

# 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. 



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#### 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.



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## **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.

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## **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.

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## **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.

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## **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. 

## 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.

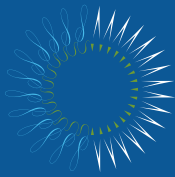
<sup>13</sup> See, e.g., Paula Smith, Claire Goggin & Paul Gendreau, Center for Criminal Justice Studies, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002)

<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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