



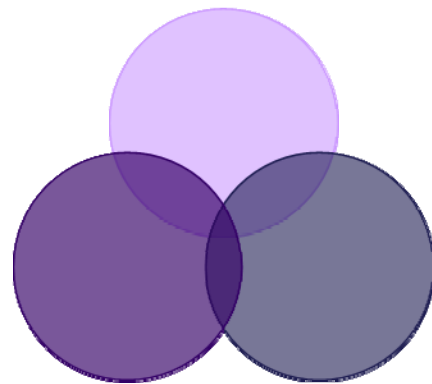
USING RESEARCH TO PROMOTE PUBLIC SAFETY:

A Prosecutor's Primer on Evidence-Based Practice

August 2008

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for the Crime and Justice Institute and
the National Institute of Corrections



This paper was developed as part of a set of papers focused on the role of system stakeholders in reducing offender recidivism through the use of evidence-based practices in corrections.



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Community Resources for Justice (CRJ) and its Crime and Justice Institute (CJI) and the National Institute of Corrections (NIC) are proud to present this series of eight whitepapers - known as the *Box Set* – that focus on the application of evidence-based principles for reducing recidivism. The papers are addressed to various criminal justice stakeholders and discuss how the implementation of evidence-based practices (EBP) and a focus on recidivism reduction affect areas of expertise in community corrections, pretrial services, judiciary, prosecution, defense, jail, prison, and treatment.

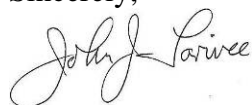
This initiative stems from a cooperative agreement established in 2002 between CRJ and NIC entitled *Implementing Effective Correctional Management of Offenders in the Community*. The goal of this project is reduced recidivism through systemic integration of EBP in adult community corrections. The project’s integrated model of implementation focuses equally on EBP, organizational development, and collaboration. It provides a framework for incorporating data-driven, evidence-based policies and practices into corrections organizations and systems. Previously piloted in Maine and Illinois, the integrated model is currently being implemented in Maricopa County, Arizona and Orange County, California. More information about the project, as well as the Box Set papers, is available on the web sites of CJI (www.cjinstitute.org) and NIC (www.nicic.org).

CJI is a division of Community Resources for Justice (CRJ), a nonpartisan nonprofit agency that aims to make criminal justice systems more efficient and cost effective in order to promote accountability for achieving better outcomes. Through consulting, research, and policy analysis services, CJI strives to improve public safety throughout the country. In particular, CJI is a national leader in developing results-oriented strategies and in empowering agencies and communities to implement successful systemic change. Its parent corporation, Community Resources for Justice, has been providing direct care and supportive services to society’s most challenged citizens for over 130 years. CRJ’s direct service programs range from residential homes for developmentally disabled adults to programs serving troubled youth and men and women returning home from prison. More information on CRJ’s programs can be found at www.crjustice.org.

NIC Correctional Program Specialist Dot Faust and CJI Executive Director Elyse Clawson originally envisioned the creation of a set of papers for each of the eight criminal justice stakeholders most affected by the implementation of EBP. This vision was carried out through the hard work and dedication of each of the authors. In addition, our formal reviewers - all of whom contributed a great amount of time and energy to ensure the success of this product - deserve recognition and great appreciation. We would also like to express our gratitude to NIC for funding this project and to George Keiser, Director of the Community Corrections Division of NIC, for his support.

It is our sincere belief and hope that the Box Set will be an important tool for agencies making the transition to EBP.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Larivee".

John J. Larivee
Chief Executive Officer
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A handwritten signature in black ink, appearing to read "Elyse Clawson".

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EXECUTIVE SUMMARY

As of 2008, more than one in every 100 adults in the United States is behind bars. Since ninety-five percent of the incarcerated population is eventually released, and of those approximately two-thirds commit new crimes within three years, many are rethinking current criminal justice policies and practices.

In recent years, as policy makers and practitioners have faced increasing prison populations and skyrocketing corrections budgets with marginal investment returns, criminal justice researchers have been identifying intervention strategies, that when applied to a variety of offender populations, reliably produce sustained reductions in recidivism. Such strategies have been referred to as “evidence-based practices” (EBP) and require application of specific principles in order to determine the most effective sanction, supervision, and services for each individual offender.

EBP works to protect public safety through recidivism reduction, hold offenders accountable through development of appropriate sanctions, and control corrections costs through strategic use of limited resources and prevention of new crimes. Application of the EBP principles help criminal justice practitioners determine who to focus limited resources on, what sanctions and services to impose, how to implement appropriate interventions, when to implement them, and why they work.

Accurately assessing an offenders risk to reoffend, using a validated assessment tool, is the first step in determining appropriate sanction and service options. Criminal behavior can be predicted based on static (unchangeable) factors such as age and criminal history, as well as dynamic (changeable) factors such as substance abuse and antisocial attitudes. With proper assessment of these factors, the likelihood of an offender committing a new offense can be effectively predicted.

Limited correctional dollars should be reserved for the moderate to high risk offenders. Low level offenders are not likely to commit new crimes and should be diverted from prosecution or given minimal conditions of sanction or supervision. Extremely high risk offenders are so enmeshed in a criminal subculture that there is little hope for them of rehabilitation. It is the moderate to high risk offenders that should be targeted for intervention.

Once the risk level is identified, the offenders’ needs must be identified and treated. The attitudes and behaviors most often associated with the likelihood

of committing crime include: low self-control, anti-social personality, anti-social values, criminal peers, substance abuse, and dysfunctional family. Cognitive-behavioral interventions must be carefully crafted to meet the unique needs of the offender in order to sustain long-term positive behavioral change.

There is a growing national movement to reform our current correctional practice, to reduce recidivism and protect public safety through the use of evidence-based practice. Many of the EBP principles are inherently relevant to the work of a prosecutor. Diversion determinations, charging decisions, plea negotiations, sentencing arguments, and revocation requests are critical junctures in the processing of a criminal case, requiring discretionary decision-making. Assessment tools can provide objective data for prosecutors to consider when making such determinations.

Prosecutors can be powerful figures in state and local criminal justice agencies and community circles, and are often at the forefront of innovative initiatives such as community prosecution, diversion programs, and problem-solving courts. Prosecutorial leadership is required for the implementation of evidence-based practices throughout the criminal process. Community corrections and institutions can do what they can with the population they serve, but effective practice requires early assessment to appropriately measure an offender's risk to reoffend and programming required to target criminogenic needs. A collaborative approach is needed by all stakeholders, working in concert, to advance the principles proven to better outcomes.

INTRODUCTION

A chief prosecuting attorney, whether elected or appointed, undertakes a tremendous responsibility when accepting the oath of office; the duty to seek justice. Justice is always subjective, often elusive, and in a criminal case based on the individual discretion of a collective few. The prosecutorial pursuit of public safety frequently involves intrusion of privacy, seizure of property, and restriction of liberty requiring legal, ethical, and moral analysis. The discretionary power to intervene in the most fundamental constitutional rights of another human being must be balanced by a fair and measured sense of justice. These are difficult decisions, primarily because the result often has far-reaching and long lasting direct and collateral consequences on offenders, victims, and communities.

Earlier this year the Pew Center for Public Safety published a report entitled *One in 100: Behind Bars in America 2008*, highlighting the drastic reality that one-percent of all American adults are currently serving time behind bars.¹ And there is no indication that such numbers are expected to go down, absent a significant shift in corrections policy. The national prison population has almost tripled in the past twenty years. As of early 2008, the total adult inmate population housed in federal and state prisons, and local jails, exceeded 2.3 million people.² The consequences of these numbers are staggering. Not only are the financial costs crippling state and local jurisdictions but the social costs to individuals, families, and communities throughout the United States are immeasurable.

Interestingly, in the fifty years between 1925 and 1975, through decades of tumultuous social and economic change in the U.S., the prison population remained fairly stagnant.³ That changed as a result of social policy in the late 1970's through the mid 1980's, when a retributive, "tough on crime" approach took hold. The war on drugs was declared, longer sentences were imposed, more mandatory minimum sentences were enacted, "zero-tolerance" became common nomenclature, and prison construction exploded. Currently, jurisdictions throughout the country are reconsidering this "tough on crime" approach. Since ninety-five percent of the incarcerated population is eventually released, and of those approximately two-thirds commit new

¹ The Pew Center on the States, *One in 100: Behind Bars in America 2008* (2008).

² *Id.*

³ M. Tonry and J. Petersilia (Eds.), *Prisons*. Chicago: University of Chicago Press, 1999.

crimes within three years⁴, current criminal justice policies and practices are simply not working.

In the past few years, much research has been done in the criminal justice arena. In the 1970's researchers concluded that nothing worked to reduce recidivism; today the field is inundated with rigorous meta analysis studies concluding that much does work to change offender behavior and reduce recidivism if evidence is used to support practice and policy. Evidence-based practice (EBP) is a term used throughout all human services fields to describe interventions that emphasize measurable outcomes. EBP interventions within criminal justice are considered effective when they reduce offender risk and subsequent recidivism, thereby contributing to long term public safety.⁵

The Crime and Justice Institute and the National Institute of Corrections have developed a three-pronged integrated model for implementing evidence-based practice in criminal justice systems, encompassing: 1) evidence-based intervention principles, 2) organizational change, and 3) stakeholder collaboration. While each of these components is necessary and equally important to the implementation of EBP in complex systems, the discussion in this paper will focus primarily on those intervention principles most likely to be encountered by the prosecution.⁶

This paper will examine prosecutorial duty, innovative research in the field of corrections, use of evidence-based principles in prosecutorial practice, and the need for systemic change.

⁴ T. Hughes & J.W. Doris, Bureau of Justice Statistics. Inmates returning to the community after serving time in prison. Accessed on 08.28.08 at www.ojp.usdoj.gov/bjs.

⁵ Crime and Justice Institute and National Institute of Corrections, *Implementing Effective Correctional Management of Offenders in the Community: An Integrated Model* (2007).

⁶ More information on the *integrated model*, cited at *supra* n.5, is available at www.cj institute.org.

PROSECUTORIAL DUTY

At the present time, more than one in every 100 adults in the United States is behind bars, totaling 2.3 million people, outnumbering all other countries in the world, including China and Russia⁷. For some members of our society, this ratio drops significantly; one in every nine African-American men between the ages of twenty to thirty-four is incarcerated.⁸ Upwards of 650,000 individuals are released from state prisons each year, more than half will be re-incarcerated, either for committing a new crime or violating conditions of their release.⁹

“Our resources are misspent, our punishments too severe, our sentences too long.” This, United States Supreme Court Justice Anthony Kennedy concluded, was the bottom line in reference to criminal punishment in the United States.¹⁰ In 2003, Justice Kennedy asserted that the failure of the legal profession to pay sufficient attention to criminal punishment was an abdication of responsibility. He urged *all* members of the Bar, including “civil practitioners” and “transactional lawyers” with all of their “energies and diverse talents” to study and engage in public discussion regarding the failure of corrections¹¹.

According to the standards of the American Bar Association, the “duty of the prosecutor is to seek justice, not merely to convict”.

State and local prosecutors are the gatekeepers of the criminal justice system. It is within their sole discretion, or the discretion conferred upon their assistants, that the vast majority of all criminal complaints are filed. There are 2,344 prosecutors’ offices nationwide,¹² responsible for handling 94% of all criminal cases in the United States.¹³ According to the standards of the American Bar Association, the “duty of the prosecutor is to seek justice, not merely to convict”. “The prosecutor shall seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action”.¹⁴

⁷ Pew, *supra* at n. 1.

⁸ *Id.*

⁹ Washington State Institute for Public Policy, *Evidence Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (2006).

¹⁰ American Bar Association, *Justice Kennedy Commission* (2004).

¹¹ *Id.*

¹² Steven W. Perry, *Prosecutors in State Courts, 2005*, U.S. Department of Justice, Bureau of Justice Statistics (2006).

¹³ Matthew R. Durose & Patrick A. Langan, Bureau of Justice Statistics, NCJ 208910, *State Court Sentencing of Convicted Felons, 2002*, Tbl.1.1 (2005).

¹⁴ The American Bar Association, Criminal Justice Section Standards, General Standards, Standard 3-1.2 (c) and (d).

Inadequacies and injustices occur everyday in our criminal justice system. Some individuals do not deserve the heavy handed punishments imposed; others do not receive punishment enough. In 2004, the Kennedy Commission wrote, “[i]t is not even clear that the increased use of incarceration has enhanced public safety, although lawmakers for twenty years have acted in reliance on the claimed crime-preventive effect of harsh and certain punishments.”¹⁵ The Kennedy Commission recommended that criminal sentencing be based on the following principles:

- 1) Lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community and who commit the most serious offenses.
- 2) Alternatives to incarceration should be provided when offenders pose minimal risk to the community and appear likely to benefit from rehabilitation efforts.¹⁶

In 2007, building on the principles enunciated by the Kennedy Commission, the ABA Commission on Effective Criminal Sanctions recommended:

- 1) [E]ncouraging prosecutors and other criminal justice professionals to take a leading role in developing programs to enable offenders to avoid incarceration and to be placed under community supervision. . . and that these programs . . . should be open to all but the most serious offenders.¹⁷

The questions arise, how do prosecutors and other system stakeholders know who poses the greatest dangers or minimal risks? How does one know which offender would benefit from rehabilitation efforts and what such efforts should be? Should prosecutors take a lead role in developing programs to help offenders avoid incarceration and, if so, where do they turn for information on building effective, outcome-based models? The research on evidence-based practice in criminal justice and corrections may help answer some of these questions and provide prosecutors with actuarial tools to assist in discretionary decision-making.

Prosecutors must not only be tough on crime, they must be smart about crime. If our criminal justice goals are protection of public safety, prevention of

¹⁵ Justice Kennedy Commission, *supra* n. 10.

¹⁶ *Id.*

¹⁷ American Bar Association, Commission on Effective Criminal Sanctions, Report to the House of Delegates [on alternatives to incarceration and conviction] (2007).

crime and crime victims, and reduction of repeat offenders; we must advance proven strategies to accomplish these goals. Investing in offender rehabilitation is not a soft on crime stance; it is a research-based strategy proven to reduce crime if implemented effectively with appropriate offenders. Research has provided the criminal justice field with study after study on evidence-based practices which are effective in reducing recidivism. Criminal justice practitioners cannot in good faith ignore such findings.

INNOVATIVE RESEARCH

In recent years, as policy makers and practitioners have faced increasing prison populations and skyrocketing corrections budgets with marginal investment returns, criminal justice researchers have been identifying intervention strategies, that when applied to a variety of offender populations, reliably produce sustained reductions in recidivism. Such strategies have been referred to as “evidence-based practices” (EBP) and require application of specific principles in order to determine the most effective sanction, supervision, and services for each individual offender.

EBP works to protect public safety through recidivism reduction, hold offenders accountable through development of appropriate sanctions, and control corrections costs through strategic use of limited resources and prevention of new crimes. Application of the EBP principles help criminal justice practitioners determine who to focus limited resources on, what sanctions and services to impose, how to implement appropriate interventions, when to implement them, and why they work. The following information summarizes the eight core principles of EBP that must be implemented and adhered to in order to realize the greatest reduction of recidivism.

It should be noted that many of these principles apply most directly to criminal justice stakeholders other than the prosecution, primarily those supervising offenders. However, because systemic implementation of EBP through expansive stakeholder collaboration is required to achieve the best possible outcomes, the prosecution is encouraged to be familiar with these principles.

1. Assess Offender Risk/Need.¹⁸ Sound assessment that identifies offenders’ risk factors is the cornerstone of effective supervision. If risks and needs are not properly identified and prioritized, appropriate interventions and services cannot be delivered.

Accurately assessing an offenders risk to reoffend, using a validated assessment tool and administered by trained staff, is the first step in

¹⁸ D.A. Andrews, J. Bonta, & R. Hoge (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior* 17:19-52; D. A. Andrews & J. Bonta (1998). *The psychology of criminal conduct*. Cincinnati: Anderson Publishing Co.; P. Gendreau & T. Little, et al. (1996). A meta-analysis of the predictors of adult offender; P. Kropp S. Hart, C. Webster, D. Eaves (1995). Manual for the Spousal Assault Risk Assessment Guide; Clements, C.B. (1996). Offender Classification, Two Decades of Progress. *Criminal Justice and Behavior* 23: 121-143.

determining appropriate sanction and service options. Criminal behavior can be predicted based on static (unchangeable) factors such as age and criminal history, as well as dynamic (changeable) factors such as substance abuse and antisocial attitudes. With proper assessment of these factors, the likelihood of an offender committing a new offense can be effectively predicted, with as much as 85% accuracy according to one researcher.

Comprehensive risk assessment is necessary because the seriousness of one's crime does not always correlate with the risk to reoffend.

Comprehensive risk assessment is necessary because the seriousness of one's crime does not always correlate with the risk to reoffend. Limited correctional dollars should be reserved for the moderate to high risk offenders. Low level offenders are not likely to commit new crimes and should be diverted from prosecution or given minimal conditions of sanction or supervision. Extremely high risk offenders are so enmeshed in a criminal subculture that there is little hope for them of rehabilitation. If not incarcerated they should be intensely monitored, but limited rehabilitative programming dollars should not be wasted on this type of offender.

As research continues to inform practice, we now know that intensive correctional interventions for low level offenders can actually increase their rate of recidivism. Imposing restrictive programming can diminish pro-social factors of low risk offenders by disrupting employment, family ties, and community interactions; further, if regularly exposed to high level offenders the interactions can actually encourage anti-social thinking and behavior in otherwise pro-social individuals. Moderate to high level offenders are those likely to reoffend if appropriate interventions are not imposed but are not such an extreme risk that interventions are futile. This is the category of individuals that correctional programming should focus on.

2. Enhance Offender Motivation to Change.¹⁹ Using motivational interviewing techniques, as opposed to direct persuasion or nondirective counseling, can help build intrinsic motivation in offenders. This is instrumental in initiating and maintaining behavior change.

Behavioral change is not an easy undertaking; for lasting change to occur self-motivation is required. Helping an offender find his or her own internal

¹⁹ W. Miller & S. Rollnick (2002). *Motivational Interviewing: Preparing people for change*. New York, NY: Guilford Press; Miller, W.R. and K.A. Mount (2001). A small study of training in Motivational Interviewing: Does one workshop change clinician and client behavior? Albuquerque, NM; R. Harper & S. Hardy (2000). An evaluation of motivational interviewing as a method of intervention with clients in a probation setting. *British Journal of Social Work* 30:393-400; Ryan, R.M. and E.L. Deci (2000). Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being. *American Psychologist* 55:68-78.

strength can be accomplished through positive interpersonal interactions and use of motivational interviewing techniques. Rather than order or direct an offender to change, which can cause resistance or ambivalence, motivational interviewing uses strategies such as reflective listening, open ended questions, elicits self-motivating statements, affirms positive behaviors, and models pro-social behavior, among other things. Change must occur from within if it is to be sustained.

3. Target Higher Risk Offenders and Appropriate Interventions. This principle incorporates five related subordinate principles—the principles of risk, criminogenic need, responsivity, dosage, and treatment. In general, the principle states that supervision and treatment should target higher-risk offenders, focus on needs related to criminal behavior, be responsive to the offender’s unique issues, be delivered in the correct dosage, and be specified in the court’s sentence.

Research on *risk*²⁰ to reoffend and risk reduction strategies indicates that resources directed toward lower-risk offenders produce little if any positive effect on recidivism while shifting resources to higher-risk offenders promotes harm reduction and public safety, since these offenders have greater need for pro-social supports, thinking, and skill building. Once offender risk level has been targeted, criminogenic needs must be identified and treated.

Criminogenic *needs*²¹, also referred to as dynamic risk factors, are attitudes and behaviors most often associated with the likelihood of committing crime.

²⁰ P. Gendreau, P. & C. Goggin (1997). Correctional Treatment: Accomplishments and Realities. *Correctional Counseling and Rehabilitation*. P.V. Voorhis, M. Braswell and D. Lester. Cincinnati, Anderson; D. A. Andrews & J. Bonta (1998). *The psychology of criminal conduct*. Cincinnati: Anderson Publishing Co.; A.T. Harland. (1996). *Choosing Correctional Options that Work: Defining the Demand and Evaluating the Supply*. Thousand Oaks, CA: Sage; L.W. Sherman, D.C. Gottfredson, D.L. Mackenzie, J. Eck, P. Reuter, & S.D. Bushway (1998). Preventing Crime: What works, what doesn’t, what’s promising. National Institute of Justice; J. McGuire (2001). What works in correctional intervention: Evidence and practical implications. Pp. 25-43 in *Offender rehabilitation in practice: Implementing and evaluating effective programs.*, edited by D.F. Gary Bernfeld, Alan Leschied. New York, NY: John Wiley & Sons, LTD; J. McGuire (2002). Evidence-based programming today. Paper presented International Community Corrections Association conference, Boston, MA, November, 2002.

²¹ D.A. Andrews & J. Bonta (1998). *The psychology of criminal conduct*. Cincinnati: Anderson Publishing Co.; D.S. Lipton, D. Thornton, et al. (2000). Program accreditation and correctional treatment. *Substance Use & Misuse* 35(12-14): 1705-1734; D. Elliott, N.J. Hatot, et al. (2001). Youth violence: A report of the Surgeon General; A.T. Harland (1996). *Choosing Correctional Options that Work: Defining the Demand and Evaluating the Supply*. Thousand Oaks, CA: Sage; Faye S. Taxman, et.al., *Tools of the Trade: A Guide to*

These needs should be prioritized so that services are focused on those factors that, if changed, would most reduce the offender's risk of recidivism. Researchers have identified the "big six" factors as:

- i. Low Self-Control – impulsive behavior
- ii. Anti-Social Personality – callousness, lack of empathy
- iii. Anti-Social Values – disassociation from the law-abiding community
- iv. Criminal Peers
- v. Substance Abuse
- vi. Dysfunctional Family

Cognitive-behavioral strategies, rooted in social learning theory, are most effective in changing offender risk factors; they focus on promoting pro-social thinking and behavioral skills, are action-oriented, and reinforce appropriate behavior.

*Responsivity*²² requires identification of interventions to which the offender will best respond. It requires that services be matched to the individual characteristics of offenders such as cognitive ability, learning styles, stage of motivation for change, gender, ethnicity, developmental stage, beliefs, and personal temperament. Accommodating these individual factors is important to effective and sustained behavioral change.

Effective interventions require appropriate *doses*²³ of services, structure, and supervision; incomplete or uncoordinated approaches can have negative effects, often wasting resources. Not surprisingly higher risk offenders require that 40% to 70% of their free time be structured with delineated routine and appropriate services during the first three to nine months of post-release supervision.

Incorporating Science Into Practice, National Institute of Corrections & Maryland Dept. of Public Safety and Correctional Services (2004).

²² W.R. Miller & K.A. Mount (2001). A small study of training in Motivational Interviewing: Does one workshop change clinician and client behavior? Albuquerque, NM; T. Gordon (1970). *Parent Effectiveness Training*. NY: NY, Wyden.

²³ T. Palmer (1995). Programmatic and non-programmatic aspects of successful intervention: New directions for research. *Crime & Delinquency*, 41(1): 100-131; P.Gendreau & C. Goggin (1995). Principles of effective correctional programming with offenders. Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick, New Brunswick; H. Steadman, S. Morris, et al. (1995). The Diversion of Mentally Ill Persons from Jails to Community-Based Services: A Profile of Programs. *American Journal of Public Health* 85 (12): 1630-1635.

Finally, *treatment*²⁴ must accompany sanction for significant and sustained behavioral change to occur. Providing timely and targeted treatment will provide the greatest long-term benefit to the community, the victim, and the offender.

4. Train Offenders through Directed Practice²⁵. Cognitive behavioral treatment methods have been shown to be effective at changing behavior and reducing recidivism. Examining thinking processes, role playing, and positive reinforcement are key components of this type of treatment. Skills should not just be taught to offenders but must be practiced, with staff direction, until pro-social attitudes and behaviors are consistently exhibited.

5. Increase Positive Reinforcement²⁶ When Appropriate. When learning new skills and behaviors, people respond better to positive rather than negative reinforcement. Research suggests a ratio of four positive

²⁴ T. Palmer (1995). Programmatic and non-programmatic aspects of successful intervention: New directions for research. *Crime & Delinquency*, 41(1): 100-131; T.R. Clear (1981). Objectives-Based Case Planning. *NIC, Monograph 1981*; F. Taxman & J. Byrne (2001). Fixing broken windows probation together. *Perspectives* Spring: 23-29; E. Currie (1998). *Crime and punishment in America*. New York, NY: Metropolitan Books; J. Petersilia (1997). Probation in the United States: Practices and Challenges. *National Institute of Justice Journal*: 2-8. Project Match Research Group (1997) Therapist effects in three treatments for alcohol problems. *Psychotherapy Research* 8(4):455-474; D.A. Andrews & J. Bonta (1998). *The psychology of criminal conduct*. Cincinnati: Anderson Publishing Co.

²⁵ S. Milhalic, K. Irwin, D. Elliott, A. Fagan, and D. Hansen (2001). Blueprints for Violence Prevention. U.S. Department of Justice, Washington, DC; W. Miller & S. Rollnick (2002). *Motivational Interviewing: Preparing people for change*. New York, NY: Guilford Press; D.S. Lipton, D. Thornton, et al. (2000). Program accreditation and correctional treatment. *Substance Use & Misuse* 35(12-14): 1705-1734; M.W. Lipsey & D.B. Wilson (1993). The efficacy of Psychological, Educational, and Behavioral Treatment. *American Psychologist* 48(12): 1181-1209; J. McGuire (2001). What works in correctional intervention: Evidence and practical implications. Pp. 25-43 in *Offender rehabilitation in practice: Implementing and evaluating effective programs.*, edited by D.F. Gary Bernfeld, Alan Leschied. New York, NY: John Wiley & Sons, LTD; J. McGuire (2002). Evidence-based programming today. Paper presented International Community Corrections Association conference, Boston, MA, November, 2002.

²⁶ P. Gendreau & C. Goggin (1995). Principles of effective correctional programming with offenders. Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick, New Brunswick; R.J. Meyers & J.E. Smith (1995). *Clinical Guide to Alcohol Treatment: The Community Reinforcement Approach*. NY: NY, Guilford Press; S.T. Higgins & K. Silverman, Eds. (1999). *Motivational behavior change among illicit-drug abusers: Research on contingency management interventions*. Washington, DC, American Psychological Association; N.H. Azrin & V.A. Besalel (1980). *Job club counselor's manual*. Austin, TX, Pro-Ed; A. Bandura, D. Ross, et al. (1963). Vicarious Reinforcement and Imitative Learning. *Journal of Abnormal and Social Psychology* 67(6): 601-607; A. Bandura (1996). Mechanisms of Moral Disengagement in the Exercise of Moral Agency. *Journal of Personality and Social Psychology* 71: 364-374.

reinforcements for each negative. It is also important to note that even when applied sporadically, positive reinforcements can be effective, unlike negative reinforcements.

Applying positive reinforcement should never undermine, or be done at the expense of, administering swift, certain, and real responses for negative and unacceptable behavior. Offenders may initially overreact to new demands for accountability, seek to evade detection or consequences, and fail to recognize any personal responsibility; but by providing consistently clear rules, enforced with appropriate graduated sanctions, offenders will tend to comply in the direction of most rewards and least punishments.

6. Engage Ongoing Support in Natural Communities²⁷. Realigning offenders with prosocial support systems in their communities is critical for sustained behavior change. Attitudes and behaviors are strongly reinforced in one's daily living environment. Without prosocial reinforcement in this setting, the chances of long-term positive effects are diminished. Research now indicates the efficacy of twelve step programs, religious activities, and restorative justice initiatives that are geared towards improving bonds and ties to pro-social community members.

7. Measure Outcomes²⁸. Measuring outcomes is crucial; it is what evidence-based practices are based on. Offender as well as staff performance must be measured.

²⁷ N.H. Azrin & V.A. Besalel (1980). *Job club counselor's manual*. Austin, TX, Pro-Ed; C.D. Emrick, J.S. Tonigang, H. Montgomery, & L. Little (1993). *Alcoholics Anonymous: Opportunities and Alternatives.*, edited by B.S. McCrady and W.R. Miller. New Brunswick, NJ: Alcohol Research Documentation, Inc., Rutgers Center of Alcohol Studies; S.T. Higgins & K. Silverman, Eds. (1999). *Motivational behavior change among illicit-drug abusers: Research on contingency management interventions*. Washington, DC, American Psychological Association; R.J. Meyers & J.E. Smith (1997). Getting off the fence: Procedures to engage treatment-resistant drinkers. *Journal of Substance Abuse Treatment*, 14, 467-472; J. Bonta, S. Wallace-Capretta, J. Rooney, & K. McAnoy (2002). An outcome evaluation of a restorative justice alternative to incarceration. *Justice Review*, 5(4): 319-338; T. O'Connor & M. Perryclear (2002). Prison religion in action and its influence on offender rehabilitation; R.J. Meyers, W.R. Miller, J.E. Smith, & S. Tonnigan (2002). A randomized trial of two methods for engaging treatment-refusing drug users through concerned significant others. *Journal of Consulting and Clinical Psychology*, Vol. 70:5, 1182-1185.

²⁸ S.W. Henggeler, G.B. Melton, M.J. Brondino, D.G. Scherer, & J.H. Hanley (1997). Multisystemic therapy with violent and chronic juvenile offenders and their families: The role of treatment fidelity in successful dissemination. *Journal of Consulting and Clinical Psychology* 65: 000-0013; S. Milhalic & K. Irwin (2003). *Blueprints for violence prevention: From research to real world settings – factors influencing the successful replication of model programs*. Boulder, CO, Center for the Study & Prevention of Violence; W.R. Miller, G.R. Sovereign & B. Kregge (1988). *Motivational interviewing with problem drinkers: II. The*

Agencies must routinely assess offender change in cognitive and skill development, and evaluate offender recidivism, if services are to remain effective. Agencies must also measure staff performance in order to achieve greater fidelity or adherence to program design, service delivery principles, and outcomes.

8. Provide Feedback²⁹. Providing feedback increases accountability and has been associated with enhanced motivation for change.

Providing progress feedback to offenders results in greater motivation, lower treatment attrition, and improved outcomes. Providing feedback to organizational staff helps maintain integrity to agency mission, improve outcomes, and focus on the ultimate goal of recidivism reduction.

drinker's check up as a preventive intervention. *Behavioral Psychotherapy* 16: 251-268; Meyers, R.J. and J.E. Smith (1995). *Clinical Guide to Alcohol Treatment: The Community Reinforcement Approach*. NY: NY, Guilford Press; Azrin, N.H., R.W. Sisson, R. Meyers, and M. Godley (1982). Alcoholism treatment by disulfiram and community reinforcement therapy. *Journal of Behavioral Therapy and Psychiatry* 13(2): 105-112; Meyers, R.J., W.R. Miller, J.E. Smith, and S. Tonnigan (2002). A randomized trial of two methods for engaging treatment-refusing drug users through concerned significant others. *Journal of Consulting and Clinical Psychology*, Vol. 70:5, 1182-1185; Hanson, R.K. and A. Harris (1998). Triggers of sexual offense recidivism. *Research Summary: Corrections Research and Development* 3(4): 1-2; Waltz, J., M.E. Addis, K. Koerner, and N.S. Jacobson (1993). Testing the integrity of a psychotherapy protocol: Adherence and competence ratings. *Journal of Consulting and Clinical Psychology* 61: 620-630; Hogue, A., H.A. Liddle, C. Rowe, R.M. Turner, G.A. Dakof, K. Lapann (1998). Treatment adherence and differentiation in individual versus family therapy for adolescent substance abuse. *Journal of Counseling Psychology* 45: 104-114; Miller, W.R. and K.A. Mount (2001). A small study of training in Motivational Interviewing: Does one workshop change clinician and client behavior? Albuquerque, NM; Gendreau, P., T. Little, et al. (1996). A meta-analysis of the predictors of adult offender; Dilulio, J.J. (1993). Performance Measures for the Criminal Justice System. U.S. Bureau of Justice Statistics, Washington, DC.

²⁹ Miller, W.R., Sovereign, G.R. & Kregge, B. (1988). Motivational interviewing with problem drinkers: II. The drinker's check up as a preventive intervention. *Behavioral Psychotherapy* 16: 251-268; Agostinelli, G., J.M. Brown, and W.R. Miller (1995). Effects of normative feedback on consumption among heavy drinking college students. *Journal of Drug Education* 25: 31-40; Alvero, A.M., B.R. Bucklin, and J. Austin (2001). An objective review of the effectiveness and essential characteristics of performance feedback in organizational settings. *Journal of Organizational Behavior Management* 21(1): 3-29; Baer, J.S., A.G. Marlatt, D.R. Kivlanhan, K. Fromme, M.E. Larimer, and E. Williams (1992). An experimental test of three methods of alcohol risk reduction with young adults. *Journal of Consulting and Clinical Psychology* 60(6): 974-979; Decker, P.J. (1983). The effects of rehearsal group size and video feedback in behavior modeling training. *Personnel Training* 36: 763-773; Ludeman, K. (1991). Measuring skills and behavior. *Training & Development* Nov.: 61-66; Zemke, R. (2001). Systems Thinking. *Training* February, 39-46; Elliott, D. (1980). A Repertoire of Impact Measures. *Handbook of Criminal Justice Evaluation*: 507-515.

The above is an introduction and cursory overview of the principles of evidence-based practice in corrections, just one prong of the three-pronged evidence-based practices integrated model developed by the Crime and Justice Institute and the National Institute of Corrections. For a more detailed discussion of these principles, please see the judicial stakeholder paper in this Box Set series.³⁰ For more information on the other two parts of the integrated model – organizational development and collaboration – please see the website of the Crime and Justice Institute.³¹ For more information on the principles of evidence-based practices from a defense perspective, please see the defense attorney stakeholder paper in this Box Set series.³²

³⁰ Crime and Justice Institute, Warren, R.W. (2007), *Evidence-Based Practices to Reduce Recidivism: Implications for State Judiciaries*. Washington, DC: National Institute of Corrections. Available at www.cjinitiative.org

³¹ www.cjinitiative.org

³² Crime and Justice Institute, Weibrech, K. (2008). *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations*. Washington, DC: National Institute of Corrections. Available at www.cjinitiative.org

EVIDENCE-BASED PRINCIPLES IN PROSECUTORIAL PRACTICE

There is a growing national movement afoot to reform our current correctional practice, to reduce recidivism and protect public safety through the use of evidence-based practice. It is important for prosecutors to understand the system-wide application of such practice in order to support, advocate, implement, or at the very least not subvert EBP. While much work has been done implementing EBP in departments of corrections and community corrections, these organizations have no choice but to work with the population of offenders that are placed on their doorstep. This violates the first principle of EBP which requires a risk/needs assessment prior to sanctioning and the diversion of low-risk offenders away from institutions and unnecessary correctional programming.

It is important for prosecutors to understand the system-wide application of such practice in order to support, advocate, implement, or at the very least not subvert EBP.

Incarcerated low-risk offenders absorb limited correctional resources, occupy space in already over-crowded prisons and jails, and are at greater risk of reoffending after being imprisoned with high-risk individuals. However, it is only attorneys and the judiciary that have the power to negotiate or order a diversionary or community sanction. It is the purview of the prosecutor, in cooperation with defense counsel, the judiciary, and the supervising authority, to assess an offenders' risk prior to final disposition of sentence, and sanction within the parameters of an evidence-based framework.

A collaborative approach is needed by all stakeholders, working in concert, to advance the principles proven to better outcomes. If the court sentences an offender, post assessment, to substance abuse treatment, but the program is not cognitive-behavioral in nature and staff are not trained to understand antisocial thinking or appropriate communication techniques, offender outcomes will likely be limited or at least not maximized. If a prosecutor fails to divert a low-risk offender from criminal prosecution, the result may be a sentence imposing overly restrictive or overwhelming conditions that might actually increase his risk of recidivism. If a high risk offender, who commits a low level crime, is sentenced without an assessment and based only on the *offense* without considering *offender* characteristics, he may be released with limited conditions at significant risk to the community. Using the medical model analogy, we must first "do no harm". An offender, like a patient, must be examined, diagnosed, appropriately treated and, depending on his condition, closely monitored until significant risk of harm has passed.

While many of the EBP principles previously described refer to offender *programming*, the principles of risk, need, and responsivity are inherently

relevant to the work of a prosecutor. Diversion determinations, charging decisions, plea negotiations, sentencing arguments, and revocation requests are critical junctures in the processing of a criminal case, requiring discretionary decision-making. Assessment tools can provide objective data for prosecutors to consider when making such determinations. While it is impractical to assume that prosecutors will have possession of offender risk/needs assessments prior to making all of these decisions, it is important they don't make decisions that may deter or negate EBP efforts in later stages of the criminal process.

Prosecutorial Practice

Since close to 97% of felony criminal cases are negotiated by counsel,³³ prosecutors and defense attorneys should be careful not to circumvent the importance of the assessment process when negotiating conditions of a plea.

Diversion is an important tool employed by prosecuting attorneys in a variety of different ways, primarily used to ensure restitution is made or community service is completed while avoiding criminal conviction for low level offenders. Many prosecutors require that a guilty plea be established but not entered by the court until conditions of diversion are met; the charges are then dismissed. Many jurisdictions are now agreeing to expunge the criminal records upon successful completion of diversion requirements so as to provide incentive for completion and to avoid imposition of a criminal record which would likely hinder future prospects for employment, housing, and other opportunities that may support pro-social community integration.

A risk/needs assessment can assist prosecutors in objectively determining whether one is an appropriate candidate for diversion and whether treatment or programming might aid law abiding behavior. There are a host of assessment tools available to jurisdictions; some that are comprehensive but others that are considered triage or initial screening tools. For offenders assumed to be low risk, such screening tools may confirm or reject the appropriateness of the diversionary process.

Plea negotiations are how the vast majority of criminal cases are disposed. According to the principles of EBP, it is critical that an offender's risk and needs are assessed prior to making any determination regarding incarceration or correctional programming. Since close to 97% of felony criminal cases are negotiated by counsel,³³ prosecutors and defense attorneys should be careful not to circumvent the importance of the assessment process when negotiating conditions of a plea.

³³ In 2005, only 3% of felony cases were concluded by jury trial. See Perry, *supra* n.12.

For example, a prosecutor may demand that plea conditions for a charge of assault while intoxicated include jail time, anger management classes, abstention from the use of alcohol and/or attendance at Alcoholics Anonymous. However, the tenets of EBP require that an assessment is conducted *before* the conditions of sentence are imposed. In this example, the assessment may conclude that the offender is a pro-social individual, with a high-school diploma, a history of long term employment, and has part-time custody of his minor children. Imposition of a jail term and requirement of attendance at classes or meetings on a regular basis might interfere with his employment and/or parenting schedule, which may result in stressors that promote association with less pro-social individuals or undermine law-abiding behavior. Conversely, it may also be the case that the individual is at higher risk to reoffend and should be sentenced to increased jail time and more stringent supervision conditions than negotiated. A comprehensive assessment could help determine the most effective conditions to employ.

In the majority of cases, prosecutors should consider negotiating the charge and leaving settlement conditions to the discretion of the department responsible for monitoring compliance of the offender, or reserve conditions of a plea negotiation until after an assessment has been conducted.

Sentencing arguments or memorandums must also be based on objective data obtained through a risk/needs assessment. As previously discussed, in order to maximize public safety and recidivism reduction, targeted interventions must be informed by completion of a validated assessment so that low-risk offenders are not over sanctioned and high-risk offenders are not under sanctioned. As with plea negotiations, conditions of sentencing should only be determined after the supervising agency has completed an assessment and preferably, a pre-sentence investigation report.

Revocation requests based on probation or parole violations should be made thoughtfully. There are many individuals in local jails and state institutions not because they committed a new offense, but because they committed a technical violation of a court imposed sentence. Prosecutors, often frustrated by an offender's apparent disregard for court order, may seek to have a stayed sentence executed. However, it is important to keep in mind the ultimate goal of recidivism reduction and, depending on the violation, execution of sentence may not support that end goal. Many offenders are ordered to attend substance abuse treatment and remain drug and alcohol free; but it is important to remember that an addiction does not have an on and off button and that relapse is an anticipated stage in the recovery process.

Intermediate community-based sanctions such as house arrest, electronic monitoring, community service, increased reporting, and work release settings are important tools in responding to technical violations.³⁴ Research indicates that in terms of recidivism reduction, community sanctions may result in better outcomes than incarceration.³⁵ Revocation guidelines can provide for responses to violations that are proportional to the risk and seriousness of the noncompliant behavior. Developing graduated revocation guidelines provides probation and parole officers with the authority and the tools to quickly respond to violations as they arise based on the risk of the offender and the severity of the breach.

Programming for offenders is an important component of rehabilitation, but programs must adhere to the principles of evidence-based practice in order to be most effective. Prosecutors should be sure to advocate for appropriate treatment since we know that sanctions alone, absent a treatment component, are not as effective in reducing recidivism. Court imposed programming that does not have an orientation toward measurable outcomes, based on sound principles and fidelity to model, is likely to be a waste of corrections resources and of limited value, if not detrimental, to the offender.

Prosecutorial Leadership

Prosecutors can be powerful figures in state and local criminal justice agencies and community circles, and are often at the forefront of innovative initiatives such as community prosecution, diversion programs, and problem-solving courts. Prosecutorial leadership is required for the implementation of evidence-based practices throughout the court process. Community corrections and institutions can do what they can with the population they serve, but effective practice requires early assessment to appropriately measure an offender's risk to reoffend and programming required to target criminogenic needs, if any. All those involved in the criminal justice system must be thoughtful about who is being sent to prison and whether such sanction furthers or impedes public safety.

The huge numbers of individuals sent to prison, most of them non-violent offenders, wreak havoc on the social fabric and community stability of urban

³⁴ Clear, T., P. Harris, and S.C. Baird (1992). Probationer Violations and Officer Response. *Journal of Criminal Justice*. 20:1-12; Gendreau, P. and C. Goggin (1996). Principles of Effective Correctional Programming. *Forum on Corrections Research*. 8(3):38-40; Oregon Department of Corrections (2002). *The Effectiveness of Community-Based Sanctions in Reducing Recidivism*.

³⁵ *Id.*

neighborhoods and is an assault on taxpayer's pocketbooks at the expense of other desperately needed human services. The cause of such societal ills and the remedies to address them obviously reach well beyond the ability or responsibility of a prosecutor to change. But EBP research has provided an encouraging avenue from which to start.

Successfully implementing any new policy or practice requires understanding the fundamental principles and likely implications of the new initiative, but also requires being thoughtful of constituent positions and confidently but carefully navigating organizational or political culture.

The naysayers of evidence-based practice may include those who equate offender rehabilitation with being soft on crime. To this objection there is a ready response and it simply requires pointing to the scientific evidence. If rehabilitation, as a sentence component and not necessarily a sanction replacement, has been proven to reduce recidivism and further public safety, we would be remiss not to encourage its use. Educating constituents and dispelling misconceptions can be an effective tool in furthering new policy.

County commissions or state legislatures, responsible for managing jurisdictional spending, may have objections to increased costs associated with enhanced use of assessment tools, development or expansion of evidence-based treatment programs, implementation of graduated sanctions, and others. However, the alternative is investing in more prisons which may have reached a point of diminishing return. The Washington State Institute for Public Policy reports that

The key to understanding the costs and benefits of prison as a crime-control strategy is the economic concept of diminishing marginal returns. When applied to prison policy, this fundamental axiom of economics mean that, as Washington increased the incarceration rate significantly in the last two decades, the ability of the additional prison beds to reduce crime has declined.³⁶

In another Washington state study, the Institute looked at the fiscal impact of implementing evidence-based "prevention and intervention programs, sentencing alternatives, and the use of risk factors in

³⁶ Steve Aos, Washington State Institute for Public Policy, *The Criminal Justice System in Washington State: Incarceration Rates, Taxpayer Costs, Crime Rates and Prison Economics* (2003).

sentencing.” The result was recidivism reduction of up to 17% and cost savings of \$4,359 to \$11,563 per program participant.³⁷

Crime victims and crime victim advocates may express opposition to the implementation of evidence-based practice if it is viewed as inadequate punishment, or if the rights of the offender appear to trump the rights of the victim. While this often occurs absent the use of EBP, crime victims and advocates should be part of any collaborative effort to implement evidence-based practices in a local jurisdiction. Educating this group on the value of evidence-based practice and its importance as a crime prevention tool may help quell some objections. Being sensitive to the situation of the victim, providing available services, and giving the victim a voice in the process may help lessen the emotional impact of the offense. However, balancing the rights of an individual victim, with the best interest of public safety as a whole, do not always perfectly align.

Recent public opinion on crime may help support a prosecutorial stance toward implementing evidence-based practice. In a 2006 survey by the National Center for State Courts, over 1500 adults were asked about their attitudes toward criminal sentencing. Almost 80% of respondents said that “under the right conditions, many offenders can turn their lives around.” When asked whether public spending should be used to build more prisons or fund programs to help offenders find jobs or get treatment, 77% preferred spending money on securing jobs and treatment. The survey concluded that “[p]eople want a criminal justice system that is effective and fair in its sentencing policies and practices – tough when it needs to be to ensure public safety, but more flexible in dealing with offenders deemed less threatening to society or when rehabilitation might be better achieved through means other than incarceration.”³⁸

³⁷ Steve Aos, et. al. Washington State Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (2006).

³⁸ Princeton Survey Research Associates International, *The NCSC Sentencing Attitudes Survey: A Report on the Findings* (2006).

NEED FOR SYSTEMIC CHANGE

While there is no argument that civil society requires the just confinement of individuals who pose significant threat to public safety, many of those incarcerated in our institutions do not fit this category. Many inmates are low-risk, non-violent offenders, whose probability of recidivism upon release may actually increase as a direct result of incarceration. Our current system can be described as a retributive, punitive model of incarceration. This has not always been the predominant philosophy in US corrections policy.

Prior to the war on drugs and the Sentencing Reform Act of 1984, federal sentencing policy was based on a rehabilitative approach, or medical model, requiring an individualized, offender-based approach to sanctioning. The system attempted to diagnose the perceived risk and needs of an offender, and treat his symptoms with a combination of punishment and treatment. As one federal court held, “[i]t is necessary to individualize each case, to give that careful, humane, and comprehensive consideration to the particular situation of each offender which would be possible only in the exercise of a broad discretion.”³⁹

While the intent of broad discretion, generally referred to as indeterminate sentencing, was “careful, humane, and comprehensive consideration,” the result was often varying disparities of criminal sanctions for similar offenses. As a result of concern by some of disparate sentences being imposed, and concern by others that tougher sentences were needed to stem the increasing crime rate, determinate sentencing took hold in states across the country and the federal system. Determinate sentencing was an *offense-based*, as opposed to an *offender-based*, sanctioning model. The result was increased penalties for many crimes, less judicial discretion in sentencing, limitations on parole and early release, and an explosion of prison populations.⁴⁰

As jurisdictions and prosecuting attorneys consider whether to tackle criminal justice reform, it is important to consider the current state of the system by conducting an environmental scan in individual jurisdictions, based on sound data, prior to advocating systemic change. Such information helps identify strengths and weaknesses of a particular system, helps prioritize what goals or outcomes to target, and provides an objective foundation to seek internal and external stakeholder support. The following information provides a

³⁹ Kennedy Commission, *supra* n. 10, citing *Burns v. United States*, 287 U.S. 216, 220 (1932).

⁴⁰ Kennedy Commission, *supra* n. 10

microscopic national scan, of sorts, which paints a bleak picture of our current correctional practice and supports a need for wide-spread systemic reform.

The financial and social costs of cycling people through the corrections system are staggering. Last year, states spent \$49 billion dollars on corrections, up from the \$12 billion dollars spent in 1987; and these figures do not include the costs of police, prosecution, courts, and costs associated with victimization.⁴¹ It is anticipated that by 2011, continued prison growth will require states to expend an additional \$25 billion dollars.⁴²

- California, for example, spent \$8.8 billion in corrections costs last year.⁴³
- Prisoner healthcare was a tremendous drain to California at a cost of \$2.1 billion in 2007 alone, a 210% increase since 2000.⁴⁴
- The geriatric population contributed significantly to these costs due to age related health issues, depression, and the onset of chronic diseases.⁴⁵
- The average annual cost of prisoner health care in the general population is approximately \$23,000; the average cost of an older prisoner is \$70,000.⁴⁶
- Hepatitis C is estimated to affect between 25% and 50% of our nation's prison population, at a treatment cost of \$30,000 per inmate annually.⁴⁷

In response to more prisoners, with more needs, correctional institutions have required more staff.

- Approximately 11% of all state government employees nationwide now work in corrections.⁴⁸
- One of the biggest budgetary issues facing states is overtime pay.⁴⁹
- In 2006, California corrections paid half a billion dollars in overtime costs alone, as it struggled to staff the state's 33 prisons, despite almost 4,000 vacant positions.⁵⁰

⁴¹ Pew, *supra* n. 1

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

Whether it is large state correctional systems, or small local jails, all jurisdictions are bursting at the seams as a result of correctional spending, often at the expense of services that may contribute to lowering crime rates such as education, treatment, and other social services.

While the financial costs to taxpayers are enormous, the social costs of our current criminal justice and correctional policies are immeasurable.

- The removal of individuals from community to prison, and their eventual return, has a destabilizing effect on families and communities.
- Studies have shown that the exit and reentry of offenders is geographically concentrated in racially segregated and economically depressed neighborhoods, primarily in African American communities.⁵¹
- 72% of prisoners from New York State came from only 7 of NYC's 55 community board districts; 53% of released prisoners from Illinois returned to the city of Chicago and concentrated in just 6 of Chicago's 77 communities, according to a 1992 study.⁵²

Children particularly suffer from the collateral impacts of incarceration.

- In 1999, approximately 1.5 million children had a parent in prison, an increase of a half-million children in less than ten years.⁵³
- Children of incarcerated parents often suffer from psychological disorders, including depression and anxiety, feelings of rejection, anger and guilt, and problems in school.⁵⁴
- According to 1999 data, one in ten mothers reported their children required state foster care upon their incarceration, too often resulting in the permanent severing of familial ties.⁵⁵

Researchers have found that low-levels of incarceration may increase community public safety, but “when incarceration reaches a certain level in an area that already struggles for assets, the effects of imprisonment undermine

⁵¹ Stanford Law Review, *The Social and Moral Cost of Mass Incarceration in African American Communities* (2004).

⁵² *Id.*

⁵³ Christopher J. Mumola, *Incarcerated Parents and Their Children*, U.S. Department of Justice, Bureau of Justice Statistics (2000).

⁵⁴ Stanford, *supra* n. 51

⁵⁵ Mumola, *supra* n. 53

the building blocks of social order” and impedes the ability of families and community groups to enforce social controls.⁵⁶

Further, the consequences of a criminal record and/or imprisonment eviscerates the opportunities and obligations of social citizenship, often rendering one ineligible for social welfare benefits including health care, food stamps, public housing, and educational assistance; driving privileges; employment opportunities; military enlistment; and the right to vote. Ironically, it is these consequences of incarceration that contribute to instability, return to a criminal lifestyle, and a cyclical pattern of incarceration and release.

All too often policy is drafted and implemented in extreme measure. In corrections, the pendulum has swung from wanting to rehabilitate all offenders to the other extreme of wanting to incarcerate all offenders. What we now need is thoughtful policy based on solid research, decisions driven by empirical data, and progress measured through articulated outcomes. Thankfully, there is now a significant amount of current, rigorous research to guide future criminal justice decision making.

⁵⁶ Stanford, *supra* n. 51

CONCLUSION

Maintaining the status quo in terms of criminal justice policies and practice is an easy decision for many criminal justice stakeholders to make. Operating within silos allows agency control and jurisdictional autonomy. But emerging criminal justice and corrections research is identifying scientific methods for improving practice that is difficult to ignore. Assessment tools predict with a great deal of accuracy those most at risk to reoffend, and what criminogenic needs offenders face that can be effectively changed with appropriate treatment. Practitioners are learning more about the importance of cognitive-behavioral interventions and how to avoid wasting limited resources on ineffective programming.

The principles of evidence-based practice have been proven to reduce recidivism by changing offender behavior. However, the principles require early diagnosis of an offender, before a plea is negotiated or sentence imposed. In fact, initial screening tools can help prosecutors make informed decisions about appropriate candidates for early diversion from the system. Whether it is an initial triage or a comprehensive risk/need, assessment tools can assist prosecutors in discretionary decision-making. To divert an offender from prosecution, reduce a charge in negotiating a plea, or recommend community sanction over incarceration, requires prosecutors to take a risk with public safety. Offender assessment can provide objective, actuarial information to assist prosecutors in making sometimes difficult decisions that can have significant impact.

Prosecutors have both the responsibility and opportunity to better the system for all those who encounter it. For an offender, a victim, a family member of one accused or one who has suffered at the hands of another, for children who become part of a cyclical pattern of repeat behavior, and for fragile communities who absorb returning offenders with few resources in place to assist, prosecutors have the duty to seek justice and the obligation to protect public safety. With well over two million individuals incarcerated in our prisons and jails, more than any other country in the world, current correctional policy must be reformed. We have at our disposal the evidence-based research and tools needed to effectuate positive criminal justice change. It is time to exercise leadership in moving such an initiative forward.

Prosecutors have both the responsibility and opportunity to better the system for all those who encounter it.

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