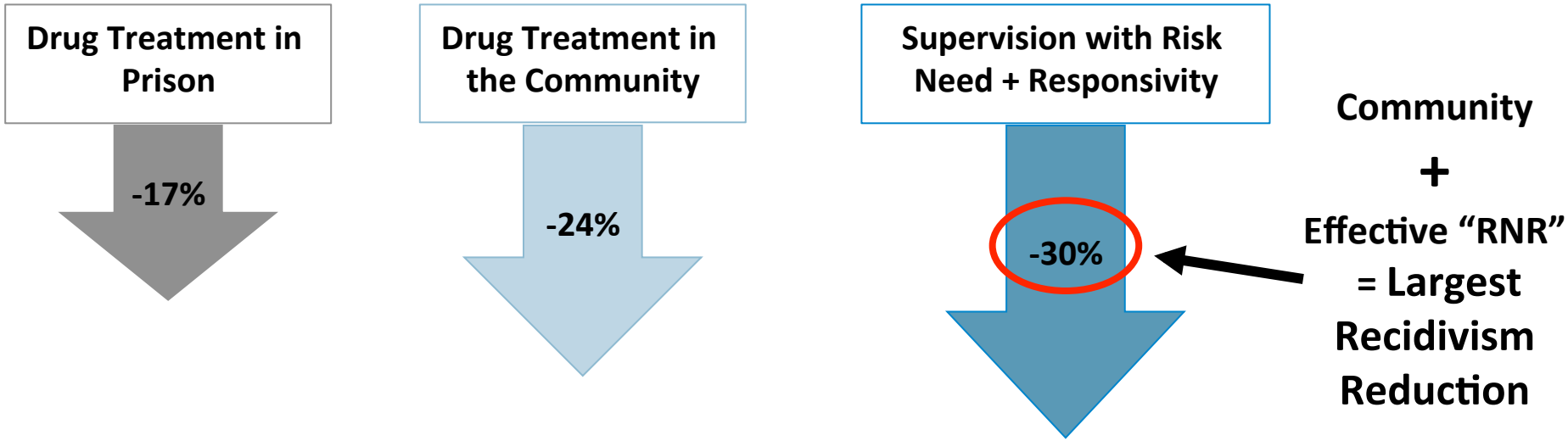


Intensive interventions led to <u>BETTER</u> recidivism outcomes for HIGH risk offenders, but….

…. intensive interventions led to <u>WORSE</u> recidivism outcomes for LOW risk offenders.

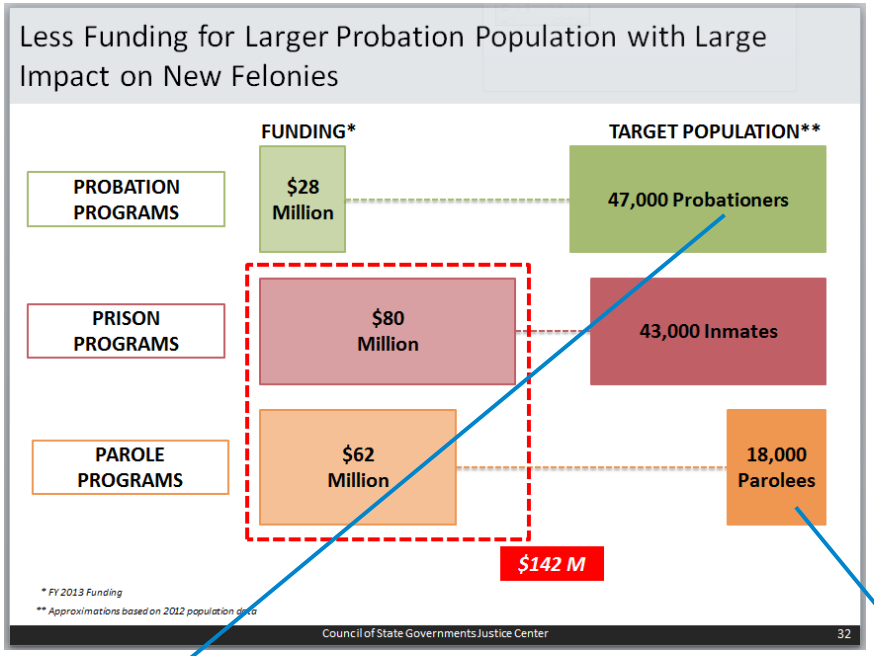
Community-Based Treatment and RNR Principles of Programming and Supervision Yield Best Outcomes

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.

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



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?

Presentation Overview

Recap of Sentencing Findings

Reducing Criminal Behavior

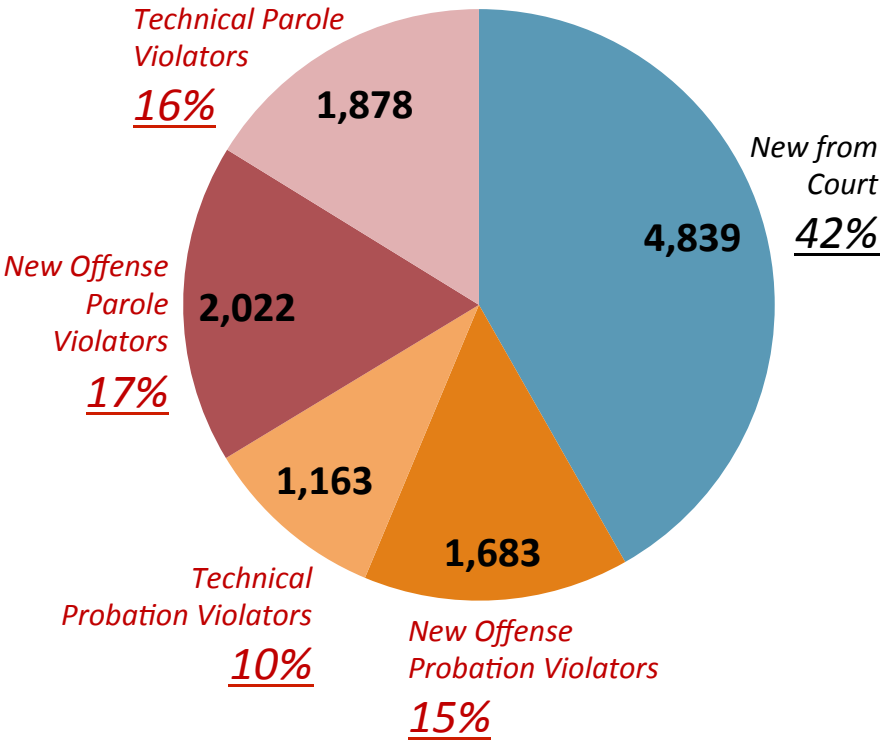
Holding Offenders Accountable

- Why It Matters
- Key Factors and Barriers
- Examples of Success

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

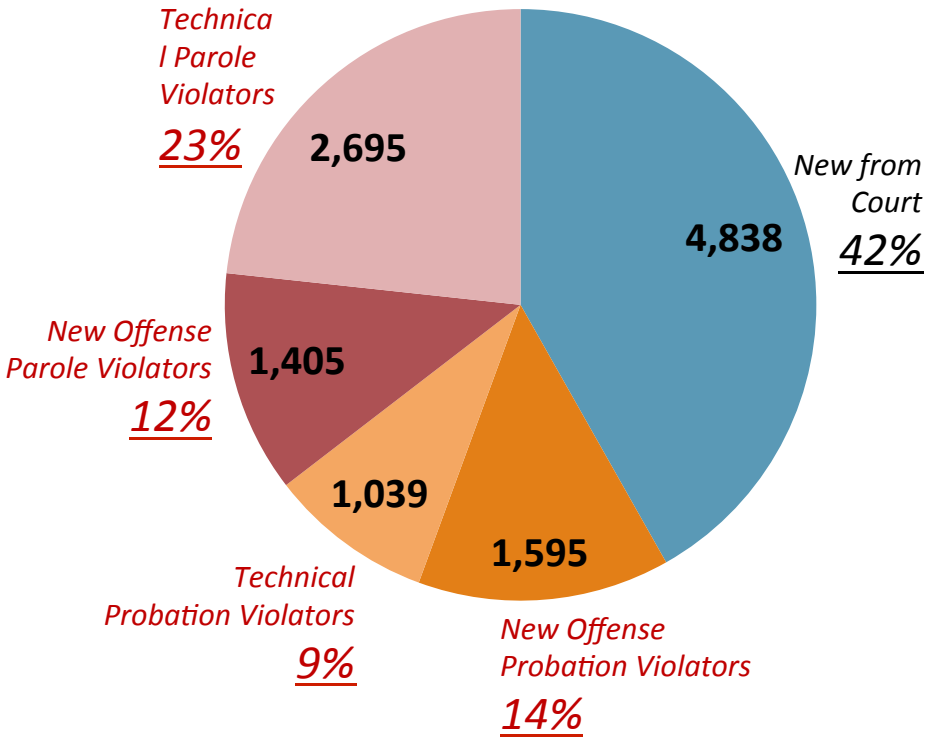
Composition of Prison Admissions: 2008 – 2012

2008 Prison Admissions



58% of Prison Admissions from Failing Supervision

2012 Prison Admissions



58% of Prison Admissions from Failing Supervision

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

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.

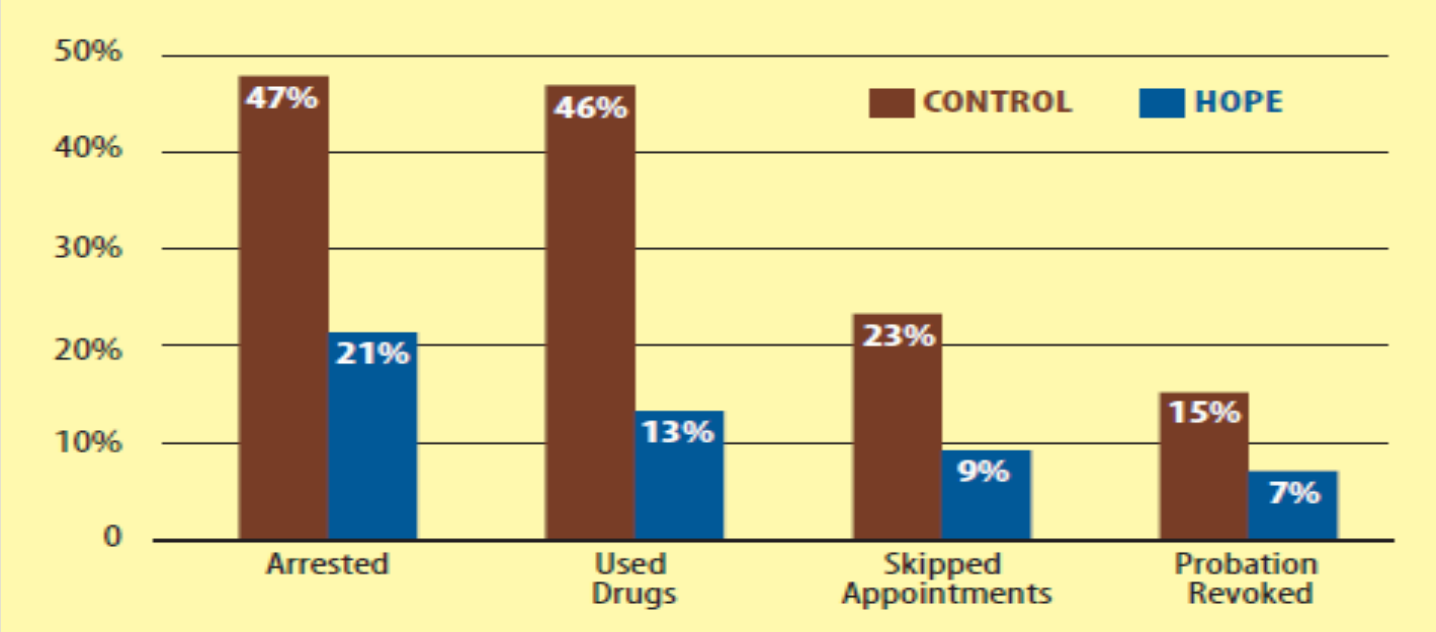
Key Factors Associated with Successful Models of Swift and Certain Sanctioning

- 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

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

Hawaii HOPE

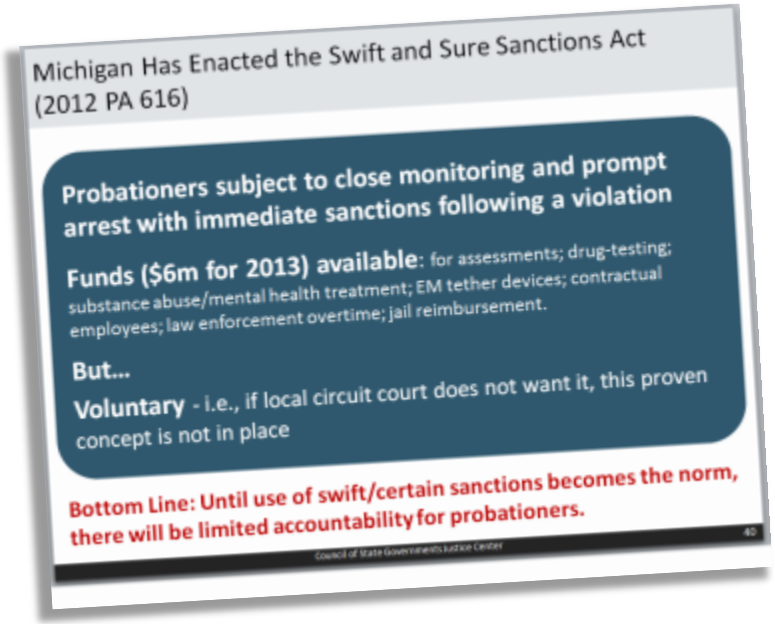
Intensive, random drug testing with swift, certain, and brief jail sanctions.



- 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.

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.

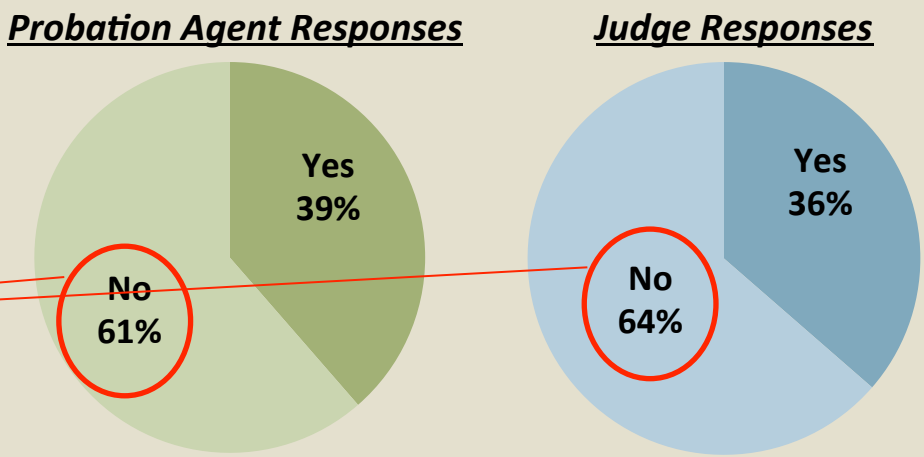
- ❑ **In other words, for the HOPE model to work, enough judges must adopt it for the desired systemic impacts.**

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.

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

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://webapps6.doc.state.nc.us/apps/asqExt/ASQ), North Carolina Dept. of Public Safety.

Summary

1

Discretion built into the system leads to major disparities in sentencing outcomes.

2

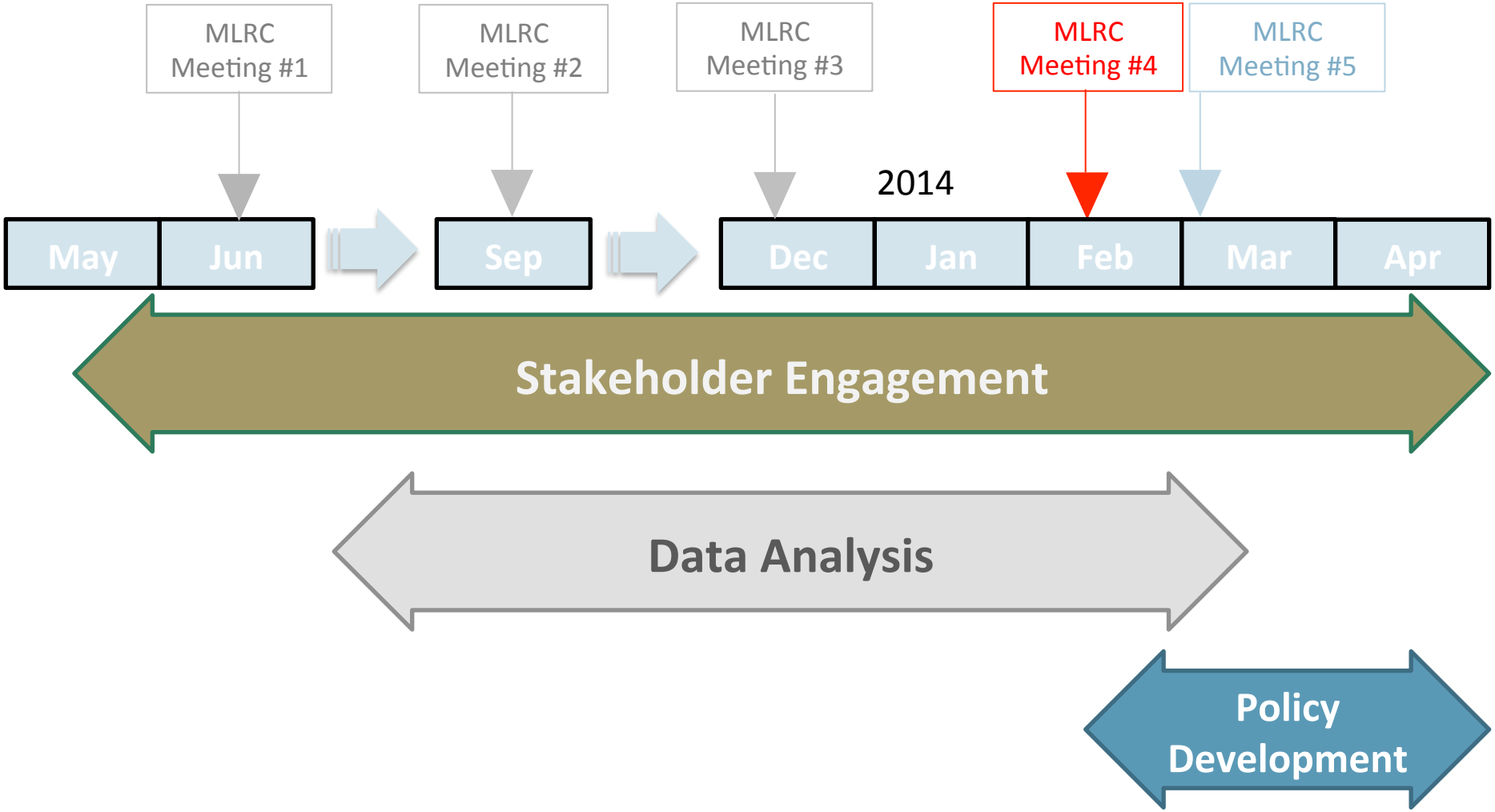
Key steps and principles for changing criminal behavior:

1. Assess for **RISK** of re-offense and focus on higher-risk offenders
2. Assess and target the specific **NEEDS** related to criminal behavior
3. Be **RESPONSIVE** to risk & needs factors in delivering the services to offenders
4. Ensure that evidence-based programs are implemented correctly and monitored for results

3

The principles of Swift & Certain resonate with Michigan practitioners and have been successfully implemented in a variety of ways in other states.

Project Timeline



Thank You

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